

Good Practice Guidelines

Participatory Approach to Core Area Development A Guide to Good Practice

DFID Research Project R 6860

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March 2000

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The Max Lock Centre, University of Westminster, produced this report with the support of the Infrastructure and Urban Development Department (IUDD), British Government Department for International Development (DFID). The views expressed are those of the authors and do not necessarily reflect the policy of DFID.

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Design and layout by Max Lock Centre

Printed by:
The Max Lock Centre
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London, United Kingdom

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The Max Lock Centre would like to thank all those above who generously gave their time and enthusiasm. We are also indebted to the many officials and residents of the case study areas who contributed their local knowledge to the field surveys, workshops and seminars.

These Fact Sheets set the current urban scene for the specific topic each cover and suggest ways and means within that topic towards achieving sustainable mixed use core area development.

Urban Tenure Arrangements

Purpose

Assessment of the tenure systems currently in place within the identified site in order to determine what options or mechanisms are the most appropriate in the given situation.

Many of the urban poor living on sites either earmarked or potentially economically viable for development lack access to basic information on urban tenure. Without this information communities entering mixed use development or facing eviction are unable to make informed decisions on the kind of tenure they should choose or what rights they might have over the use or ownership of the land or property they occupy as individuals or community.

This Fact Sheet aims to provide communities and other disadvantaged stakeholders with an understanding of different forms of urban tenure so that they may be better able to make informed decisions on land tenure issues.

Context

With a diverse range of economic opportunities available, cities attract a wide variety of different interest groups. Nowhere is this more pronounced than in core urban areas where the range of employment opportunities has traditionally been extensive enough to accommodate both rich and poor. However, with the rapid urbanisation of many cities in developing countries during the past fifty years, formal urban land supply systems, mainly statutory Masterplans, were unable to cope with the increase in demand. Low-income groups (both in-migrants and dispossessed residents had little alternative but to invade land thus creating squatter settlements, which have slowly developed a range of informal tenure systems to meet their occupants' needs. With increasing commercial and residential demand for well-located urban space from a number of different interest groups, urban tenure arrangements are constantly evolving and are often complex.

Box 2.1: Tenure Systems in Indonesia¹

Indonesia's land ownership and tenure systems are largely controlled by the national Government. There are two main types of land right in Indonesia and both are managed and administered by the BNP (National Land Agency) in accordance with the 1960 Basic Land Act No. 5 (Undang-Undang Pokok Agraria).

The first type consists of rights which are granted by government and these include: *Hak Milik* (Right of Ownership *Hak Guna*); *Bangunan* (Right of Building); *Hak Guna Usaha* (Right of Exploitation); *Hak Pakai* (Right of Use); *Hak Pengelolaan* (of Management Right) and *Hak Tanggungan* (Security Rights).

The second consists of special land rights given by the primary holder to another party which include: *Hak Guna Bangunan*; *Hak Pakai*; *Hak Sewa* (Right to Rent); *Hak Gadai* (Right of Pawning); *Hak Usaha Bagi Hasil* (Right of Product Sharing Exploitation); *Hak Menumpang* (Right of Taking Advantage).

Definition of Land Tenure and Property Rights

In redevelopment programmes or projects, each indigenously acceptable tenure land right system must be established and recognised, respected, worked with and through, in the case of each individual development. It is important that the intrinsic values of rights as understood by the various stakeholders - the one as against the other - are understood and evaluated.

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 ownership². 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 life³.

¹ Oetomo A, Kusbiantoro BS, 1998

² Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

³ Payne, GK (1997) 'Urban land tenure and property rights in developing countries: A review', Intermediate Technology Publications, London

Box 2.2: The Most Common Forms of Tenure in Developing Countries

Customary tenure is found in most parts of Africa, the Middle East, Melanesia and (once upon a time) North America. It evolved from largely agricultural societies with little competition for land, (where land has no economic value), where survival was often precarious and depended upon careful use of the land to ensure an ecological balance. In customary systems, land is regarded as sacred, and man's role is one of stewardship, protecting the interests of future generations. Allocation, use and transfer are determined by the leaders of the community according to its needs, rather than through payment, though some form of token amount may form part of the agreement. With urban expansion, the system has become subject to commercial pressures and may only benefit members of the group⁴.

Private tenure 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 groups⁵.

Public tenure is acknowledged to some degree within most societies. 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 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'⁶.

Religious land tenure systems include Islamic tenure. The complexity of Islamic tenure may vary from country to country, but there are four main categories:

'Mulk', individual rights of ownership or private lands, are protected in law.

'Miri' or state controlled land, which carries *'tassru'* or usufruct rights, is increasingly common, the State retains ownership and registration of the land but transfers rights of usufruct [the right of temporary possession, use or enjoyment of the advantages of property belonging to another, so far as may be had without causing damage or prejudice to it], allowing an individual to sell or let land, or transfer it to their heirs. Land holdings must remain intact and cannot be divided up between heirs.

'Musha', (traditionally a rural form of tenure and restricted to sparsely populated tribal areas), refers to land that is collectively owned and is 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).

'Waqf' land is land 'held for God' in perpetuity to protect public buildings (e.g. mosques, schools etc) from land speculators and developers. 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). As they are outside the commercial land market, *waqf* lands are often inefficiently managed (as in Lahore)⁷.

⁴ An excerpt from Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

⁵ An excerpt from Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

⁶ An abridged excerpt from Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

⁷ Adapted from Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

Institutional tenure and property rights exist within organisations created to provide housing for low-income communities. Although housing organisations commonly offer rent, leasehold and freehold tenure, the following arrangements concerning the acquisition of tenure usually only apply to housing organisations.

Rent to Buy: After an agreed period of time (decided upon by the housing organisation) a renting tenant is given the opportunity to purchase the property. Once the tenant has secured the necessary capital, ownership of the property is then transferred to the tenant who from that point on is responsible for any maintenance and repairs that need to be carried out on the property.

Instalment Sale: The only real difference between rent to buy and instalment sale is that in an instalment sale the tenant must declare their intention to buy as soon as he/she occupies the property.

Shared Ownership: The tenant purchases a share of the freehold of the property and pays the remaining amount in rent instalments to a housing association that owns the housing unit.

Although this is an example from South Africa, similar kinds of arrangements exist in most countries and would include co-operatives and associations. There would normally be National or State legislation under which such establishments and organisations would be set up⁸.

Non-formal tenure categories cover a broad range 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 arrangements⁹.

Existing Tenure Systems

There are a wide variety of different tenure systems and forms of property rights, some of which are formal, and others that are customary or informal. There is a full range or 'continuum' of tenure categories between the different extremes of formal and informal, and sometimes several systems co-exist in the same area. Before any intervention or redevelopment process is undertaken, it is important to identify and evaluate the full range of tenure systems and sub-markets in operation within the area or city, as there are often complex relationships in existence¹⁰.

Tenure Status and the Development Process

The process of mixed use, participatory approaches to core area development can be constrained by issues of ownership, occupation and tenure. One such example is where the area and/or site is in multiple ownership and consequently collective action needs to be promoted, organised and sustained in support of common, community interest. Where residents have rights of tenure, the community may be more fragmented and willing to act on the basis of individual rather than collective interests.

Another constraining factor can be where the occupants of the site have few or no rights of occupancy – particularly at the outset. However, clearing or re-locating illegal settlers can have political costs (as can ignoring them), which strengthens the position of illegal settlers. This position is cemented over time,

⁸ Social Housing Foundation, South Africa 1999

⁹ An abridged excerpt from Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

¹⁰ Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

particular where settlers invest in their housing and gain de-facto rights of occupancy. The inhabitants of such settlements may still feel some threat from their official illegal status and be more ready to unite and act as a community in defence of their common interests.

Whilst informal tenure arrangements are most often regarded as illegal, the lack of an affordable and legal alternative in many cities has given many of those in informal tenure arrangements a greater sense of security. This has either occurred as a result of the local authority providing much needed infrastructure and services to informal settlements or because they do not have the capacity or political will to offer alternative living solutions to such large numbers of people. Either way both scenarios provide informal settlers with a sense of implied informal legitimacy. There can also be constitutional rights within National or State legislation that gives occupiers of land - whether legal or not - rights to be re-housed should the site they occupy be subject to re-development by the owner. An example of state legislation that enforces the on-site provision of low-income dwellings is the 1:3:6 policy introduced by the Indonesian National Government, requiring 6 low-income residential units and 3 middle-income residential units for each high-income residential unit built.

Some of the 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 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.

Informal arrangements on public or private land include:

- *Illegal squatting:* Living on land without permission from either the owner or local authority.
- *Illegal construction:* Building on land without permission from either the owner or local authority.
- *Illegal subdivision:* The legal owner subdivides the land or property for residential or commercial reasons without the permission of the local authority.

Illegal purchase and sale of land/property: The illegal purchase or sale of land that is legally owned by another party is for many the only way of obtaining a house. The development of illegal land markets in informal settlements is highly organised, although it often represents a huge health hazard for those concerned and is environmentally unsound.

Box 2.3: The Tabya Area, Aswan City, Egypt

The Tabya area (located in the heart of Aswan City, where monetary land values are very high) used to be an informal/squatter area suffering from an absence of land tenure security, lack of infrastructure and community facilities, deteriorating environmental and housing conditions, and institutional indifference. In 1991, the German Agency for Technical Cooperation (GTZ) proposed an upgrading scheme to the area, in conjunction with the Aswan Urban Development and Land Management Unit (UDLMU). After many institutional problems and legislative deficiencies, the National Programme of Urban Upgrading (NPUU) provided the area with basic physical infrastructure in 1993. The project was supposed to be a mutual cooperation and self-help project involving: the residents and the Egyptian and German Governments. After the residents' tenure was established, and blanket promises of secure tenure were given by the state there was a widespread reluctance to participate within the community.

While the area still suffers from decaying environmental and housing conditions, it has become increasingly market driven. Urban gentrification has occurred; higher-income groups and land speculators have displaced the low-income communities.

Due to the problems and conflicts the German Agency for Technical Cooperation terminated their involvement and withdrew funding in 1996¹¹.

¹¹ Max Lock Centre (forthcoming 2002) 'Good practice in core area development: Final report' (DFID research project R6860), Annex 9: Other City Studies: Cairo, Aswan City, Howrah pp8-9

Box 2.4: Advantages and Disadvantages of Non-Islamic Tenures		
Tenure and Definition	Advantages	Disadvantages
<p>Rental</p> <p>A fixed term agreement between the owner of a property and a tenant to possess and use a property.</p> <p>Tenants pay a regular fixed payment for the duration of the contract. In legal rental agreements a proportion of the rent normally goes towards the general upkeep and maintenance of the rented property.</p>	<p>Renting provides a relatively affordable method of accessing housing provision.</p> <p>Rentals are commonly for short time periods, require little financial investment (i.e. deposit). They offer flexible payment schedules that allow tenants to pay on either a daily, weekly or monthly basis. For this reason rental tenure is the most commonly used form of tenure among low-income groups in urban areas.</p>	<p>Security of tenure is short-term and potentially unstable.</p> <p>Investment into property by tenants (either in the form of rent or household improvements) cannot be recouped by the tenant when the contract expires.</p> <p>Rented property cannot be used as collateral to secure financial assistance.</p>
<p>Leasehold</p> <p>The long-term rental of a property or piece of land. Statutory contracts are drawn up between the lessor and the lessee for a specific time period but are commonly extended nearing completion.</p> <p>The lessor controls rights of use and development although the lessee may be allowed to sublet the property or land to another party. In so doing, the lessee assumes liability should any damages occur to the property/land.</p>	<p>Leaseholds allow an interested party the opportunity of accessing land or housing without having to invest a large amount of capital in the process.</p> <p>Costs associated with general maintenance and management are largely the responsibility of the owner.</p>	<p>Leasehold only provides security of tenure for the duration of the contract and although this usually extends to 99 years or more it cannot be used as financial collateral.</p> <p>Leasehold usually requires additional mortgage assistance from a financial institution, which disqualifies many low-income groups as they either do not earn enough or do not have secure incomes.</p> <p>Investment (rental payments or property improvements) cannot be realised by the lessee when the lease eventually expires.</p>
<p>Freehold</p> <p>The ownership of land or property for an indefinite length of time. The owner may rent out the property.</p> <p>Where development rights have not been nationalised, as they have in the UK and hence the need for a grant of planning permission to develop, the owner can develop as he wishes but with regard to local building, fire or other regulations.</p>	<p>Provides the owner with security of tenure.</p> <p>The owner can profit more from the sale of a freehold than leasehold title.</p> <p>The owner is able to recoup value added to the property and profit from any increase in the property's market value.</p> <p>Freehold can be used as collateral to secure financial assistance.</p>	<p>Requires mortgage assistance from a financial institution. This disqualifies many low-income groups leasing property because they either do not earn enough or do not have secure incomes.</p>

Regularising Tenure and Property Rights

Research undertaken suggests 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: residential plots in Jakarta with clear title have a 45 percent premium on value over comparable plots without clear title, whilst in Manila the risk of eviction was considered to lower the value of housing units by 25 percent (Dowall and Leaf, 1990; Dowall, 1998)¹².

However, many low-income households cannot afford to purchase formal titles, and since much of the low-income rental accommodation is often provided by small

¹² Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

landlords who are themselves frequently poor and living in unauthorised settlements, programmes to regularise tenure will frequently lead to increased evictions of the most vulnerable social groups within the community¹³.

Box 2.5: Regularising Tenure and Property Rights		
View point	Advantages	Disadvantages
Individual	<p>Legally endorses informal or constitutional right to use/own land.</p> <p>Should lead to an improvement in services, infrastructure and general living environment.</p> <p>Depending on nature of tenure i.e. right to use or own, legal rights improves group or individuals chances of accessing credit.</p>	<p>Regular taxes and service charges incurred as a result of achieving legal tenure are additional costs that will have to be met by the individual.</p> <p>As land is regularised and infrastructure and urban services provided or improved, existing residents renting property may be forced off the land as a result of related rent increases.</p> <p>May not be affordable to the individual in the long term.</p>
Government	<p>Increases amount of land/ property available in the formal market which in turn should lead to an improvement in urban management practise.</p> <p>Increases amount of revenue collected through land and property tax which in turn should lead to increased spending and improvement of public services and infrastructure.</p>	<p>Legitimise rights of use and/or ownership which could effect future development plans in an area.</p> <p>Once a right over land or property is granted it is difficult to revoke unless the beneficiary is seen to have broken a law or contractual agreement in some way.</p>

Tenure regularisation programmes may not always be the most appropriate means to enhance the security and rights of residents. Whilst city-level programmes can minimise the distortion impact on local land markets (which can be an outcome of very localised regularisation programmes), they also impose heavy burdens on land registries. With respect to the emphasis on freehold and ownership, communities themselves may prefer other systems, assuming there is a level of legal protection and security. Customary systems can foster greater social cohesion whilst rental tenure systems can allow greater mobility¹⁴.

As the impacts of tenure changes can be difficult to anticipate and difficult to revoke once undertaken, an incremental approach to improving the rights of residents can avoid problems (disruption to markets and social problems), without necessarily having to rely upon changing tenure status. An approach that develops local forms of regulation and builds upon existing systems may be appropriate within some contexts¹⁵.

¹³ Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

¹⁴ Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

¹⁵ Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3

Box 2.6: Different Approaches to Improving the Rights of Residents¹⁶

The Certificates of Use in Botswana and Lesotho are one example of an approach to increase the rights of residents without changing their tenure status. 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 extending customary arrangements to improve rights 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 cannot 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.

Conclusion

There are many different types of tenure, both formal and informal, which may be co-existing in the same area at the same time. There can be perceived benefits of a programme to regularise the tenure of unauthorised occupants; examples include improved access to formal credit systems and an incentive for the individual occupant to 'invest' in their property. However, widespread regularisation programmes have been shown to distort property and land markets, increasing values and reinforcing the exclusion of the poorer sections of the community. An alternative approach is to increase the security of occupancy, extending existing customary arrangements where appropriate.

Within the redevelopment process, it is crucial to identify and acknowledge the different types of tenure and property rights that may be operating on the land, and to work alongside them. There should be a procedure in place for the community and individuals within it to be as fully informed as possible about their ownership, land, and tenancy and occupancy rights during any redevelopment process.

¹⁶ Excerpt adapted from Payne GK (2001) 'Urban land tenure policy options: Titles or rights?' Habitat International, Vol 25 No 3