DESIGNING A LAND RECORDS SYSTEM FOR THE POOR

SECURE LAND AND PROPERTY RIGHTS FOR ALL

UN@HABITAT
FOR A BETTER URBAN FUTURE

ITC
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GLTN
GLOBAL LAND TOOL NETWORK

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FOREWORD

For most of the world's poor people, securing tenure to the land they work on or to the home they live in requires them to navigate a difficult and complex road. The basic building blocks of conventional land registration – having accurate documents and a formal and rigid system in which they are recorded – present such an enormous obstacle that, along with a lack of money, lack of influence and land offices that are physically far away, it is almost impossible to even start the journey.

Rapid urbanization in recent decades has only added to these difficulties. It has created such an enormous demand for land records in situations with too few resources and capacity that many conventional, formal registration systems simply cannot keep up. Slums are one result of this. Moreover, globalization is now increasingly putting enormous pressure on agricultural lands in developing countries due to food and energy insecurity. In most cases, the rural poor suffer.

Another problem is that, at the current rate, it will take decades if not centuries for most developing countries to get a complete and accurate land registration system in place. Along with the issue of slow delivery, the broader land community also recognizes that individual titling on its own cannot deliver security of tenure to all. A continuum of land rights that features a range of types of tenure is widely accepted as being more practical and appropriate, especially for poor people.

UN-Habitat with the Global Land Tool Network (GLTN) partners are committed to delivering secure land rights at scale through the promotion of the continuum of land rights and development of pro-poor and gender appropriate land tools. However, implementing the con-tinuum of land rights presents its own challenges when it comes to creating a system in which these rights are recorded, particularly if this continuum applies on a large scale. This publication is about creating the tool to address these challenges

The pro-poor land recordation system suggested here should be seen as the first step on the tenure rights ladder. It draws on the lessons learned from conventional land titling systems and incorporates local community tenure practices. It offers an affordable, practical and achievable way to support a range of tenure rights for poor people, particularly in situations where conventional land registration systems cannot accommodate them. It also focuses on the many details that make up a pro-poor land recordation system.

This initiative is just the start of a process to tackle a complex, land-related issue; critical and wide-ranging discussion on the ideas presented here are crucial to any success. Developing a pro-poor land recordation system is no small challenge and, as you will read, there is some urgency to this task. It is important, however, that it is done.

At UN-Habitat, we value the spirit of partnership in building better cities. My thanks go to the Governments of Sweden and Norway for their continued financial support. Likewise my appreciation goes to GLTN partners particularly to the Faculty of Geo-Information Science and Earth Observation (ITC) at the University of Twente (The Netherlands), for sharing their knowledge, expertise and experience.

Finally, we recognize that sustainable urban development cannot be achieved without addressing some important challenges such as slums, youth job creation, public space, urban planning and other related issues. I have every confidence that this tool provides us with an opportunity to achieve more equitable and inclusive cities in the future.

Dr. Joan Clos,
Under-Secretary-General of the United Nations,
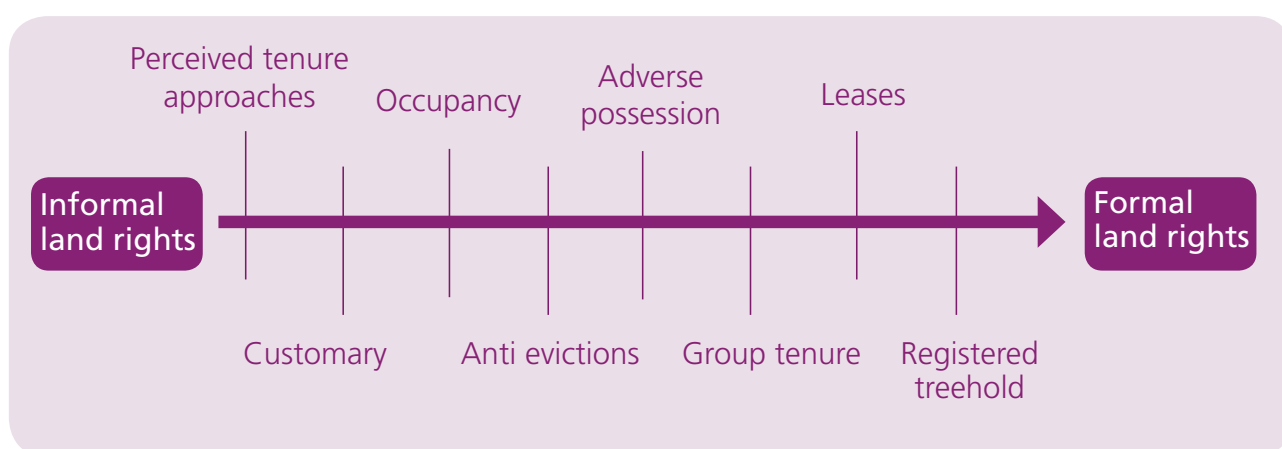Executive Director UN-Habitat.

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INTRODUCTION

1.1 BACKGROUND

The wider global land community has experienced a paradigm shift and it now accepts that individual land titling on its own cannot deliver security of tenure to the majority of people in the developing world. It is also accepted that the process of land titling is too slow. Currently, in the developing world, only about 30 per cent of land is regulated by some form of land registration/recordation system. Land registration is defined by the Food and Agriculture Organization as "the official recording of legally recognized interests in land and is usually part of a cadastral system. From a legal perspective, a distinction can be made between deeds registration, where the documents filed in the registry are the evidence of title, and registration of title, in which the register itself serves as the primary evidence" (2009). At the present rate, it will take centuries to achieve complete title coverage in a large number of countries. The global land community has come to believe that the way to deliver security of tenure is through a continuum of land rights that allows people to get onto the tenure rights ladder (see diagram below).

However, a continuum of land rights approach, if implemented at scale, will require the introduction of new forms of land recordation. This publication focuses on the lowest end of designing such a recordation system, namely a pro-poor land recordation system for the urban and rural poor, who are generally the majority of the population in developing countries.

The key question this publication seeks to answer is: what does a pro-poor land recordation system look like? The publication aims to outline an innovative and affordable land recordation system that would make it possible to record different types of land rights and tenure, and operate within a co-management framework with the community. The publication incorporates some elements that have been learned from history and existing land systems, as well as the experiences of professionals, government authorities, civil society, researchers and others in trying to address the related land issues.

Perceived tenure approaches   Occupancy   Adverse possession   Leases

Informal land rights ——————————————→ **Formal land rights**

Customary   Anti evictions   Group tenure   Registered treehold

The continuum of land rights.

Participants to the Expert Group Meeting on Development of a Pro-poor Land Recordation System, 15-16 March 2011, Paris, France. Photo © UN-Habitat / Danilo Antonio.

The Global Land Tool Network (GLTN) identified pro-poor land records as one of the 18 new land tools needed to move the global land agenda forward. The GLTN is composed of 45 international partners working on developing new land tools to address the wide range of complex challenges found in rural and urban areas. These partners include civil society, grassroots, professionals, bi-laterals, multi-laterals, training and research institutions. New GLTN partners, such as the International Union of Notaries (UINL) and the International Alliance on Land Tenure and Administration (IALTA), have been very involved in the development of this land recordation tool.

GLTN's agenda has a number of themes. One of these is "land rights, records and registration". The pro-poor land recordation tool is located within that theme as part of the subtheme "deeds and titles". It has learnt from and builds on completed or on-going work on other GLTN tools and themes, such as the continuum of land rights approach; co-management; the development of a pro-poor land rights recording system called the Social Tenure Domain Model (STDM); participatory enumeration; post-conflict and post-disaster land tools; gender evaluation; scaling up grassroots approaches; and land governance. The pro-poor land recordation tool is closely linked with the first two (STDM and enumeration) and could be implemented in parallel with each tool or both.

This publication is based on a background paper written by Professor Jaap Zevenbergen for an Expert Group Meeting on "Development of a Pro-Poor Land Recordation System" held with legal/notary, technical and registry professionals in March 2011 in Paris, France. Both the background paper and discussions at that meeting have been taken into account, but it should be noted that there are many complex

issues related to this tool which do not appear in this publication and which need to be further developed, studied and thought through. Some of these issues include having clear institutional perspective on communities and an understanding of the political economy at national/state/local level and community level, and between the various levels. These issues should be addressed prior to initiating pilots.

Finally, many of the positions outlined in this publication are much more nuanced than presented, or there is a variety of options and variables that need to be considered in any particular local situation or context. This has been difficult to express in a short publication that addresses such an enormous issue. However, this publication presents the first steps towards a coherent framework and is intended to focus the debate on this tool.

1.2. WHAT IS THIS PUBLICATION ABOUT AND WHO IS IT FOR?

This publication summarizes the benefits of land recording. It then identifies some of the critical problems that poor people experience with conventional land registration systems. There is a review of some lessons learnt with land records, land reform and land administration; for example, many of our legal and land recordation systems contain historical anti-poor biases that need to be addressed when designing a pro-poor land recordation system. Also, rapid urbanization has created a massive demand for land records in a situation where resources are scarce, which has placed an impossible strain on the conventional land registration/recordation systems and contributed to large-scale slum formation. The social land tenures of low income people, including those in rural and

customary areas, have consistently not been recognized in land registration systems, yet these social tenures, including both main and secondary land rights, provide security of tenure to the majority and should be recognized and protected.

A range of important issues are highlighted as elements for success in a pro-poor land recordation system, such as possession/prescription being a key concept to poor people, and that an inventory of rights and/or claims and a simple map within a jurisdiction of the size of a municipality. Also, a pro-poor system would need to improve participatory adjudication approaches to accommodate social land tenures, including complex layered rights, and be able to accommodate less accurate forms of data and maps. The system would have to be at community level to improve the accuracy of the records and their accessibility. Other key pro-poor design elements include affordability and delivering preventive justice. A co-management system is outlined whereby the state and the community share responsibility for the land records and for limiting injustice to the poor with regard to their land.

A first design of a pro-poor land recordation system is outlined. It builds on community tenure practices and introduces simple land records and indexes, a (barefoot) land officer and a record keeper, both of which are embedded in the community and linked to the state structure. Other aspects discussed include joint inspection, information in records not being the only evidence, and broader governance issues. A continuum of land recording is proposed that could support a range of rights and allow for the upgrading of land records and systems over time.

> *'... pro-poor land recordation system is a possible solution to the problems of conventional land registration systems.*

The publication is intended to demonstrate to government authorities, civil society organizations, professionals, donors and other key stakeholders that a pro-poor land recordation system is a possible solution to the problems of conventional land registration systems.

1.3 WHY THE NEED FOR LAND RECORDATION?

When it is designed and implemented correctly, land registration or recordation has a number of benefits for landholders. This does not happen automatically. Benefits need to be added step by step to the pro-poor system and will potentially include:

- Evidence/proof of land rights including of the transaction, of the parties involved, of the land involved, of the acceptance by the community.
- Notice to the world, including the state.
- The creation of rank/priorities between different recorded documents.
- An index linked to the names of the parties, which will facilitate ease of access to information.
- A geometrical index, which facilitates linking the land documents to the ground.
- Easier operations for (local) government for ser vices and to organize other land management activities.
- An increased level of status in the eyes of the state.

- An increased level of status in the eyes of the community, depending on the acceptance by the community of the system, its presence on the ground, the land documents and other services.

A PRO-POOR SYSTEM COULD ALSO:

- Lead to improved access to subsidies, consumer loans, etc.
- Act as a proxy concerning participation in democratization.
- Be the first step on the tenure rights ladder, or continuum, eventually leading to full ownership.
- Be the foundation for capital formation.
- Increase predictability and efficiency by reducing ad hoc land related activities by the state.
- Decrease some of the conflict over land by increasing predictability. The land records themselves would contribute to better local dispute resolution in general.
- Make it possible to make large investments that take a long time to recoup.

THE PRO-POOR LAND RECORDATION SYSTEM WILL HELP DELIVER ALL THESE BENEFITS BUT NOT TO THE DEGREE FOUND IN MANY WESTERN SYSTEMS. THAT WILL DEPEND ON ISSUES SUCH AS:

- how well the system is embedded legally, either with a law or a high level policy document, or at least not being prohibited by existing legislation;
- the way disputes are resolved, including how the courts will interpret disputes;
- the attitude of the society as a whole, particularly the community in which the system is located.
- the legitimacy of the pro-poor system in the eyes of different actors (public and semi-public agencies and private sector actors).

LAND REGISTRATION AND RECORDATION SYSTEMS – TRENDS AND DEVELOPMENTS

The theoretical benefits of land registration have been widely documented. Conventional land systems are often evaluated within a legal-administrative framework rather than within an implementation framework that also includes poor users. Using a pro-poor implementation framework draws attention to the many challenges and problems in conventional systems, and these often have historical roots.

> '*… many people still do not have legal rights, and if they have legal rights they do not have formal documents to prove it.*

THE HISTORY OF THE LAW. Many of our legal and land recordation systems contain historical anti-poor biases that need to be addressed when designing a pro-poor land recordation system. Land tenure laws were part of the codification of the larger body of law that was created in the past, often hundreds of years ago. The biases of the original rulers who undertook the codification were included, so it often supported the powerful and conquering power. This body of law was then exported to colonies and many current land tenure systems still reflect these biases. The powerful and the elites have generally used most formal systems to exclude others, particularly in developing countries. Even after decades or hundreds of years of independence in some countries, many people still do not have legal rights, and if they have legal rights they do not have formal documents to prove it.

THE HISTORY OF LAND RECORDS. Many developing countries had no land recordation system prior to colonization in the nineteenth and twentieth centuries. Colonization was often the first stage in the introduction of land recordation systems. These systems, many of which are still in place, reflect both the bias of the original codified laws of the colonizing country and the biased amendments to laws made in the colony by the colonizing authority for their own purposes and for their settlers. Often, newly-independent countries have struggled, with limited success, to expand these systems beyond the parcels originally registered during the colonial period. Also, the new owners of the original properties are often the post-independence powerful and elites.

THE RISK OF FIRST REGISTRATION. Conventional adjudication or first registration, either through sporadic or systematic approaches, provides an opportunity for powerful and informed people to manipulate the system for their own gain (or for the gains of their relatives and friends) if not done appropriately because these people know how the system operates. Also, land registration and titling focuses on the main land rights and often excludes the secondary rights. These secondary rights are a key part of the social security system of women and other vulnerable groups and the loss of them can have a significant impact on individual and household livelihoods. There have been many reports of registered owners of the main land right preventing holders of unrecorded secondary rights from having access to their land.

NON-REGISTRATION OF SUBSEQUENT TRANSACTIONS. There is increasing evidence that many people do not register subsequent transactions even when they have registered land rights. Instead, they informally hand over the documentation to the buyer. Reasons for this are: costs, an unfamiliar corporate and professional culture, the number of steps involved, and long delays. These issues are common
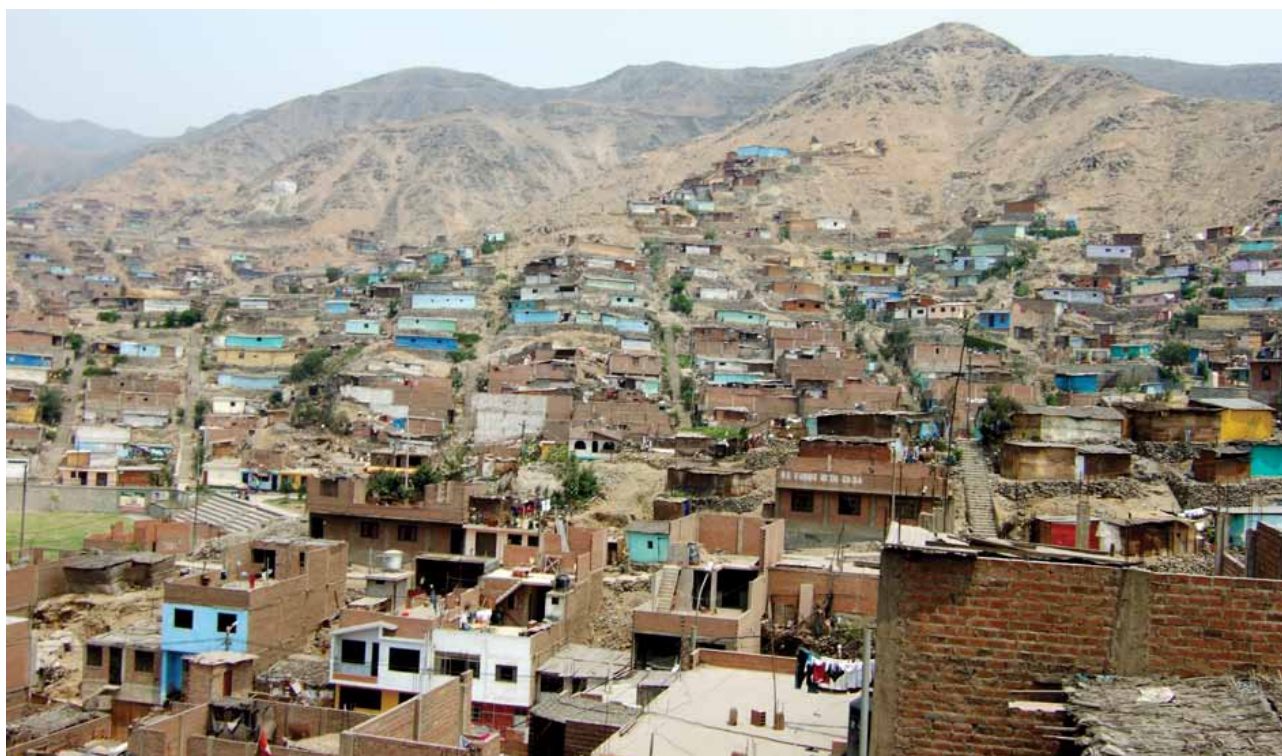
Urban sprawl in Barriada, Lima. Photo © UN-Habitat / Claudio Acioly.

in conventional land registration systems and this, together with too few staff and an inability to pay them, often leads to malpractices. This in turn benefits the rich, who obtain services by paying facilitation fees and/or using their influence regardless of the situation on the ground.

THE POOR DO NOT USE REGISTERED RIGHTS AS COLLATERAL. It is generally argued that land should be registered so that owners can obtain collateral. Experience from large land titling projects is mixed and evidence from Peru and South Africa shows that, generally, the poor do not use this financial facility for several reasons. Some of these are that they fear losing their land through a forced sale; banks focus

not only on the land documentation but also on the income of the household applying for the loan; and the cost of registering the mortgage may be high compared to the loan amount being requested. Often, the design of land recordation that allows for the registration of a mortgage also includes additional steps, including technological and legal processes, which increase the cost.

ALLODIAL TITLE AND THE POSITION OF THE POOR. In some developing countries the state owns all land and citizens acquire a lesser right allocated by the state, such as a use rights, perpetual use rights or leasehold. In other countries, this allodial right is vested in the individual as part of the right of own-

Blessing or curse? Large pineapple plantation in Bukidnon, Philippines. Photo © UN-Habitat / Danilo Antonio.

ership. The state (for land allocated for public purposes) or local government may also hold ownership rights that include the allodial right. The owner of this right (private or state) can use it or give a lesser right to another person/s (e.g. tenancy or leasehold). Many poor communities live on land that is held privately by the state or local authorities. Poor people usually have no allodial rights and often do not even have lesser forms of formal rights. In some cases, allodial title is used to evict or weaken the rights of poor occupants. In other cases, it has helped to start land reform or led to limited or no compensation when authorities decide to acquire or take the land "for public good". The issue of allodial title has to be addressed with a pro-poor land recordation system to that people people can progress along the continuum of land rights.

A GAP IN THE SUPPLY OF LAND DOCUMENTS ENCOURAGES CORRUPTION. In the developing world, only about 30 per cent of land is registered. This means that, in using conventional land registration and administration systems, the supply of formal land documents is very limited, which leads to a supply gap relative to the demand. This, in turn, encourages facilitation fees and malpractices that mean the poor

are excluded.

URBANIZATION AND AREAS OF RAPID DEMAND. Land administration systems, including registries, are designed to deal with modest levels of change. In settled urban areas, the size and shape of a formal property usually does not change for decades. Names of the landholders of formal urban properties change due to death and sales probably every ten years. The size and shape of formal buildings are stable over long time periods. However, these assumptions might not apply with rapid urbanization. Slum development and illegal construction of structures are much faster than formal development and conventional tenure systems are not able to keep up. Land recordation and (index) mapping cannot be kept up-to-date. The same limitations apply to land allocation, land taxation, land distribution and the spatial planning of urban areas, and mirror the limitations of legal and land documentation systems.

In sub-Saharan Africa, more than 60 per cent of city residents live in slums and this is directly linked to the inability of the urban systems to scale up using conventional approaches.

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KEY DESIGN ELEMENTS FOR PRO-POOR LAND RECORDATION
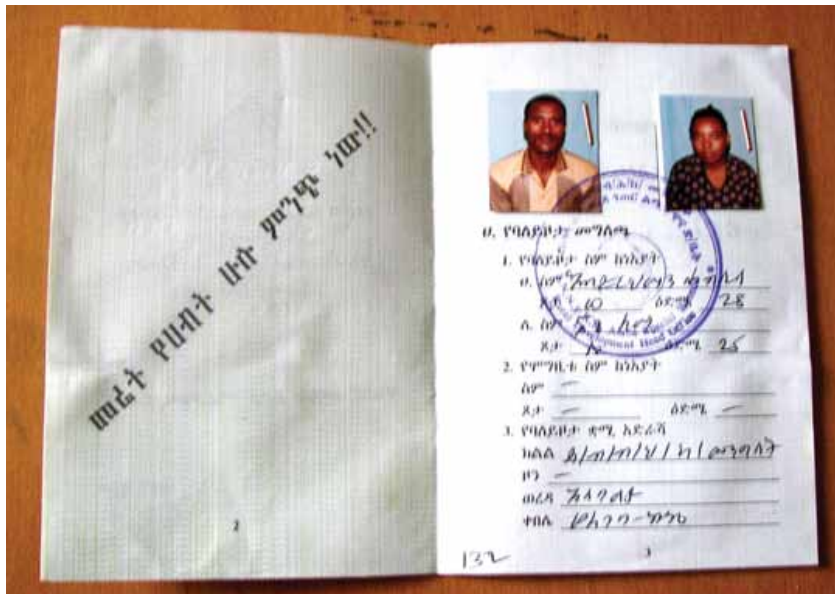
Improving tenure security with a rural land certificate estimated at USD 1 a parcel, Amhara, Ethiopia. Photo © Jaap Zevenbergen.

Other instances of a rapid demand for land documents occur with commercial developments or with large (foreign) investments that are associated with a scramble for resources. In these scenarios, the focus of the land system is on delivering land rights to investors and there is little or no protection of local communities' rights. The conventional system gives benefits to the elites while putting the poor at risk of eviction and of losing their de facto land rights.

THE POOR AND THE STATE HAVE LIMITED FUNDING FOR LAND DOCUMENTS REGISTRATION. The poor cannot afford land documents delivered by conventional systems. Adjudication of a parcel of land in Latin American, for example, can cost between USD 27 and USD 603 (even USD 2,800). A pro-poor system has to be far cheaper, around USD 1 a parcel, as it is in Amhara, Ethiopia. Most governments cannot afford to subsidize the cost of land documents even with a conventional system, particularly as it involves a range of costly private sector professional fees. Finally, governments often prioritize other issues, such as health, sanitation, education and transport, and the "departments of land" are seldom among the best-resourced departments. A pro-poor system should be affordable for the majority of citizens, making it realistic for governments to scale up their support for it.

MAKE THE SYSTEM TRANSPARENT, INCLUSIVE AND EQUITABLE. The purpose of the proposed system is to be inclusive and available to the poor so it is critical that it is transparent and equitable. Information should be freely accessible, which should make it harder for any person or group to manipulate land records or land rights. Accessible records also make it possible for (local) people to check their tacit and local knowledge against what is documented, without the need to hire expensive professionals and/or without resorting to bad practices such as paying bribes.

> ❜ *Information should be freely accessible, which should make it harder for any person or group to manipulate land records or land rights.*

Not all people hold the same amount of land, but all people should have an opportunity for their interests in land to be recorded. In an equitable system, women and men should be treated equally and age, ethnicity

and marital status should not hinder something being recorded. It should also be possible to record all local types of interests, including secondary rights. The existence of a recorded main right should not alter the ability to record an existing secondary right that is acknowledged by the community.

SOCIAL TENURES HAVE COMPLEX, LAYERED RIGHTS. Historically, customary and other informal tenure systems were often considered to be less sophisticated than formal tenures in the Western world. This is not true, however, as these customary and informal systems encompass more complex rights over resources by different people than those found in individualized Western systems of registration. The web of tenures found in these societies often provides a safety net for the most vulnerable people in the community (e.g. widows) by giving them access to limited benefits (secondary rights) on someone else's land. The tenure complexities can also cater for geographical and climatic circumstances, and these tenure rights can have a stronger time dimension as compared to ownership or even leasehold. These tenures tend to be flexible and adaptive to change and attempts to codify them would reduce their flexibility. If codification was integrated into a conventional land registration system of simplified statutory land tenure types, it would also set aside secondary rights, among others, which would have a negative impact on the livelihoods of vulnerable people. In many countries, any attempt at national codification would be impossible because of the diversity of social tenure types. This is important even in peri-urban areas, where customary tenures are often adapted to urban situations.

A better approach for the design of a pro-poor land recordation system is to use the community to describe the tenure system and the types of evidence currently used. This will encourage the introduction of new forms of legal evidence into the system that fit better with the social tenures of the communities. It will also allow evidence types linked to the land records to be altered over time as the communities' land tenure evolves. These kinds of activities would make the land recordation system appropriate and more flexible.

> *Better approach for the design of a pro-poor land recordation system is to use the community to describe the tenure system and the types of evidence currently used.*

It would, however, also mean that the pro-poor system records would have less clarity on their own in comparison with Western land registration systems, which are stand-alone systems. Co-management by the community leaders would be important for risk management and clarifying the information prior to the actual recordation of rights. While some risk may remain, this can be limited by making land recordation part of a wider system of land governance and land management. This builds on the security of tenure recognised and respected by the community prior to the creation of the land records. Such processes would contribute to addressing a broader land management issue and will ensure legitimacy and acceptance by the community.

A WIDE RANGE OF LAND DOCUMENT TYPES. In many developing countries, only about 30 per cent of the land is regulated with land documents held in record/ registry systems. The remaining 70 per cent of land,

Various land documents, not necessarily cadastre and other formal land records, can assist in improving the tenure security of the urban and rural poor. Photo © UN-Habitat / ITC.

particularly rural land, is characterized by forms of customary land tenure. Many urban slums have no, or few, legal land records. Also, in some countries land documents are generated through sporadic documentation and approaches; in others, systematic documentation is undertaken only in parts of the country. In countries where there is no compulsory legal registration of transactions, some properties have a completely documented trail, other properties have only some documents recorded and others will have no documents in the system at all. The lesson learned from this is that, when introducing pro-poor land recordation, the poor need to begin acquiring documents that will support the recognition of their tenure rights.

These records and/or documents will not necessarily provide clarity on the title; a more complete picture would also include (verbal) verification within the community, particularly by respected leaders in the earlier stages of the recordation system.

POSSESSION AND PRESCRIPTION. Land in areas under pressure is nearly always being used and/or is occupied. Even if there is no de jure holder of the land there is always a de facto landholder. The status of the people on the land, that is, those in possession, differs between countries. It depends on the legal and institutional framework, if the land records are incomplete, or whether informal access to land is the norm. Many legal systems include the notion of prescription, which means that claims people have under law expire at some point in time. For example, if an owner does not responsibly administer the land and another person occupies and uses it without any resistance from the owner, then the legal system assumes after a certain time that the owner has given up their claim on the land. This strengthens the position of the occupier, although not all legal traditions allow them to become the "new owner". The length of time after which the original owner loses their claim varies between countries, with 5, 12, 20, 30 or 40 years being common.

This practice can relate to boundary changes between two owners (just a strip of land) or to a whole property, or a claim to part of a larger property.

Possession or prescription over private land as opposed to public land is treated differently; generally state land cannot be acquired with the same ease, or at all. Also, certain legal clauses usually apply both to the conditions at the start of the adverse possession of the land, and to what have happened during the time period. Violent possession of land is usually excluded from this process and, in some jurisdictions, courts equate squatting by poor people (often defined by courts as a crime against the land) as violent and will bar any prescription claims.

The legal limitation of possession/prescription on state land is a critical issue for the poor as they often occupy such land. This comes about either because firstly, the community occupied the land before the creation of the nation state and the state's allodial title to it, a situation often exacerbated by a lack of clarity on the boundaries of state land; or secondly when poor people invade the land.

Warning sign against invasion of government land. Photo © Jaap Zevenbergen.

> *It is hard for the poor to make a claim as they cannot fulfill the requirements, pay the necessary fees, hire professionals, repeatedly travel to relevant offices and have no appropriate knowledge and contacts.*

Some countries support the poor settlers' prescription/possession claims in both urban and rural areas. This fits with the understanding that someone in possession of the land may have the stronger right to it, based on the principle that possession is nine tenths of the law. There can still be problems with the evidence for the claim, even when possession is accepted, unless the owner who loses the right accepts their neglect. Witness statements are usually crucial, but aerial photos or satellite imagery from previous years can also help to substantiate possession claims. Even under these conditions it is hard for the poor to make a claim as they cannot easily fulfil the requirements, pay the necessary fees, hire professionals, repeatedly travel to relevant offices and have no appropriate knowledge and contacts. Even when claims are supported by fee-waiving projects and non-government organizations (NGOs), the formal system may be incapable of coping with the increased workload, which leads to "facilitation fees". These fees lead to some claims becoming more important than others, which again disadvantages the poor.

Given the way that the poor occupy the land, and the current range of legal opportunities that exist, addressing possession/prescription is important. The pro-poor land recordation system will have to rely more on possession, both on privately held and state

land. The design will also need to support the fact that this information needs to be treated as equal evidence when it conflicts in a prescription procedure with the de jure rights, which they "adversely" possess.

THE NATIONAL AUTHORITIES AND LAND (TAX) RECORDS.
National authorities have introduced two major types of land documenting systems, namely land rights records and land tax records. In some countries, the recordation/registration of land rights might develop independently of the land tax system, or it might be coordinated, linked or even integrated with it. The land recordation system needs to take these into account for the local area. In some situations it could be based on tax records, which are often more affordable than legal land records.

AUTHENTIC OR CORRECT LAND RECORDS.
The registered land information should reflect the situation on the ground. However, in many countries this cannot be assumed because people do not always follow the correct procedures. These include:

- using the required (professional) experts to complete the technical/legal process;
- using experts who are well trained, adequately paid and mandated to undertake the work;
- having a clear legal and policy framework, and;
- getting the correct documentation for intended changes (transactions) and using correctly updated registers.

The effect is that the situation on the ground will be different from that in the records, and the system will not reflect the de facto situation, including unpublished changes to earlier registered properties. A bigger problem is caused when experts complete all the required steps and produce formal documents but do not involve the people occupying the land. This can create a formal landowner who has obtained the property through fraud, to the detriment of the land-holder on the ground. This also happens regularly to the detriment of the state when state land allocation procedures are abused, which creates authentic land records that are not correct.

> ' *It will take decades, if not centuries, for many countries to complete land registration of the whole country.*

When designing a pro-poor system to address this, it is important that the land recordation system is close to the ground to ensure that the records are correct and mirror what is on the ground. People will be able to see any discrepancies easily. Also, co-management, which includes a governance approach, should also ensure that malpractice either through manipulation by elites and/or through the work of government officials is limited. This will ensure land documents that do not match the situation on the ground are not created.

COVERAGE OR ACCURACY FIRST?
First registration and the introduction of a land registration system, particularly the related-mapping component of the process, is expensive and time consuming. Several countries have undertaken a systematic adjudication approach and begun to slowly expand their land registration coverage. Estimates based on the current pace at which land titles are issued suggest that it will take decades, if not centuries, for many countries to complete land registration of the whole country.

Participatory planning process by men and women in Nepal. Photo © UN-Habitat.

A key reason for this is the strict regulation of data collection, particularly geometric boundary data, problems in proving identity and producing documentary evidence, among others. Often, the boundary also requires a large and expensive marker/boundary stone in the field (e.g. a concrete marker) which is costly and creates logistical problems. The collection of birth and marriage certificates, identity cards, tax records and other supporting documents during adjudication is also particularly onerous for poor and often illiterate communities.

More rapid approaches need to be introduced to increase the pace of coverage, with less emphasis on accuracy initially. At the start, accurate and complete data should not needed, otherwise it will be difficult to get coverage. Instead, less accurate forms of boundary and rights data should be acceptable. Also, non-conventional boundary markers could be considered. The suggested pro-poor approach could consider using aerial photos or satellite images and general

boundary rules for a first level graphical index. This data could be improved as, and when, required. Also, with a land rights continuum approach, lesser forms of land rights would need less paper proof of personal status at the start, allowing for complete personal documentation to be accumulated before moving to the next step on the land tenure continuum. This would speed up the adjudication process at every step up the ladder and people would have more time to learn about the requirements of a land recordation system.

LAND RECORD MANAGEMENT AS PART OF PUBLIC ADMINISTRATION. Land registration, particularly when located in a ministry of lands or the judiciary, tends to be a separate activity, undertaken by both the public and private sector. The land records' offices should be well embedded in the state system to benefit from administrative reform and information sharing. A pro-

Can communities co-manage a land recordation system? Northern Uganda. Photo © Jaap Zevenbergen.

poor land recordation system needs to be embedded in the larger public administration structure, as well as the overall registry structure, for optimal performance. Where possible, these structures should also be linked to the personal information management systems.

VESTING OF LAND REGISTRY FUNCTIONS: LOCAL VERSUS NATIONAL AUTHORITIES.

Formal land registration agencies tend to be located at a national level in unitary states and at state level in federal states. In many countries, the land registry is linked to a ministry of justice or the judiciary. The land registry may also include some mapping components, although mapping is more often part of a survey or cadastral department.

The lack of decentralization of land records creates a number of problems, for example lack of access to the registry information by users, lengthy travel time and far location of the offices to submit documents and, importantly, a lack of buy-in at a local level. The location of registries often restricts local people, and even municipalities, from using the recorded information. Poor access and poor identification with the registry system have a negative impact on the currency of the system because local people often neglect to record any changes to their land's status in the system. Registries should be near communities to ensure ease of access and to improve land management, land taxation and planning. Day-to-day operations on the records need to be performed close to communities. There should be many offices at a lower level of local government and their jurisdictions should avoid overlaps and gaps. The land records' office should be part of the formal local authority and work with private sector actors, NGOs including community-based organizations (CBOs), and with local communities, both customary and/or informally organized groups.

The marginalization of some community groups needs to be limited as much as possible. The extent to which a pro-poor land recordation system can address gender, handicapped and/or outsiders' rights and claims will have to be tested in a pilot programme. It may not be possible in the first stage because a change in attitude within the community is a precursor to recording these rights. A land office that is more accessible, both in terms of location and transparency, should strengthen the position of the poor and vulnerable, and limit the opportunities for the elite.

SUMMARISING THE PRO-POOR DESIGN ELEMENTS.

1. The recordation system should be affordable for the state and its citizens particularly the poor to enable the country to scale up the system.
It also needs to be transparent, accessible and equitable to ensure delivery to the poor.

2. The system has to deal with complex, layered rights. Next to formal tenures, it needs to take care of customary and informal systems, as well as secondary rights.

3. The system should build on social tenures rather than strict paper trails.
It is important that the system is simple, quick and inexpensive and avoids costly experts and fees.

4. The land recordation system should be physically close to the people to improve record accuracy, to ensure ease of access and to improve land management and planning.

5. Complete data should not be a priority at the first stage of the design.
Less accurate forms of boundary and rights data would be sufficient and non-conventional boundary markers should be allowed.

6. A spatial index map should be introduced early to identify on the ground the land described in the document. A simple geometrical index can be created.
Maps may already be available.

7. The pro-poor land records' office should not be a totally independent entity, but ideally should be embedded in the larger public administration structure.

8. The system has to deliver preventive justice by having land records that contain objective information that clarifies the rights and contractual relations, and limits the need to go court.

9. The system should build on co-management of pro-poor land records, including identifying witnesses, creating evidence, building the currency and legitimacy of land records. Strong checks and balances are needed to protect vulnerable groups.

FIRST DESIGN OF A PRO-POOR LAND RECORDARION SYSTEM

ASSESSMENT OF NATIONAL AND LOCAL CONDITIONS. A range of issues need to be assessed on a national level. These include:

- The level of government support for the idea of a pro-poor land recordation system.
- The legal framework to see how pro-poor it is in regard to security of tenure for the poor and to land records.
- The elements of the recordation design and how well they fit with the existing legal framework of the country and the area where the system might be implemented.
- The governance and institutional shape of government so that the best location for the records and record keeper can be identified.

Other legal issues which need to be assessed on a local level include:

- the extent and forms of legal pluralism;
- the extent to which the law is flexible;
- whether the law prohibits such a land record system;
- whether prescription is available, existing forms of legal evidence and tenure types;
- family law and practice;
- how administrative law could possibly be used, and
- a review of customary practice through a human rights lens.

The local level assessment should cover a range of items. Of utmost importance is getting the support of the local community, which requires entry points to be identified and a user needs and requirement assessment to be undertaken. The local assessment should

identify local initiatives, local processes and practice associated with land, as well as the land's legal status. The local administrative and co-management capacity, including the status of community leadership, should be assessed. Also, a risk assessment, particularly of the local political economy, should be done that encompasses actors, institutions and patron-client relationships, corruption issues, the contradictory land law systems that impact the area, and the impact of external factors in the area including the commodification of the land. The design will have to be adapted for national and local conditions drawing on the assessment.

Sensitization process at community level is essential in gaining peoples' support and achieving legitimacy, Uganda. Photo © UN-Habitat / Danilo Antonio.

BUILT-ON COMMUNITY TENURE PRACTICES. The pro-poor land recordation system should be built on existing local approaches. In many situations, the social land tenure system includes elements which would form an integral part of the pro-poor system. Community rules about identifying leaders should be followed. In informal areas, these people may be chiefs and elders in customary areas, local community leaders, ward or block heads, and could include special land committees working under the leader/s.

In some communities religious leaders may be important. These types of leaders know the local land tenure rules and their current interpretation in changing circumstances. They also know the position and land interests of the different people in the community. The leadership will know whether a person selling the land is entitled to sell it, and whether a buyer meets the criteria to acquire the rights. They will also know the family law appropriate to the parties, for example a lineage might have a pre-emption right when land is being sold, or the land rights of orphans when there is a sale. Leaders can also act as witnesses to the parties' intentions and record the knowledge in their heads and/or on informal documents.
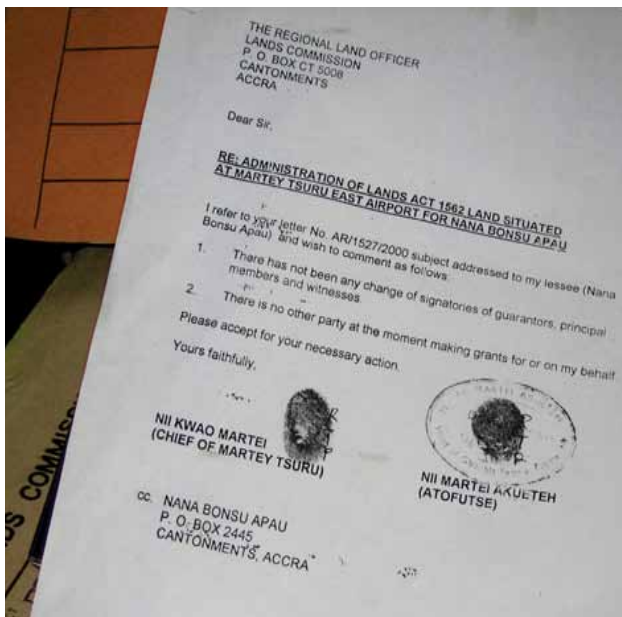
Chief signs off on the document that incorporates the local customary tenure system. Photo © Paul van der Molen

Not all communities have stable leaders or leaders who give equal and fair treatment to members of the community. However, the pro-poor system needs to be built around community leaders because conventional land registration systems cannot cater for the needs of the poor. The capacity of leaders and communities will need to be developed through awareness creation, manuals, training and advice by the (bare foot) land officer and/or the local record keeper. This will take time but it is the only way forward to extend security of tenure to the poor and build the systems over time.

A SPORADIC OR A SYSTEMATIC APPROACH. The number of recorded land rights that should be recorded in a country is usually of the same order as the population of that country. This means that a lot of work must be done before a country is fully covered by a land recordation system. Adjudication started in Western Europe around 1807; it was completed for the Netherlands (a small country) in 1831 and for France in 1850. This shows how long full coverage can take.

There is evidence in many parts of the world that people increasingly use some kind of informal/formal publication document when they transfer land rights. The proposed pro-poor system aims to build on this trend and take it one step further, without becoming an overdesigned solution. The approach should be sporadic at first to allow people to join as, and when, they felt the need. At the same time, awareness-raising should be done so that people know what the system has to offer. Most people would probably enter the system when involved with a transfer, such as a decision to sell. Such transactions are usually relatively easy to capture and record. The consequences to land of death, marriage and divorce are, traditionally, much more difficult to capture.

Depending on the local circumstances, it may be important to start more systematically. Participatory

Re-establishing property boundaries and claims is most challenging in post-crisis situation, Banda Aceh, Indonesia. Photo © UN-Habitat / Clarissa Augustinus.

enumeration has shown that when communities are organized they can undertake systematic identification of land rights. With a pro-poor land recordation system, a more systematic approach to the creation of records can also be done when the community is ready. In some communities it might not be possible to start with a sporadic approach because of suspicion between neighbours, and the first step will have to be systematic. Although cheaper per property (due to economies of scale), this requires more upfront investment.

Even if a pro-poor system proposed is used, it will not be possible to include the whole country in a few years and areas of high priority will need to be chosen. Also, the system should build on the paper documents already being used by communities and should be implemented either sporadically or systematically, depending on community demand and available resources.

DELIVERING PREVENTIVE JUSTICE. The main reason for introducing land recordation is for preventive justice. Society invests in preventing conflict by creating land records that are evidence of land rights and

contractual relations. In this way, when two parties (including advisors) transfer land between them, objective information is available that clarifies the rights and contractual relations, and limits the need to go to court for a final agreement. It also means that the creation of strong evidence (almost impossible to undo for a land title) is not the primary task of such a process. Rather, it is about ensuring an equitable process in which both parties understand what they are doing. Of course, evidence of this process has to be recorded so that others have access to it, particularly if the transacting parties are not available, or are willing, at a later stage to agree on what was done. However, the information could be incomplete or incorrect, so the need for additional evidence is not precluded.

CO-MANAGEMENT FOR PRO-POOR LAND RECORDS. There is increasing recognition that land recordation systems do not solve all problems, are not politically neutral and elites may capture them. There is an increasing amount of work, by Transparency International for example, which shows that officials in land systems use these systems for corrupt purposes.[1] To improve land governance around a pro-poor land recordation system, the system needs to be closely

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[1] See Transparency International (2009) and Transparency International-India (2005).

Participatory enumeration exercise by Mahila Milan (women's groups) in Orissa, India. Photo © SPARC.

linked to its user community through a co-management approach.

A co-management approach is one in which some of the tasks usually carried out in a land registry and/or surveyor general's office and/or by notaries and/or licensed surveyors are, instead, carried out by the community and its leaders in conjunction with a local land records' office. The term co-management describes a partnership between a community of users and other primary stakeholders who share responsibility and authority for management. The terms of the arrangement have to be carefully negotiated and maintained to ensure that the roles, responsibilities and contributions of the parties are clear. There needs to be clarity on the storage and ownership of data and realistic

expectations of the different parties. Critically, the parties must be able to openly discuss the power relations between them. Such a co-management approach could have a range of benefits for a land recordation system, including increasing coverage, filling capacity and resource gaps, enabling access to government data, providing access to land administration innovations, monitoring inclusion, ensuring protection of vulnerable groups, management of conflicts and ensuring sustainability. Some co-management design features could be in identification of witnesses, evidence creation, building the currency and legitimacy of land records, para-legal aid, dispute resolution, capacity building and political support.

Thus the community, and particularly its leaders, such as local government leaders, community based leaders, NGO leaders, should carry out some tasks. This

will make the system more affordable, particularly by reducing the professional time that is usually involved. This approach is as strong as the community leadership on which it relies. If no clear sense of community exists and/or leadership is contested, this approach cannot be applied easily unless it emerges quickly and fairly. When the community leadership is a powerful local elite, which is also not unusual, then strong checks and balances under co-management are needed for equitability and to protect vulnerable groups. The legitimacy of records and the credibility and legitimacy of the recordation system rest on the system's link to the state structure and on the community leadership structure. Ultimately, the currency of the system, its use by the community and its usefulness to the community depend on the community leadership and its relationship to the land recordation system. Importantly, the land records will be based on local forms of evidence. This will make it possible eventually to build customary and informal social tenure approaches into the legal system.

FORMALIZATION AND A LAND OFFICER. The pro-poor land record design is intended to build on the trend whereby non-formal land transactions are recorded on paper. The first step would be to use standardized forms for transactions (pre-recordation). Standard formats will:

- help people to remember certain elements;
- allow equitable policies to be introduced slowly through, for example, the manner in which items are formulated (e.g. expecting the inclusion of both spouses by having space for two names); and
- facilitate later recording, processing and re-use. The forms should accommodate diversity and overlap in tenure arrangements and family relations, but bring clarity if, and when, possible.

Ideally, filling in the form should be supported by, or even be done by, a neutral person with above average appropriate knowledge. The (barefoot) land officer could also act as the secretary to the communities' leaders, but should maintain a neutral position. Their primary task is to identify clearly the intentions of buyer, seller and community, and document these correctly and clearly. Their role is not to judge the relationship between the parties or the negotiated changes, but to facilitate. Advice on adherence to broader policies, such as national laws, can be a responsibility of the land officer in due course, but should not be rigid as this could hinder the land recordation system in its early stages.

> ❜ *The legitimacy of records and the credibility and legitimacy of the recordation system rest on the system's link to the state structure and on the community leadership structure.*

The land officer's main qualifications at the start need to be literacy combined with acceptance within the community and reasonable knowledge of the community and its rules. Full capacity will not be possible initially and capacity issues will be critical, but land officers' knowledge can be increased with training. Their funding as well as their appointment will depend on local circumstances; they could be based in the municipality, district council, NGO and/or the community. The issue of governance needs to be dealt with appropriately, otherwise informal fees may become part of the system. Both the state and the community need to support the concept of co-management.

RECORDATION. The next step is the recordation of the information in the land recordation system. This is only possible if standardized forms and the land officer are already in place. Completed forms would be presented to the local records office at community level. The ideal location for the records will differ according to local circumstances. Not every village in rural areas with a tribal structure will need a land records' office.

In larger cities, different districts, slums or areas that have been settled will need their own office. An important criterion when outlining the jurisdiction of the records is that the community using the records must feel that they own them and that the records do not just belong to a higher authority.

A key function of the land officer is to take the standardized forms to the land records' office where a record keeper will receive them. The record keeper's role will include doing a very quick check to identify serious mistakes.

> ‘ *An important criterion when outlining the jurisdiction of the records is that the community using the records must feel that they own them and that the records do not just belong to a higher authority.*

They may also use this opportunity to build capacity in the land officer for the next case by giving advice. Although there are some overlaps in the functions of the land officer and the record keeper this is necessary to create enough checks and balances in the system.

LAND, RECORDS, INDEXES AND THE RECORD KEEPER. The record keeper should store the forms in an orderly fashion, usually by numbering them so that they can be easily retrieved, and keep indexes of the forms. Each form should have a number of indexes. The first is the name index to enable a search for a person by name, both as a seller and as a buyer. This can be challenging if the format is not standardized, or when different scripts are used and transcription rules vary. It is prudent to enter the same transaction under two separate spellings than risk not finding the name at a later date. Indexing can be done by using a card index box-based system or a book. The former is more flexible but is more easily manipulated. Auxiliary indexes can also be set up in this way.

The second set of indexes is about the land. It may not be possible to have any form of spatial index at the beginning because of cost and technical complexity. However, the co-management and witness system, together with the planned small size of the land records' office jurisdiction, will probably fill the gap and ensure that the information on the land records (without a spatial index) can be linked to plots/sites on the ground to some degree.

An important weakness of a simple land recordation system, such as a basic deeds registration system, is that the information on the land document is not sufficient to identify the land on the ground. Sometimes, several documents describe the same piece of land differently. The solution is a simple geometrical index. The spatial index is vital in any modern land system. Land is more stable than people are and is safer to use as the basis of a documentation system. Each piece of land that is linked to a form or transaction should

Sensitization process at community level is essential in gaining peoples' support and achieving legitimacy, Uganda. Map © Solomon Njogu.

receive a number that is also used for all subsequent forms linked to the same piece of land.

The weakness of this indexing system is how to establish whether a subsequent transaction affects the same land or not. This can be improved (definitely in urban areas) by placing the number visibly on the house structure. A further improvement is to put the number on some kind of graphical index (map) as well. A range of tools can be used, including existing maps and plans. It is possible to derive a base map of a semi-developed area from a satellite image and print this to put the numbers on and record subsequent

changes, such as subdivisions. This approach becomes more difficult as the area changes, densifies and is (re) developed. If a community is ready for it, a spatial index can be achieved by participatory mapping and/ or participatory geographical information systems (p-mapping/pGIS), with or without aerial photos or satellite imagery as a backdrop to a sketch map. At this stage it might be possible to link it to the Social Tenure Domain Model (STDM) software for land administration. A comprehensive cadastral map with subdivision surveys should not be considered at this stage. Again, the initial steps should be modest using whatever is available or can be done realistically.

INSPECTION. The state should have regional inspection mobile units that travel to all the local land records office. They could train and develop the capacity of the record keepers and land officers. They could also make backups of the records to limit the impact of disasters, violence or accidental fires. The community leadership, be it local government, customary or informal, could also play an inspection role. This would show mutual inter-dependence and could be vital to improved governance. For example, an annual co-inspection ceremony would be a possible way to demonstrate this.

PRO POOR LAND RECORDS HAVE IMPORTANT INFORMATION BUT ARE NOT THE SOLE SOURCE OF EVIDENCE. The pro-poor design is certainly not a title system. Nor is it a fully-fledged deeds system. Evidence that is counter to the information in the recorded land documents should still be allowed in the system. Over time, the information in the records will be seen as more credible relative to verbal information, and if earlier recorded information has priority over information that is recorded later. Some of these advantages can also be introduced at later stages. They should fit the way the community understands its tenure system and the role the land records should play in it. Whatever the status of the evidence, people who start a transaction will benefit from the land record information, as they will be able to check on the land's status.

CONTINUUM OF LAND RECORDING. The pro-poor land recordation system should be the first step on the land tenure rights ladder. Pro-poor land records should be part of a continuum of land recording. The pro-poor system would be built on existing paper-based systems and would be cheap and simple enough for local experts. Taking the step from an informal

publication system to a pro-poor land recordation system would increase the state's recognition of the communities' land rights and facilitate local government land management activities. Both the exact shape of the pro-poor land recordation system and the point at which the pro-poor system is upgraded to another major level would have to be determined during piloting and scaling. It would also depend on the local situation. While the legal-administrative and mapping aspects of the records can evolve at different speeds, they should not get completely out of sync.

SUMMARISING THE SYSTEM DESIGN. Key reasons to create a pro-poor recordation system are to protect the rights of the poor, to supply preventive justice and to limit the development of future conflict. The pro-poor land records office should not be a totally independent feature. The corporate culture associated with the system should be based on co-management between the community and the state to ensure that the records remain current and are useful to the community. Co-management should include a governance approach that manages malpractice and corruption. This means that there should be a two way flow of information and capacity development between local communities and national experts.Guidance and inspection from a higher level should also be instituted to maintain and increase the local land office knowledge, to assist in developing working procedures, to improve the overall transparency and quality of the local office records and to contribute to the protection of third party rights. This should be a low-key function initially and focus more on motivation and support than on penalizing and prescribing. The land records' office should build on local initiatives and support, but should also be embedded in the national context, including the legal, institutional and governance

environment. This will mean being flexible instead of just applying nationally standardized approaches, and allowing very basic forms and equipment to be adapted to local conditions, and encouraging bottom up land record creation. This approach should be linked to a continuum of land recording, whereby records can be improved over time as required. This means that the design should be simple and affordable at the outset, while ensuring that the details that are needed for the ultimate goal can be reached in the future. Building capacity with (bare foot) land officers and a local land recorder would be an important design feature, and would facilitate phasing in the continuum of land recording. It is important that both roles exist to strengthen the checks and balances. A delicate balancing act is needed, particularly in the initial years of implementation.

Other sectors, such as planning offices courts, the police and those who solve local land disputes, could learn from what the local land records' offices have to offer and start to use the information in their own work. Those in the private sector would also come to

> ❛ *Key reasons to create a pro-poor recordation system are to protect the rights of the poor, to supply preventive justice and to limit the development of future conflict.*

05

CONCLUSIONS

value this knowledge.

The global land community has accepted that individual land titling on its own cannot deliver security of tenure to the majority of people in the world and that countries need to adopt a continuum of land rights. Any country adopting a continuum of land rights at scale will need to introduce innovative land administration systems like the pro-poor land recordation system. This publication outlines a possible approach.

Political will is vital for the success and sustainability of this approach. Political elites may try to set up a land registry and/or capture the land registry for their own purposes – that is, to distribute the land use rights for their own benefit. To protect the land rights of the poor, therefore, it is necessary, but not sufficient, to assert these rights in a land recordation system. Such a system does not exist in isolation from the political system. So, to ensure security of tenure for the poor, poor people need to be linked to, and mobilized around, the land records' office. This means that both political understanding and political will by the community and its leaders needs to become part of the system design and implementation. An assessment of national and local conditions, and a clear understanding of the institutional perspective on communities, the political economy within such a community, and between state and community, is important for implementation. These aspects are key to the success and sustainability of a pro-poor system and Global Land Tool Network partners will continue to explore them.

This publication is a first step in the process of developing a legally robust pro-poor land recordation system. It raises a number of issues and proposes many design elements that should be critically reviewed.

> ‘ *It is necessary, but not sufficient to assert these rights in a land recordation system.*

The design needs to be assessed as to whether any key elements have been missed, whether the design elements are coherent as a package and whether all the issues and challenges raised have been addressed appropriately. For example, implementation requirements such as funding, training, education and material resources need further exploration. Again, Global Land Tool Network partners will undertake this work, including through piloting.

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THE GLOBAL LAND TOOL NETWORK

The Global Land Tool Network (GLTN) aims to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure. The Network has developed a global land partnership. Its members include international civil society organizations, international finance institutions, international research and training institutions, donors and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. For further information and registration visit the GLTN web site at www.gltn.net.

The Faculty ITC, University of Twente

The Faculty of Geo-Information Science and Earth Observation (ITC) focuses on teaching, research and capacity development. It addresses problems related to the management of space and resources and problems related to the provision of relevant, timely and reliable geospatial information. It focuses on a number of research themes including land administration. The activities of that theme are under taken within the UNU School for Land Administration Studies, under which umbrella ITC has associated with the Netherlands Cadastre, Land Registry and Mapping Agency (Kadaster) to combine scientific and professional expertise and approaches in the field of land administration. Equal attention is given to the institutional (land policy, land law, land administration and business administration) and technological (Geo-ICT information systems, database systems and international standards) developments and challenges, necessitating integrated approaches. One of the core topics is the development and implementation of pro poor land tools.

ABOUT THIS PUBLICATION

Designing a Land Records System for the Poor is the first attempt to fill the gaps in the development of new forms of land recordation to assist the implementation of a continuum of land rights approach at scale. It is about the development of the initial design of a pro-poor land recordation system - a recording system aimed at supporting the recognition and protection of a range of rights of the poor.

This publication emphasizes a co-management approach where the community performs a greater role in the design and management of the system. The design also highlights affordability, legitimacy and credibility as key requirements for success. However, it also recognizes that more work and studies are needed to enhance the design and better inform its implementation.

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