

LAND TENURE SECURITY IN SELECTED COUNTRIES: *Synthesis Report*

SECURING LAND AND PROPERTY RIGHTS FOR ALL

LAND TENURE SECURITY IN SELECTED COUNTRIES

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United Nations Human Settlements Programme (UN-Habitat)
PO Box 30030, Nairobi 00100, Kenya
Tel: +254 2 623 120
Fax: +254 2 624 266
www.unhabitat.org

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Principal Editor: Michael Kirk
Co-editors: Danilo Antonio, Samuel Mabikke and Jorge Espinoza
Editing: Victoria Quinlan
Authors: Akhter Md. Washim, Antonio Danilo, Beyene Adugna Mekonnen, Chigbu Uchendu Eugene, Dealca Rhea Lyn, Ding Rui, Duut Nelson Namikat, Espinoza Jorge, Kariuki Judy Wambui, Mabikke Samuel, Mohiuddin Taufique, Mushing Anthony, Nyadimo Eric, Palacios Turian, Quaye Benjamin, Rudiarto Iwan, Rukundo Bruce, Salán Reyes Mario, Sewornu Rita Esinu, Tawee Duangkaew, Wald Ilana, Wanyonyi Agatha, Zhang Xiuzhi
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PREFACE

It is well recognized that secure land and property rights for all are essential to reducing poverty because they underpin economic development and social inclusion. Secure land tenure and property rights enable people in urban and rural areas to invest in improved homes and livelihoods. Although many countries have completely restructured their legal and regulatory framework related to land and they have tried to harmonize modern statutory law with customary ones, millions of people around the world still have insecure land tenure and property rights.

Lack of access to land and the fear of eviction epitomize a pervasive exclusion of poor people from mainstream social, economic and civic opportunities, especially women. To address these problems, tools and strategies to increase poor people's access to secure land and housing tenure need to be devised. The Global Land Tool Network (GLTN), whose Secretariat is hosted by UN-Habitat, recognizes that security of tenure for the poor can best be improved by recognizing a range of types of land tenure beyond individual titles. The current thinking focuses on a "continuum of land rights" that is being promoted and increasingly accepted worldwide.

In this synthesis report, the issue of tenure security is addressed and assessed in several countries where government, civil society, the private sector and development cooperation initiatives have been implemented for decades. The selected case studies from fifteen (15) countries ensure not only a geographic balance but they also represent countries with different socio-economic and land-related

histories and that have followed different pathways. The studies' key findings underline the still precarious state of tenure security in many countries.

The findings also show best practices for legal and administrative reforms that have generated incentives for long-term investment in land, or incentives to include the poor more comprehensively. The case studies will hopefully work as a kind of "compendium" on the current state of tenure security, its future challenges and perspectives. They will allow for comparisons between countries and regions and address, besides others, policy makers, the private sector, civil society organizations and donors. Also, they will help applied researchers and implementers of "ground checks" and may support students of different disciplines to cope better with complexity in tenure issues.

This work was undertaken through a joint endeavour with the Chair of Land Management at Technische Universität München (TUM) and the Sector Project Land Policy and Land Management of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). The findings will enhance our knowledge of serious tenure security challenges and hopefully will inspire additional policy debate on implementation, inclusion, or incentives, as well as new research on secure land and property rights for all. The findings will also be useful to GLTN's global partners (currently more than 63 consisting of professionals, development partners, research and training institutions, technical and civil society groups) to address land tenure and land reform, amongst other issues.

BACKGROUND

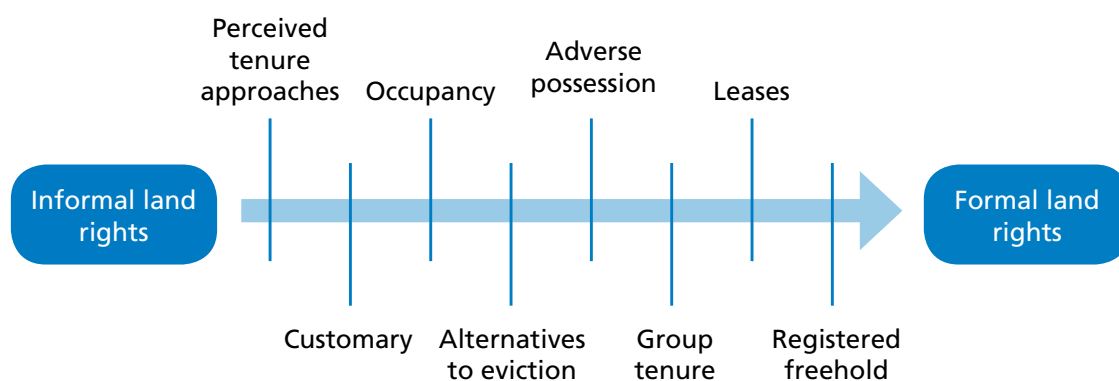
Secure land and property rights are critical for reducing poverty and for enhancing economic development, gender equality, social stability and sustainable resource use. When land is poorly managed, the associated problems often lead to disputes, land degradation and lost socio-economic development opportunities. Secure land tenure and property rights can exist in a variety of forms. Secure tenure is, in part, a matter of perception and relationships of trust and it can be safeguarded by various mechanisms provided that the rights of land users and owners are clearly assigned. In addition to formal titles, security can be achieved through long-term rental contracts or formal recognition of customary rights and informal settlements. This range of possible forms of tenure has become internationally recognized as being a continuum, along which each form of tenure provides a different set of rights and different degrees of security and responsibility.

While some governments have, to varying degrees, recognized a range of different forms of tenure as being legitimate, “tenure security” still tends to be strictly defined in more statutory forms of legal security, such as individual land titles. This not only fails reflect realities on the ground, but it severely reduces the number of women and men who can afford such “formal” tenure security, particularly those living in poverty and in rural areas. The problem is especially acute in Africa, where the majority of the

It is likely that less than 30 per cent of developing countries are currently covered by some form of land registration - that is, about 70 per cent of people in developing countries are outside a register.

populations will be unable to afford such secure forms of tenure for generations and who will be increasingly marginalized by market-based statutory tenure systems that emphasize individual rights. It is likely that less than 30 per cent of developing countries are currently covered by some form of land registration - that is, about 70 per cent of people in developing countries are outside a register. To bridge this gap, the partners of the Global Land Tool Network (GLTN), as facilitated by UN-Habitat have supported the use of a continuum of land rights, or a range of rights, to make it possible for the majority of people, including the poor, to have security of tenure.

Given the limitations of land titling, and the value of incremental approaches to secure tenure, UN-Habitat advocates the use of a variety of alternative tenure options that can be easily adapted in developing countries. While the continuum approach is increasingly being endorsed, important work is still needed to change deeply rooted mind-sets on what secure tenure entails.



Source: UN-Habitat (2012)

INTRODUCTION

Land tenure systems are a product of historical and cultural factors and they reflect the relationships between people, society and land (Payne, 2002). Land tenure comprises the customary and/or legal/statutory rights that individuals or groups have to land and related resources, and the resulting social relationships between the members of society (Kuhnen, 1982). Each country has developed specific land tenure concepts that are based on historical and current values and norms. The concepts determine the present tenure systems and they have often been shaped by an evolutionary process. In many cases, endogenous forces act as drivers that sharpen and change tenure systems, for example population growth, industrialization and urbanization, or accelerating natural resource exploitation. In addition, there may have been external influences, such as the imposition

of a colonial power's legal system in the past or more recently through internationally harmonized statutory law and global treaties such as those on indigenous peoples, the environment or gender equity. In some cases, tenure systems have been determined by revolutionary processes and the resulting turnover of existing land tenure systems through redistributive land reform or forced land collectivization. Even in countries where gradual changes in land tenure systems were initiated, policy makers may have strengthened the role of the (central) state in allocating and even managing land. Often in these cases, this vision materialized with the nationalization of non-registered lands held under customary tenure and of forest or pasture resources, and the influence of government organizations that directly interfered in land use and management.



Remote village in the mountains of the Yun'nan plateau in China © Rui Ding

However, because these state-led tenure reforms had disappointing results with regard to economic development, efficiency and even equity and local participation, most of the policies and experiments have been criticised and partly revised since the 1990s, paving the way for far-reaching, market-driven tenure reforms and a redefined role for the state. These initiatives initially concentrated on reforming the complex statutory legal framework; later they tried to identify ways to better integrate customary rules and regulations into modern tenure systems. Together with decentralization and de-concentration of decision-making powers, many countries attempted to bring land administration closer to its clients in urban and, particularly, rural areas. This was done to support systematic titling of land, to enhance the efficiency of land administration, to address the poisoning impact of corruption at all levels and to settle different kinds of land-based conflicts. All these efforts aimed to significantly increase tenure security. In a few cases, they explicitly focused on the poor and marginalized groups in society; in other countries, reforms aimed to unleash the potential of working land tenure systems for economic growth, sectoral and structural change, and for domestic and foreign investment. Further, governments were reacting to the strong demands from an increasing (mainly urban) middle class that invests in property in order to ensure their financial future and to finance the education of their children due to insecure or no alternative investment opportunities within the countries (e.g. bonds, bank savings).

Common trends in tenure systems can be observed for most of the countries despite remarkable differences

attachment to land, thus confirming that land tenure systems are indeed an integral part of any nation's or society's culture and history. This may contrast with the actual situation in Western post-industrial societies where this emotional-spiritual connection has been limited to agriculture and rural areas, and where anonymous land sale and tenure markets dominate urban development.

Tenure systems, in particular tenure security, therefore, reflect a lot about the nature of society, the development and performance of its informal and formal institutions, and the ways of dealing with change under globalization and factor market liberalization (linking land to capital markets through collateral delivery). Modern tenure systems are based on formal, statutory together with more informal, customary rules and regulations. The statutory / conventional system normally includes private freehold and leasehold rights, as well as public or state land that is often leased out to private concerns. The customary system is based mainly on communal/ common regulated tenure or, in the worst case, open access. This leads to cases where property rights in land or other resources are too weak to be enforced at a local level or are non-existent, leading to long-term overuse, resource degradation and therefore the de facto expropriation of use rights and benefit claims from these lands. Rights, restrictions and responsibilities can vary considerably with each tenure system and society. The current pace of urbanization in almost all developing and industrializing countries has resulted in the rise of tenure system insecurities, particularly in urban informal settlements.

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