



DEBATE & PRO-POOR OUTCOMES WHEN REGULARISING INFORMAL LANDS: URBAN AND PERI-URBAN AREAS

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Abstract:

This paper underlines the importance and urgency of addressing urban development. The forces generating urbanization and urban growth may be irreversible. But the suboptimal, if not inhumane conditions, in which millions of urban poor live should be reversible. The paper surveys the debate and policy options on how to reverse these suboptimal or inhumane conditions. It focuses particularly on the regularization of informal land and settlements in urban and peri urban areas. It highlights how certain debates and assumptions have evolved and raises attention to some issues of relevance to future policy, especially with regard to tenure security and the diversity of tenure systems, land titling and land administration experiences.

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1 RISING TO THE URBAN CHALLENGE

For the first time in human history, more people now live in urban than rural areas. According to United Nations estimates, urban populations could *double* to almost 5 billion by 2030. The overwhelming majority of this increase is expected to be in developing countries, which could triple their entire urban built-up areas by 2030, from 200,000 to 600,000 sq. km. This 400,000 sq. km. increase would match the world's *combined* urban area in 2004. Few urban centres have been planned to absorb these numbers (UN-Habitat, 2008a:4), and land management and administration agencies are struggling to cope with the demand for land for housing.

The forces generating urbanisation and urban growth are irreversible, at least in the short and medium terms, and in many respects they are beneficial both to the increased urban populations and national economic development. Climate change, increased productivity in the agricultural sector, and a tendency for globalisation to concentrate capital and landholdings in fewer hands all reinforce rural-urban migration and urban growth. Although urban areas make a significant contribution to economic growth, many of their existing and projected inhabitants in developing countries are poor and this is resulting in a growing urbanisation of poverty.

Ever increasing demand for land, combined with speculative strategies by private investors and high-income groups have raised land prices in the formal market and forced many households to rely on informal land markets to access land for housing. This has resulted in the perpetuation and expansion of informal settlements in urban and peri-urban areas (Huchzermeyer and Karam, 2006).

In some key respects, land issues in urban and peri-urban areas are significantly different from those in rural areas. For example, the greater intensity of demand inflates prices to levels often equal to those of developed countries. Because foreign influences and investments are often more extensive in urban areas, there is also a greater chance that traditional tenure practices co-exist with those influenced by foreign laws and regulations.

The unprecedented scale and complexity of urban growth has understandably led many international agencies, bi-lateral donors and even many national governments, to be wary of intervening in urban development. Instead, the overwhelming proportion of donor funding has focused on promoting rural development. Over the years, there has been a lively debate among academics and policy makers concerning the relative merits of focusing on rural or urban investment in order to meet social and economic policy objectives of increasing employment and reducing poverty. Whilst the situation is undeniably complex, and varies from place to place and over time, urban areas have not so far attracted the attention or resources they need in order to effectively absorb the historically unprecedented numbers now looking to them for their future.

It is often not appreciated that government funding, which is invariably far greater than external donor funding, is frequently dependent on revenues generated in urban areas. The promotion of dynamic, well managed, towns and cities is therefore a vital component in creating sustainable rural and national development programmes. Policies are required to guide and manage the process of urban growth through effective land management, planning and tenure systems, within a governance framework which advances, or at least protects, the needs of the urban poor.

In this context, governance can be defined as the process of governing by articulating the management of public affairs at various scales, regulating relationships within society and coordinating the interventions of a diversity of actors. Land governance, beyond its social dimension, refers to arbitration between the competing economic functions of land. It aims to reconcile, while complying with laws and rules, the interests of the various categories of actors, and to involve citizens in decision-making processes by taking local practices into account. Since land issues are frequently a source of conflict, it is important to consider relationships concerning land

before making policy decisions (see UNDP OGC land governance briefs and discussion paper series, plus the UN-Habitat Global Campaign for Good Governance¹).

2 KEY ISSUES ON INFORMAL URBAN SETTLEMENTS

At present, 1 billion people live in urban slums and informal settlements. This number is projected to increase to 1.4 billion by 2020 and 2 billion by 2030, unless radical action is taken. These numbers confirm the enormity of the challenge facing international donors, national and local governments, the private sector and civil society in meeting the need for land, infrastructure and housing in developing countries. In comparison with this need, the MDG target to improve the lives of at least 100 million slum dwellers by 2015 is clearly inadequate since, even if it is realised, the situation will be even worse than at present.

To achieve poverty reduction objectives, it is important to promote local and inward investment and ensure the equitable distribution of benefits. A key requirement is to improve the living conditions of many more than 100 million people living in slums and various types of unauthorised settlements. It is also necessary to do this in ways that remove the need for *future* slums and unauthorised settlements. To add to the challenge still further, both these objectives need to be achieved in ways that provide adequate levels of security and access to livelihoods, services and credit. These objectives require a 'twin-track' or 'two pronged' approach to improving existing settlements and increasing the supply of affordable, reasonably located land in urban and peri-urban areas².

Many older informal settlements are in locations which have become valuable. This makes them vulnerable to pressure from commercial developers and government agencies seeking to transform urban areas to meet the needs of investors and high income residents of the urban elite. Under such conditions, it is common for authorities to adopt a legalistic approach to justify evicting residents (COHRE, 2006). Even when land administration agencies claim that they are providing compensation, this is rarely at market rates and relocation is often to the urban periphery where the urban poor cannot afford transport to places of employment. Alternatively, settlements may be subject to market-driven displacement, whereby commercial developers or higher income groups purchase land from residents at less than its potential market value. Such approaches may create more 'modern' (ie Western) urban centres, but simply move the poor to other locations where they are less visible.

Fortunately, although poor urban residents live in substandard or unauthorised settlements, many governments now recognise the massive collective contribution they make to local and national economies. Rather than prejudice this contribution and increase social disruption, governments accept that it is preferable to regularise such settlements wherever it is practical to do so.

Of course, not all settlements are suitable for regularisation and upgrading. Some may be on land which is vulnerable to landslides or flooding, whilst others may be on prime commercial sites, or areas designated for strategic public needs, such as highways, railways or ports. In such cases, relocation will be necessary, though it is important to identify alternative sites as close as possible to the existing locations, so that livelihood opportunities are protected and, if possible, enhanced.

¹ http://www.undp.org/oslocentre/overview/land_governance.html and UN-Habitat (2000) 'Global Campaign for Good Governance' Nairobi: <http://www.unhabitat.org/content.asp?typeid=19&catid=25&cid=2097>

² See, for example, Payne, G (2005) 'Getting ahead of the game: A twin-track approach to improving existing slums and reducing the need for future slums' (Environment and Urbanization, Vol. 17 No.1 April pp135-145 and UN-Habitat (2006) 'State of the world's cities 2006/7, Earthscan, London, p174.

3 THE EVOLVING DEBATE ON GOVERNANCE AND URBAN LAND

Improving urban governance in land administration will be a key issue during the next few decades. This involves:

- arbitrating between conflicting uses of land (residential, industrial, commercial, public services and infrastructure, public spaces);
- adopting and enforcing basic planning norms and standards;
- protecting the environment and;
- ensuring fair and equitable access to land for all households, depending on their needs and resources.

As observed by the consultancy practice Land Equity (2008:6-7) governance has become an integral part of the development agenda in the last decade. Although there is some variation in how it is defined, there is general acceptance that it is based on a set of principles that include participation, fairness, decency, accountability, transparency, and efficiency.

Although these characteristics are now endorsed by many international institutions, there is no universal consensus about what "good governance" means in practice. It is too frequently used in a restrictive way, linking it to a market economy, western-type of democracy, and a pre-eminence of individual over collective rights. The relevance and effectiveness of governance choices depends on historical factors, levels of economic development and political choices that are all specific to each country (Meisel & Ould Aouidia, 2007). This applies also to governance in land tenure and administration.

It is important to note, therefore, that governance "cannot be reduced to technical administration or 'management' of land markets or land policy reforms, and it cannot be confined to the sole issue of land taken in isolation of wealth and political power distribution" (Borras and Franco, OGC Brief # 2, 2008). Thus, a pro-poor land policy "must involve land-based wealth transfers from the previous entities that control such resources" (ibid) and a 'bundle of *powers*' rather than a 'bundle of *rights*' which involves the ability to derive benefits from things rather than merely entitlements (Ribot and Peluso, 2003). Borras and Franco (OGC Brief # 2, 2008) claim that an effective pro-poor land policy is one that is class-conscious, historical, gender and ethnic-sensitive, productivity-increasing and livelihood-enhancing. They also acknowledge that there is no 'magic bullet' in realising these aims³.

1. Changing attitudes to tenure security

The literature has lagged behind the need to address urban governance in land administration and land tenure⁴. Apart from a landmark review by Charles Abrams in 1953 and a later global review by the United Nations (1973), the focus was on national or rural aspects until the late 1980s. At that point, various observers (e.g. Angel et al, 1983) noted that increasing demand and prices for urban land demanded increasing public sector intervention. Doebele produced a useful typology of tenure systems that sought to explain the myriad forms found in urbanising countries. Others have since followed (e.g. Durand-Lasserve and Selod, 2007 and Payne, 2004). It is now widely

³ http://www.undp.org/oslocentre/docs08/land_governance/Land%20Policy%20Brief%20-%20-%20Final.pdf

⁴ Most of the literature to date has concentrated on rural issues as in the previous UNDP/OGC Briefs and the FAO literature on land policy. These have, however, increasingly addressed the political economy aspects which are central to an understanding of urban land issues and policy options.

recognised that tenure systems are the outcome of historical and cultural forces and reflect relationships between people and the land on which they live.

The relationship between governance, land administration and land tenure in urban areas emerged later, following the Habitat II Conference in 1996 in Istanbul, and was driven by the need to increase protection from forced evictions and promote long term options for secure tenure. The need to address urban governance and secure tenure issues together was stressed by the General Secretary of the United Nations on the occasion of the Habitat II+5 conference held in New York in 2001. Governance was presented as a "precondition for economic efficiency and effective administration. A healthy society is one that gives all its members a chance to participate in decisions that affect their lives. Improved urban governance, therefore, implies greater democracy and strengthened local authorities... ". It was closely linked with the lack of secure tenure, which affects tens of millions of urban families. "This absence of legal protection and support often leads to the enlargement of the informal sector, allowing people to put food on the table, but inhibiting the ability of people to raise capital, attract investment and receive water and other basic services.... Action in this area has the potential to create considerable wealth and provide a major route out of poverty" (United Nations, 2001).

The launching by UN-Habitat in 1999 of the Global Campaign for Secure Tenure and the Global Campaign on Urban Governance reflects a major shift in urban development policies. The World Bank has also recognised the importance of secure tenure in promoting economic development and reducing poverty and organised a series of regional conferences on land and tenure issues in 2002 to establish the basis for appropriate land tenure policies and corresponding governance strategies. At the same time, the governments of Australia, Germany, Norway, Sweden, the USA and other countries increased funding and policy initiatives on land tenure. The increasing attention has been matched by a similarly increasing consensus on the form such policy should take.

The Millennium Development Goals adopted by the United Nations in 2000 reaffirmed the key role of the Regional Campaign on Secure Housing and Land Tenure and Good Urban Governance, ensuring environmental sustainability (Goal 7 of the MDGs) and to develop a global partnership for development (Goal 8) (UN-Habitat, 2004a). One outcome of the Campaign was the Urban Governance Index (UN-Habitat, 2004b) and the establishment of the UNDP Governance Center in Oslo. FAO, IFAD, FIG also contribute to initiatives to improving governance in land administration.

2. Changing attitudes to land administration

Development practitioners of all persuasions have also recently recognised the importance of governance and the role of land management because land administration is considered one of the most corrupt sectors of government (Land Equity, 2008:1). Consequently, investments in land administration reform and projects have increased steadily and the World Bank group and other donors are currently financing more than 50 such projects to provide and register real property rights. However, in many countries, regulations and procedures for registering rights, recording transactions or obtaining building permits, etc., are unclear and overcomplicated. Such conditions prevent the urban poor entering the formal land market and can generate opportunities for corruption and rent seeking by officials (Land Equity, 2008).

3. Changing incentives

One of the central paradoxes of urban governance is that, despite numerous international conferences, World Urban Forums, World Bank Urban Symposia, Best Practices awards, etc., during which examples of innovative approaches to urban land policy, land tenure and regulatory reform have

been promoted, progress remains far below the level required. There are many reasons for this. However, research on the political economy of urban land markets undertaken for the World Bank⁵ suggests that one reason may be that the political, administrative and commercial elites in many countries benefit from the status quo and see no need to change the approach to land administration. Where such groups are drawn primarily from the social, economic and cultural elite, it is perhaps inevitable that they find it difficult to appreciate the realities addressed by those lower down the social and economic scale. Unless decision makers are drawn from a wider cross section of society, or more participatory forms of decision making are adopted, it may be unrealistic to expect significant progress unless the benefits of change are shown to be greater than current approaches.

One way of addressing this issue is to raise public awareness more effectively and for key decision makers in areas making progress to advise and assist those in areas lagging behind. However, since nations and cities are often competing for investment, such collaboration may best be facilitated through the activities of international agencies, such as UNDP, UN-Habitat, the World Bank, Cities Alliance and bi-lateral donors.

4 THE EVOLVING DEBATE ON REGULARISATION

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 aspects, 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. Different people or groups may enjoy recognised interests in some or all of these rights. In any discussion of land tenure and property rights, it is important to recognise the importance of cultural, historical and political factors, as these influence the way key terms and relationships are defined in practice.

1. Types of tenure and tenure security

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. It is therefore important to think of tenure as a continuum of categories, including squatting, unauthorised subdivisions on legally owned land, and other arrangements that may not conform to official procedures. 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 recognised customary tenure operates alongside statutory systems.

Each major tenure system has advantages and disadvantages:

- Customary systems generally facilitate social cohesion, but may not be able to withstand increasing pressure on land and favour men and members of the indigenous group over women and in-migrants.
- Private land ownership puts land to the most economically efficient use, but often excludes the poor and limits state land management options.

⁵ PADECO (2007) 'The Evolving Role of World Bank Urban Shelter Projects: Addressing Land Market and Economy-Wide Constraints: Final Report, PADECO, Tokyo. Mimeo.

- Public or religious land ownership may facilitate equal access to prime locations, but is also associated with bureaucratic inertia and sometimes corruption.

Within each tenure regime are a number of distinct categories as follows.

1.1. Table1: Tenure systems and their characteristics⁶

Tenure system	Characteristics	Advantages	Limitations
Freehold	Ownership in perpetuity.	High degree of security. Freedom to dispose, or use as collateral for loans. Maximises commercial value, potential for increases in asset value.	Costs of access generally high. Collateral value may not be relevant if incomes are low or financial institutions are weak. Property value can go down as well as up.
Delayed freehold	Conditional ownership. Title is granted on payment or when development has been completed.	Same high degree of security as freehold when payments are made on schedule or development are completed. Freedom to dispose, or use as collateral for loans. Maximises commercial value, with potential increases in asset value.	Default in payments or development may result in eviction and loss of funds invested. Collateral value may not be relevant if incomes are low. Property value can go down as well as up. Expectations of increased value can divert investments from more productive sectors.
Registered Leasehold	Ownership for a specified period from a few months to 999 years.	As secure as freehold, but only for the period specified in the lease.	Requires legal framework. Costs of access generally high. Investment may be neglected towards the end of the lease period.
Public rental	Rental occupation of State- owned land or house.	Provides a high degree of security, providing terms and conditions of occupation are met.	Limited supply may restrict access. Often badly located for access to livelihoods. Terms often restrictive. Deterioration may result if maintenance is poor.
Private rental	Rental of privately owned land or property.	Good security if protected by legally enforceable contract. Provides tenants with flexibility of movement.	Open to abuse by disreputable owners. Deterioration may result if maintenance costs not met.
Shared equity	Combination of delayed freehold and rental in which residents purchase a stake in their property (often 50%) and pay rent on the remainder to the	Combines the security and potential increase in asset value of delayed freehold and the flexibility of rental. Residents can increase their stake over time, ultimately leading to full	Requires a proper legal framework and efficient management.

⁶ From UN-Habitat (2008c) 'Secure Land Rights for All' Nairobi

	other stakeholder.	ownership.	
Co-operative tenure	Ownership is vested in the co-operative or group of residents who are co-owners.	Good security. Maintains social cohesion.	Requires a proper legal framework. Restrictions may reduce incentives to invest. Requires a cohesive group. Requires double registration (of land and the association).
Customary ownership	Ownership is vested in the tribe, group, community or family. Land is allocated by customary authorities such as chiefs.	Widely accepted. Simple to administer. Maintains social cohesion.	May lose its legal status in urban areas. Vulnerable to abuse under pressure of urban and market development. Poor customary leadership may weaken its legitimacy. Generally favours men and members of the indigenous group over women and immigrants.
Religious tenure systems (e.g. Islamic)	Islamic tenure has four main categories: <i>Waqf</i> is religious trust land; <i>mulk</i> is full individual ownership; <i>miri</i> is state owned or controlled land with use rights; <i>musha/mushtarak</i> is collective/tribal ownership.	Facilitates family/group tenures and accessible and affordable land management procedures.	Because they are outside the commercial land market, <i>waqf</i> lands are often inefficiently managed.
Intermediate, or temporary, tenure systems	There are many pragmatic arrangements, including land certification, 'Certificates of Comfort', Temporary Occupation Licenses, Permits to Occupy, etc.	These include individual and community-based options and provide reasonable security for households to invest, whilst protecting long term public interest options for change.	Costs may be incurred by authorities or residents if relocation is required. If these prove excessive, redevelopment can be inhibited. Temporary tenure may inhibit investment.
Non-formal tenure systems	These include categories with varying degrees of legality or illegality. They include regularised and unregularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. Several forms of tenure may also co-exist on the same plot, (eg. tenants & sub-tenants), with each party entitled to rights.	Some of these non-formal categories, such as squatting, started as a response to the inability of public allocation systems or formal commercial markets to provide for the needs of the poor and operated on a socially determined basis.	As demand has intensified, even these informal tenure categories have become commercialised, so that access by lower income groups is increasingly constrained. Insecurity may inhibit investment.

Naturally, societies which place a strong emphasis on communal interests tend to favour state, public or customary ownership, whilst those which give priority to the interests of individuals will encourage private land tenure systems, such as freehold or leasehold. Ethnically homoge-

neous groups, especially in rural areas, often apply customary tenure systems to regulate the allocation and use of land. This is more difficult in ethnically mixed urban areas.

Whilst no single tenure system provides advantages without some major limitations, it is clear that globalisation has tended to reinforce statutory tenure systems based on Western preoccupations with the rights of the individual. Those unable to meet the terms and conditions imposed by commercial land markets offering individual titles are therefore increasingly forced into various non-formal solutions.

2. Avoiding simplistic definitions

The delayed focus on urban land tenure issues is largely due to their complexity and their political implications. In many countries, particularly those once subject to colonial rule, European tenure regimes, such as Roman law and the Napoleonic Code, were imposed on settlements developed, or occupied, by foreigners. Officially, these supplanted local practices such as customary tenure. However, in practice, existing forms of tenure persist, resulting in legal plurality. The continued application of imposed or imported tenure practices, combined with conventional city master plans, failed to provide for increasing numbers of rural-urban migrants following independence. More and more poor households were therefore forced into unauthorised settlements, so that by the 1990's, non-formal tenure categories were increasing more rapidly than any other in cities of the South (Payne, 1989).

As cities grew, the range of tenure categories increased. For example, while earlier settlers were often able to squat on undeveloped public land, more recent demand has had to be accommodated by the informal subdivision of legally owned land by its owners or commercially motivated intermediaries. In most developing countries, it is therefore no longer appropriate to define tenure in terms of legal or illegal, formal or informal, since there is in practice a continuum of tenure types. The political aspects are also extremely complex and involve high stakes. It is no doubt for this reason that Borrás and Franco note that there has often been a tendency to evade "the fundamental issues of political power, the political economy of land and political change" which any pro-poor policy and practice must address (OGC Briefs # 1 & 2, 2008).

3. Land tenure, property rights and poverty reduction

Land tenure and property rights have recently been identified as a key issue in managing the growth of urban areas and reducing urban poverty⁷. For example, in May 1999, UN-Habitat launched its Global Campaign for Secure Tenure to address the need to increase protection from forced evictions and promote longer term options for secure tenure⁸. Similarly, the Millennium Development Goals established in 2000⁹ emphasise the impacts of insecure tenure and its

⁷ The remainder of this section is drawn from Payne, G., Durand-Lasserve, A., and Rakodi, C. (2008)

⁸ Benschop (2003:1) notes that "[where these first quotation marks end?]" various definitions of secure tenure exist, but the most recent definition that was agreed upon during the Expert Group Meeting on Urban Indicators in October 2002, is: "*the right of all individuals and groups to effective protection by the state against forced evictions*". Under international law, 'forced eviction' is defined as: '*the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection*'. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights (the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights).

⁹ The eight Millennium Development Goals (MDGs), established in the Millennium Declaration, were approved by 191 Heads of State and Presidents at the General Assembly of the United Na-

links with poverty and poverty reduction. Sclar and Garau (2003:57) note that “insecure tenure has multiple ramifications for poverty. Legal tenure at the settlement level is often a prerequisite for the provision of basic services. Without security of tenure, newly serviced settlements are vulnerable to market pressure”. As such, “ensuring security of tenure is an effective tool for alleviating poverty in slums”.

The World Bank has also recognised the importance of secure tenure in promoting economic development and reducing poverty in both rural and urban areas. At the same time, many donor governments recognised the importance of secure land rights and fairer land distribution.

The increasing consensus on the importance of tenure policy in reducing rural and urban poverty was matched by an equal consensus on the form such policy should take. Stanfield and Bloch (2002:1-2) state that “in the 1980s, U.S. foreign assistance shifted to emphasise macro-economic policy reform and private enterprise development. This shift was reflected in USAID’s Policy Determination on “Land Tenure” (PD-13) that emphasised land markets, land titling, and real property registration. Land titling also became central to the operations of The Inter-American Alliance for Real Property Rights, which was established to support the Summit of the Americas process in response to the commitments related to real property rights in the region made in the Declaration of Nuevo Leon; the Millennium Challenge Account (MCA); the Real Estate Advisory Group (REAG); and the Inter-Summit Property System Initiative (IPSI).

The momentum established by these initiatives is noted by Daley and Hobley (2005:13), who report that “the start of the Thailand Land Titling Program coincided neatly with a major international shift in development policies: during the 1980s the World Bank’s structural adjustment programmes and liberalisation policies (and the IMF’s stabilisation policies) linked beliefs about the importance to economic growth of privatising and individualising land rights with the broad pro-market tenets of ‘neo-liberalism’. This approach was also reflected in the World Bank’s 1993 housing policy paper, *Housing: Enabling Markets to Work*, which stated (1993:70) that secure tenure increases housing investment and that “where proper titles are issued, investment in housing may further increase if the titles can be used as collateral for obtaining housing finance”. The report went on to state that titling need not be restricted to freehold titles, and may offer titles that can be upgraded to full freehold titles over time. Market liberalisation policies and programmes were predicated on the basis that increased investment would result in growth and that such growth would “lift all boats” and thereby reduce poverty. Experience has shown that such claims frequently proved excessive and, in some cases, actually increased poverty in real, as well as relative, terms.

4. The pros and cons of land titling programmes

A major boost to discussion on the importance of tenure security and its implications for social and economic development followed the publication in 2000 of the book by Hernando de Soto¹⁰ which claimed a direct correlation between property ownership and affluence in the West and the lack of this in developing countries. De Soto claims that the major stumbling block that keeps the rest of the world from benefiting from capitalism is its inability to produce capital, and that whilst the poor already possess the assets they need to make capitalism work for them, they hold these assets in defective forms. By this he means that they lack titles to their properties which they can use to invest in businesses, rendering their assets ‘dead’ capital. He estimates the total value of such ‘dead’ capital is at least US\$9.3 trillion. “They have houses but not titles, crops but not deeds, businesses but not statutes of incorporation” (de Soto, 2000:7). Elsewhere, de Soto

tions in the year 2000. They pledged to adopt new measures and join efforts in the fight against poverty, illiteracy, hunger, lack of education, gender inequality, infant and maternal mortality, disease and environmental degradation.

¹⁰ de Soto, Hernando (2000) *The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else* Basic Books, New York

(2000:56) acknowledges that people of the global south remain "trapped in the grubby basement of the pre-capitalist world" not because they have no property, but "because they have no property to lose."

Perhaps inevitably for somebody who has been so widely quoted and reviewed, de Soto has claimed that his views have been misrepresented and the Commission on Legal Empowerment of the Poor (CLEP), of which he was co-Chair, emphasises that land titling is not the only option to reduce poverty. However, it also states (CLEP Overview paper, 2006) that access to land ownership is an essential component for poverty eradication in developing countries and a central tenet of de Soto's approach is that ownership is essential if a property is to be usable as collateral for a loan. It is on this basis that many land titling programmes have recently been proposed.

However, a major policy shift in approach took place in the late 1990s. This is recognised by Quan (2003) and confirmed in several World Bank publications. For example, Deininger (2003) states that the World Bank now "acknowledges that formal titles are not always necessary, or sufficient, for high levels of tenure security". Similarly, another World Bank report (2006:12) states that "most policy analysts now no longer simply assume that formalization in a given context necessarily increases tenure security, and leads to collateralized lending. The original assumptions have now become questions for empirical research".

Empirical evidence on the social and economic impacts of titling programmes has replaced assertions and claims and given a sound basis for objective assessments. Two key findings are that:

- 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.
- Most bank lending is revenue rather than asset-based, so the provision of titles will not necessarily increase access to formal credit Home (Payne, Durand-Lasserve and Rakodi 2007 & 2008).
- Whilst international experience shows that even the poor will invest what they can if they have reasonable security, titles are not the only means of ensuring security. Many people achieve security through political pressure, collecting receipts for utilities payments, or simply by sheer force of numbers.

The stated intention of titling programmes is to provide high levels of security and property rights in a form which will enable poor households to obtain access to credit and work to lift themselves out of poverty, but this depends on:

- households being able to service the debt
- property values not declining below the outstanding loan amount.

There are additional drawbacks to titling programmes in developing economies which have not been adequately acknowledged by their advocates. These include:

- windfall profits for squatter 'owners' who sell up as soon as formal tenure is granted
- eviction of tenants unable to afford increased rents
- new unauthorised settlement by people hoping formal titles will also be awarded to new areas
- distortions to land markets caused by sporadic titling
- heavy burden placed on land registries by city-wide titling programmes

- costs and complexity of administrative procedures required for titling programmes, which discourage households from completing the regularisation process, thereby perpetuating the informal land market.

It is now clear that urban titling programmes have been excessively promoted in developing countries. This reinforces the lessons being painfully learned following the sub-prime loans scandal in the USA, whereby home ownership was being promoted to groups known as 'Ninjas' ("no incomes, no jobs, no assets") even though they were too poor to service the mortgages provided. The limitations of these assumptions are now abundantly evident.

5. Alternatives to tackling tenure

Finally, it is not always necessary to change the formal tenure status of a land parcel or settlement in order to regularise it and realise social, economic and environmental policy objectives. As the highly acclaimed Kampung Improvement Programme in Indonesia (Silas, 1997), the Orangi Pilot Project in Karachi, Pakistan (Hasan, 2008) and the upgrading programmes in Ankara, Turkey (Payne, 1982, 1984) and Port of Spain, Trinidad and Tobago (Griffith-Charles, 2004), all illustrate, these objectives can be realised by improving the physical environment, the installation of access roads, surface drainage, water supply, sanitation, energy supply and better solid waste disposal. The confidence that these services give to a community are often more than sufficient to offset concerns about possible eviction and encourage further investment by households in improving their homes when and as resources are available.

The policy implications of alternatives to titling are discussed in the OGC Brief # 10 'Gender Sensitive and Pro Poor Principles When Regularising Informal Land: Urban and Peri-Urban Areas'.

Weblinks:

http://www.undp.org/oslocentre/docs08/land_governance/Land%20Policy%20Brief%20-%201-%20Final.pdf

http://www.undp.org/oslocentre/docs08/land_governance/Land%20Policy%20Brief%20-%202%20-%20Final.pdf

http://www.undp.org/oslocentre/docs08/land_governance/Discussion%20Paper%20-%201%20-%20Final.pdf

http://www.undp.org/oslocentre/docs08/land_governance/Discussion%20Paper%20-%202%20-%20Final.pdf

<http://www.glt.n.net>

<http://itc.nl>

<http://unhabitat.org>

<http://www.fig.net>

http://www.fig.net/admin/ga/2008/agenda_app/app_09_07_rep_comm_7.pdf

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