

URBAN LAND TENURE POLICY OPTIONS: TITLES OR RIGHTS?

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Introduction

This paper addresses urban land tenure issues and policy options, particularly in developing countries. It draws heavily on a recent review of the literature¹ and a research project on 'Innovative approaches to tenure for the urban poor' being undertaken with funding from DFID.

The review revealed that surprisingly little was written on urban land tenure in developing countries before the 1980's. Furthermore, the amount of empirical evidence dealing with the full range of statutory, customary and informal or non-statutory systems of urban land tenure and property rights, together with the dynamics of their interaction, remains extremely limited. This has denied policy makers, administrators and sectoral professionals a sound foundation on which to revise existing tenure policies or develop new ones. A major conclusion of the review was therefore the need for further research on innovative approaches and particularly examples of what could be called 'intermediate' systems of tenure and property rights.

As many observers have noted, land is unlike other resources in that it cannot be made or moved. It also excites intense emotional and psychological attachment in a way that services, materials and finance do not. A precondition for creating equitable and efficient land and housing markets is the existence of an appropriate land policy. Systems of tenure and property rights occupy a central element in the preparation of such a policy.

Existing tenure systems

The pioneering UN study (1973) of urban land policy and land use control measures identified a wide range of formal and customary tenure systems. Although this omitted any significant discussion of informal or unauthorised tenure sub-markets, it established that many tenure systems exist and that they are based on a wide range of cultural and historical influences. Any attempt to develop appropriate tenure policies, therefore needs to take into account this variety and the factors influencing it.

In order to assess different land tenure systems, it is therefore necessary to formulate a working definition of terms. For this purpose, land tenure can be defined as *the mode by which land is held or owned, or the set of relationships among people concerning land or its product*. Property rights are similarly defined as *a recognised interest in land or property vested in an individual or group and can apply separately to land or development on it*. Rights may cover access, use, development or transfer and, as such, exist in parallel with ownership. On this basis, it is clear that the ways in which a society allocates title and rights to land is an important indicator of that society, since rights to land can be held to reflect rights in other areas of public life.

A major complication is that there are often different systems of legislation relating to land, and different forms of tenure, co-existing in the same country and, sometimes, even within the same city, or between an urban area and its surroundings. Each form of tenure has its advantages and limitations depending upon its context. Among the most common types in developing countries are the following:

Customary tenure

This is found in most parts of Africa, the Middle East, Melanesia and (once upon a time) North America. It evolved from largely agricultural societies in which there was little competition for land, and therefore land had no economic value in itself, but where survival was often precarious and depended upon careful use of the land to ensure an ecological balance. In

¹ Payne, Geoffrey 'Urban land tenure and property rights in developing countries: A review' Intermediate Technology Publications, London 1997

customary systems, land is regarded as sacred, and man's role considered to be one of stewardship, to protect the interests of future generations. Allocation, use, transfer, etc, are determined by the leaders of the community according to its needs, rather than through payment, though some form of token amount (eg beer money, or cattle) is often extracted as a sign of agreement. With urban expansion, the system has become subject to commercial pressures and may only benefit members of the group.

Private tenure

This is largely an imported concept in developing countries and is generally concentrated in urban areas, where it was designed to serve the interests of colonial settlers. As such, it may co-exist with other indigenous tenure systems. The system permits the almost unrestricted use and exchange of land and is intended to ensure its most intense and efficient use. Its primary limitation is the difficulty of access by lower income groups.

Public tenure

Virtually all societies acknowledge the concept of public land ownership to some degree. In socialist countries, all rights are vested in the state, while in capitalist countries, it may be restricted to a narrow range of public requirements, such as strategic or communal uses.

The concept of public land ownership is largely a reaction to the perceived limitations of private ownership in that it seeks to enable all sections of society to obtain access to land under conditions of increasing competition. Although it has frequently achieved higher levels of equity than private systems, it has rarely achieved high levels of efficiency due to bureaucratic inefficiency or systems of patronage and clientelism.

Religious land tenure systems

The traditional forms of tenure in Islamic countries represent another variation in this range. There are four main categories of land tenure within Islamic societies. '*Waqf*' land is land 'held for God', whilst '*mulk*', or private lands, are also protected in law; '*miri*', or state controlled land which carries '*tassruf*' or usufruct rights, is increasingly common, whilst '*musha*', or communal lands, are gradually ceasing to be a major factor under the requirement by land registries that ownership of land parcels has to be proven (United Nations 1973:Vol V:37). The religious foundations of the *Waqf* hold substantial areas of land in some cities, notably Baghdad and Beirut, which are protected from legislative encroachment (United Nations 1973:Vol V:37). Because they are outside the commercial land market, waqf lands are often inefficiently managed (as in Lahore).

Non-formal tenure categories

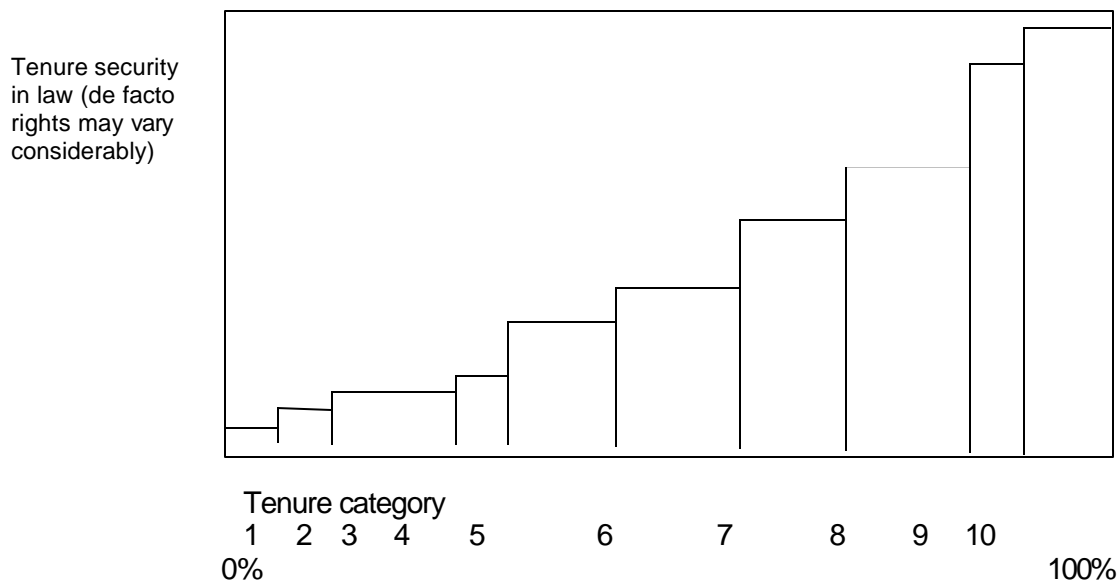
As stated above, these include a wide range of categories with varying degrees of legality or illegality. They include regularised and un-regularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. In some cases, several forms of tenure may co-exist on the same plot, as in Calcutta, where '*thika*' tenants rent plots and then sublet rooms to others who sub-let beds on a shift system, with each party entitled to certain rights. Some of these non-formal categories, such as squatting, started as a response to the inability of public allocation systems or commercial markets to provide for the needs of the poor and operated on a socially determined basis. However, as demand has intensified, even these informal tenure categories have become commercialised (see Payne 1989 for examples), so that access by lower income groups is increasingly constrained. Despite this, they represent the most common urban tenure category in many countries and accommodate the majority of lower income households. They are also often expanding more rapidly than any other category.

The tenure continuum

The range and complexity of tenure systems outlined above demonstrates that it is simplistic to think of tenure in black and white terms, such as legal or illegal, since there is generally a continuum of tenure categories within most land and housing markets. In many countries, there may even be more than one legally acceptable system operating, so that migrants moving from customary areas to urban centres may be considered to be behaving illegally, simply because they are operating in accordance with systems which are not acceptable in their new locations.

The co-existence of these different tenure systems and sub-markets within most cities creates a complex series of relationships in which policy related to any one has major, and often unintended repercussions on the others. Before any attempt to intervene in land markets is made, it is therefore vital to assess the full range of de jure and de facto tenure systems and sub-markets which exist in any city. An example of some of the tenure categories which exist in many cities is illustrated in Fig 1, though this omits customary and religious categories for reasons of simplicity.

1: Typical distribution of urban tenure categories by legal status



Tenure categories found in many cities:

- 1 Pavement dweller
- 2 Squatter tenant
- 3 Squatter 'owner' - un-regularised
- 4 Tenant in unauthorised subdivision
- 5 Squatter 'owner' - regularised
- 6 Owner - unauthorised subdivision
- 7 Legal owner - unauthorised construction
- 8 Tenant with contract
- 9 Lease-holder
- 10 Free-holder

NB: For simplicity, this illustration deletes customary and Islamic tenure categories

Policy issues to be resolved

Under conditions of rapid urbanisation, competition for secure, serviced land is increasing in all developing countries. This places greater pressure on existing tenure systems and requires governments to formulate policies which encourage efficient land use and improve accessibility to it, especially for the urban poor. The central issue is therefore what forms of land tenure are most likely to achieve these objectives of efficiency and equity in different contexts? In addressing this issue, it is necessary to recognise that although land tenure raises important technical and procedural questions, it is ultimately a political issue, since rights over land cannot be isolated from packages of rights in general.

Perhaps the first point to make is that there are no absolute standards by which security of tenure can be defined. For squatters who have lived in a settlement for many years, their *perceived* security of tenure may be indistinguishable in practice from households living in legal housing. It is therefore important to distinguish between de facto and de jure tenure status.

Secondly, as countries increasingly adopt market led approaches to economic development, so the tendency towards commodification or commercialisation of urban land is intensified. Land plots in the formal economy now frequently command astronomic prices and even plots or rooms in squatter settlements, which ten years ago would have been allocated to friends or relatives free of cost, are now sold on an increasingly open market. Before the recent reversals in land prices, it was reported that a squatter shack in Mumbai (formerly Bombay), was on the market for US\$15,000, despite lacking any title, services, or paved access! Even rights to part of a pavement in cities like Mumbai, can attract a relatively large sum within their particular sub-market.

This trend does not mean, however, that the variety of tenure sub-markets has been reduced, since new commercially based tenure systems have emerged. In many cities, unauthorised commercial land subdivisions now represent the largest single channel of land and housing supply. As they have expanded, so they have diversified in terms of the level of security provided and the social groups served. Local terms such as gecekondu, bidonville and favela, may now subsume processes of land settlement, development and exchange which embody significant differences in perceived tenure status not recognised by outsiders.

Recent trends in land tenure policy

Among the diverse approaches towards land tenure, national land ownership proved popular in many countries, especially during the 1970s. Mabogunje (1990) observed that 20 out of the 40 countries in sub-Saharan Africa had nationalised all lands and extinguished private freehold ownership, though some have reversed this approach since. In India, the Urban Land Ceiling and Regulation Act of 1976 sought to bring large vacant private land-holdings under public ownership or control. However, the increased demands that public ownership place upon the state have invariably proved greater than the ability to develop and allocate lands according to needs, so that a substantial proportion of urban populations were forced into the very unauthorised settlements that the policy was intended to prevent.

In countries where governments have supported private land ownership systems, high costs, reinforced by inappropriate regulatory frameworks, forced many lower income households into unauthorised settlements. The resulting insecurity has been compounded by the requirement from mainstream financial institutions for title deeds as collateral for loans. This has restricted access by the poor access to formal credit and the opportunity to improve their housing conditions.

World Bank policy on land tenure and property rights

The Bank's Draft Urban Strategy Paper (2000) makes limited reference to urban land tenure, except to emphasize the need for 'stronger property rights' in real estate markets and 'secure and clear' tenure in upgrading projects. This is a considerably reduced focus compared to the attention given in the Bank's Housing Policy Paper (1993), which listed improvements to property rights as the first priority in terms of demand side instruments (IBRD 1993:iii). Furthermore, tenure security and property rights are listed (ibid:10) as among the most important factors influencing housing demand and it is claimed that insecure tenure leads to under-investment in housing and to reduced housing quality.

What forms of tenure and property rights does the Bank advocate? This is difficult to assess from the limited documents available when preparing this paper. However, in the case of lower income countries, the Housing Policy Paper defines this as developing market-oriented systems of property rights and allocates priority to upgrading systems of land titling and regularising tenure in squatter settlements. The form of tenure proposed, as a long term objective, is individual freehold titles, or private ownership (p34, p71 and p82), though it is accepted that other forms of title which can be upgraded to full freehold title over time may be appropriate.

A more recent Bank publication by Brandao and Feder² (1996), claims that "secure individual (or corporate) property rights are critical in establishing a structure of economic incentives for investment in land-based activities". The authors argue that the more these rights are restricted, the weaker will be the investment incentives and the lower the productivity of land that the role of governments in land markets is to remove regulatory constraints to the free operation of land markets.

Against this background, what are likely to be the consequences of encouraging systems of individual titles or regularising insecure tenure as recommended by the Bank? To what extent will they succeed in: 1) encouraging investment in housing construction and improvements; 2) improving access to formal channels of credit and; 3) widening the property tax revenue base of local authorities? Also, to what extent will they 4) enable urban development authorities to increase their influence over land and housing markets and improve 5) the efficiency and 6) the equity characteristics of such markets?

1) Encouraging investment in housing

It is undeniable that perceived security of tenure is widely accepted as a precondition for households to invest in house construction or improvements. This is not the same thing, however, as saying that full titles are the only means of achieving acceptable levels of security. Numerous examples exist of considerable investments being generated simply by an official statement that a settlement will not be removed, by the provision of services, or by the issuance of certificates of use.

In one case notable case during the 1980's, the government of Pakistan offered freehold titles to about 100,000 households living in Karachi's squatter settlements. Merely by *offering* titles, however, the residents considered that they would be free to enjoy permanent occupation of their plots. Consequently, only 10 per cent eventually took up the offer; the remainder presumably considered the administrative charge for the title deeds was not worth paying, or they did not wish to expose themselves to paying property taxes. In another case in Cairo, residents of a squatter settlement rejected offers of freehold titles because they considered the cost too high; yet the offer of titles, together with the provision of services, was sufficient to stimulate considerable investment in house construction and improvement

² This publication was cleared for inclusion in the occasional paper series by the Bank's Competition and Strategy Group, Private Sector Development Department, though the views expressed should not be attributed to the World Bank. The paper cannot therefore be accepted as official Bank policy.

and increase land values substantially (Daef 1993). Conversely, cases exist where the provision of titles is not sufficient, *in itself*, to achieve increased levels of security, investment in house improvements or increased property tax revenues (Varley 1987 and Payne 1997:26).

2) Improving access to formal credit

Land titles are widely accepted throughout the world as a secure form of collateral for large loans and this goes a long way to explaining their popularity. However, many households in developing countries, especially poorer ones, do not require large loans, since they do not earn enough to service them. What they require is access to small loans to enable them to build an extra room (eg for rental income), or to improve the quality of their existing accommodation. For such loans, other forms of collateral would invariably be acceptable. The real impediment to the poor obtaining formal credit is the reluctance of formal credit institutions to enter the small loans market for the poor because of the high transaction costs.

Even for those households wishing to obtain larger loans, the value of titles as collateral may be less in practice than has so far been assumed. The reasons for this are quite simple. Public sector finance institutions frequently find it difficult to foreclose on defaulting loans, even when they possess the title deeds to a property, because it is politically unacceptable for public authorities to be seen to forcibly remove poor people from their modest houses. Traditionally low levels of cost recovery in public sector schemes indicate that it will take some time to change the culture of such institutions.

For households seeking loans from private sector finance institutions, the primary consideration in approving a loan is the ability to repay it. Collateral is irrelevant unless households can satisfy this initial criterion, since responsible institutions would be reluctant to provide loans only to have to foreclose on them soon afterwards. This inevitably restricts mortgage finance to households with adequate levels of income or savings and this, by definition, excludes the poor. It can therefore be concluded that the provision of titles are unlikely, in themselves, to increase access to formal credit.

3) Improving the property tax base

As was mentioned in the Karachi example above, the provision of titles may not generate a corresponding increase in tax revenues. This may be because households who perceive that they are secure, refuse to pay taxes, or because the high tax thresholds make it difficult in practice for them to meet the costs. The common arrangement by which central government agencies collect property taxes, may also reduce the incentive to pay, if households feel that they will receive nothing tangible in return. Willcox (1991) has even argued that title documents in Pakistan are worthless, since the State does not guarantee them and possession alone provides security of tenure, a fact well known to all those who encroach on unused land. He concludes that shelter programmes in Pakistan will have to rely on instruments other than tenure for support.

4) Increasing public sector influence over land and housing markets

The regularising of land tenure on a large scale may have serious negative consequences which have so far not been fully acknowledged. Given the continuum of statutory, customary and unauthorised tenure categories in most cities in the South, public sector intervention in any one sub-market has direct and indirect repercussions on other sub-markets. If full titles are granted to residents in squatter settlements for example, it sends a signal to land-owners and developers that significant and sudden increases in land values can be realised by subdividing land illegally. The Bank itself notes that prices for houses with tenure may be 25-60 per cent higher than for similar houses without it (IBRD 1993:41), representing a considerable profit margin for agents involved in informal sector subdivisions. Title provision or regularisation may therefore stimulate the very processes of unauthorised development

they seek to prevent and therefore reduce, not increase, public sector influence over land and housing markets.

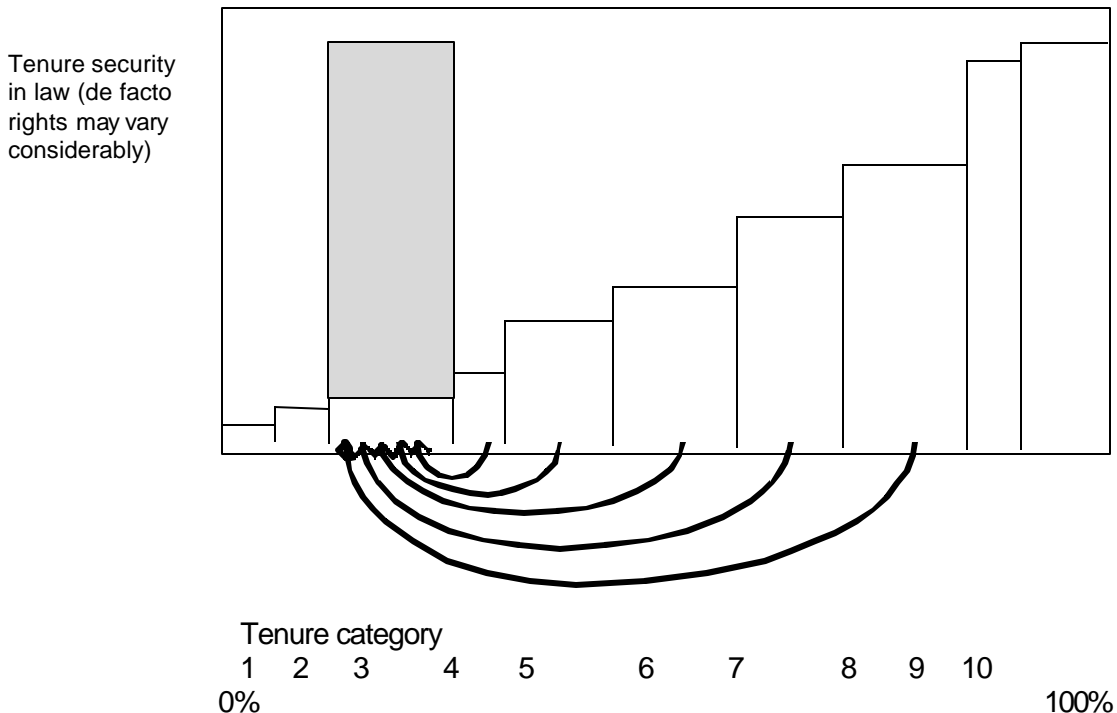
A further consequence of granting full individual titles may be to further intensify distortions in urban land and property markets which, in many cases, are already severely distorted. This can be seen graphically in Fig 2, where 'downward raiding' is encouraged from residents in other sub-markets.

5) Improving the efficiency of land and housing markets

One of the reasons which prompted the Bank's latest sector policy was a recognition that its previous project based approaches had failed to make a significant impact upon land and housing markets. Cohen (1992) has acknowledged that the new approach of market wide interventions is raising the stakes to a high level, in that whilst the failures of individual projects may not have been significant, failures at market levels would be.

In this connection, a major concern is that land ownership patterns in many countries in the South is heavily concentrated, with those possessing large land-holdings also enjoying considerable political and economic power. Under such conditions, the policies advocated by Brandao and Feder in favour of facilitating individual and corporate autonomy are likely to be welcomed by such elites, though not be those lower down the social and economic ladder. For example, land-owners in Pakistan do not pay taxes on their land and are unlikely to support legislation to introduce this.

2: Likely consequences of providing titles to 'owners' of squatter houses



Tenure categories found in many cities:

- 1 Pavement dweller
- 2 Squatter tenant
- 3 Newly legalised freeholder of squatter house or plot
- 4 Tenant in unauthorised subdivision

- 5 Squatter 'owner' - regularised
- 6 Owner - unauthorised subdivision
- 7 Legal owner - unauthorised construction
- 8 Tenant with contract
- 9 Lease-holder
- 10 Free-holder

NB: For simplicity, this illustration deletes customary and Islamic tenure categories

This figure demonstrates that the provision of full, formal tenure status to informal settlements raises their commercial value and can therefore actually reduce tenure security for the most vulnerable social groups, such as squatter tenants. It also creates new, or intensifies existing, land and property market distortions because households in tenure categories with more existing security suddenly find that squatters have received full titles. This encourages "downward raiding" as shown by the arrows.

A further cause for concern is that even when land ownership is more egalitarian, governments in developing countries have little experience of formulating and implementing urban land tenure policies appropriate to all sections of demand. The direct and indirect, positive and negative consequences of a specific policy measure are particularly difficult to predict, and if they cannot be predicted, they cannot be controlled. Also, unlike policies concerning interest rates or taxation, which can be adjusted upwards or downwards as circumstances require, tenure is a uni-directional policy instrument, in that it is practically impossible to withdraw rights once granted.

The unpredictability and inflexibility of tenure instruments therefore make it difficult to apply them with any degree of confidence as a means of improving the efficiency of land and housing markets. However, it is clear that insistence on full titles can have severe negative impacts on the operation of urban land and housing markets.

One example of the problems caused by insisting on full titles can be seen in the case of Ahmedabad, India. According to Kundu (1990), the prospect of obtaining titles to potentially valuable urban land led to a dramatic increase in the registered population and in litigation between residents and other claimants, so that several settlements had to be excluded. Others were omitted because municipal authorities were unable to give any undertakings for the slums on private lands over which they had no jurisdiction. Parikh (1996) also noted that of over 2,000 slum settlements, only 43 were selected for a World Bank funded project. These were eventually whittled down to 17, though even these could not be taken up and the venture was abandoned in the early 1990s. In contrast to the Bank programme, the Ahmedabad Slum Networking project, launched in 1995, was able to begin implementation within 18 months after the Municipality gave an undertaking that no active evictions would take place for at least ten years and concentrated on improving infrastructure and access to facilities and credit. What could not be achieved in ten years became possible in just over a year by adopting a flexible approach.

6) Increasing the equity of land and housing markets

Given the high proportion of tenants in the cities of developing countries, particularly in informal settlements, the impact of inappropriate regularisation policies may render large numbers of people homeless. The provision of land titles may raise land values which are then passed onto tenants, many of whom cannot afford to meet the costs and are displaced in favour of higher income groups.

It is obviously difficult to estimate the numbers or proportions of tenants displaced as a result of upgrading or title provision in squatter settlements. However, a doctoral thesis of tenants in a Cairo settlement (Daef 1993) traced more than 21 per cent who were displaced as a result of an upgrading project which included the offer of land titles to squatter owners. An additional

proportion was known to have been displaced, but could not be traced. Anecdotal evidence from other studies suggests that this tendency may be common.

Policy conclusions

It is clear that the form of tenure under which land is held or owned has a significant impact on its market value and options for access by the urban poor. For example, in Jakarta, Dowall (1998) found that residential plots with clear title sold for a 45 percent premium over comparable plots without clear title and in Manila the risk of eviction is considered to lower the value of housing units by 25 percent (Dowall and Leaf, 1990; Dowall, 1998), whilst in Davao, Simon found that land values increased by 58 percent after titling.

What this evidence also suggests, however, is that the lack of formal titles is a price which the urban poor pay to gain access to residential plots which they could otherwise not afford. It also suggests that, since a significant proportion of rental accommodation for the poorest groups (eg tenants) is often provided not by rich slumlords, but by small landlords who are themselves poor and possibly living in unauthorised settlements, providing such landlords with titles will exacerbate evictions of the most vulnerable social groups.

Tenure regularisation programmes which operate at city level are likely to reduce market distortions, but impose an excessive burden on land registries. Conversely, those implemented at the local level will be easier to cope with, but are likely to increase urban land market distortions for the reasons given above

The Bank's housing policy paper represents an ambitious development in its contribution to the sector and offers exciting opportunities for market wide improvements. Its objectives deserve widespread support; however, the Bank is surprisingly reticent regarding the impact of its tenure proposals on the rental sector, particularly private informal rental housing, which accommodates a large proportion of the urban population and almost all of the poorest households. There is therefore a real danger that a policy approach which emphasises the benefits of owner-occupation, and provides various incentives for it, may result in the creation of a large under-class which is denied access to any form of affordable or acceptable housing. Such a policy also fails to take into adequate account the variety of legal and socially accepted traditions in land tenure systems and distorts land markets in favour of one system at the expense of all others. This is hardly consistent with the objective of improving the equity of urban land and housing markets.

Rightly or wrongly, the Bank is associated with the promotion of private freehold tenure, individual human rights and the development of 'property owning democracies'. These carry associations of a universally valid concept of development which has yet to be universally agreed. In this connection, it is worth remembering that Bangladesh has a far higher level of property ownership than Switzerland or Germany. Another problem with a market based approach is that it becomes extremely attractive to hold land as an investment and a hedge against inflation, especially in countries where financial institutions are not well enough developed to attract and channel domestic savings into more productive sectors.

Another limitation of freehold tenure systems is that only a small proportion of households can afford even the subsidised cost of a plot with title. In a well functioning and self-regulating market, where changes in demand stimulated changes or increases in supply, this would not be a problem. However, land markets in most developing countries are often controlled by a few powerful groups and are severely distorted due to the lack of stable and profitable channels for more productive investment. Until such monopolistic tendencies are reduced, it is essential to protect vulnerable groups from the rigours of such markets and the sloping playing fields on which they operate.

Colclough (1991) has argued that where there are serious market imperfections, liberalisation could actually make matters worse and that under such conditions, the market itself is the problem to address. Platteau (1994) goes further and concludes that under certain conditions, more complete liberalisation can entail *new* market imperfections. Finally, the assessment of Bank intervention on land tenure in Tanzania by Shivji (1995) concludes that the process of titling became the process of the more powerful and influential getting themselves registered as owners to the disadvantage of others. In addition, land markets have not emerged on the scale expected, land has been held increasingly for speculative purposes, registration has not increased access to credit and titling has worked against the interests of women and children. He also tellingly claims that these failures have been verified by the Bank's own research without, apparently making a dent in its orthodoxy (ibid:54).

The important point is that policies which emphasise and encourage freehold may unintentionally or inadvertently discriminate against other forms of tenure which may be more appropriate for large sections of the population. For example, it is common for many low-income households to prefer the social cohesion which customary systems offer under conditions of rapid social change, or the mobility offered by rental tenure systems, providing they enjoy adequate security and legal protection. Such protection may be easier to achieve in land markets which encourage a variety of tenure options, rather than one at the expense of others.

It has also been suggested above that the six policy objectives outlined in this paper can be more effectively achieved through other methods than the provision of land titles. In fact, the provision of titles may actually make it more difficult to achieve these objectives. This is not to deny the need for a radical review and sustained reform of the regulatory frameworks by which urban land markets are managed. High building and planning standards, restrictive regulations on land use and development and cumbersome administrative procedures raise entry costs to land markets and legal shelter which inhibit development. Permitting modest initial development and the merits of incremental development, together with the introduction of 'one-stop-shops' for processing land transfers and development proposals could generate major improvements in the efficiency and equity of urban economies.

Policy options - the benefits of a rights based approach

The evidence suggests that caution is advisable in effecting major changes to tenure systems. This is partly because titles and rights once granted cannot easily be withdrawn unless occupants fail to meet agreed obligations and because the wider implications of specific tenure policy changes are presently difficult to predict. A starting point may therefore be to regard every step along the continuum from complete illegality to formal tenure and full property rights as a move in the right direction, to be incrementally. This would minimise market distortion and the risk of undesirable social consequences.

Until more information and experience are gained on the impacts of tenure changes, one option is to increase the rights of residents without changing the formal tenure status. The Certificates of Use in Botswana and Lesotho are one example. The arrangement in Hyderabad, India, in which some slum settlements are designated un-objectionable, and therefore to be officially tolerated, is another. In high density areas, it may be appropriate to offer condominium ownership, on the lines being implemented in Brazil, Malaysia, Thailand and the Philippines.

A further option is to extend existing customary arrangements. One example of this can be found in Egypt, where a modest ground rent, or 'hekr' is charged to informal settlers on government or unclaimed desert land. This does not grant title, and could not be transferred, but ensures that if households have to be displaced, they will receive compensation for the buildings they have erected on their plots. Such an arrangement distinguishes between the

ownership of land and the ownership of property and facilitates access by the poor to plots which would otherwise have been beyond their means. Farvacque and McAuslan (1992) also recommend that where a national code for land law is inapplicable, the best approach is to build on what exists and develop local forms of regulation, rather than trying to impose institutions from the centre, modelled on imported systems. Doebele (1988) lists several other options, including community land trusts, transfer development rights (TDRs) and co-operative tenure forms.

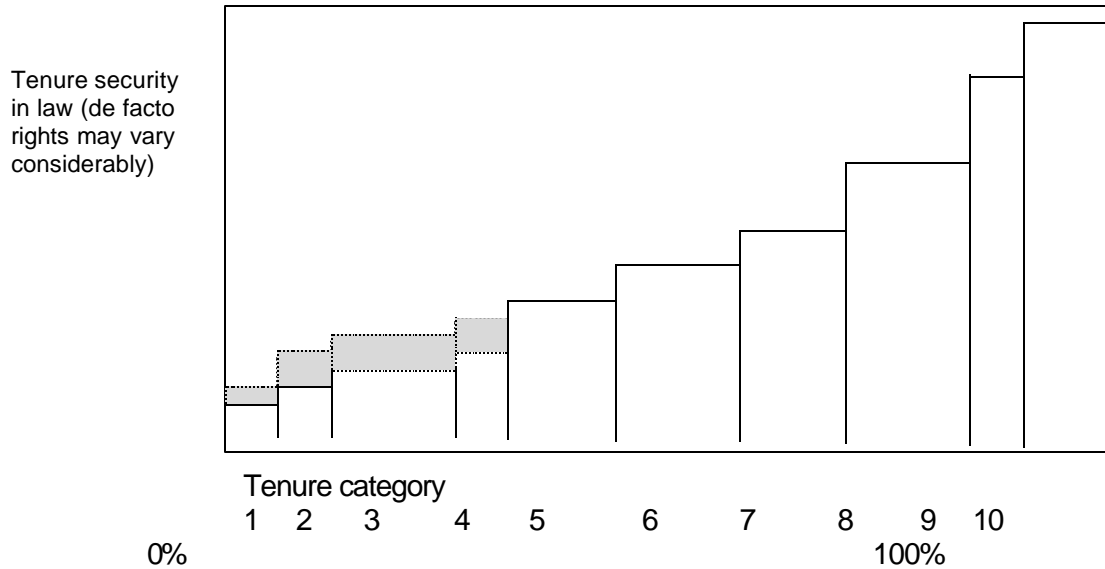
Such intermediate options appear to offer improved security, increased public sector influence over land development, modest increases in tax revenues and practical options for financing land development. A diagrammatic illustration of this approach is presented in Fig 3. This indicates how a rights-based approach may be able to improve tenure security for the most vulnerable social groups (and therefore equity) and at the same time reduce distortions in land and housing markets. Consideration should also be given to increasing the range of tenure options available, possibly by adapting existing indigenous tenure systems, or innovations from other countries. This will help to minimise short term fluctuations in land prices and other indirect consequences and enable households - and governments - to learn from experience and adjust to change at an acceptable pace.

Research presently being undertaken with funding by DFID seeks to examine a selected number of these 'intermediate' systems of land tenure and property rights. It is being undertaken in close collaboration with the UNCHS Campaign for Secure Tenure and it is intended that the findings will be completed in time for submissions to Istanbul+5 in 2001. Case studies are being carried out of examples in India, Kenya, Brazil, francophone Africa and other countries still to be selected. Suggestions on other examples are welcomed.

The research will seek to identify 'pressure points' to indicate limitations of existing tenure systems and the needs of vulnerable groups in terms of access, use, security, affordability, location and transferability. It will help identify options for improving their rights without prejudicing the operation of the market as a whole, though the ability to implement any changes will depend upon the institutional capability of municipal or provincial government agencies. This is frequently a major impediment to the implementing *any* land tenure policy, since the existing tenure status of a given land plot may be open to dispute. Strengthening the administrative capacity of land registers is a pre-condition to establishing efficient land markets and systems of property rights.

Finally, whilst commercialisation of land markets exert a powerful influence on tenure policies, social and cultural needs also play an important role in the way that tenure systems operate.

3: Likely consequences of improving tenure rights in unauthorised settlements



Tenure categories found in many cities:

- 1 Pavement dweller with approval to remain
- 2 Squatter tenant with protection
- 3 Squatter `owner' - regularised
- 4 Tenant in unauthorised subdivision - with protection
- 5 Squatter `owner' - regularised
- 6 Owner - unauthorised subdivision
- 7 Legal owner - unauthorised construction
- 8 Tenant with contract
- 9 Lease-holder
- 10 Free-holder

NB: For simplicity, this illustration deletes customary and Islamic tenure categories

The figure suggests that a rights base approach increases tenure security for the most vulnerable social groups. It also increases social equity without distorting land or property markets.

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