
Slum Upgrading Legal Assessment Tool



UN-HABITAT

Table of Contents

INTRODUCTION.....	4
<i>What is the Tool.....</i>	4
<i>The Aim of the Tool</i>	4
<i>What Are the Benefits and Outcomes</i>	5
<i>Structure of the Assessment Framework</i>	5
SECTION 1. LAND AND SECURITY OF TENURE	7
<i>The Right to Land and the Right to Adequate Housing.....</i>	7
<i>Structure of the Assessment</i>	7
<i>Technical Content of Land and Security of Tenure</i>	8
1b.1 Flexible Tenure Systems	8
1b.2 Land Regularization.....	9
1b.3 Eviction and Involuntary Relocation.....	10
1b.4 Mechanisms to Resolve Disputes.....	12
1b.5 Reduce Administrative Hurdles and Fees on Land Titling, Registration and Transfers	13
SECTION 2. PLANNING.....	15
<i>Inclusive Planning at Scale.....</i>	15
<i>Structure of the Assessment</i>	15
<i>Technical Content of Planning.....</i>	16
2b.1 Planning at Scale	16
2b.2 Slum Upgrading and City Spatial Planning.....	17
2b.3 Existence of Planning Instruments and Land Management Tools for Slum Upgrading.....	17
2b.4 Community and Stakeholders Participation	18
2b.5 Planning Standards	19
SECTION 3. ACCESS TO BASIC SERVICES.....	20
<i>Improving Access to Basic Services as an Important Dimension for Slum Upgrading</i>	20
<i>Water, Electricity and Sanitation are Basic Human Needs</i>	20
<i>Structure of the Assessment</i>	21
<i>Technical Content of Access to Water</i>	22
3b.1 Legal Accessibility of Water	22
3b.2 Physical Accessibility of Water.....	23
3b.3 Measures to Ensure Affordability of Water.....	24
3b.4 Regulation for Different Types of Enterprises	25
<i>Technical Content of Access to Electricity.....</i>	27
3b.5 Legal Accessibility of Electricity.....	27
3b.6 Physical Accessibility of Electricity	28
3b.7 Measures to Ensure Affordability of Electricity	29
3b.8 Regulation for Different Types of Enterprises	30
<i>Technical Content of Access to Sanitation</i>	31
3b.9 Physical Accessibility of Sanitation.....	31
3b.10 Legal Accessibility of Sanitation	32
3b.11 Measures to Ensure the Affordability of Sanitation.....	33
3b.12 Regulation for Different Types of Enterprises.....	34

SECTION 4. HOUSING	35
<i>Housing as a Preventive Approach to Slum Upgrading</i>	<i>35</i>
<i>Structure of the Assessment</i>	<i>35</i>
<i>Technical Content of Housing</i>	<i>36</i>
4b.1 Supply of Affordable Housing for Sale and Rent.....	36
4b.2 Strengthen Legislative Framework for Rental Housing	37
4b.3 Development of Flexible Building Regulations	39
4b.4 Regularization of Informal Housing.....	40
4b.5 Reduce Administrative Hurdles to Build or Upgrade a House	41
4b.6 Identify Beneficiaries.....	42
SECTION 5. FINANCING.....	44
<i>Inclusive Financing Regulation and Policies.....</i>	<i>44</i>
<i>Structure of the Assessment</i>	<i>44</i>
<i>Technical Content of Financing</i>	<i>45</i>
5b.1 Availability of National Resources and Framework.....	45
5b.2 Municipal Finance	46
5b.3 PPP/multi Stakeholder Partnerships	47
5b.4 Helping the Demand Side	48

INTRODUCTION

UN Habitat's estimates of the number of urban households that are 'slum' households suggest that there were 881 million 'slum dwellers' in 2016,¹ including some 56 per cent of the urban population in sub-Saharan Africa and more than 30 percent of the urban population of South Asia (UN-Habitat 2016, p. 203). Slums normally differ from formal settlements because of unclear, often illegal, land occupation, or the settlement and its buildings did not receive official permission, and also because the site layouts and structures contravene regulations (for instance, plot sizes are smaller than the minimum specified by planning regulations). In many cities, informal settlements are so common and house such a high proportion of the population and the workforce that they cannot be considered an exception but the rule. If laws and regulations in force in a country consider illegal the homes and livelihoods of much of the city population, then their appropriateness that should reviewed.

Lessons from UN-Habitat's work in slum and informal settlement upgrading highlight how a successful slum upgrading need to shift the housing and land regimes towards a pro-poor regulatory framework - remove obstacles and create practical solutions responsive to the slum context. It is therefore fundamental to understand the structure and the way in which legal and regulatory frameworks support or hinder the development of informal settlements upgrading efforts.

What is the Tool

The Slum Upgrading Legal Assessment Tool is a diagnostic self-assessment tool to identify, in a structured, objective and systematic way, the strengths and weaknesses of the regulatory framework made of all legislation and regulations enacted at different levels and in force in country. It is designed to be used either alone or, ideally, within the context of a broader law reform method that begins with issue identification and legal mapping and moves all of the way through to recommendations for reform. It is a useful tool to guide the process to agree on actions that are needed to address the identified gaps. The Assessment Tool uses an indicative approach, relying on a limited number of indicators in each of its five thematic areas: land, planning, basic services, housing and financing. While it produces what appear to be quantitative outputs, these are built on a primarily qualitative analysis that is designed as a framework to catalyze discussion within a national or local context and not as a means of ranking.

The legal assessment framework uses two sets of indicators, the first is related to the functional effectiveness of law, which includes indicators related to: 1) Consistency of policy objectives; 2) Transparency and efficiency of mechanisms and processes; 3) Organizational of institutional responsibilities and roles; 4) Clarity in standard of drafting and 5) Capacity for implementation. However, this part will not be discussed in this handbook.

The second set of indicators are technical in nature and they are related to land and security of tenure, planning, access to basic services, housing and financing. The technical content will be elaborated in details.

The Aim of the Tool

This legal assessment tool intends to provide urban managers and other stakeholders with a framework to understand how and if their legal and regulatory framework supports participatory city-wide slum upgrading or not. Specifically, the quick guide is to act as:

¹ Excluding those without tenure security.

- A self-assessment tool to be used during focus groups, to identify strengths and weakness of the current urban planning system and guide opportunities for city-wide slum upgrading.
- A clarifying process- to make clear what frameworks might need to be revised as part of a longer-term reform process.
- An entry point to change mindset and build capacity around legal and regulatory frameworks for participatory city-wide slum upgrading. Based on key planning principles promoted by PSUP.

The quick guide is NOT intended to:

- Be a comprehensive assessment of urban law (though the method of analysis could be applied). It is not conclusive, but only an initial assessment
- Cover everything affecting urban planning but rather focus on the basic elements of physical planning in slum and informal settlement contexts.
- Does not include specific indicators for the crosscutting issues: participation, human rights, youth, gender and climate change. But human rights consideration will be given to some thematic areas related to slum and informal settlement contexts, such as forced evictions, access to basic services for example.

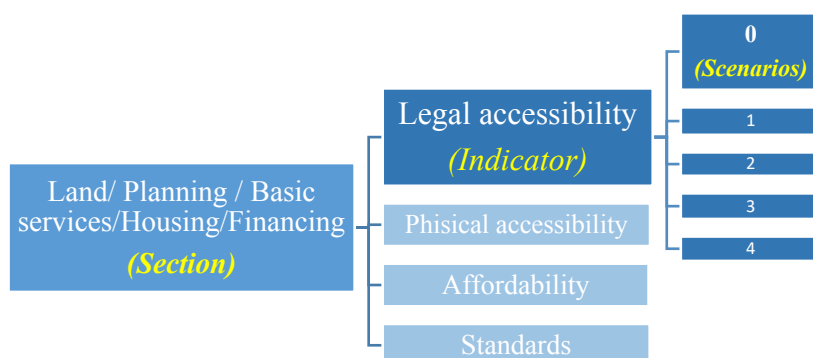
What Are the Benefits and Outcomes

The analysis tool assesses the regulatory causes that have an impact on five thematic areas. It looks at all the laws, regulations, decrees applicable in a city, enacted at different levels. It focuses on the actual law, but will stimulate the discussion on any discrepancies in their enforcement or enactment.

At the end the tool will help urban managers and other key stakeholders to have a robust domestic legal analysis, supported by a participatory discussion which outlines the strengths and opportunities or impediments of current legal and regulatory frameworks for slum upgrading. As a result, a set of recommendations will be produced and indicate the way forward for slum upgrading, and what actions need to be taken to make longer-term reforms for strengthening responses to improve the lives of slum dwellers, and the urban poor in general.

Structure of the Assessment Framework

The Slum Upgrading Legal Assessment Tool focuses on five areas: tenure security, planning, access to basic services, housing and financing. In each areas, we use a number of indicators to capture the essential elements that matter most for slum upgrading and provision of affordable housing. Each indicator is further broken down into five “scenarios” on a scale from 0 to 4, with indications of the what legal provision could be in place based on the principles of the New Urban Agenda, UN-Habitat’s principles and experience, and international human rights standards. The guiding UN-Habitat’s principles here refers to: 1) Human Rights-Based Approach; 2) Slum household definition (5 deprivations): lack of safe water, access to sanitation, durability of housing, overcrowding, and security of tenure; 3) Functional effectiveness of laws (capacity of the laws of achieving their objectives); 4) Right to adequate housing; 5) The continuum of land rights; 6) UN-Habitat Sustainable Neighbourhood Planning 5 principles and the PSUP neighbourhood design recommendations for slum upgrading. The scenario under ranking 4 describes the most satisfactory result for a given indicator.



The different scenarios offers suggestions on different mechanisms the legal provisions could contain and that countries could consider introducing to support their upgrading programmes.

SECTION 1. LAND AND SECURITY OF TENURE

The Right to Land and the Right to Adequate Housing

Secure Tenure is the right of all individuals and groups to receive effective protection by the State against unlawful evictions. Without tenure security, housing will be inadequate², and might fall into the scope of slums (as it is considered as one of the five conditions that define slums)³. Today a significant percentage of the world population cannot afford formal land tenure and is forced to choose informal settlements. Without tenure security, people fear eviction and become reluctant to invest in improving their house.

Therefore, improving tenure security is deemed as the first component of the progressive realization of the right to housing and slum upgrading. This is also in accordance with the principle of promoting secure land tenure which is enshrined in New Urban Agenda.⁴ The granting of secure tenure will not, in and of itself, solve the problem of unsafe living environments and inadequate housing. However, it is one of the most essential elements of a successful slum upgrading strategy and a precondition for the physical and environmental improvement of slums.

In this Chapter, the tool promotes a flexible tenure system with land regularization, supported by effective land management, multiple dispute resolution mechanisms and safeguards on involuntary relocation.

Structure of the Assessment

This section of the tool evaluates land regulations through five indicators:

Indicator 1: Flexible tenure systems

Indicator 2: Land regularization

Indicator 3: Eviction and involuntary relocation

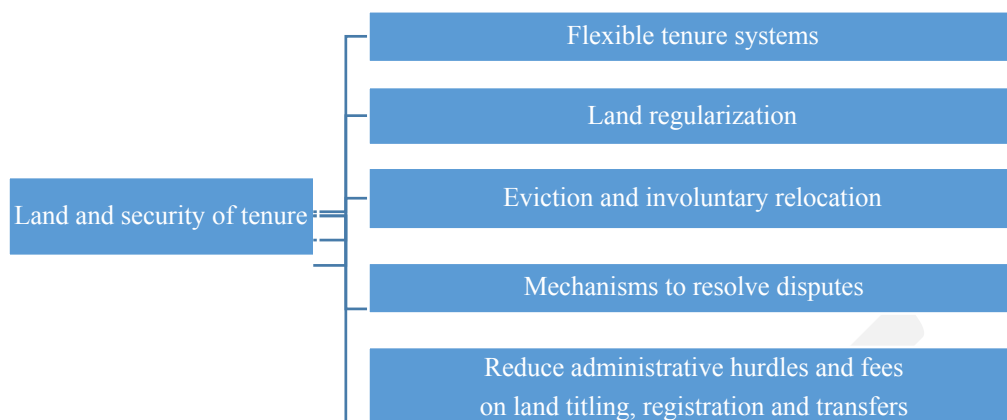
Indicator 4: Mechanisms to resolve disputes

Indicator 5: Reduce administrative hurdles and fees on land titling, registration and transfers (red tape)

² Adequate housing entails more than four walls and a roof. In order for housing to be adequate, it must, at a minimum, meet the following criteria: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; location; and cultural adequacy. See General Comment No.4 to the right to adequate housing.

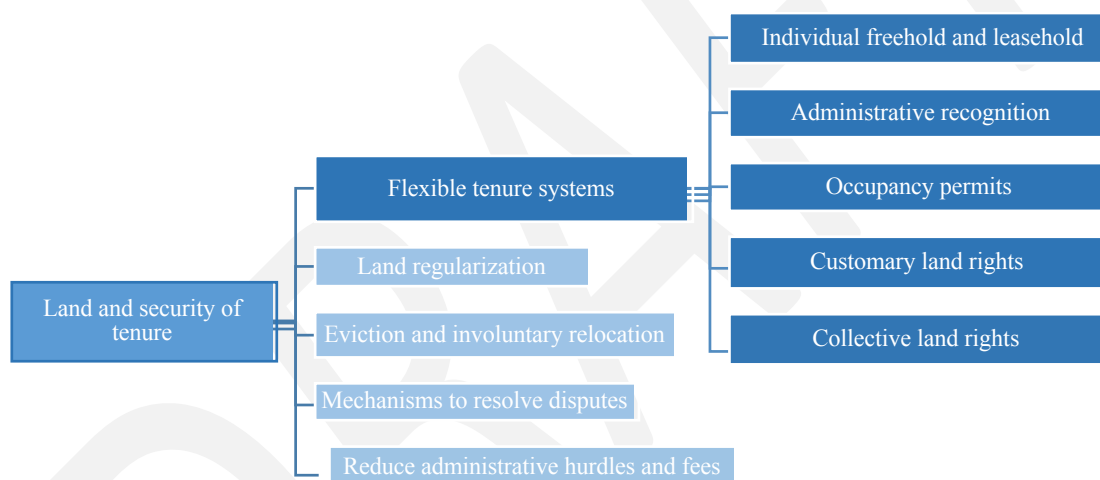
³ UN-Habitat defines a slum household as a group of individuals living under the same roof in an urban area who lack one or more of the following: a) Durable housing that protects against extreme climate conditions; b) Sufficient living space; c) Easy access to safe water; d) Access to adequate sanitation; e) Security of tenure that prevents forced evictions.

⁴ UN, Resolution adopted by the General Assembly on 23 December 2016 - 71/256 New Urban Agenda, A/RES/71/256 (25 January 2017), para 14.



Technical Content of Land and Security of Tenure

1b.1 Flexible Tenure Systems



Rather than importing one-size-fits-all models on individual ownership, this tool adopts a fit-for-purpose approach which calls for the legitimate holding of customary land and other informal tenure to be recognized in the formal legal system with the option of subsequently being recorded and eventually upgraded to a legal status. For this purpose, the indicator is made to assess whether the system allows for the continuum of land rights or not.

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