MONITORING
SECURITY
OF TENURE
IN CITIES

PEOPLE, LAND AND POLICIES

UN@HABITAT
FOR A BETTER URBAN FUTURE

GLTN
GLOBAL LAND TOOL NETWORK

Monitoring Security of Tenure in Cities: People, Land and Policies

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FOREWORD

It is well-recognized that secure land and property rights lead to reduced poverty, to economic development and to social stability. A robust tenure system can protect people from eviction and give parents the right to pass their land on to their children.

But in the 21st century, secure tenure is not a one-size-fits-all concept, and a range of different tenure arrangements apply to the millions of people around the world in slums, those who live on city pavements, those who rent rooms, or who own their own homes.

So what does secure tenure mean? Current thinking focuses on a "continuum" of tenure security – a set of possible arrangements that are a response to the reality of being poor and living in a city. Included in this continuum are people with little or no security of tenure; they have no documents, no contracts and little protection under the law. They live under the constant threat of eviction. Alternatively, there are people who have a solid contract, the right documentation and laws in place that enforce their rights.

The concept of a continuum also allows that tenure security may be realized and measured at three different levels: individual households, communities and national levels. It also includes the possibility that there is more than one route to achieving tenure security.

Measuring security of tenure is a necessary step towards increasing that security and improving policies to manage it. It can be a complicated procedure because a tenure arrangement that is reasonably secure in one situation may be insecure in another. Secure tenure can include both formal and informal tenure arrangements, and it is also the case that the people affected may under-estimate or over-estimate their situation.

I believe that this publication presents an innovative method to measure tenure security. It draws on the experiences of development agencies and academics in developing cities. It also carries many examples of the way in which tenure can be mapped, assessed, evaluated and analysed.

It makes use of different types of surveys, national statistics and population censuses, and incorporates the lessons learned from a case study conducted in São Paulo, Brazil.

Monitoring tenure security is an integral measurement instrument of the Millennium Development Goals. This UN-Habitat initiative will be of great use to all those striving to achieve these goals. An important tool in the battle against urban poverty and for better, smarter cities, it is a major contribution in our global drive for secure tenure for all.

Joan Clos
Under-Secretary-General, United Nations
Executive Director, UN-Habitat

LIST OF ACRONYMS

AfDB	African Development Bank
AUC	African Union Commission
DFID	Department for International Development
EGM	Expert group meeting
FIG	International Federation of Surveyors
GLTN	Global Land Tool Network
GUO	Global Urban Observatory
IFAD	International Fund for Agricultural Development
IIED	International Institute for Environment and Development
ITDG	International Technology and Development Group
LGAF	Land Governance Assessment Framework
LIFI	Legal and Institutional Framework Index
NSO	National Statistical Office
OHCHR	Office of the United Nations High Commissioner for Human Rights
UIS	Urban Inequities Survey
UK	United Kingdom
UN	United Nations
UNCHS	United Nations Center for Human Settlements
UNECA	United Nations Economic Commission for Africa
UNECLAC	United Nations Economic Commission for Latin America and the Caribbean
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UN-Habitat	United Nations Human Settlements Programme
UNIAEG	United Nations Inter-agency Advisory and Expert Group
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNESCWA	United Nations Economic and Social Commission for Western Asia
USA	United States of America
UNSD	United Nations Statistical Division
WB	World Bank

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GLOSSARY OF TERMS

The following definitions reflect local context but are global enough for comparison. They were taken or adapted from various sources including publications from UN-Habitat (2008) Secure land rights for all, World Bank (2009) the Land Governance Assessment Framework, and the FAO (2003) Multilingual Thesaurus on Land Tenure.

Acquisition

Assumption or attainment of rights in property.

Adjudication

Process of final and authoritative determination of the existing rights and claims of people to land.

Adverse possession

Possession of land through long-term peaceful occupation as a "trespasser" or squatter. The right to possession of land after a statutorily prescribed period can be gained if there is no legally defendable claim.

Building permit

An approval by the local governing body on land use and planning for construction or renovation of a property.

Cadastre

A cadastre is a parcel based and up-to-date land information system containing a record of interests in land (i.e. rights, restrictions and responsibilities). (FIG 1995)[1]

Collective rights

Collective ownership of a natural resource where the holders of rights to a given natural resource are clearly defined as a collective group, and where they have the right to exclude third parties from the enjoyment of those rights.

Common property

Common property is typically land and other resources in which entitled beneficiaries, whether individual or community defined, have specific common rights to common areas. The community controls the use of the common property and can exclude non-members from using it.

Community

A group of people with similar socio-economic features, settled within a geographically contiguous area. In statistical terms, a community is synonymous with a group of households living within the same census tract, with or without similar traits. In this document, it is used interchangeably with the word "settlement".

Communal land

Land over which a community has rights or access to. The community may or may not have legally recognized ownership over the land. In some cases, for instance, the state may be considered to be the owner.

Continuum of tenure rights

A continuum of tenure rights can be observed, especially in the context of developing countries where different sources of land access and use patterns may coexist. There is thus a diversity of tenure situations, ranging from the most informal types of possession and use to full ownership.

Customary land "ownership"

Refers to the communal possession of rights to use and allocate land by a group sharing the same cultural identity. A single person usually administers it on behalf of the group. Decisions - made on a consensual basis - must comply with the cultural tradition of the community concerned. The extent of the rights to use the land depends on the agreement passed between the customary community and the person receiving the rights. Within the group, social institutions defend or protect these rights against other claims regarding the land. Land management practices are also evolving. In most developing countries, customary practices have proved to have a surprising capacity to adapt to the new economic and social contexts introduced by the globalisation of national economies and to the rapid spatial expansion of urban areas. In urban areas, customary land delivery, in the strict sense of the term, does not operate according to this model. It still survives at the periphery of most African cities, but it has been progressively eroded during the colonial and post-colonial period. Recent empirical observations suggest that it is being replaced by a combination of reinterpreted customary practices with other informal and formal practices.

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[1] FIG (1995). The FIG Statement on the Cadastre. Federation of International Surveyors.

Deed

Written or printed instrument that effects a legal action, such as a contract of sale.

Dispute resolution

There are typically a range of dispute resolution mechanisms available in a country. There are two broad groups: formal dispute resolution mechanisms and informal dispute resolution mechanisms. The formal mechanisms include the formal legal system as well as a range of other options that may include administrative dispute resolution and state-administered or sanctioned alternative dispute resolution (ADR) mechanisms. Informal systems typically involve community leaders, village elders, village assemblies or committees in resolving disputes. They may or may not have formal recognition by the state or under the law.

Dwelling

A place to live in, a house (shack or apartment). In this document, the term is also used as a proxy for the land on which the dwelling stands.

Eminent Domain

Process of the exercise of rights by the state as the sovereign owner of all the land when in the compulsory acquisition of land or property by the state.

Eviction

Removal against their will of individuals, families and/or communities from the homes and/or the land which they occupy, without the provision of, or access to, appropriate forms of legal or other protections. The term is commonly used in connection with the eviction of squatters, but may also be used in the context of unlawful evictions. For example, lawful evictions due to eminent domain, could become unlawful when the cleared land is used for purposes other than public infrastructure investments (often maximising corporate profit). Most evictions are carried out in the name of "public interest", although the objective is to make land available for private investment and development.

Expropriation or compulsory acquisition

Refers to a procedure by which public needs for land or property rights in the pursuit of government policy are met. Different from evictions, expropriations concern households that have a legal/recognised property right (administrative permits holders, leaseholders and freeholders). As such, they are entitled to compensation. Processes of compulsory acquisition and needs vary from country to country. The processes of acquisition are statutorily defined, and will include detailed requirements and timetables for procedures and notices on the part of both parties. The processes will also include a basis for setting compensation for the loss of the owner expropriated.

Forced eviction

The Committee on Economic, Social and Cultural Rights in General Comment n°7 refers to 'forced eviction' as the "permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." In this context, a wide range of rights may be violated because of a) the absence of justification/legality for the eviction and b) the way the eviction is carried out. The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights law."

Formal tenure

Designate various forms of land holdings, occupancy status of the dwelling unit and related obligations (in terms of planning, construction and other form of development) that comply with government laws and regulations.

Governance (land)

This concerns the process by which decisions are made regarding access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled. Key elements of the definition include decision-making, implementation and conflict resolution, with emphasis on both process and outcomes (GLTN, 2008).[2]

Household

Household is a group of people living under the same roof. A household may have family or non-family members. Alternatively, a number of families could live in a household. It is often referred to as a consumption unit.

Household survey

A household survey is an instrument that collects demographic, social and economic information from the household head through pre-coded questionnaires. It is often based on a pre-selected sample of households. Household surveys use the household, instead of land, as a unit of analysis. The advantage of the household as a unit of analysis is that these surveys cover both the formal and informal land on which households are settled, while the official land information systems are often limited to formal land units. The disadvantage is that tenure-related indicators are drawn from the declaration of the household head. Another point to consider is that surveys do not cover the production units, workplaces.

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[2] GLTN (2008). Common Definitions of the Global Land Tool Network. Nairobi: UN-Habitat (www.gltn.net).

Human settlements (see settlement)

Refers to physical components of shelter, infrastructure and services; the physical elements which provide support to the community living there.

Illegal settlements

They are defined in connection with "informal settlements". The term "illegality" is used often by the administrative authorities (officials in charge of urban management, especially of state property or land register offices), to carry out evictions. In such instances, "informal" settlements are also deemed "illegal" — and vice versa.

Indigenous

There is no internationally agreed definition of indigenous peoples/communities and the main criterion is self-identification. The term refers to communities, people and nations that have a historical continuity with the lands which they have traditionally owned, occupied or otherwise used; as well as distinct political, legal, economic, social and cultural institutions, including laws, traditions, customs and land tenure systems. Their cultures and ways of life differ considerably from the dominant society, and as a result they often suffer from various forms of discrimination and marginalization both politically and socially.

Informal settlements

Informal settlements, designate settlements/neighbourhoods, where land occupation does not comply with tenure, layout, construction, services and or fiscal obligations. In connection with human settlements, the term "informality" raises the same definition problems as when it is applied to economic activities and to employment: it is defined negatively. Its main characteristics are known, but in many situations the line between formal and informal is blurred. A settlement with the same characteristics regarding land, urban planning and housing, depending on the contexts and public authority interpretations, will be considered either as formal or informal. Two main types of informal settlements can be distinguished depending on the type of development. The first is unauthorised commercial land development – usually on private land – where land is subdivided illegally, usually by informal developers, and sold as plots. The subdivision is illegal either because it violates zoning and planning regulations, or because the required permission for land subdivision has not been obtained. The second type of informal settlement is squatter settlements on public or private land. As the land has been illegally occupied and the building activity has taken place regardless of or in violation of development, planning and construction norms, occupants in squatter settlements have no rights. In the physical sense, there is large variety of informal settlements ranging from well established, well-built communities that simply lack formal recognition, to very heterogeneous groupings of houses that are poorly planned and lack access to facilities such as roads and utilities.

Informal tenure

Refers to tenure arrangements where the level of security of tenure that they provide depends on various local circumstances. In such arrangements, protection against forced evictions can be weak. However, de facto recognition of occupation can be proved through political patronage, adverse possession laws, proof of payment of utility bills, oral evidence, informally recognised customary rights etc.

Land administration

The processes of determining, recording and disseminating information about tenure, value and use of land when implementing land management policies (UNECE 1996).[3]

Land governance

The rules, processes and structures through which decisions are made regarding access to and the use [and transfer] of land, the manner in which those decisions are implemented and the way that conflicting interests in land are managed.

Land registration

The International Federation of Surveyors (FIG) defines land registration as follows: "Land registration is the official recording of legally recognised 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."

Land tenure

Designates the rights individuals and communities have with regard to land, namely the right to occupy, to use, to develop, to inherit, and to transfer land. Land tenure should thus primarily be viewed as a social relation involving a complex set of rules that governs land use and land ownership. While some users may have access to the entire "bundle of rights" with full use and transfer rights, other users may be limited in their use of land resources. The exact nature and content of these rights, the extent to which people have confidence that they will be honoured, and their various degrees of recognition by public authorities and the concerned communities, have a direct impact on how land is used.

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[3] *UNECE (1996). Land Administration Guidelines. Geneva: United Nations Economic Commission for Europe.*

Land tenure system

The land tenure system in a given jurisdiction comprises the set of possible bases for land allocation, security of tenure, transactions of property and land, land use, the management and adjudication of disputes regarding rights and property boundaries. As such this range encompasses both rural and urban tenures and includes ownership, tenancy and other arrangements for the use of land.

Land use plan

A plan that identifies areas for a designated use for the purpose of land management. Such a plan is used for classification, resource management planning, identification of areas for future development uses, including road widening.

Lease

A lease is a contractual agreement between a landlord and a tenant for the tenancy of land.

Legal framework

Judicial, statutory and administrative systems such as court decisions, laws, regulations, bylaws, directions and instructions that regulate society and set enforcement processes.

Legal ownership or freehold title

Tenure type created by law (often including a registration law) or recorded in a private system that property lawyers maintain. These systems create legal evidence that supports the tenure of owners. Freehold or legal ownership means that a person holds all rights to land except those limited by law. These limits are usually about how the land can be used. Owners have many other rights, such as the right to sell, mortgage, bequeath, lease and to use land the way they see fit within the limits of the law.

Living Standards Measurement Survey (LSMS)

Established by the World Bank Development Research Group, LSMS monitors progress in raising levels of living standards, identifies the consequences for households and proposed government policies, and improves communications between survey statisticians, analysts and policy makers.

Longitudinal studies

Longitudinal studies trace a group of people over a substantial period in order to understand the in-depth dynamics of transformation by using qualitative or quantitative techniques. In this document, it refers to the tracing of a group of squatter families over several years to understand what happens to them and how policies and market dynamics impact on their lives.

Millennium Declaration and the Millennium Development Goals

The Millennium Declaration is a policy instrument adopted by all 189 member states of the UN General Assembly that frames global cooperation for development in the 21st century. The Declaration sets out within a single framework the key challenges facing humanity at the threshold of the new millennium, outlines a response to these challenges, and establishes concrete measures for judging performance through a set of inter-related commitments, goals and targets on development, governance, peace, security and human rights. In recognition of the need to translate this commitment into action, a broad interagency consultation arrived at a set of goals and aspirations commonly known as the Millennium Development Goals (MDGs). The MDGs are the world's time-bound, quantified targets for addressing extreme poverty in its many dimensions — income poverty, hunger, disease, lack of adequate shelter and exclusion — while promoting gender equality, education, and environmental sustainability. Since their endorsement by the UN General Assembly in 2001, the MDGs have risen to the top of the development agenda and are the common focus of priorities for the development community.

Mortgage

A transfer in the interest of land or property for the security of a debt.

Municipal land

Land or property where the municipal government or local authority has custodianship.

Parcel (of land)

A defined area of land with a unique record of ownership, use, or other characteristics.

Probability sampling

The probability sample design enables an investigator to know the likelihood of each sample unit (or strata/cluster) in the universe being selected into the sample as a whole. This feature makes it possible to estimate standard errors, which in turn enables the researcher to generalise the findings for the whole universe. Household surveys are based, generally, on probability samples.

Public land

Public land is land in the custodianship of the state, municipality, or local authority, as opposed to private land.

Purposive sampling

In some studies, probability sample design is neither possible nor needed. In this case, the principal investigators select a sample based on expert opinion or local knowledge that is a best match for the objective of the study. Statistical generalisation is not possible.

Registered

The term "registered" means that the rights are recorded unambiguously in the land administration system and there are generally few disputes over the recorded information. It does not necessarily mean that the final certificate or title has been issued.

Registry

The term "registry" or "register" is used to denote the organization where the information on registered land rights is held. Information on registered land is typically textual and spatial, with the former typically maintained in a registry and the later in a cadastre office. In some countries there is a combined organization that has both sets of data and in some countries this office is called the cadastral office (in the Balkans, for example). In others, there are separate registry and cadastre offices. The term "registry" is used to cover both the registry and the cadastre (if one exists).

Regularisation / formalisation

Regularisation of tenure is the informal or illegal occupation of land being legalised by statute, giving occupiers the legal right to ownership, occupation or use of the land.

Respondents

Subjects of a sample study who either respond to the questions of an interviewer or tick answers in a questionnaire.

Secure tenure

Right of all individuals and groups to effective protection by the state against forced evictions that are, under international law, against "the permanent or temporary removal against their will of individuals, families and/communities from the home and/or the land they occupy, without the provision of, or access to, appropriate forms of legal or other protection". According to the United Nations, a person or household "can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent" (UN-Habitat, 2003).

Secondary rights

Rights that are beyond the primary rights to transfer property through sale, gift, exchange or inheritance, or that encumber property through mortgage, lien or other charge. Secondary rights are typically associated with use rights that may or may not be eligible for registration.

Settlement

A settlement is a geographical and administrative entity that people inhabit. Several functions are embodied in a settlement (land, housing, infrastructure, tertiary services, market and employment opportunities). Settlements are not self-contained, they are physically linked to each other by transportation networks.

State land

Property in the custodianship of the central/national government.

Tenure regularisation

There is a complex relationship between tenure security and different forms of regularisation which have implications on both effectiveness and cost. The legalisation of informal settlements can take many forms, but it is generally done by giving individual freehold titles/deeds and is accompanied by individual servicing of the sites.

Tenure formalisation

Process by which informal tenure is being integrated into a system recognised by public authorities. It is often presented as a means to ensure tenure security to the extent that informality is source of insecurity. Formalisation can be achieved through two different channels depending on whether public authorities administratively recognise occupation (provision of personal rights) or deliver real property rights.

Typology of tenure

A country-specific classification of dominant land tenure prevailing either formally or informally. It distinguishes public ownership/use, private ownership/use and indigenous and non-indigenous community tenure.

Upgrading

A mechanism for increasing tenure security by formalising interests in property in an incremental process. All or some rights may be registered with varying degrees of restrictions placed on the property.

Urban group rights

Refers to identifiable groups in an urban setting. They are groups in which people are easily classified as members or non-members for the purpose of benefiting from specific rights to an area.

Urban Inequalities Survey

Household surveys based on probability samples that measure selected Millennium Development Goals and Habitat Agenda indicators in selected cities. The main feature of UIS is that these indicators can be estimated separately for slums and non-slums.

Usufruct, use rights

Usufruct is the legal right to use and derive profit or benefit from property that belongs to another person or entity.

Waqf land

Land allocated for charitable (or religious) endowment.

EXECUTIVE SUMMARY

Security of tenure is an effective way to safeguard the relationship between people and land in both rural and urban areas. Securing tenure for all, especially through the range of tenure arrangements and practices covered in this document, has various benefits. Some of these are social stability, poverty reduction, improved land management and functioning urban land markets. This report reviews the experiences of several agencies and academics in order to benefit from the efforts made by them on security of tenure, the lessons they learned and the gaps they identified. It is made clear that, although there is a consensus on the importance of tenure security, it has been less easy for governments and the scientific community to actively monitor and track performance.

One of the report's main aims is to assist those engaged in land tenure security to strengthen their capacity to develop all the phases of a robust tenure system. It presents a method of tracking security of tenure, especially in urban areas, at three levels: city/country, community and household. The monitoring technique proposed follows a theoretical approach to tenure as opposed to the conventional approach based on the concept of duality: owner versus renter; formal versus informal land tenure; and from de facto (non-registered or/and recorded) to registered rights. Typology of tenure security within a continuum is also proposed. This report contrasts the relationship between these approaches and monitoring systems, and proposes a flexible method that navigates the three levels mentioned above. For instance, it proposes that in the absence of household surveys, community and city assessments based on qualitative methods can be done. The methodology also provides for data collected at the community level to represent micro-level information; the macro-level assessments through the Legal and Institutional Framework Index (LIFI) could also service all three levels. The application of this methodology in several cases has already shown that the accuracy of measuring security of tenure increases with the number of levels (households, settlements and city/national) simultaneously used in the whole process. The generic framework can guide or be adapted to supply the foundation for the development of suite of robust security of tenure indicators for different purposes and supports various land initiatives.

The proposed methodology also assesses the degree to which tenure security varies within the tenure continuum. It suggests a range of information sources, including expert opinion, household and community surveys, perception analysis and policy framework analysis.

The methodological framework uses the SMART[4] indicators of development and reporting. One of the innovative approaches in this framework is the community-based security of tenure which can be mapped, assessed, evaluated and analysed. It recommends that at settlement level the security of tenure assessment covers information on i) the land's legal history; ii) the land's current jurisdictional situation; iii) the geographical dimension of land tenure; and iv) the harmony between plans and actual land use patterns. Whereas at city level the assessment focuses on: i) evictions; ii) remedies-preventive policies and regularisation efforts; iii) land administration practices, the household level analysis helps to understand how people themselves experience land tenure security. The sub-components of tenure security include i) evictions including their history and perceptions of the household head and the spouse; ii) type of document to prove legality or legitimacy of unit; iii) duration of occupation; iv) rights to restrict, develop, sell and inherit dwellings.

Applying the methodology to real cases validates its applicability and effectiveness. An important part of this methodology is the use of evaluation logic to combine both the qualitative and quantitative reporting of the findings in a way that is useful to policymakers. Because decision makers and land managers are often faced with volumes of information – geographical, statistical or qualitative – the methodology emphasises the inclusion of an analytical summary. This puts complex information into one statement without losing detail or nuance.

The methodology is expected to contribute to global reporting on the Millennium Development Goals, to inform policy formulation on local and national tenure security, and to contribute to ongoing regional initiatives, such as the African Union-led Land Policy Initiative and the World Bank-led Land Governance Assessment Framework.

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[4] *Specific, measurable, attainable, relevant and time-bound.*

Informal settlement in Cairo, Egypt. © UN-Habitat / Claudio Acioly

1. MONITORING SECURITY OF TENURE

1.1. MONITORING SECURITY OF TENURE: FROM DUALITY TO TENURE CONTINUUM

This report proposes a method to track security of tenure at three levels: city/country, settlement and household. This chapter presents the conceptual framework – a tenure continuum – which summarises the historical evolution of monitoring land tenure security and places this within the current global programme to monitor the Millennium Development Goals.

Whether tenure systems provide security for the users of land or not is a relative concept that changes over time and space. Over the centuries, however, land tenure has evolved from a communal/collective system into one of individual-ownership, with many variants in each broad system. Unsurprisingly, in the past monitoring land tenure (if any was done) was shaped by the communal ethos and was different from that of private ownership-based systems. Tenure security was an articulated axis of duality involving private owners of land and "the rest". The main hypothesis was that owners were more likely to have secure tenure than renters and others. In modern times, the collection of data on "ownership" has been the methodological reflection of the mainstream economic ideology – liberalism and neo-liberalism – which asserts that high levels of property ownership were (and still are) a sign of economic success and affluence.[5]

Yet experience has shown that even a decade before the housing-mortgage-related financial crisis of 2008 the proportion of owners and renters in a society was not a valid marker of security of tenure. Towards the end of the 20th century, the international community placed a stronger emphasis on eliminating urban poverty than preserving private property.[6] The research community also argued that many types of tenure, other than ownership, could also help people to access land rights.[7]

Empirical evidence about alternative types of tenure that strengthened this view was readily available, for example UN-Habitat's Urban Inequities Surveys (UIS) in selected African cities; findings from a number of cities showed that a considerable number of owners felt insecure, while renters felt secure. A methodological complication of UIS made the indicator on ownership problematic, because survey data relied on reporting by household respondents, in general the head of the household, in response to interviewer's questions.

The findings of the Urban Inequities Surveys point to a tendency in respondents to "over-claim" ownership. The sections below include evidence of the extent to which people felt (or presumed) they owned their dwelling despite the lack of documents.

By the onset of the new millennium, the duality between formal versus informal tenure arrangements was established. The former consisted of the freehold/leasehold with tenants having formal rental contracts; the latter included all other tenure arrangements that were, or were close to being, "extra-legal". The main hypothesis was that formal ownership of land/property eliminated not only poverty but also obstacles to the success of capitalism in underdeveloped countries.[8] The 2007 UN-Habitat global report on human settlements, entitled "Enhancing Urban Safety and Security", further clarifies the importance of security tenure beyond property rights and the need to promote innovative approaches to securing land rights.[9]

Although the distinction between formal/informal land tenure gave a better picture of tenure security than the "owners versus renters" approach, the concept-validity problem was still there. Especially in the developing world, not all "formal" types of tenure turned out to be secure, while not all informal tenure was insecure. The line between formal and informal was more blurred than previously thought. For example, despite any formal guarantees that inhabitants were given, their security of tenure could be jeopardised with a change of policies or of government.

A current example of tenure vulnerability, even with a formal arrangement, is the eviction of plot-owners from Kenya's Mau Forest. People were formally resettled in the forest during the 1980s and 1990s by the then government because their original location was blocking a major water source. Evictions, which began in 2009, were justified on environmental grounds, but the process led to protracted political wrangling and showed that the resettled inhabitants had no rights to their land despite their being there for decades. In many parts of the world, freeholders or leaseholders are often evicted to make way for large-scale infrastructure or high-end housing projects that may or may not be justified.[10]

[5] UN-Habitat (2003). Rental Housing: An essential option for the urban poor in developing countries. Nairobi.

[6] UNCHS (1997). The Istanbul Declaration and the Habitat Agenda. Nairobi: UNCHS.

[7] UN-Habitat (2003). Handbook on Best Practices on Security of Tenure. Nairobi.

[8] De Soto, H (2000). The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else. United Kingdom: Bantham.

[9] UN-Habitat (2007). Enhancing Urban Safety and Security, Global Report on Human Settlements. Nairobi.

[10] AGFE (2009). Report of the Advisory Group on Forced Evictions on Istanbul.

Informal settlement in Mongolia. © UN-Habitat

In terms of relationships and the processes for reaching tenure solutions, the formal land sector in cities in the developing world has emulated the transaction models of the informal land sector. This has been well documented in cities such as Rio de Janeiro.[11]

The recent history of urban land transactions at global scale shows that there is no clear line between formal and informal tenure systems. This is partly due to the evolution of informal tenure systems, which are increasingly geared towards the formalisation of land rights or to the creation of intermediate mechanisms that allow for the recognition of a legitimate household.

Aside from these historical developments, empirical findings show that only five to fifteen per cent of households in the developing world are regarded as formal; the rest are informal. It can be assumed from this that units with informal tenure cannot be homogenous. In practice, informal tenure includes a range of tenure arrangements, some of which may be as secure as formal arrangements.

The methodology proposed here, therefore, goes beyond these dualities and looks at the nuances of informal land tenure arrangements. It draws on approaches in IFAD,

AUC-UNECA-AfDB and the World Bank, as well as UN-Habitat's recent attempts to measure the variables of tenure security.

In 2010, UN-Habitat[12] released a book that presents a set of methods that fully involve and engage urban poor communities in land surveying for securing land rights as initial steps for participatory planning or upgrading initiatives. With several cases studies and examples, it is demonstrated that the participatory surveying enumeration method often leads to a better knowledge of the needs and priorities of the community. The methodology is currently been used in Haiti and in Eastern Democratic Republic of Congo. The Office of the High Commissioner for Human Rights (OHCHR) also developed a conceptual and methodological framework on human rights indicators, including the right to adequate housing, which is currently used in various countries such as Nepal, Serbia and the United Kingdom. The framework provides illustrative structural, process and outcome indicators on the different attributes of the right, including security of tenure.

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[11] Perlman, J. (2010). It All Depends: Buying and selling houses in Rio's favelas. IHC publication.

[12] UN-Habitat (2010). Count Me In: Surveying for tenure security and urban land management, GLTN Publication, Nairobi. For more information on the OHCHR Human Rights Indicators Framework, visit http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx). The framework hereafter proposed also draws from those experiences.

1.2. THE MILLENNIUM DECLARATION AND UN-HABITAT'S MISSION

Alongside the theoretical and technical debates on land tenure, the United Nations Millennium Declaration committed world leaders to improving the lives of slum dwellers through security of land tenure. The indicator of this security was defined as "the proportion of households with security of tenure in the cities".[13]

The inclusion of this indicator within a set of conventional global indicators on poverty and human development was a turning point for monitoring efforts on security of tenure in urban areas. Following the Millennium Declaration, the next major political instrument for eliminating poverty in cities and villages was the development of multilateral and bilateral development agencies. These agencies had to develop systems for gathering and analysing internationally comparative data. An interagency technical team was established and UN-Habitat was the lead agency in the development of this indicator.

In 2011, during UN-Habitat's 23rd Governing Council, member states committed themselves to:

> "Promote security of tenure for all segments of society by recognising and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and intensifying efforts to achieve secure tenure in post-conflict and post-disaster situations."[14]

The statement was a strong signal to develop security of tenure indicators within the context of the continuum of land rights.

A key initiative for monitoring this indicator on tenure security in urban settlements was the Expert Group Meeting organized by UN-Habitat in November 2002, to articulate an operational definition of security of tenure. This could then be translated into a questionnaire for household surveys that were done in 2002. Data was subsequently gathered through the Urban Inequities Surveys (UIS) done in a number of cities. Abridged security of tenure modules (thematic questionnaires within the main questionnaire) were "piggybacked" on existing survey initiatives between 2003 and 2006.

The UISs highlighted many nuanced variables of tenure security based on large samples of respondents. However, the surveys[15] did not reflect the legal and institutional framework within a society that could have provided qualitative data on the extent to which the policy environment is conducive to resolving tenure issues for the urban poor. Hence, UN-Habitat developed another instrument, the Legal and Institutional Framework Index (LIFI), and created the opportunities to pilot them.

While these two tools collected data at the two crucial levels – household and city – a link was missing to the settlement level. Other studies focusing on communities, such as those implemented in South Africa and Iraq,[16] led to the formulation of a settlement level methodology.

Drawing on the UIS and LIFI pilots, the efforts of the Global Land Tool Network (GLTN) and the monitoring initiatives of other international development agencies, this report proposes a methodology, including a set of limited indicators, which synthesises i) the subjective and objective experience of households; ii) the legal status of the settlement; and iii) the overall policy environment in cities. This methodology may then be scrutinised further by the international community.

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[13] UN (2002). Millennium Development Goals Indicators. New York: Inter-agency expert and advisory group on MDG Indicators.

[14] UN-Habitat resolution HSP/GC/23/CRP.18 on "Sustainable urban development through expanding equitable access to land, housing, basic services and infrastructure" (p 4, paragraph 7 (b)) adopted during its 23rd Session in Nairobi, 14 April 2011.

[15] It can be suggested that when conducting surveys and census adopting principles such of self-identification, informed consent, protection of data and disclosure control should be encouraged to prevent abuse of sensitive data. In some specific cases, participation of survey respondents in the design or review of the questionnaire could also improve the effectiveness of the questionnaire itself and the utility of data produced, especially when undertaking participatory enumeration. Similarly, partnerships with independent and experts (e.g. statisticians) should also be encouraged.

[16] Fourie, C., Scogings, D., Aitken, D., Hillermann. R. (1987). Preliminary Mapping of Settlement Distribution, KwaZulu-Natal: A multi-disciplinary technical explanation – the making of a map. Durban: Inkatha Institute for South Africa. D. et al. (2011). Rapid Assessment of Four Iraqi Cities. Baghdad.

Informal Settlement in Manila, Phillipines. © UN-Habitat

2. UNDERSTANDING TENURE SECURITY

The first axis of the debate revolves around the documents that families hold as evidence of the legality or legitimacy of their tenure status, be it de jure or de facto. Until recently, the "titles-only" approach, which the private-property-centred approach of western capitalism has nurtured since the 18th and 19th centuries,[17] was seen as the only way to secure tenure. The transfer of Euro-centric methods to European empires led to similar processes of formal land titling in those countries.

More recently, major actors in development and finance institutions, for example the World Bank, based their strategies on the premise that i) land titling should be promoted; ii) private property should be protected; iii) investments should be secured; iv) land markets should be unified; v) access to formal credit should be improved and finally, vi) poverty should be reduced.[18]

This approach, argued effectively by the scholar Hernando De Soto, dominated the field. He argued that granting titles to the poor would liberate the plots they occupy and transform them into capital. This, in turn, could be used as collateral for loans to jumpstart their businesses, or improve their houses, among other gains that increase their quality of life and clean the society of extra-legal relationships and methods.[19] Prominent world leaders advocating De Soto's thesis promoted the idea of land titling further.[20]

As leaders and technocrats around the world internalized the idea that the formalisation of land title was the prerequisite for capitalist development, the machinery of several governments were mobilised towards expensive and never-ending programmes on land titling and surveying. These did not have much success because most developing countries have less than 30 per cent of their land under a cadastral system.[21]

Aside from the difficult and expensive implementation issues around titling, evidence from land formalisation programmes also created doubt about its impact on poverty reduction, although this excludes the good results it has had on tenure security for women-headed households.[22]

BOX 2.1. EVOLVING DEFINITIONS OF TENURE SECURITY

Land tenure: The way in which land is held or owned by individuals and groups, or the set of relationships legally or customarily defined by people with respect to land. Tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings with land.

Security of tenure: As a follow up to the 1996 Habitat II Conference in Istanbul, the FIG and the UNCHS jointly defined tenure security as "the protection against eviction; ii) the possibility of selling and transferring rights through inheritance; iii) the possibility (of having a) mortgage and access to credit under certain conditions".[1] Although a title-only approach is not overtly expressed in this definition, the third condition for security of land tenure, that is, "the possibility of mortgage and access to credit", implies this approach because institutions do not give either mortgages or credit without a document that shows that the property is formally registered.[2]

A more current articulation of security of tenure, by the AUC-UNECA-AfDB, proposes similar variables: "Security of tenure refers to the degree of recognition and guarantee of rights (including ownership, use, manage resources, lease) that provides i) protection against forced evictions; ii) the possibility of selling and transferring rights through, for instance, inheritance; iii) mortgage options, and iv) access to credit under certain conditions.[3]

UN-Habitat expands the definition of tenure security:

...The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it;

...The certainty that an individual's rights to land will be recognised by others and protected in cases of specific challenges; or, more specifically

...The right of all individuals and groups to effective government protection against forced evictions.[4]

The latter definition was adapted from FAO Multi-lingual Thesaurus on Land Tenure and UN-Habitat (2003). Handbook on Best Practices, Security of Tenure and Access to Land.

[17] Marx, K. (1970). Capital, Volume 1. Penguin.

[18] Payne, G.; Durand-Lasserve, A.; Rakodi, C. (2009). The Limits of Land Titling and Home Ownership, IIED, Environment and Urbanization, Vol. 21(2), 443-62; p. 444.

[19] De Soto, H. (2000). The Mystery of Capital: Why capitalism triumphs in the West and fails elsewhere? London: Black Swan.

[20] Payne, G.; Durand-Lasserve, A., Rakodi, C. (2009). Ibid.

[21] Augustinus, C. (2009) ibid. p. 1.

[22] Payne, G., Durand-Lasserve, A., Rakodi, C. (2010). Ibid. p.451.

[1] FIG/UNCHS (1998). Informal Settlements, Security of Tenure, Urban Land Management and Local Governance: Experiences in implementing the Habitat Agenda. Draft report of the Durban Conference, 1997; August 1998. Quoted from UN-Habitat (2003) Handbook on Best Practices, Security of Tenure and Access to Land.

[2] UN-Habitat (2008). Secure Land Rights for All. Nairobi. p.7.

[3] AUC-UNECA-AfDB (2009). Tracking progress on land policy development and implementation. Addis Ababa.

[4] UN-Habitat (2008). Secure Land Rights for All. Nairobi. p.7.

After decades in which governments have promoted home ownership, it has been shown that the correlation between home ownership and welfare is not as strong as previously believed, and that home ownership is not enough to eradicate poverty.[23]

A recent assessment of the World Bank experience on shelter lending for the last three decades says:

> "…formal titles are a necessary condition to developing a fully functional housing market, particularly a housing finance system, but they are not a sufficient condition to unlock the trillions of dollars that are said to be locked up in dead assets. Moreover, simpler approaches to alleviating tenure insecurity are often available and, depending on the existing constraints, there are a variety of tenure instruments that can be employed to convey property rights or freedoms."[24]

There is a good deal of literature on shelter and land that provides a rich analysis of tenure instruments other than titles[25] which show that essence (de facto status of tenure security) is more vital to people than form (de jure tenure security).

At the start of this century, the concept of tenure-continuum was endorsed by the international development community (Figure 2.1) in preference to the mainstream approach which aimed for the transformation of all informal and customary types of tenure into one single category: freehold. In line with this new paradigm was an incremental strategy of providing tenure of land without radically departing from the de facto situation on the ground.

There are many case studies, some of them longitudinal, which demonstrate how such incremental and evolutionary strategies have succeeded at a larger scale. One example is the Turkish national experience (in which the squatter population evolved to become title owners over several decades), which occurred in a free-market environment with minimal state interference (or support) to integrate the poor into the city.[26]

The second axis of debate revolves around evictions. Some approaches to security of tenure see evictions as the litmus test for security of tenure.

The main hypothesis underlying UN-Habitat's Campaign

on Secure Tenure for All, launched in 2000, implies that the stronger the protection of families against evictions, the higher is their security of tenure. Others, however, believe that an eviction-safe status of

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BOX 2.2. THE TENURE CONTINUUM

In many urban and peri-urban areas, various types of non-formal tenure have become predominant. Each serves a market segment and has a discrete impact. Most people now live at some point on a tenure continuum; for example, they may be the recognised owners of the land but they have constructed a house in an area that is not designated for residential use, or they may simply have failed to conform initially to official regulations or procedures. Within these categories there are others, such as renting land, buildings, rooms or even beds, with or without contracts, all of which may provide some rights. In India, for example, pavement dwellers in Mumbai enjoy some legal rights. In certain cases, there may even be more than one legally acceptable system operating, such as statutory, customary and religious systems (in Islamic countries for example).[27]

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a household is just the minimum condition for security of tenure. In other words, "no or low risk of unlawful evictions" is a necessary but not sufficient condition for tenure security.

The argument is that if tenure security is to contribute to poverty elimination, the poor should be able to benefit from a bundle of rights that include the right to sell and inherit land – a crucial ingredient for the well-being of rural and peri-urban populations. Simply being free from the risk of eviction is not sufficient to ensure that a family can improve their circumstances. This document subscribes to the argument for an enlarged scope of tenure security, packaged with additional rights.

Relying on the "eviction-free status of a household or a settlement" as an indication of security of tenure also raises further points of contention. One view[28] is that market pressure has removed the distinction between two distinct phenomena: i) expropriation of land, and ii) eviction from urban land. Often, authorities in various countries have been able to get legal justification for some evictions that were unlawful. Based on research in 52 cities, a World Bank study showed that justifications for evictions based on "fake eminent domain" explained a good portion of evictions.[29]

As a result, support grew for the argument that "evictions" are not good indicators of security of tenure. This is

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[23] UN-Habitat (2003). Rental Housing: An essential option for the urban poor in developing countries. Nairobi.

[24] Buckley, R. and Kalarickal, J. (2006). Land Market Issues: The mystery of capital revisited. p 30. In R. Buckley and J. Kalarickal, eds. Thirty Years of World Bank Shelter Lending: Directions in Development Infrastructure, Washington D.C.: World Bank.

[25] UN-Habitat (2006). Enabling Shelter Strategies: Review of experience from two decades of implementation. Nairobi.

[26] Balamir, M. (2002). Legality and Legitimacy of Tenure in Turkey. pp.157-180. In Payne (ed.) Land, Rights and Innovation. ITDC.

[27] UN-HABITAT (2008) Ibid. p.7.

[28] Durand-Lasserve, A. (2011). EGM on the Monitoring of Security of Tenure.

[29] Flood, J. (2006). Secure Tenure Survey Final Report. Report prepared for the World Bank, funded by DFID, January 2006; UN-HABITAT (2010). EGM on LIFI for Nairobi. "Eminent domain" refers to the justification of demolitions/evictions when the vacated land is to be used for public purposes like infrastructure, schools, etc. Joe Flood, among other scholars and practitioners, concedes that most often the land cleared for uses of public purposes are handed on to corporate developers who, in turn, use the land for private profit purposes.

FIGURE 2.1. **CONTINNUM/RANGE OF TENURE TYPES**

Perceived tenure approaches
Occupancy
Adverse posession
Leases

INFORMAL LAND RIGHTS

FORMAL LAND RIGHTS

Customary
Anti-evictions
Group tenure
Registered freehold

Source: UN-Habitat, 2008
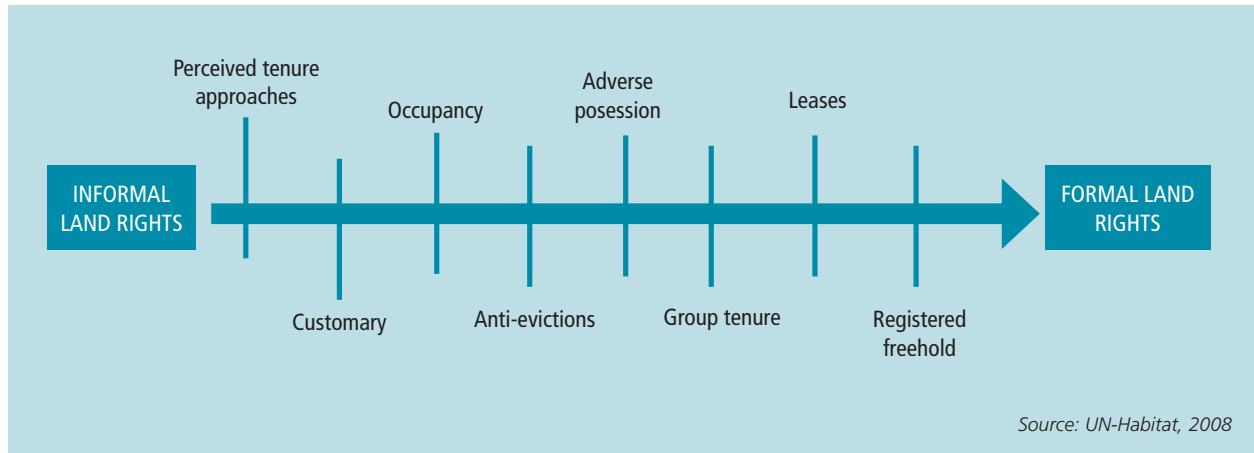
particularly so when legal justifications are likely to occur in a global context in which competing cities seek to grow with "signature projects" that often use massive segments of urban land. Evictions are therefore considered part of the group of indicators in this monitoring system, but are not sufficient on their own for indicating security of tenure.

Another aspect that was considered important but was often neglected in the monitoring method proposed was that of gender. It is now universally recognised that women are subject to several legal and cultural obstacles in exercising their rights over land, despite the labour they invest in it.

Particularly in the developing world, there is a global pattern of discrimination and injustice. Although it is women who use land (cultivate, maintain houses), they are at much greater risk than men of losing it if their marital status changes through widowhood or divorce. Further research showed that in many countries women made up a significant proportion of households heads.[30]

In view of this conceptual background, this document aims to develop a mechanism to monitor security of tenure which will: i) be gender sensitive, ii) seek to measure and define types of tenure security beyond formal registration of land, and iii) monitor evictions and access of urban residents to land rights.

30 UNCHS (2000). *Compendium of Human Settlements Statistics. Nairobi.*

African Union

African Development Bank

Economic Commission for Africa

FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA

Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods

The African Land Policy Initiative.
© African Union Commission , the United Nations Economic Commission for Africa and the African Development Bank (AUC/ECA/AfDB)

3. OVERVIEW OF EXISTING MONITORING INITIATIVES

The inclusion of security of tenure among the Millennium Development Goals indicators is relatively new. But monitoring of shelter/land related issues and programmes has developed through decades of experience built within the World Bank, IFAD and FAO[31], and the use of the information pool created by the national statistical systems population censuses, agricultural statistics, industrial statistics, household surveys and administrative records. International monitoring initiatives, including that of UN-Habitat, are summarised here and an attempt is made to articulate the differences and similarities between them, and to identify any gaps.

3.1. LAND GOVERNANCE ASSESSMENT FRAMEWORK

Although the World Bank (WB) has gone through different stages of monitoring initiatives in recent decades, this review focuses on its more recent Land Governance Assessment Framework (LGAF).

Recognising the highly political nature of the land sector, the developers of LGAF pursued a meticulous strategy to attain "objectively measurable information based on technical issues rather than value judgments and subjective perceptions".[32] Using precise pre-coding techniques, the WB's method is precise and objective. The major LGAF instrument was borrowed from the global monitoring programme, Public Expenditure and Financial Accountability (PEFA)[33], which was set up in 2001 by several bilateral development agencies and the IMF to strengthen recipient and donor capacity.

LGAF is systematic and structured. Five themes are broken down in to 21 interest areas and these in turn unfold into 80 indicators. These indicators are converted into questionnaires/checklists and answers to them are pre-coded to ensure standardisation.

The themes are:

- Legal and institutional framework
- Land use planning, management, taxation
- Management of public land
- Public provision of land information

- Dispute resolution and conflict management

A meticulous process is followed to ensure that country-specific dimensions are incorporated within instruments. The groundwork for the qualitative phases, for example the expert group meetings (EGMs), is extensive to ensure all participants agree on major points. The main approach is the quantification of data collected through interviews with key informants, EGMs and small surveys. Although LFAG has been piloted in selected countries, the documentation on LGAF does not include information about the cost of this exercise.

The theoretical scope of LGAF embraces the concept of tenure continuum. Indicators (i) and (ii) under the group Land Governance Indicators 1 aim to show whether the customary or statutory rights of most of the rural and urban population are recognised by the existing legal framework. However, the overall emphasis, from a thematic viewpoint, is on the dynamics of the formal land tenure systems. The outcome level indicators (ii) and (iii) under the thematic area Enforcement of Rights ask if "most individual properties in rural/urban areas are formally registered".[34]

Because the LGAF process produces an accurate picture at a country level it enables the global stakeholders who influence national policies to make cross-country comparisons. Although this method is applicable on a city scale, the methodological void seems to be at a settlement level. These issues will be addressed in the section that explains the proposed method.

The cost per-country of implementing LGAF is approximately US dollar 60,000, inclusive of local expertise, EGMs, panels and small surveys. It is not clear whether WB expertise was included in this estimation.

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[31] Buckley, R. and J. Kalarickal (2006). Ibid; AUC-UNECA-AfDB (2007). Land Policy Initiative: Expert Group Meeting on Land Policy Indicators. Addis Ababa. 3-4 May, 2007.

[32] Deininger, K. Selod, H. and Burns, T. (2010). Using the Land Governance Assessment Framework: lessons and next steps. World Bank Annual Conference on Land Policy and Administration.

[33] Deininger, K. et al (2010). Ibid. p. 10.

[34] Deininger, K. (2010). Ibid. p. 16. One of the areas of local governance indicators is the "recognition of a continuum of rights".

3.2. URBAN GROWTH MANAGEMENT INITIATIVE AND THE MONITORING OF SECURITY OF TENURE

Another significant monitoring initiative originates from an intention to make cross-country comparisons a part of the Urban Growth Management Initiative (UGMI – a World Bank project funded by DFID). The monitoring research was based on a sub-sample of 58 cities selected purposively out of 350 cities of the Global City Sample of 350 cities.[35]

A network of country focal-points coordinated the data gathering, based on a single instrument (checklist), by holding key-informant interviews and, if necessary, desk-reviews in relevant institutions.[36] Data were collected from preliminary visits to statistical offices and/or local experts, from institutions engaged in forceful evictions, and from organizations representing evictees. The checklists completed by the country focal points were closely supervised by the principle investigator, who had first hand experience in the cities in question.

The data gathered included information on the general housing market, different types of tenure, institutional involvement in forceful evictions, the rights of evictees, the dynamics of irregular settlements, regularisation practices and the like.[37]

Stronger synergy is seen between the thematic area of this report and the UGMI's monitoring efforts, as it focuses mostly on the enabling environment (policy), irregular settlements and invasions, evictions, property rights and regularisation. The findings on evictions especially provide rich information on eviction practices and dynamics. Cross-country comparisons are made through a tenure index and separate thematic areas.

The iterative process between the principle investigator, who was familiar with all cities involved, and the consultants in the field ensured high quality data collection. In order to replicate the method, however, an additional layer of field supervision might be necessary. The method could also be improved to better align indicators with measurement instruments.[38]

The study was implemented in 58 cities around the world. Information on the cost was not available.

3.3. THE AFRICAN LAND POLICY INITIATIVE

The Land Policy Initiative (LPI) is a major effort driven by the African Union Commission, the United Nations Economic Commission for Africa and the African Development Bank (AUC-UNECA-AfDB), for monitoring security of land tenure in the sub-Sahara Africa region. It is part of a wider programme for the construction of land policies. High level political commitment is sought by gathering African Heads of State around a summit as the last leg of the road map for the development and the implementation of the LPI.[39]

The monitoring programme within the LPI covers a broad spectrum of land-related issues, categorised under the following themes: economic, social, environmental and governance. These are further divided into 18 sub-themes, some of which include security of tenure, land disputes, land governance/corruption, cost and affordability, women's security and others. Data is collected through 14 types of instruments, including qualitative and quantitative tools, institutional data, census, maps, media and others. It is possible for each of these instruments to have more than one tool, providing close to 20 sources/tools of information.

By design, each country is expected to create its own typology of land tenure, although the monitoring system provides a generic classification of tenure, which also reflects the legal ramifications of African historical dynamics; that is, customary law and sharia.

As the results accruing from the implementation of the proposed system are expected to feed into a regional policy tool, comparative analysis could be made in reference to a "band of tenures" as defined by the LPI Framework and Guidelines.

There are similarities between the LPI key indicator "increased number of new certificates/documents",[40] the UN-Habitat monitoring initiative implemented to date, and the advanced version proposed below.

Another area of synergy between all three systems – LGAF, LPI and UN-Habitat – is that of local knowledge and expertise, which plays a critical role in determining the typology of tenure as well as the rating and scoring.

[35] UN-Habitat, as part of its monitoring programme, selected 350 cities using principles of probability proportionate to population sampling, which were designed to represent 10 regions defined by the UN, for the reporting of the Target 11, MDGs. Most of these cities were either mega or big cities.

[36] Flood, J. (2006). UGMI: Secure Tenure Survey. Based on material collected for the Transport and Urban Development Department. World Bank.

[37] Flood, J. (2006). Ibid. p.14.

[38] Flood, J. (2006). Ibid.

[39] AUC-UNECA-AfDB. (2007). Ibid.

[40] AUC-UNECA-AfDB (2007). Ibid. p. 22.

3.4. URBAN INEQUITIES SURVEY AND LEGAL AND INSTITUTIONAL FRAMEWORK INDEX

UN-Habitat's experiences in monitoring security of tenure in urban areas benefited from the synergy between the programmes summarised above While there are many similarities between these programmes and UN-Habitat's programme, the differences are significant. Because monitoring security of tenure was started in response to the Millennium Declaration, the indicators and instruments revolved around the individual units (households/workplaces) as the unit of analysis, rather than land or policies/institutions.

UN-Habitat first developed a monitoring programme in response to the Millennium Declaration and the Millennium Development Goals (MDG). As with all reporting for the United Nations General Assembly, the indicators[41] outline the performance of nations as opposed to communities or cities. To satisfy this condition, data is generally collected at household level. Indicator 32, "proportion of urban households with security of tenure" is no exception. Hence, as the lead agency responsible for monitoring of this indicator, UN-Habitat started its monitoring efforts based on household surveys, which makes it technically possible to report at the global level.

However, UN-Habitat was soon faced with the problem that the concept of "security of tenure" was not specific enough to be measured. In October 2002, the agency organised an international Expert Group Meeting to define operational indicators that would, in turn, enable slums and security of tenure in households to be monitored. The most important feature of this meeting was that it brought together experts from diverse disciplines – urban planning, demography, statistics and social sciences – as well as civil society and municipal planners. This diversity made the formulation of indicators possible, by enabling the cross-fertilisation of ideas and expertise.

The expert group thought that the mainstream indicator, "proportion of families who own dwelling" that was collected through population censuses, was not useful in tracking tenure security and decided on the following indicators:

- Proportion of households holding documentation;
- Proportion of households threatened by evictions;
- Proportion of households who have been evicted in the last five years.[42]

Subsequent to the EGM, UN-Habitat produced guidelines for the Urban Inequalities Survey, for which funding could be raised, and for the existing household survey initiatives to which questions or modules could be added.

The UIS is a pioneering initiative for measuring not only security of tenure, but also conditions in slums, health, education and social capital. It borrowed from other surveys, mainly the Demographic and Health Survey (DHS) and the Multiple Indicators Cluster Survey (MICS) on conventional indicators, but the UIS also revised the definition of appropriate water and sanitation in an urban setting. The innovative feature of the UIS, however, is that they measure a broader concept of tenure security and rights among households.

The UIS has the potential to provide indicators that are rigorous and representative of the city being surveyed. Survey-based indicators, in turn, help evidence-based advocacy, which has greater potential to affect policies, and help managers to improve their programmes.

In addition to providing basic indicators, these surveys also enable more in-depth analyses and correlations between variables.

Finally, more sophisticated analysis contributes to the theoretical debates discussed above by providing new evidence for revisiting existing paradigms.

The lessons learned from the pilots and the establishment of the GLTN within UN-Habitat created the need to complement the UIS results with another instrument that could uncover the policy environment, the legislative situation and the extent to which existing legislation is implemented. A team of in-house experts subsequently developed the Legal and Institutional Framework Index (LIFI).[43]

The thematic areas covered by the LIFI included: i) evictions, ii) remedial and preventive measures, iii) land administration and iv) land markets. The last thematic area was eliminated after pilots in a number of cities.

The LIFI serves two purposes that are equally important. First, assuming that LIFI is applied in many cities, the LIFI score, as a stand-alone value, could be used to make

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[41] Indicator 32 states: "The proportion of households with access to secure tenure is 1 minus the percentage of the urban population that lives in slums. In the absence of data on number of slum dwellers, UN-Habitat produces estimates based on a definition of slums as agreed by the Expert Group Meeting on Urban Indicators in 2002." This indicator addresses the target 11 of the MDGs: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers.

[42] UN-Habitat (2002a). Expert Group Meeting on Urban Indicators: Secure tenure, Slums and Global Sample of Cities. Nairobi, 28-30 October 2002.

[43] The UN-Habitat team was Clarissa Augustinus, Nefise Bazoglu and Jan Turkstra. During the first quarter of 2003 they worked on the formation of the LIFI and the production of the Guidelines on the Monitoring of Secure Tenure.

sub-national, regional/global comparisons. Second, in cities where both a UIS and a LIFI is implemented within the same timeframe, the values of indicators obtained from both instruments will be synthesised to provide the full picture (people and policies combined) of security of tenure.

The LIFIs are meant to produce qualitative results as opposed to the quantitative indicators the UIS provide. The process of data gathering – the selection of key informants representing different stakeholder groups coupled with an EGM – is qualitative. To reach to a summary conclusion, however, the experts are asked to rate the legislation and the institutions.

Although the overall score attained at the end of this process is based on expertise, experience and a process of intense discussion and debate at the EGM, it is still a subjective assessment.

Most thematic areas of the three levels of monitoring

(people, land, policies) converge and the main difference is the unit of analysis: individual units (people, households); land; policies and institutional dynamics. Another difference is the coverage; while both the LPI and the LGAF initiatives include both rural and urban land, the UIS and LIFI covers urban land with a special focus on informal areas. The institutional and legal indicators (LIFI) are not as elaborate as the LGAF and the AUC/UNECA/AfDB's LPI schemes, mainly because of funding limitations. The original objective of the UIS – responding to the wider monitoring demands of the MDGs and the Habitat Agenda – is too comprehensive to allow for a specialised, in-depth investigation of tenure security. The summary of the UN-Habitat monitoring scheme below expands on these points.

Both the UIS and the LIFI will be reviewed and illustrated below, as most proposals made are drawn from these two experiences.

Family generations and land. © UN-Habitat

3.5. MILLENNIUM DEVELOPMENT GOALS, UNITED NATIONS INTERAGENCY ADVISORY AND EXPERT GROUP ON MDG INDICATORS

After the Millennium Declaration, the United Nations Interagency Advisory and Expert Group on MDG indicators (IAEG) were set up to coordinate the monitoring and reporting of the Millennium Declaration Goals' 48 indicators. The IAEG's main function is to ensure that the indicators stand up to scientific scrutiny. Because there was no credible monitoring system for tracking tenure security, in 2002 the IAEG developed a proxy indicator that could stand in for the original Millennium Declaration indicator, namely "the proportion of households with access to security of tenure". The agency responsible for monitoring and reporting, UN-Habitat, had to make sure that rigorous data sources, preferably household surveys, were used. As a corollary, the sub-components of the indicator had to be aligned with what was available within existing surveys and censuses: i) water, ii) sanitation, iii) density, iv) housing conditions. This proxy indicator's convergence with the concept of slums is what also allowed it to be endorsed by the IAEG.[44]

Since the main aim was "improving the lives of 100 million slum dwellers", these four parameters also matched with the thematic focus of the MDG the target. Thus, UN-Habitat negotiated with the IAEG to keep the indicator within the set of MDGs, and prepared to set up a monitoring system for reporting on slums immediately, while resolving to develop a monitoring system for reporting on the original indicator revolving around tenure security.

The first step in this direction was for UN-Habitat to ensure that operational definitions of slums and of security of tenure were created. The October 2002 EGM in Nairobi was to establish the measurable parameters of a slum. Included were:

1. Improved water

2. Improved sanitation

3. Adequate living space

4. Durable housing

5. Security of tenure

Approximately 10 years ago, the IAEG advised that it was appropriate to limit the reporting on Target 11 to the first four parameters, which deal with the physical aspects of housing, until rigorous monitoring of the last parameter – security of tenure – was ensured.

Conceptually, security of tenure continues to constitute one of the parameters of a slum, therefore, as soon as a credible monitoring scheme is developed, it should also be part of a slum definition.

There is not sufficient information to suggest if, with the present system, the number of slums are under or over estimated. On the one hand, if a strong correlation exists between the physical parameters and security of tenure, then the estimated quantity of slums could be close to accurate. On the other hand, if households with adequate conditions of housing and services (parameters 1-4) do not have security of land tenure, then the number of slum households could be underestimated. In any scenario, putting back the parameter for security of tenure into the slum definition would give a better picture of the reality, which is why it is expected to contribute to a key decision to redress the definition of slums.

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[44] The IAEG meetings during 2002 were critical, because the group was close to deleting the indicator "proportion of urban families with security of tenure" on the pretext that UN-Habitat did not offer a methodology which could withstand scientific scrutiny. Thanks to the efforts of UNSD and UN-Habitat to convince the IAEG that, very soon, UN-Habitat would launch a monitoring programme to measure the indicator, the group agreed to keep the indicator as is.

Land survey in Burkina Faso. © UN-Habitat

4. THE PROPOSED SYSTEM FOR MONITORING SECURITY OF TENURE

In terms of content and themes, the monitoring system does not introduce new areas, but in terms of method, two features are considered to be new. These are: i) zeroing in on the synergy between the three elements of security of tenure (people, land, policies); and ii) summarising vast amounts of data in a few indicators. These two features are expected to create a clearer picture of the tracking of security of tenure. The method of synthesising many findings at each level is described in detail below.

This chapter is constructed according to the indicators that form the basic set of vital information about the situation of tenure security. This is in spite of the fact that most of the methods proposed could also include the comprehensive set of indicators that will be elaborated on in chapters 5 and 6.

4.1. THE INDICATORS FOR REFLECTING TENURE SECURITY IN THREE DOMAINS: PEOPLE, LAND AND POLICIES

As discussed within the main text, security of tenure is manifest in three domains: the individual unit (household or workplace), the settlement and the city. These domains can be juxtaposed with the three elements of security of tenure: people, land and policies. Hence, the key indicators of security of tenure reflect the situation at the mentioned levels.

Security of tenure in land is attained when:

- Access to land rights for the majority of individual units is recognised by others (state or non-state parties) as legal or legitimate;

- Households trust that the authorities will protect [45]them (in dwellings or workplaces) from forceful evictions;

- Women spouses trust that the authorities will protect them from forceful evictions in the event of widowhood or separation;

- (Alternative gender indicator) Proportion of women married under arrangements protecting them from evictions (context-specific);[46]

- The legal status of the land in most informal communities allows for intermediate tenure solutions;

- The city's legal and institutional dynamics are open to mainstreaming the intermediary forms of tenure within land management systems; and

- Legal provisions against forced evictions are accessible and effective.

These indicators are configured in a modular way. The ideal monitoring approach is when data is collected at the individual unit, settlement and city domains. This offers added value in methodological terms because findings from three domains can be triangulated. The combination also optimises the relevance of the indicators because two aspects of the reality are shown: the subjective experience of the individuals and the objective, legal conditions of the land and institutional environment.

However, one indicator at one level may be sufficient to monitor the extent of land tenure security when there are few or no opportunities to collect data at multiple levels.

At the individual level, however, it is proposed that a more comprehensive set of indicators be used (Table 5.1) contingent on the objective of the monitoring and funding opportunities. These indicators require further information on evictions and type of documents possessed,[47] preferably in pre-coded form (for example, type of legal and legitimate documents). Additional indicators are also suggested for some parameters, such as i) the length of residence; and ii) perceived access to specific rights to sell, inherit, develop and improve the unit. The theoretical discussion on the choice of indicators is given in chapter 5.

This chapter contains three options to get to the five indicators of the basic minimum set given above. The

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[45] The Framework for monitoring of tenure security of tenure in cities is anchored in the rights-based approach and acknowledges that States and governments have three levels of obligation: to respect, protect and fulfill land right. Clearly, this means that firstly, the State has the responsibility to respect land and property rights, therefore refraining from interfering with the enjoyment of the land rights, and prohibiting forced evictions. Second, the responsibility to protect the all land and property rights means enacting laws that create mechanisms to prevent violation of the rights by state authorities or by non-state actors such as protecting tenants against landlords' threats, harassments and forced evictions. This protection is to be granted equally to all and considered all forms of tenure arrangements. Finally, the responsibility to fulfill the right means to take active and progressive steps to put in place institutions and procedures, including the allocation of resources to enable people and communities to enjoy land and property rights. Such measure may include concrete steps to eradicate landlessness, homelessness and equitable access to land, housing and other land-based resources. A rights-based approach develops the capacity of duty-bearers to meet their obligations and encourages rights holders to claim their rights." See http://www.unfpa.org/rights/approaches.htm

[46] Ideally, the indicators related to women and security of tenure should be part and parcel of a monitoring system. As noted by Doss, C. and Meinzen-Dick, R. (unknown) in Land Tenure Security in Uganda: Initial Evidence, a presentation. Since illustrative data is missing, however, incorporating the gender dimension will be planned in due course.

[47] In a context where documents are not critical (for example, legitimacy), one has two options. (1) Ask respondents to nominate one of a list of pre-coded "tenure types" – with the pre-coding being country specific. (2) Another question could ask respondents to select from a list of items of evidence that they have to support their claim to tenure. This list of evidence would again have to be pre-coded, but would perhaps be more standardized than the tenure types. A standard table of the evidence required to prove rights could be used to determine a result against the indicator. Of course, the survey method has to be coupled with other methods at different levels to produce a robust result.

options are based on the type of instrument used for data gathering and analysis methods. Several possibilities are also proposed as a means of retrieving indicators at the individual unit and community/settlement domain respectively, and one possibility at city/country level. At this point, a synergy may be traced between the LGAF and the LPI monitoring initiatives.

4.2. PEOPLE: HOW TO MONITOR TENURE SECURITY OF THE PEOPLE (HOUSEHOLD): (MICRO-LEVEL ANALYSIS I[48])

Monitoring the security of tenure at the level of the people enables policy makers to trace the impact of land policies and market and social dynamics by gathering data directly from the people themselves. It is because of this that the monitoring systems discussed in this section are complementary to those of the other methods presented above, which gather data, indirectly, from experts and institutional information.

This section expands on the technical and programmatic steps to retrieve the minimum set of indicators described

[48] Micro level analysis comprises of two elements – the individual units and the community.

above. Firstly, formulas for the estimation of each indicator are given; secondly, the policy implications, packaged within four possibilities (types of instruments), are explained. These possibilities include i) the UIS; ii) modules added on to household surveys; iii) questions added on to national population censuses; and iv) small surveys.

These possibilities pertain to the monitoring at the household or the workplace (for production or services). Due to data limitations the case study presented in this paper – done in São Paulo, Brazil – only covers households, although conceptually the same system could also be applied to individuals and workplaces.

As seen below (Table 4.1), these possibilities appear to be the most expensive (ranging between US dollar 70,000-US dollar 200,000). However, because these are the only options available to monitor the impact level on the people – these costs are justified. It is at this level that perceptions and the relationship of people to land and to the systems that legalise or legitimise their rights over the land, can be monitored. All the legal, social, economic and historical dynamics and policies impact on the individual unit. Impact on the household refers to documents and evictions.

TABLE 4.1. **COST OF MONITORING OPTIONS AND EXPENDITURE ITEMS: SECURITY OF TENURE**

| OPTIONS | TYPE/LEVEL | EXPENDITURE ITEMS | | | | | | | TIME (MO) |
		International Consult.	Local Consult.	EGM	Travel	Printing et al.	Other	Total	
1	People: household								
a	Urban Inequities Survey (UIS)	28	80	34	24	15	18	199	6
b	Household survey/added question	22	10	8	12	2	0	52	10
c	Census /added question	12	18	30	15	0	0	75	12
d	Small sample survey	12	20	5	5	4		46	3
2	Land: community								
a	Community assessment	25	32	8	9	21	2	97	~6
b	Rapid assessment	12	7		1	1	1	22	~6
c	Community module added on to surveys	6	6	4	2				14
d	Qualitative assessment	11	6	2	6				25
3	Policy								
	LIFI	11	10	5	6		2	33	2

4.2.1. Rationale

According to the definition endorsed by UN-Habitat, land users are secure if they are confident that they "will not be arbitrarily deprived of the rights they enjoy over land" (Table 4.2). The critical ingredient which nurtures this confidence is the certainty that these "rights are recognised by others". "Others" includes two main groups – state and non-state actors – because each group has its own conditions for "recognising" people's rights. The condition required by both groups is the existence of a document that shows two very significant elements of the tenure cycle of the household/individual/community: whether (or how) the land or dwelling was earned. The document also reveals the different ways in which people could have acquired the land – whether it was bought; whether they took out a mortgage; if they put the land to productive use; if they rented the land; or if they inherited it. It also describes the action that the person took to ensure that his/her access to land is either legal or legitimate. Varying in a multitude of ways, these actions aim to ensure the involvement of "others" or "third parties" which include official registry offices and semi-official residents' associations.

The wide endorsement "documentation" receives from the international community, as well as the considerable experience of UN-Habitat with the UIS, makes "documentation" a strong choice as a parameter reflecting tenure. Such an indicator is also endorsed and used by the AUC-UNECA-AfDB monitoring initiative within the framework of the LPI. If these agencies continue to measure this indicator, the international community will soon be able to make global or regional comparisons.

The type of document that a person holds also indicates whether the occupant is a tenant, an owner or an illegal invader, as evident from Table 4.3.

Which documents can be considered secure? This will vary according to the context and therefore has to be decided by local experts or stakeholders. This paper suggests a binary classification of secure and insecure documents as a point of reference for further adaptation according to local realities. The terminology will also have to be revised according to the language on the ground.

As observed from the formulas presented in Table 4.4, it is suggested that, except for the utility bills, all the documents listed in Table 4.3 are considered secure. A wide margin is given for contextual adaptation because a document that is deemed "secure" in the above table could be insecure in another context.

TABLE 4.2. **SECURITY OF TENURE: DEFINITION AND INDICATORS**

LEVEL	INDICATOR NAME	DOMAIN/ELEMENT	DEFINITION	INDICATOR
MICRO ANALYSIS	ST-HH1 HH2	Household (HH) *People*	Access to land for the majority of individual units are recognized by others (state or non-state parties) as legal or legitimate	1. Proportion units with documents as evidence of legality or legitimacy for access to land rights 2. Proportion of units where people trust they will not be evicted
	Sett-Com	Settlement *Land*	Land legal status for the majority of informal communities allows for intermediate, flexible tenure solutions	1. Proportion of informal occupants using public land that is not planned for infrastructure or other services within total city population
MACRO ANALYSIS	ST-City1 ST-City2	City/country *Policies*	Intermediary forms of tenure are mainstreamed within the legal and institutional framework of the city/country	1. Informal settlements are included within the land information systems 2. Legal provisions against forced evictions are accessible and effective

It is for this reason that the process chosen to monitor the security of tenure over land is as important as the core/ global definitions and estimation methods themselves. As suggested in the following sections, the expert groups should devise their own typology of tenure groups and make a binary assessment of which of these types are secure and which are not.

4.2.2. Policy implications and strategies to follow

Numerous paths lead researchers to the numerator and the denominator of the formula for estimating indicators on documents (ST-HH1). Hence, the policies implicated and the strategies to follow differ according to the instrument chosen. The section below presents the four possibilities in Option 1.

4.2.2.1. Option 1: Household surveys and population and housing censuses

The measurement of security of tenure can be done through standalone household survey such as the Urban Inequities Survey or through existing surveys such as Demographic Health Survey and Multiple Indicators Cluster Survey. Both types of surveys are based on a representative sample that allows a quantitative estimate of tenure security. Questions on security of tenure can also be added to population and housing censuses that allow a quantitative estimate city-wide as well as nationwide. However, in the absence of household surveys with a representative sample or population and housing census, qualitative measurement of secure tenure can be obtained through small-scale sample surveys or qualitative methods.

A. First possibility: Urban Inequities Survey

About the instrument

An Urban Inequities Survey (UIS) is a sample survey consisting of three instruments - household, women and community questionnaires. It is carried out in cities where the sample size varies between 1,000 and 4,000 households, which are selected according to the principles of probability sampling. This implies listing and mapping the total universe within the city. Since the initiation of the UIS goes back to the monitoring needs of the Habitat Agenda and other MDG indicators, the survey questionnaire also covers other thematic areas.

Like all surveys, the UIS is an elaborate process of sample design and selection, questionnaire design, pilot testing, selection of interviewers, training of interviewers, field supervisors, data processing and analysis. The total cost varies according to the size of the sample and the questionnaires.

A household survey of 4,000 households with detailed questionnaires may cost approximately US dollar 200,000. Costs will be lower if wages and transportation are inexpensive in the city selected, but not a lot lower

TABLE 4.3. **DOCUMENTATION AND SECURITY OF LAND TENURE**

DOCUMENTATION	SECURE	INSECURE
OWNERS		
Land registration certificate	V	
Title deed to dwelling	V	
Purchase agreement for land	V	
Lease agreement for land	V	
Certificate of occupation (without being registered another name adjudication certificate)	V	
Property tax certificate		V
Utility bills		V
TENANTS		
Registered lease agreement	V	
Not registered lease agreement	V	
Informal agreement (written)	V	
Verbal agreement (no document)		V
Occupied rent-free with knowledge of owner		V
Occupied rent-free without the knowledge of owner		V

Source: UN-Habitat (2004)

TABLE 4.4. **ESTIMATION OF INDICATORS FOR INDIVIDUAL UNITS (ST-HH1 AND ST-HH2)**

INDICATOR NAME	FORMULA
ST-HH1=	Number of people (units) who hold secure document /Total population * 100
ST-HH2=	Number of people (units) confident they will not be evicted/Total population *100

because the biggest share of expenses goes towards the cost of international consultants. They are an essential element for sample selection and analysis and reporting and even local consultants charge internationally fixed prices. One way to reduce costs is to use short questionnaires. It is not advisable to reduce the sample size to less than 4,000 households for a satisfactory response rate to questions on documentation and evictions.

Suggested Programme Interventions

International Partnerships:

Forging international partnerships, especially inter-agency partnerships, is key to the success of a UIS. Firstly, UN-Habitat's Global Urban Observatory and the GLTN could find donors to fund a thorough analysis of the existing data, especially the UIS of Cairo that was completed in 2006, to extract lessons learned. Inter-agency partnerships are also needed for the external evaluation of the three other UIS experiences – Addis Ababa (Ethiopia), Lagos (Nigeria) and Casablanca (Morocco) before going on to the next phase.

Partnership with the regional statistical agencies – the United Nations Economic Commission for Africa (UNECA), Asia Pacific (UNESCAP), Latin America (UNECLAC), Western Asia (ESCWA) and Europe (UNECE) – is vital to carry out more pilot UISs in Latin America, Asia and Eastern Europe. New UISs are necessary to complete the regional learning from the UIS experience, which is limited to the African continent.

The GUO and the GLTN should prepare a trainers' protocol and be directly involved in training interviewers and other GLTN partners. The training of trainers and interviewers is crucial because security of tenure is a concept that is unfamiliar to the interviewers. The World Bank, Regional Development Bank experts and the United Nations regional economic commissions could also assist with the training component.

It is therefore advisable that a joint programme is developed in UN-Habitat's next Strategic and Institutional Plan (SIP) programme cycle.

Programme action at the national/local Setting:

1.   Partnerships need to be established with the national statistical office (NSO) of the country where the UIS takes place, with the major land institutions, and with selected universities or research institutes;

2.   A steering committee (SC) consisting of the above stakeholders should be set up;

3.   A local expert should be selected to write a concept note on the purpose of the exercise (as per the World Bank strategy) and to suggest a typology of land tenure categories;

BOX 4.1. CORE QUESTIONS FOR UIS

1.   Do you own or rent this unit (dwelling)?

2.   (If owner) Do you have one of the below documents as evidence of your rights over this dwelling? (list of documents in Table 4.1)

3.   Does this document help you improve your dwelling?

4.   Does it (document) help you inherit or sell this dwelling?

5.   Does it provide you with rights over land (full/shared) (yes/no)

6.   (If yes) Right to develop over land?

7.   Right to sell/inherit?

8.   (If renter) Do you have a formal contract with landlord?

9.   Do you have an informal contract with landlord?

10. (If no) Have you sub-let the dwelling you live in?

11. Have you heard of any forceful evictions in the city (yes/no)

12. (If yes) Do you trust you would be supported by the authorities if you are subject to forceful evictions?

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4.   The SC should mobilise local experts around an EGM to define the features of tenure groups (as reflected in documentation) and devise questions accordingly. Another important function of the SC is to identify the secure/insecure types of land tenure by type of document held by the household;

5.   An exploratory phase using qualitative research techniques is essential to find the most appropriate ways to ask about documentation and about evictions. The minimum set of core questions, in Box 4.1, could be used as a reference to formulate the questionnaire;

6.   A technical committee (TC) composed of selected experts should be formed to oversee data collection, data analysis and reporting.

Best Practices and Lessons Learned

Between 2003 and 2006, UN-Habitat implemented the UIS in four cities: Addis Ababa in Ethiopia; Lagos in Nigeria; Casablanca in Morocco and Cairo in Egypt. The UIS was also implemented in 17 small towns in the Lake Victoria Region of Eastern Africa. The experience from each survey ultimately produced a better monitoring instrument: the Cairo UIS, which targeted 4,000 households to represent the city. The Cairo UIS was carried out by the American University of Cairo's Social Research Centre, which also topped up the budget to research additional indicators that the centre was interested in.

As a pioneering household survey programme, the UIS experienced many problems, as expected. First, the questionnaires varied from city to city, which made comparisons difficult. Second, consistency checks within the household questionnaire were not well designed.

Due to lack of funding, UN-Habitat could not carry out hands-on training on subjects that were new to the interviewers, such as security of land. This accounts for the measurement errors discussed below.

The questions on documentation and evictions appeared to intimidate people, as response rates to both were lower than the response rate for the lead question on ownership.

B. Second possibility: Security of tenure module added on to household surveys

About the instrument

Since the 1960s, many household survey initiatives at the national level have been in effect. (In effect, the UIS has emulated these experiences at the city level). The Demographic and Health Survey (DHS) funded by the United States Agency for International Development (USAID) and executed by ORC Macro – a leading research institution – was the first of the genre. Another prominent international household survey (a Multiple Indicator Cluster Survey – MICS) was initiated by the United Nations Children's Development Fund (UNICEF). Both survey instruments have been implemented in selected countries in Africa, Asia, Latin American and the Caribbean, and Eastern Europe every three to five years. Other international surveys are the Norwegian International Assistance's household surveys carried out by the Norwegian Operational Research Agency (FAFO), and the World Bank's Living Standards Measurement Survey (LSMS). The prospects of piggybacking on the Bank's LSMS are high, because a partnership based on land studies with the GLTN is already in place.

Aside from these global initiatives there are also regional efforts, often generated by the United Nations economic commissions for Africa and Latin America, as well as the World Bank living standards surveys. More recently, however, with the changing economic balance around the world, some developing countries – Thailand, Brazil, Lebanon and Turkey – have also commissioned household surveys carried out by local research centres.

In most household surveys, the thematic scope (demographic, economic, social and physical conditions of the house) is more or less the same. One aspect usually missing is security of land tenure. Hence, this second possibility entails adding security of land tenure modules to the household questionnaire and, if possible, the questionnaire for women in these surveys. This is not new; UN-Habitat experimented with selected questions in the questionnaire module that is asked women, in a number of cities, Accra (Ghana), Hama (Syria), Dhaka (Bangladesh),

Mumbai (India), Kolkata (India) and São Paulo (Brazil). The case study presented in chapter 6 will illustrate what type of indicators could be retrieved when a module is added to an existing survey initiative.

Suggested programme interventions

International partnerships

Because household surveys are very expensive, the strategy of adding on security of tenure modules to the existing survey instruments is not straightforward. It requires a strong partnership between both technical experts and the political decision makers. A partnership also needs to be forged between people of diverse disciplines, ranging from land experts and surveyors to statisticians and social scientists.

To ensure survey opportunities are not missed, it is suggested that Global and Urban Observatory (GUO) makes an inventory of the planned household surveys carried out by the above-mentioned agencies – UNICEF, ORCMacro, National Census Offices and the like. The GUO should also search for new survey opportunities and establish partnerships with the research agencies implementing surveys. The GLTN network and the Habitat Programme Managers (HPM) could help with the identification of survey activities.

The key is the collaboration between GUO and the GLTN to cross-partner with different institutions in the same country, which could help advocacy with both parties. For example, GUO's partnership with the Norwegian Operational Research Agency (FAFO) could also help GLTN raise funding with the Norwegian International Assistance Programme.

Likewise, GUO could establish a sustained collaboration with ORC Macro – the research organization which implements the Demographic and Health Survey – while GLTN could lobby with USAID and the Millennium Challenge Fund to advocate for resource mobilisation. As already mentioned, close technical and political ties with the United Nations economic commissions would help not only during the advocacy phase, but also during implementation.

Action at the national level

Not all networking and advocacy is limited to the international level. At the country level, the Habitat Programme Managers (HPM) need to be mobilised to identify the survey opportunities and motivate national partners to add security of tenure to these surveys. As a principle, the HPM's range of networking should expand to include the president of the National Statistical Offices, who can play a pivotal role in the planning and the implementation of these large household surveys.

Often, the demand for surveys on and monitoring of a development indicator is generated from the local setting

and is a stronger determinant in implementing monitoring activities than collaboration at the international level. The GLTN could also be a catalyst for generating demand by national actors.

As for other steps, similar course of action such as the setting up of committees and others (as suggested for possibility 1) is also relevant for possibility 2.

Monitoring security of tenure: practices and lessons learned

The method of piggybacking on the household survey in Brazil worked successfully, as the big sample size allowed for a thorough analysis of the secure tenure indicators for São Paulo. The experience helped, not only to produce the indicators described in the main text, but also to reformulate the questions. A detailed analysis of the São Paulo household survey is presented in chapter 6.

Another successful experience has been in Istanbul, although the definition of indicators varies considerably. The partial UISs that were added to the Demographic and Health Surveys in Mumbai, Kolkata, Dakar, Accra, Istanbul, and São Paulo, however, cost the agency between US dollar 30,000-50,000. Other countries add the module of security of tenure on their own initiative (Cote d'Ivoire for example). However, this strategy, done for cost-effectiveness, needs to be further reviewed because of varying success levels among different experiments. The lessons learned from the experience show that UN-Habitat's contribution should be US dollar 50,000-60,000 to get more comprehensive information.

Lessons can also be learned from evaluating the partnership initiatives. The first step would be to assess the relevance and effectiveness of the strategy of add-on modules. Experience shows that the process, both technically and managerially, has to improve. Methods should be devised to retrieve the same core set of indicators, even though the typology, the terminology and the question formulation could be different. Importantly, modules should be pre-tested to establish the validity and reliability of questions, and UN-Habitat or consultants should train interviewers to reduce measurement errors.

C. Third possibility: "Type of document" question added on to the National Population Census Form

About the instrument

The ideal method would be to piggyback (with a few questions) on the National Population Censuses (NPCs) implemented every 10 years, and on the sample surveys that the National Statistical Offices (NSO) implement at different periods. Some typical surveys are the Household Characteristics Survey, Industrial Survey, Agricultural Survey and Workplace Survey. Since the 1950s, all NPCs include a question on home ownership. For example: "Do you own or rent this dwelling?" This presents an important

opportunity that should not be missed. Although lobbying with international partners as well as governments has many challenges, it is worth the effort because of a census's advantage over other methods; that is, complete coverage of all cities within a nation as well as all households within a city. Possible steps that could be followed are summarised below:

Suggested Programme interventions:

International partnerships
UN-Habitat's Global Urban Observatory could start coordinating with the NSOs both through its own network of national statistical offices as well as the United Nations Statistical Division (UNSD) and the United Nations Population Fund (UNFPA), which actively provide technical assistance to the NSOs. The UN Working Group on Population Censuses was established by the UN Statistical Division (UNSD) and the UNFPA. Since this working group's mandate is to set the international standards and norms of the NPCs, it is exactly where the international network of secure land tenure should start lobbying. Efforts were made to add secure tenure in the Census 2010, however, it was not part of the Principles and Recommendations of the Census 2010. At the international level, UN-Habitat made a consistent effort during 2006-07 to lobby the UN Working Group on Population Censuses to add on a question on the "type of document a household has" to the questionnaire of the Census 2010. However, the Working Group rejected the proposal because, it believed, that any question on documentation would jeopardise the reliability of responses to the census as a whole.

The internationally set date for the next population census around the world is 2020, but the Working Group on Population Censuses is set up much earlier, in 2016 or 2017. GLTN and its partners interested in monitoring security of tenure could take this opportunity to engage with the Working Group and take steps to be kept fully in the picture at the international level. GLTN could also actively guide national/city level activities.

To carry out effective advocacy campaign, it is necessary to document and disseminate information on relevant case studies, such as that of Aleppo, Syria, where an additional urban-indicators module was added to the 2004 population census.

Action at the national level
The same course of action described within possibilities 2 and 3 could be followed on a national level, with minor adjustments because of the nature of the instrument. The national actors who have a stake in collecting information on security of tenure through the census should wage a high profile advocacy campaign because NSO officials and other players are likely to resist the idea of adding questions. Therefore, it is paramount that the Habitat

Programme Managers (HPM) in the countries are actively involved from the beginning. (For Census 2020, advocacy should start not later than 2012).

The household questionnaire form of the census includes a question on the relationship of the dwelling (owned/ rented) to the respondent. The only additional question will be the possession of a document as illustrated in Box 4.2.

The approximate cost for adding this single question could be US dollar 75,000. The biggest expense is likely to be for the training of interviewers as there will be large numbers of them. It should be noted, however, if only one city adds a question, then the cost would reduce by one third.

Practices and lessons learnt

The programme can benefit from the lessons learned from the experience in Aleppo, Syria, mentioned above. The partnership between UN-Habitat and the Economic Commission for Western Asia (ESCWA) featured intense technical training given for the establishment of the Aleppo Urban Observatory.[49]

The Mayor of Aleppo negotiated with the National Statistical Office to add a module that got more information on security of tenure, among other things, from the census questionnaire.

D. Fourth possibility: Small-scale sample surveys or qualitative methods

In the absence of funds or partnership opportunities for large scale surveys and population censuses, small scale sample surveys or qualitative research methods could be an option. It is important to note that the first three instruments of Option 1 are the most effective ways to retrieve the indicators that are rigorous enough for global reporting and comparison. Whereas the possibility proposed below is considered to have value for local stakeholders, decision makers, civil society and people as an input to city and national policy formulation and planning.

Small sample survey results coupled with desk reviews could provide an overall feel for the number of units that possess documents considered secure. A sample size of 500-700 households would be enough to get a reasonable idea of the distribution of types of households in relation to land. The sample design appropriate for this exercise – purposive sampling – is practical and cost effective because the selection of clusters and/or households do not have to comply with the rules of probabilistic sampling (units of the universe have an equal or known probability of being selected for the sample). The guiding principle of sample selection is the expert's prior knowledge about the clusters/ households.

[49] The Aleppo Urban Observatory was set up and Urban Indicators training was funded by DFID between 1999-2002 within the overall support given to the Global Urban Observatory.

> **BOX 4.2. WHAT QUESTIONS TO ASK IN A POPULATION CENSUS FOR ESTIMATING INDICATOR 1.**
>
> 1. Do you own or rent this unit ? (already included within census questionnaires)
> 2. Do you have one or more of the below documents? (list of documents as per local typology and termi- nology)

It is recommended that a two-tier strategy be followed by aiming to implement possibilities 1 and 2 occasionally (every five to ten years) and to be annually updated through the methods proposed at possibility 3. This is the strategy that UNICEF and other agencies pursue to meet the standards of rigorous reporting and to continuously update the indicator.

It should be noted that possibilities 2 and 3 (questions added on to existing household surveys and the population censuses) can only measure indicators on documentation, excluding the one on evictions. Thus, full thematic coverage is only possible through the use of a complete UIS. If proxy indicators on documentation and evictions are considered to be sufficient (Table 4.5), small surveys or qualitative methods can also provide rich information on security of tenure. The advantage of qualitative methods is that they are more appropriate for in-depth information and nuances of variables than estimating indicators that could be generalised for the universe (city).

4.3. LAND: HOW TO MONITOR THE SETTLEMENT INDICATOR: (MESO-LEVEL ANALYSIS)

4.3.1. Rationale

The other domain that is key to the monitoring of security of tenure is the physical and legal status of land at the settlement level. Although household indicators do reflect the experience of individual families related to security of tenure, the legal dynamics of land and planning decisions cannot be measured alone by household surveys or censuses. While the MDG indicator "proportion of urban households with security of tenure" may well serve the purposes of global monitoring and broad policy formulation, it is not sufficient for the construction of sub-national and city and settlement level policies and planning. Also, household surveys can be expensive and settlement level surveys could be cheaper and therefore more promising as a method to generate data. This section will expand on the settlement level assessments and proposals with a particular focus on the legal status of land on which informal settlements are formed.

The legal and physical status of land is a key ingredient of a comprehensive monitoring system. Decision makers who

plan to bring intermediate tenure solutions – targeted for individual units that are settled informally on urban land – need information at the settlement/land domain. The LIFI findings in a number of cities reveal that, despite the pro-poor tendencies in legislation and the popular intentions of political leaders, the legal, planning or geological state of the land have created obstacles in the implementation of their policies.

The policy-makers or planners who resolve to improve the condition of informal settlements need two types of information. The first is about the type of stakeholder who can exercise certain rights over the land (public, collective or private ownership). The second is on the legal status of land with reference to the spatial plans that determine land-use. Most large-scale programmes that have offered intermediate tenure solutions (for example in the Philippines and Turkey) covered informal settlements on public land. The plans derived from such programmes often allocate the land to infrastructure, tertiary urban services or nature conservation. In doing so, alternative solutions could be found. Another aspect to take into account is the physical/geological domain. The settlements on dangerous areas (encroaching on public transport routes, on landslide and flood-prone areas, for example) cannot be offered alternative, gradual land regularisation solutions.

4.3.2. Method for large-scale land tenure pattern identification and land legal status

The method is geared towards retrieving data and information on the two parameters depicted above: i) types of stakeholder who have access to land rights (public, customary, collective or private ownership); ii) land use decisions given through spatial plans.

The two options recommended in this section for assessing the legal status of the communities'/settlements' land benefit from the use of a variety of investigative techniques: the study of maps, interpreting images, reviewing legal documents and maps, small surveys and qualitative research. Two separate sets of methods for acquiring data can be used; firstly a method to obtain an overall population estimate of the informal settlements, and secondly a method for the identification of all the informal settlement areas and their legal status. The methodology can be used separately or jointly depending on funds.

Planning standards that are mostly relevant to middle class areas could be adopted for poor areas so as to introduce an intermediate tenure solution. It has been noted that introducing planning standards at the level of informal settlements is often contested by using middle class planning standards, particularly site sizes. The methodology proposed here recognises that informality can be assessed for moving towards intermediate and pro-poor planning standards. In the assessment of informal settlements in

TABLE 4.5. **MEASUREMENT INSTRUMENTS BY INDICATORS**

INDICATOR	Urban Inequities Survey –UIS)	Household survey supplement (partial UIS)	Census supplement	Small Survey	Rapid Assessment	Community Assessment	LIFI
% households w/ insecure documents	■	■	■				
Proxy % HHs w/ insecure documents				■	■	■	■
% Households w/ rights to sell/inherit	■						
% households evicted	■						
% HHs fear eviction	■						
% Women fear eviction	■						
% informal pop on land amenable to solutions					■	■	
Informal units are included within Land Information Systems							■

TABLE 4.6. **ESTIMATION OF THE SETTLEMENT INDICATOR: LAND LEGAL STATUS**

INDICATOR NAME	FORMULA
ST-Sett =	Number of people informally settled on land whose legal-physical status is amenable to intermediary solutions/ City total population * 100

Durban, it was found that,[50] for example, information on land that was reserved for urban infrastructure and services, and hazardous land was not readily or publicly available and was not recorded as part of the land's legal history. The methodology suggested here proposes to bring further distinctions within the information available at country level if possible.

The main aims of the methodology are:

1. To develop a typology of land by legal status (legal access and land-use decisions);

2. To identify all informal settlements areas within the boundary, and also to use building type as a key characteristic of informality;

3. Identify all types of land tenure status in the map (scale to be determined) with ground checks. When possible use legal maps and cross-check information with land professionals;

4. Identify informal settlements by the following criteria:

    a. Government-owned land: all informal settlements on public land,51 and using the following characteristics:

        i. Land owned by municipalities/local authorities;

        ii. Land planned for infrastructure, if possible;

        iii. Land planned for urban services;

        iv. Land owned by tribes, customary and trust land;

        v. Waqf[52] land (if applicable);

        vi. Hazardous land (if possible);

    b. Private ownership – individuals, industrial, farm;

    c. Private ownership by group – customary, group, waqf.

5. To estimate the population of all informal settlements (denominator ST-Sett) through multiplication of number and type of houses in each settlement type. Information for this is from aerial photographs digitized to create a map and a count of houses of all the areas, as well as occupancy rate through five per cent sample of informal households in the settlement; or through requesting average household occupancy rates from key respondents.

6. To estimate the population in the remaining land (numerator ST-Sett).

In cases where state land is not registered and therefore does not appear in maps, LIFI and/or the use of land professionals can assist to ascertain the legal status of the informal settlements. Because a city is not as large as a country it is easier for land professionals working in these smaller areas to determine their legal status. They may have answers for some of the areas but not necessarily all of them. Often, land professionals have critical information that is not recorded, but with the tactful combination of LIFI, the land's legal history and input from land professionals, experts can create a map of state land. Such methods need to be further tested and documented. Hence, the methodology proposes that an approximation of the extent of unregistered land could be got through meticulous investigation through the real estate dealers and other land professionals.

The method[53] will also be elaborated on in the section on community assessment and rapid settlement assessment below.

The data for the method described above could be retrieved through various instruments. The alternatives summarised below revolve mainly around thematic mapping of land tenure patterns methods as well as qualitative analysis and small surveys. This section also presents other options that may provide the proxy version of the settlement indicator through quantitative and qualitative analysis methods.

4.3.2.1. Option 2: Informal Settlement Assessment

There are three different ways to implement Option 2:

• Informal settlement assessment

• City/settlement comprehensive rapid assessment

• Household survey clusters

Possibility 1: Informal Settlement assessment

<u>About the instrument</u>

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[50] Fourie, C. (1987). Ibid.

[51] The definition of public land may vary from one country to another. There are countries where public land is registered/recorded and others where they are not. Some countries do not have the "private" ownership of land. It is proposed that another operational indicator could be "the proportion of informal settlers (on public and non-registered land) that have realistic expectation of having their tenure formally recognized". In any case, it is recommended that the survey questionnaire clearly identifies and spells out the meaning of "informal settler" and "realistic expectation". This can be done by adding some questions that may decide/clarify the formal/informal status, and a set of questions that explore options to have the occupation formalized. Alternatively, an in-depth analysis can identify such options and provide samples to the enumerators.

[52] Waqf (Arabic) is a generic name for charitable endowment.

[53] Experts at the workshop in Washington D.C., April 2011, discussed the monitoring system proposed in this paper and highlighted the challenges in gathering data for the numerator; for example, public land that is not planned for infrastructure investments. Apparently, the LGAF experience has shown that a vast portion of public land is not registered within information systems, nor is it possible to predict the extent of land allocated for future infrastructure.

In South Africa in 1986, under the auspices of the University of Natal's Land Surveying Department and the Inkatha Institute, maps were created showing the large-scale land tenure patterns of the province of KwaZulu-Natal where nine million people lived. The purpose of the map was to show that it was not possible for the apartheid government at the time to create a unified and independent KwaZulu "homeland".[54] Small-scale aerial photography was used (equivalent to current satellite imagery). It was not possible to identify every house on the images so a tenure typology for the province was created and the imagery was interpreted against this typology to create the maps that depicted the tenure bands. To crosscheck the tenure bands, land legal status assessments were done using literature about the province and getting input from land professionals with knowledge about the province. The maps were produced in a few months at a cost of less than US dollar 10,000.

The steps of the instrument consist of the following:

1. Obtaining satellite imagery of the defined informal settlements at various scales (original study used aerial photographs, 1/150,000); Today, Google maps could be used to map out the typology of settlements, with particular focus on informal and irregular settlements;

2. Development of land tenure typology;

3. Identification of land tenure/settlement types that could be photo-interpreted;

4. Developing the land tenure/settlements map, including informal and formal settlements as well as land allocated for farms and industrial use;

5. Establishing and estimating the tenure status through rapid survey and sampling;

6. Regrouping settlements under generic types[55] and linking them to indicators/data;

7. Verification of the map using technical, theoretical and ground information.

Steps 2 and 3 are necessary to estimate the population. Some may question the accuracy of the estimates obtained by counting dwellings and photo-interpretation of the densities, and other parameters. Therefore, further ground checks could improve data and estimation accuracy.

This method for the production of these land tenure patterns covering a very large area was developed out of the methods described in section 4.3.2. above, where aerial photography together with an assessment of the land's legal status were used to generate information about informal settlements. South Africa's electricity supplier is using aspects of these three methods, with different permutations, in national planning for the electrification

of the country. Satellite imagery is used and different settlement types are identified from the imagery that also depicts cadastral parcels. This shows that the method can be scaled up to national level.

Suggested programme interventions

International partnerships
The Global Land Tool Network (GLTN) already has an array of partnerships to harness momentum in the implementation of this methodology that could trickle down to the national and local level. The wide network of expertise in many disciplines (land surveyors, lawyers, geographers and social scientists) includes several actors who can both organise and implement community studies using their skills as private practitioners, public officials, planners and politicians. The focus should be on GLTN partners who are interested in land-related indicators and who can work through their respective organizations.

The GLTN and its partners (interested in indicator work) may establish a Working Group on the Monitoring of Security of Land Tenure in order to prepare generic and context-specific guidelines, and to train the trainers and assist in preparing monitoring action plans.

National level actions
The national level actors could follow the same strategy used by those researching settlements in the KwaZulu-Natal studies. It consisted of the following, summarised steps:

1. The pre-selection of a national research institution to prepare the conceptual background of the study;

2. The formation of a technical committee composed of experts from the disciplines mentioned above. The technical committee should also benefit from the technical infrastructure of different government agencies who can provide aerial photography / satellite imagery and compile and print maps;

3. Technical committee to collect data, analyse and report;

4. Presentation of results to a wider group of local, national and international actors;

5. Overseeing by GLTN partners.

The international community generally creates a demand for monitoring programmes, but local policy makers could take the initiative in commissioning the study to be done by academic institutions capable of forming a multi-disciplinary team and mobilising resources from other public or private agencies. Almost all countries, with few exceptions, do have institutions, satellite companies, national statistical offices and cartography offices that have the technical infrastructure and the skills. This is provided that governments also initiate and coordinate (or let the

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54 *The maps showed that the territory of KwaZulu was made up of more than 60 pieces of land that could not be consolidated for apartheid purposes.*

55 *Steps adapted from the original formulation in the Durban study*

universities coordinate) the process.

Practice and lessons learned

The literature on the study of informal communities draws from the vast demographic and urban transformation of the 1970s and 1980s experienced in countries where rural-urban migration took off in the post-World War 2 era.

For example, in South Africa, most South American nations and Turkey,[56] urban experts took an interest in analysing the ramifications of this vast change in the social and economic fabric, in land tenure and particularly in the phenomenon of informal settlements within cities.

The research on informal settlements pioneered in the method of combining socio-geographical analysis with the current status and the history of land. This paper will review such research implemented in Durban and KwaZulu-Natal province in South Africa during the late 1980s.[57]

One feature of this study – the use of an inter-disciplinary team of social scientists, surveyors, experts of photogrammetry and anthropologists who all use different instruments for analysis - is in line with the recommendations of the monitoring system proposed in this paper. Another feature that merits emulation is the multi-stakeholder nature that embraced government authorities as well as academics.

Possibility 2: City/Settlement Rapid Assessment

About the instrument

This possibility in Option 2 is drawn from the Rapid Assessment in Iraq. The main idea is similar to the small-scale sample surveys or qualitative methods described above. It aims to provide a city level overview of the range of tenure practices within various neighbourhood types and corresponding perceptions of tenure security, thus identifying hot-spots of tenure insecurity for more focused research. The main features are:

- The use of digital imagery and maps;

- The use of focus group interviews with different stakeholder groups (for example women and youth) and key informants (real estate agents and brokers) instead of household sample surveys; and

- Consultant(s) contracted to undertake the study in each selected city.

A bonus is that this study provides neighbourhood (mahala)[58] by neighbourhood information on the tenure situation. Even though, in its present form, the study does not include a population estimation, it could be adapted to include this.

One distinct feature of this study is that data is collected from different stakeholder groups, for example the city council, households and key informants.

Practices and lessons learned

The Iraq study is still a work in progress. It is recommended that once finished, the methodology is meticulously documented to share it as a best practice.

The main discussion points needed about data analysis are:

- How data collected from different units of analysis (inhabitants, business owners, city council and others) is merged;

- How focus group data is gathered and analysed to yield one of the four ratings of informality;

- Is it possible to provide one indicator for each city?

The estimated cost of this exercise is low – US dollar 7,000 per city.[59] It is worth including the cost of UN-Habitat's expertise which makes the real cost approximately over US dollar 20,000 per city, varying according to the number of cities studied simultaneously, thus providing an economy of scale and also a number of sample neighbourhoods to be studied.

One of the innovative aspects of this method is the non-conventional qualitative data gathering sources through real-estate agents, women and youth groups. An improvement could be made by devising methods of aggregation. The investigators could consider retrieving the data for the numerator (public land that is not planned for infrastructure) from focused research with real estate agents.

The rapid assessment in the four cities of Iraq is not the only example. With Geographical Information Systems (GIS) technology and funding for the better governance of the municipalities, a number of municipal planners can create and update geographical information with household and community data. In cases where budget limits are not an issue, the data is retrieved from a complete household count; a case in point is the information base for the Greater Municipality of Konya, Turkey.[60] The reader could look into the examples of Local Urban Observatories in Madina, Saudi Arabia, and others in Mexico and Brazil, on the Global Urban Observatory website (http://ww2.

[56] See: Senyapili, T. (1975). Gecekondu. Ankara: Middle East Technical University Publication; Fourie, C. et al. (1987). Preliminary Mapping of Settlement Distribution KwaZulu-Natal: a multi-disciplinary explanation – the making of a map. Durban: Inkatha Institute for South Africa (IISA); Fourie, C. (1986). The Impact of Urbanization on Land Tenure and Administration in the Peri-Urban Area around Durban; Schlemmer, L. et al. (1986-87). Informal Communities in Greater Durban. Durban: IISA; Gilbert, A. (ed.) (1996). The Mega-City in Latin America. Tokyo, London, Paris: UN University Press.

[57] Fourie. C. et al (1987). Ibid; Schlemmer, L. et al (1987). Ibid.; Fourie, C. (1986). Ibid.

[58] Mahala is the Arabic word for neighbourhood

[59] UN-Habitat (2010). Background Paper for Rapid Land Tenure Assessment, in Erbil, Hilla, Baghdad and Nassriyah., UN-Habitat office for Iraq, in Amman.

[60] Osmanli, N. (2010). Land Information Systems in the Greater Municipality of Konya (Turkey). Paper presented to the UNECE Meeting on Spatial Planning and Security of Land Tenure, 28 October 2010, Antalya.

unhabitat.org/programmes/guo/).

Possibility 3: Household survey clusters

<u>About the instrument</u>

Two other methods could provide settlement level data. The first is to add on a cluster questionnaire to the household questionnaire. The second, in the absence of a survey, is to implement a stand-alone qualitative assessment of each or selected settlements.

Methods to provide community aggregate, or, settlement by settlement information are explained in the sections above.

Of great importance for targeted programme implementation is the availability of instruments providing data on individual settlements. Another reason why each (sample) settlement should be investigated is also methodological; there should be a match between the data on households with the data on the communities they belong to. Such data could be attained in many ways, however proposals here will be limited by the types of tools available:

1. In the event that teams can piggyback on household surveys, a settlement questionnaire to each household-cluster selected for the sample could be added on to the main questionnaire. The information in Box 4.3 could be collected either through a focus group or key-informant interviews or through a mini-EGM.

2. A stand-alone qualitative assessment could be implemented in situations where no household survey exists. The assessment should be structured in order to maintain a reasonable level of standardisation across settlements. The optimal tool is a settlement-checklist while conducting focus group interviews and/or key informant interviews. In some cases the checklist could also be complemented by a community or settlement mapping exercise.

<u>Suggested programmatic action</u>

The main instrument – the checklist in Box 4.3 – is one of the distinct features for Option 2, which comes as a supplement to a household survey that should focus entirely on the legal history and the current status of the community land, types of access to land and the power of networks.

Some may challenge the feasibility of this method by arguing that household surveys (not least those with big samples) are expensive and rare. Yet the frequency of such surveys is far greater than assumed.

The key is for UN-Habitat to track these surveys systematically and to campaign for the addition of a

measurement for security of land tenure. For example, the ORC-Macro implemented a Demographic and Health Survey in Kenya in 2008 to which UN-Habitat could have added this module for Nairobi.

4.3.3. Qualitative analysis

<u>About the instrument</u>

If the objective of a monitoring programme is a synthesis of information (household/settlement/city-country) from different domains, then the ideal method is the one described above. However, in the absence of such a survey, UN-Habitat could consider resorting to a stand-alone qualitative assessment, which could be applied in many ways.

The preferred path is a two-tiered method:

1. A desk review of the history of the settlement from records, maps, other documents under the chief's responsibility as well as the municipality, done by a small team of experts; and key informant interviews with the chief and/or selected elderly people, including women.

2. A settlement-level EGM comprised of surveyors, municipality planners and municipality outreach staff (wardens), paralegals, teachers, chiefs, men/women of religion, selected elderly men/women, families with a history of generations of residence, focal points from NGOs, or other partners from outside the neighbourhood for one day.

3. The EGM participants, through a process of debate and consensus, will reach a verdict on the tenure risks of the settlement in a binary rating – good or bad.

The scope of the checklist will be wider than that described in Box 4.3, and will include an EGM-constructed-typology of land tenure that takes into account formal/non-formal tenure; ownership/tenancy; documentation and process of acquisition, and gender. The experts (participants) will be asked to make an informed guess about the distribution of each of the types of tenure. This could be seen as a mini-Legal and Institutional Framework Index described below.

4.4. POLICIES: HOW TO MONITOR THE CITY/COUNTRY DYNAMICS (MACRO-LEVEL ANALYSIS)

4.4.1. Option 3: Legal and Institutional Framework index

UN-Habitat has developed the Legal and Institutional Framework Index (LIFI) and two indicators to track progress on the policies of the city/country domain. It should be noted, however, that the findings from the LGAF and the LPI could also be considered as an option,

especially in cities where there is no LIFI.

The first indicator is the extent to which informal settlements are included within the land information systems.

Summary scale (see Table 4.7):

0-200   =   very low tenure security

201-400   =   low tenure security

401-600   =   satisfactory tenure security

601-800   =   high tenure security

801-1000   =   very high tenure security

The second indicator sheds light on the extent to which legal provisions against forced evictions are accessible and effective.

The concern for the monitoring of the land and policy dimensions is, clearly, not only limited to the settlement level, but also valid for broader domains – city and national. The lessons learned from the LIFI pilots highlighted the need to complement the UIS results (objective and subjective household experience) with another instrument that could uncover the policy environment, the legislative

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BOX 4.3. CHECKLIST FOR SETTLEMENT QUALITATIVE ASSESSMENTS

Land legal history
- Cases of transition from non-formal to formal codes of tenure
- Cases of disputes emerging/settled due to multiple land codes
- Extent of legal literacy
- Incidence and process of evictions

Land jurisdictional status
- Extent of informal settlements on
- Public or private land
- Tribal land
- Land planned for infrastructure

Types of access to land
- Squatting
- Purchase legal
- Purchase of land subdivided illegally

Strength of networks
- Social network
- Political connections
- Feelings of tenure security
- NGO & University & Municipality connections

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situation and the extent to which existing legislation is implemented. Subsequently, the Legal and Institutional Framework Index (LIFI) was developed by a team of in-house experts[61] through the partnership with the Global Land Tool Network (GLTN).

In contrast to the quantitative indicators that the UISs provide, the LIFIs are meant to produce qualitative information. The process of data gathering, one or multiple EGMs, is qualitative. Through these EGMs, experts decide the extent to which the policy environment in these cities is secure. In order to reach a summary conclusion quantification is need as the experts are asked to rate the situation of the legislation and the institutions.[62]

LIFI results could serve two purposes that are equally important. First, assuming that LIFI would be applied in many cities, the LIFI score could be used to make sub-national, regional/global comparisons. Second, in cities where both a UIS and a LIFI are implemented within the same timeframe, the LIFI score will be synthesised to provide a full picture of the city.

The LIFI EGM process provides rich qualitative information that could be instrumental in the interpretation of micro level results, but could also enable policy makers to make a summary rating of the land's legal situation and the policy environment, generalised into three values:

- High/reasonable level of security of tenure

- Medium level of security of tenure (some aspects are favourable, some are not)

- Low/no level of security of tenure

Aside from the general assessment that could be reflected in the summary score, each of the 23 indicators of the LIFI could also be used separately.

Rationale

The above methods help to understand the security of land tenure situation from the perspective of the people and the land. The picture, however, would be incomplete without sufficient knowledge about the land and housing policies and how they are implemented. The main instrument for measuring this is the Legislative and Institutional Framework, which has a lot in common (both thematically and methodologically) with the World Bank's LGAF and the AUC-UNECA-AfDB's LPI.

Common interest in the monitoring of land policies by different institutions would not only create a critical mass of monitoring data for global comparisons, but also generate a stronger demonstration effect on the national and local domain.

61 The team consisted of Clarissa Augustinus, Nefise Bazoglu and Jan Turkstra. It worked during the first quarter of 2003 on the formation of LIFI and produced the Guidelines on the Monitoring of Secure Tenure.

62 UN-Habitat (2006). Legal and Institutional Framework Index: Summary Application. Nairobi.

TABLE 4.7. **LEGAL AND INSTITUTIONAL FRAMEWORK INDEX (REVISED 2011)**

#	POLICY THEME	VARIABLES	Weight (W)	Score (S) (0-10)	W*S
EVICTIONS					
1	Multi-stakeholder involvement		5		
2	Process prior to evictions				
21		Consultation	2		
22		Justification	3		
23		Notification	3		
24		Recording	3		
25		Compensation/relocation	3		
3	Legal aid to potential evictees				
31		Legal provisions for legal aid exist	6		
32		Legal provisions are practiced	6		
REMEDIAL & PREVENTION					
4	Legislative & policy enforcement				
41		Constitution and land laws protect occupants and their possession rights	5		
42		Coherent, unambiguous and non-contradictory land laws and pro-poor land-use practices	5		
43		Gap between the practice (de-facto) and legal (de-jure) systems is not wide	5		
5	Equality of access to tenure -				
51		Laws of property inheritance and property registration are non-discriminatory.	3		
52		Co-tenure registration of multiple household members is possible.	3		
53		Household members have inheritance and development rights;	3		
54		Renters have tenure security according to clear regulations and rent is regulated	4		
6	Land administration practices	Functioning of Land Management and Land Administration Institutions			
61		Basic land registration / recording systems are in place and operational	8		
		HHs with informal tenure are included in the information systems	7		
62		Institutional capacity	3		
63		capability	4		
64		Stability	3		
65		Affordability of services	4		
66		Transparency	4		
67		Land disputes			
671		Individuals have legal entitlement to access information and consultation about decisions that might violate their right to adequate housing	4		
672		Institutions are accessible at local level and provide information and assistance	4		
			100		(0-1000)

Source: UN-Habitat (2011) , LIFI Form revised after the Nairobi LIFI exercise in July 2010. Source of original instrument, UN-Habitat (2003) "Guidelines, Operational Definitions for Household Surveys in Cities on Secure Tenure and Slums", Nairobi

As explained in the main text, the LIFI embraces a wide array of indicators (23) grouped around three thematic areas: evictions; remedial and preventive measures; and land administration and management. Lessons learned from the pilots done in Nairobi and São Paulo helped to select a set of critical indicators among these thematic areas. According to expert opinion about these two cities, both countries and cities, not least Saõ Paulo, enjoy an environment of progressive legislation and reasonably sophisticated institutions which would otherwise rank their land tenure security level as "high" or "very high". However, both groups of experts were equally certain that the optimistic legislative environment was far from effective, mainly for the following reasons:

- Criteria of eligibility limit access to legal opportunities. Especially for the residents of informal settlements, protective provisions of laws did not apply. Alternatively, tenants with informal sub-let arrangements could not apply for state protection in case landlords evicted them.

- Implementation of pro-poor policies is not possible due to insufficient or inadequate institutional capacity even when potential evictees were eligible for free legal aid.

It is because of such reasons that it was decided to focus on one aspect of the policy environment which is considered to be a critical sign of the "effectiveness" of policy implementation, under the scenario of a pro-poor legislative environment. It should be noted, however, that when such laws are not predominant, then the choice for "one critical indicator" might be different. This is something to be decided upon by the steering and the technical committees suggested above.

Method

What is proposed as a single indicator showing the status of security of tenure is the extent to which informal settlements are considered part of the mainstream system of tenure. Obviously, the first step towards mainstreaming is "acknowledging" the settlements, and the step in acknowledging them is to include these units within the land information systems, even before they are regularised. The indicator is estimated as shown in Table 4.8.

Suggested programme interventions

The action points described for other options generally applicable for implementing the LIFI. The process of collecting information on this could benefit from a synergistic partnership with the LGAF of the World Bank and the LPI of the AUC-UNECA-AfDB. At the national domain, the steering and technical committees proposed above could coordinate the LIFI exercise. The most crucial element, in this case, is the choice of experts for participating in the EGM, the facilitator and the local consultant.

The basic outline that the LIFI exercise should follow includes the following:

1. Steering committee contracts a local consultant to produce a situation analysis of legislation and institution vis-à-vis security of tenure. The purpose is to ensure that the EGM starts with a common understanding of the concepts and the situation, at the onset (similar to what the LGAF of the WB suggests).

2. Experts are selected from various stakeholder groups (private practitioners, professionals, technocrats or managers from the city, the central government, academia, civil society, and so on). The critical issue here is to select experts who are articulate and able to freely discuss issues and express their opinions.

3. A two-day EGM is held as their opinions and scoring is obtained via three instruments: land legal history form; security of tenure typology of individual units by documents and the LIFI form at the end of which a report is produced.

Practice and lessons learned

Two best practices that can be cited are the Nairobi and the São Paulo LIFI. The Nairobi LIFI, which is attached to this paper, was a turning point after which the LIFI was substantially revised and major revisions were made to the scoring technique. Also, one of the four sections – Functioning of Land Markets – was omitted because the LGAF instrument monitors this parameter much more elaborately. UN-Habitat might consider replacing this element with the LGAF instrument, but also to hold a separate EGM.

Drawing from the LIFI experiences in selected Latin American cities in 2006 and in Nairobi 2010, it was decided that the LIFI form and process needed to be revisited. The major change brought about by experimentation and consultation was the exclusion of the last section, Land Markets. This was because the experts thought it was not as relevant to the security of tenure of urban inhabitants as other components were. What is more, by taking too long, and therefore causing excess fatigue among experts, the application of this component has often jeopardised the reliability of other sections. It was also decided that the four component scores are utilised separately, instead of synthesizing them under one survey score for each city.

The suggestion to resort to intra-regional comparison of countries rather than global,[63] was also endorsed by UN-Habitat. Lessons learned from the Nairobi LIFI (Attachment II.) and the in-house discussions with the GLTN and the GUO also produced two additional tools: i) typology of tenure arrangements according to expert opinion; and ii) land legal history.

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[63] Durand-Lasserve, A. (2009). LIFI Internal Report on Methodology. UN-Habitat.

TABLE 4.8. **ESTIMATION OF INDICATOR 3 : ST-CITY**

ST-City1	=	High= LIFI score on the indicator 'integrating informal units within information systems' is 5-10 Low= LIFI score on same indicator is 0-4
ST-City2	=	High= cumulative LIFI score on indicators 'legal aid to potential evictees exists' and 'legal provisions are practiced' is 9-12 Low= cumulative LIFI score on indicators is 0-8

4.5. MANAGING THE SUSTAINABILITY OF MONITORING SECURITY OF TENURE

Monitoring the Millennium Development Goals has generally been a challenge because, for the vast majority of countries, monitoring systems are limited at best. The main sources of data are the Statistical Offices, which are often very reluctant to go beyond the blueprint monitoring they have always done to analyse data to retrieve different indicators, unless there is political pressure and additional funding opportunities.

4.6. CONSOLIDATING INDICATORS AT THE THREE DOMAINS: PEOPLE, LAND, POLICIES (INDIVIDUAL UNIT, SETTLEMENT AND CITY/COUNTRY)

The researchers or decision makers could choose one or more of the above options. It is proposed, for the reasons given above, that three options to monitor the security of tenure at each level are used. Under this scenario, the challenge of synthesising the findings from multiple options should be addressed. This section describes how to combine findings on different domains.

Students of land and social studies will immediately be concerned about the vast amount of data and what to do with it. Unless synthesised, the data is going to produce volumes of descriptive information, which might be useful in terms of geographically targeted programme interventions, but is of less value for monitoring and knowledge management. Therefore, the last step will be to propose a method to synthesise all this information into one summary indicator. Figure 4.1 summarises the three results that could come out of the combination of household and settlement-level assessments.

The advantage offered by this method is that it embraces the two realities of security of tenure – the people and the land/settlement. Other tools reviewed among the micro-level monitoring methods do not do this. The stand-alone qualitative assessment, for example, indirectly provides information about the households through expert opinion or desk review.

Hence, in a particular city, the final score of the household survey, which provides an objective perspective on families and households, is combined with the final score of the LIFI to synthesise the results from these two different levels into a one-indicator-summary for the policy maker.

In line with this design, a number of UISs were implemented, either through add-on questions to existing household surveys or through a full UIS in a limited number of cities between 2002-2006. The lack of programme funding, however, jeopardised coordination between the LIFI and the UIS implementation, as convenience took precedence over planning. UN-Habitat chose to pilot both UIS and LIFI in as many cities as possible, whenever the opportunity arose. Therefore, the current situation shows that not all cities which had full UIS had LIFI, and vice versa. There is only one city, São Paulo, where both the UIS and LIFI were carried out within the same period – summer 2006 – so this paper uses the data on São Paulo to better describe the suggested methodology. However, one important leg of the design, micro data at the settlement level, is missing from the São Paulo data. This is because the settlement dimension was not included in the method proposed at the time. As a result, the case study below cannot fully demonstrate the implementation of the proposed method.

It is clear that much work and thinking, although fragmented, has already been done by UN-Habitat on the question of monitoring security of tenure to date. The methodology proposed below benefits both from this background and input from the GLTN, the World Bank and regional development agencies in Africa, all of which has enhanced collective thinking on the issue of measuring security of tenure.

FIGURE 4.1. **SYNTHESIS OF INDIVIDUAL UNIT (PEOPLE) AND COMMUNITY/LAND INDICATORS**

GOOD	MEDIUM	LOW
People (individual units) enjoy high tenure security & risks at community level are none or low	1. People do not feel secure but community risks are low, or 2. Households do feel secure but community risks are high	Neither people nor community are secure

FIGURE 4.2. **SUMMARY VALUE OF COMBINED MICRO INDICATORS WITH MARCO (LIFI) SCORING**

HIGH	MEDIUM	LOW
• Both micro and macro levels enjoy high ST • Both micro and macro show medium ST • Micro shows medium and macro high ST • Macro, medium and micro show high ST	• Micro shows high ST while macro shows low ST • Micro shows low ST while macro shows high ST	• Micro and macro level scores show low ST • Micro level shows medium ST while macro level reflects low ST • Macro level reflects medium ST while micro score ranks as low ST

Favela Sta. Teresa, Rio de Janeiro, Brazil. © UN-Habitat

5. OPERATIONALISING THE TENURE SECURITY INDICATORS

This section will cover the set of specific indicators and their relationship to the broader theoretical definition of security of land tenure. Students of monitoring often face the dilemma of using indicators that often sound too simplistic for phenomena that are complex by nature. Our quest to develop a monitoring method on security of tenure is not immune to this issue, therefore the logical links of the indicators to the wider definition will be articulated in as clear a way as possible. Albeit its didactic appearance, this method will de-mystify the statements that are inherent in the definition of security of tenure (Box 5.1).

The indicators that match the concept/definition of security of tenure revolve around evictions, documentation, duration of residence/use, and the bundle of rights that the families enjoy (Table 5.1).

The long list of household indicators will be summarised in four broad statements on whether the situation is optimal or less-than-optimal, vis-à-vis the four meta-indicators. The rationale for the selection of each group of indicators will be elaborated upon in the next section, noting, however, that the indicators could also reveal the different periods of the family land-use cycle (Figure 5.1).

TABLE 5.1 SET OF SECURE TENURE INDICATORS AT THE HOUSEHOLD DOMAIN

INDICATOR	DEFINITION
1. EVICTIONS	
Family history of evictions	Number of households evicted in the last five years per 10,000
Perception HH's risk	% household heads who fear they will be evicted
Perception on women's risk	% women who fear they will be evicted from HHs after divorce/separation/loss of husband
2. DOCUMENTATION AND ACQUISITION	
Documents held:	% families which hold: • Titles • Certificate of occupation • Purchase agreement/receipt • Property tax receipts • Utility bills • No documents
Process through which dwelling (and/or land) was acquired	% families acquiring land by: • Formal finance sources (public or private) • Direct purchase from private individuals/developers • Self-arranged building (direct labouring or via a developer)
3. DURATION OF RESIDENCE/USE (OF CURRENT DWELLING/WORKPLACE)	
	% households residing at current dwelling for 10+ years (proxy indicator for adverse possession). The same formula also holds for workplaces
4. RIGHTS	
Restrict	% families believing they have the right to prevent others from entering
Develop	% families believing they have the right to develop their dwelling
Sell	% families believing they have the right to sell
Inherit	% families believing they have the right to inherit

FIGURE 5.1. **INDICATORS TELL PEOPLE'S EXPERIENCE OVER TIME**

FUTURE

PRESENT

- Eviction-fear (HH head
- Eviction-fear (spouse)
- Guarantee of rights for future

Type of
document

- Eviction history
- Type of acquisition
- Duration of residence/use
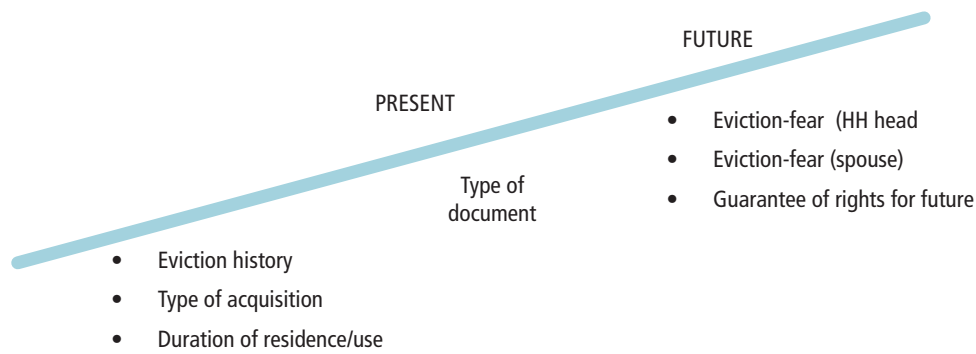
BOX 5.1 DEFINITION OF SECURITY OF TENURE

...The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it,

...The certainty that an individual's rights to land will be recognised by others and protected in cases of specific challenges; or, more specifically,

...The right of all individuals and groups to effective government protection against forced evictions.

UN-Habitat (2008) Secure Land Rights for All, GLTN Publication, Nairobi

The respondents to the UIS questionnaires provide information on their past experience, their present situation and their perceptions and estimates about what their future might be. The question about documentation reflects the extent to which the current document held by the household head will protect his/her rights for the future; it will also provide information on the likelihood of an eviction. It also reveals the process through which he/she got the document.

The type of document is just one factor among many that determine a family's security of land tenure. The processes through which the households acquired the land/dwelling also shapes, to a certain extent, the present and the immediate future, while the length of time they have been resident could strengthen their social networks and the established land/housing markets (legal or extra-legal).

Information which the respondents declare about the future (for example their risk of eviction, access to rights) is not only a predictor, but is also an assessment of what happened in the past and the extent to which the household is currently equipped to have security of tenure in the future. Yet, all these are also affected by the policy environment, as family history does not occur in a vacuum.

5.1.   TYPE OF DOCUMENT AND TENURE RIGHTS

The documents which individuals or households possess reflect (indirectly or directly) their relationship to the land they live on. It describes the series of past decisions and actions taken by those who have a claim to the particular piece of land.

According to the definition proposed by UN-Habitat, land users are secure if they are confident that they "will not be arbitrarily deprived of the rights they enjoy over land" (Box 5.1). A critical factor which bolsters this confidence is the certainty that these "rights are recognised by others". But who are the "others"? Although not explicitly stated in any definition, from the literature it can be deduced that "others" includes two main groups – state and non-state actors. This is because each group has its own conditions for "recognising" peoples' rights. The common condition required by both types of actors is the existence of a document.

The document reflects two very significant processes in the tenure cycle of the household/individual/ settlement – whether (or how) the land/dwelling was earned. It reveals the different ways in which someone acquired the land – whether they bought it, they took out a mortgage, they put the land to productive use, they rent the land, or they inherited it. The document also shows whether the person who uses the land took the necessary steps to legalise or legitimise ownership. Ways to do this range from formal land registration to utility connection.

Caution should be shown, however, in interpreting the categories for how someone acquired land as mutually exclusive, as the line between them and processes is not always clear An individual/household may have a complex story to tell rather than one fixed situation regarding his/her security of tenure. A family may move on to land as illegal occupants who have nothing but utility bills to prove their legitimacy, and then within a generation or sooner become legal title owners.

Similarly, one type of document might tell several stories. For example, a title owner could have acquired this

document through various means: inheritance, purchase, mortgage, gift, donation or, sometimes, illegally.

Despite its shortcomings, however, this method is useful to make links between the broader concept of security of tenure and specific indicators.

5.2. EVICTIONS

The most visible violation of housing rights facing the urban poor today is the practice of evictions without due legal process.[64] Under international law, forced or unlawful eviction is defined as "the permanent or temporary removal against the will of individuals, families or communities from the homes and/or land they occupy, without the provision of, and access to, appropriate forms of legal and other protection".[65]

5.2.1. The rate of past evictions

Being forcefully evicted from one's home or workplace is among the most serious and dramatic violations of human rights. Evicted families are deprived not only of their homes, but also of their jobs and the services they receive from society – schools and clinics among others. It affects the survival and development of family members. Being evicted without due legal process and with no legal support is a manifestation of absolute insecurity of tenure. Therefore, the indicator defined as "the proportion of households that were evicted in the past five years" does reflect the extent to which authorities have violated people's rights. As an indicator, the eviction rate in a city gets it strength from its factual nature. That is, a person or household has either been evicted in the past or not; it is not a hypothetical question.

However, when the interviewee does not understand the purpose of the question and his/her response includes both types of evictions - lawful and unlawful[66] - the question needs improving. To refine the indicator, it is proposed that future UISs include other questions to distinguish between unlawful and lawful evictions. The difficulty in determining the differences among evictions, however, is that the line between unlawful and lawful evictions may

> **BOX 5.2. PERCEIVED FEAR FROM EVICTIONS ASSESSED WITHIN THE CONTEXT OF THE POLICY ENVIRONMENT AND THE LEGAL STATUS OF COMMUNITY LAND**
>
> If eviction laws and practices embody critical features which would protect human rights of citizens , and, the legal status of community land is favourable and people do not fear evictions, then the *security of tenure is high* (definitely)
>
> If the eviction laws and practices do not embody the critical features which would protect the human rights of the citizens, and, people fear evictions, and, the legal status of land is not favourable, then *security level is low*
>
> All other options emerging from the combination of the findings from three domains, then security of tenure is medium which means that the situation at one or two of the domains is negative. One of the many combinations that emerged follows as below:
>
> If policy environment is favourable, and, people do not fear evictions, and, the legal status of community land is not favourable, then the *security of tenure is medium.*
>
> For more information on the Human Rights Indicators and methodology, visit http://www.ohchr.org/EN/Issues/Indicators/Pages/framework.aspx or http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx)

often unclear.[67] The experts on Nairobi, for example, noted that profit motives often lay behind a substantial number of "well-justified evictions" that were carried out to make way for infrastructure projects. The same is true for decisions made by the Istanbul Metropolitan Municipality, which evicts people from homes or workplaces for purposely 'public goods' (to create a green area for example), but after a short period changes the decision on land use and subsequently uses the cleared urban land for high-end housing projects.[68]

Also worth discussing is the household head's (respondent) possible confusion about the difference between the lawful and unlawful evictions.

5.2.2. Fear of eviction

Often, the residents of illegal settlements and squatter areas are chronically stressed because they are anxious that they may be unlawfully evicted by government authorities, by the owners of their dwellings or the land owner. Their fear could be based on an objective assessment of their own situation – the extent to which they have abided by the law, the settlement's location, and the political and social dynamics, among many other reasons.

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[64] UN-Habitat (2006). LIFI report on Saõ Paulo. p 6.

[65] Committee on Economic, Social and Cultural Rights (1997). CESCR General Comment 7, The Right to Adequate Housing; Forced Evictions. See also the Special Rapporteur on Adequate Housing on Basic principles and guidelines on development-based evictions and displacement are contained in Annex I of the report of the Special Rapporteur, A/HRC/4/18:, particularly , paragraph 3-15 and annex II on possible indicators). To know more: http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx'

[66] At this stage, it should be noted that the concept of 'lawful' and unlawful' is context/country specific. This assumes that a prior legal history has been undertaken to ensure that the interviewer (as well as the person analysing the data) are familiar with laws (national and international) to be able to explain to the interviewee the nuance between lawful and unlawful evictions. The use of guidance material such as the forced eviction assessment questionnaire (http://www2.ohchr.org/english/issues/escr/docs/ForcedEvictionsAssessmentQuestionnaire.pdf) can be helpful in this context. Alternatively, the team could assess the outcome of policies, laws and practices on tenure insecurity: change in homelessness (both primary and secondary); change in number or proportion of evictions; increase/decrease in poverty, increase/decrease in marginalization, etc. Again, the methodology should be carefully designed to untangle the issues of attribution and contribution.

[67] UN-Habitat (2010). LIFI report on Nairobi: 22 June, 2010. Nairobi.

[68] Committee on Economic, Social and Cultural Rights, General Comment 7 (1997) and Special Rapporteur on Adequate Housing on Basic principles and guidelines on development-based evictions and displacement are contained in Annex I of the report of the Special Rapporteur, A/HRC/4/18 (available at: http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx)

Protest against forced evictions in Manila, Phillipines. © UN-Habitat

Alternatively, inhabitants could arrive at purely subjective conclusions based on what they hear from neighbours or on news about evictions that may or may not affect them.[69] The reason for this perception remains largely unknown. It is clear, however, that fear adversely affects the families' quality of life because it prevents them integrating into urban life.

How is such a perception related to the legality or legitimacy of security of tenure? Assuming that high levels of fear among inhabitants is based on a rational assessment of their tenure situation, would it qualify as a proxy-indicator for reflecting an objective risk of eviction? Or, if the family feels secure, does it mean that it really is? The answers to these questions can only be given when the feelings of the household members are put into the legal and institutional context. There are four possible conclusions that could vary with the different scenarios:

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[69] Flood, J. (2006). Ibid.

5.3.   DURATION OF USE (DWELLING, WORKPLACE)

The length of time that someone has used the same dwelling/settlement is regarded as an indirect indicator for security of tenure, especially for those who have squatted or acquired their dwelling through the unauthorised informal housing/land market. The hypothesis is that the more years a family has lived in the same dwelling, on the same piece of land, the greater the ability of the family to move, incrementally, from one evolutionary stage of informal tenure to the next, until they are recognised formally. The same pattern is applicable to the period that land is used for any other purpose – production, commercial or services – however, as the current data focuses on residence alone, the analysis will concern housing.

The above hypothesis may sound too linear and mechanical to apply to the irregular patterns often seen in the course of an individual unit's (family, in this case) tenure cycle.

Some people may say that a progressive and optimistic evolution towards a definite solution – regularisation of tenure – is too idealistic. It could be said that if this were a universal trend, then the incidence of evictions would not be so high. Literature on tenure around the world repeatedly shows that this pattern does match reality. Among many case studies one which traces the life cycle of a rural migrant-turned-public officer tells the saga of a man (household head) who

"…began (life in Ankara) with a total disregard for the existing legal system, (gained) a gradual recognition of rights and built up equity (resulting from) 50 years of determination, patience, entrepreneurship and confidence."[70]

The package of personality traits "determination, patience, entrepreneurship and confidence" in recent migrants, coupled with enabling policies, can work in favour of the households who reside long enough to move one step further towards regularisation of tenure.

Adverse possession – the policy instrument applicable for the squatters that occupied both public and private land, up to a certain period of time – is a significant route for regularisation. In Brazil, scholars describe[71] how squatters can obtain rights over private land of up to 250 square meters after five years of peaceful occupation.

Many instances have been documented in which the possession of certificates could help residents get individual (or group) titles if they prove that they have been living permanently in the area.[72] Another factor which increases these residents' tenure prospects is the chance to build social networks and capital.

5.4. THE RIGHTS INDEX

Much of what was discussed in the previous three dimensions of security of tenure – documentation, evictions, duration of residence – indirectly alludes to rights of tenure. But this particular dimension directly reflects the extent to which households have (perceive) different types of rights – restriction of entry, to develop, to sell and to inherit – which offers many economic opportunities for the development of the family and of the economy, because the vibrancy of the land market is enhanced.

An eviction-free society (that is, no or low eviction rates; no fear of eviction) shows that it does not tolerate human rights' violations[73]; when the majority of households enjoy the above spectrum of rights, it shows that tenure relations are ripe for creating a prosperous family and economy.

[70] Balamir, M. (2002). Ibid. p.164 in G. Payne (ed.). Ibid.

[71] Fernandez, E. and Rolnik, R. (1998). "Law and Urban Change in Brazil" in Fernandes and Varley (eds.) Illegal Cities Law and Urban Change in Developing Countries. London: Zed. Quoted from UN-Habitat (2003). Handbook on Best Practices, Security of Tenure and Access to Land. Nairobi.

[72] Kagawa, A. and Turkstra, J. (2002). "The Process of Urban Land Tenure Formalization in Peru" pp.57-75 in G. Payne (ed.) (2002). Ibid. p. 61.

[73] In addition to international standards describing the human rights of all, additional guidance can be found on the protection against forced evictions in the Basic principles and guidelines on development-based evictions and displacement of the Special Rapporteur on adequate housing (http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx. Moreover, on situations of man or nature caused displacements, one could refer to the Guiding Principles on Internal Displacement (http://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx) and to the "Pinheiro Principles" on Housing, Land and Property restitution for refugees and displaced persons (http://www.ohchr.org/EN/Issues/Housing/Pages/Documents.aspx)."

A view of Sao Paulo, Brazil. © UN-Habitat / Claudio Acioly

6. SECURITY OF TENURE IN SAO PAULO: A CASE STUDY

The overall method proposed in this paper consists of the synthesis of three levels of data: household, settlement and city. Due to the lack of data in the research carried out in São Paulo, however, the case study will be limited to an analysis of two levels – the individual unit (household, in this case) and the city (policies). This case study is based on the combination of household survey and LIFI for data collection: i) questions added on to an existing household survey in São Paulo, and ii) the LIFI.

The chapter is organized around the content of the indicators (type of documents, evictions) rather than the domains, because the point of this chapter is to demonstrate a contextual analysis.

São Paulo is among the most studied cities but, by coincidence, it was also included in the random sample of 35 cities on which UN-Habitat planned to carry UISs as part of a monitoring programme that embraced not only security of tenure, but also the Habitat Agenda indicators and the selected MDG goals.

The survey in São Paulo does not cover the complete package of the security of tenure module because UN-Habitat piggybacked on a household survey carried out by SEADE, a Brazilian research company, with selected questions on security of tenure. With all the advantages associated with piggybacking – cost-effectiveness and avoidance of redundancy in data collection – the approach also had some disadvantages: indicators of women's eviction-anxiety and land, housing and human rights are missing.

However, the fact that the São Paulo survey results were drawn from a large sample – close to 5,000 households – enabled more in-depth analysis than was possible with the stand-alone UISs that were implemented in other cities such as Lagos (Nigeria) and Casablanca (Morocco).

Another methodological opportunity that UN-Habitat created in São Paulo was to pilot the LIFI within the same time period – summer 2006. Based on the review of the contextual analysis above, it is possible to illustrate the contextual analysis depicted above.

The sections below will cover the LIFI and the household survey (SEADE) results and a combined summary assessment of both. The sections will expand on the main indicators that will be illustrated with the São Paulo data in this paper: documentation, evictions and duration of residence.

6.1. TYPE OF DOCUMENT

6.1.1. The LIFI results reflecting city/country policies

The LIFI exercise follows a qualitative approach in which in-depth dynamics and nuances add richness and meaning to the quantitative indicators retrieved by the SEADE household survey. The value added by the LIFI process (as explained above, among the methods used by UN-Habitat) is the latitude given to the experts to debate, disagree and reach consensus. In this way, the statistics which only give a cross-sectional picture of a city are placed within an historical legal and political context.

Both UN-Habitat and the participants believed that the LIFI in São Paulo was rigorous enough for the purposes of this exercise – it proposed a methodology that synthesised the qualitative dimensions with quantitative indicators. The experts involved represented academia and research; the real estate sector; the land registration institution; the Ministry of Public Works; the Ministry of Housing and Urban Planning; different branches of the São Paulo municipality; NGOs and civil society.

6.1.1.1. Evidence of a pro-poor approach within legislative framework

The policy environment in São Paulo is satisfactory with a total score of 50 out of 100, according to expert opinion. In this paper, separate scores of different sections are used to establish thematic correspondence with the indicators produced by the household survey in São Paulo. The particular component of LIFI which matches with the documentation indicator of the UIS is the combination of the sections, i) Government response: Remedies (Regularisation and Prevention), and ii) Land Administration Practices. The resulting sub-total, 39 out of 50, is indicative of a policy environment that qualifies as "secure".

There are several reasons why this score is relatively high in comparison to other components. First, an assessment was made and all experts agreed that both Brazil's Constitution and the land laws protect occupants and/or their rights to possession. However, they thought, these laws lacked coherence because they are often contradictory and their interpretation leads to confusion. The experts thought that the incoherence led to difficulties in the regularisation process, but they also conceded that large steps were taken recently towards the regularisation of favelas and loteamentos in São Paulo (the previous government granted 43,000 titles).

The legislation was rated positively because, the participants thought, it contained checks and balances against discriminatory tendencies towards certain groups, in particular women and renters.

On the other hand, the experts on São Paulo conceded that a large gap existed between theory (progressive legislation) and practice. They believed that the performance of the state and municipal actors gave little cause to believe that the implementation of the laws was good. Because people were not conscious of their rights, they could not apply civic pressure on the stakeholders who are supposed to implement the motions of these progressive laws.[74]

6.1.1.2. Land administration system lags behind the legislation

The power of civil society is important for putting popular laws into practice. But without a reasonably established management and information system (technically and administratively) the implementation of such laws could be jeopardised. More concretely, staff capacity and ability, digital information systems, affordability of registration and the easy flow of procedures[75] are among the crucial ingredients for achieving tenure security for most urban residents.

The Municipal Law (Lei no:13.514/2002) qualifies as a very progressive instrument; it allowed families who squatted on public land – a significant segment of the city's population – to benefit from a special concession for self-help dwelling. The government has also taken the steps to facilitate the implementation of the municipal law by appointing state-sponsored lawyers to assist the poor to register their land; by reducing the period of registration from 30 to 15 days; by instating a system of registration through the internet; and by ensuring that staff turnover is low. Building on this law, São Paulo started an expanded programme of regularisation for households living in the 160 favelas. But the poor programme coverage – eighty households in five settlements – did not match the programme's good intentions.

Many factors account for this less-than-ideal result, including:

- The registry of public land is far from complete;
- Court decisions in favour of collective adverse possession are difficult to get;
- The technical services that the São Paulo Municipality should provide are not sufficient (land information exists, but retrieving it is difficult due to unsatisfactory levels of organization and lack of digital systems);
- High cost of registry limits families' access to documents enabling security of tenure.

The opinions of experts are confirmed by the SEADE survey in São Paulo, which revealed that only seven per cent of the dwelling owners could declare they had a concession of occupation. São Paulo is typical of many cities where, despite the popular and egalitarian ideology driving the legislation, structural and technical factors slow progress down.

The EGM, aware of these shortcomings, agreed that the policy environment in São Paulo does offer a favourable environment for people who seek to boost their security. A massive segment of the population – the 160 favelas intended for regularisation – could be considered less risk-prone, than those which are not covered within the regularisation targets.

6.1.2. Household Survey results

The findings from São Paulo's UIS will follow the sequence in which indicators themselves evolved. As mentioned above, the earliest indicator for security of tenure was the percentage of home ownership among households. The hypothesis behind this indicator was that homeowners were more secure than renters. More recently, the focus on ownership versus tenancy shifted to formality versus informality of tenure arrangements; the tables corresponding to these categories will be presented. Finally, the concept of a continuum of tenure rights gained ground. Building on efforts to define operational indicators, this study borrows from the concept of continuum while using the household head (or respondent) as the unit of analysis. The resulting analysis will offer finer distinctions between the informal tenure types, but not necessarily according to the types of rights' categories articulated in the continuum of tenure rights. This approach will be illustrated by the São Paulo UIS data.

It should also be noted that the findings are based on respondent declaration, and that household heads (respondents) were not asked to show their documents.

The vast majority of residents in São Paulo, 78 per cent, declared that they own their dwellings. One resident in five said that he/she was a renter. According to Table 6.1, only four per cent admitted they occupied or invaded land.

Contrary to predictions, there is no significant difference between types of settlements – slums and non-slum – as both owners and renters seem to be equally distributed within the two types of neighbourhoods. The most significant finding relates to the group of householders who describe themselves as occupiers/invaders.

As expected, the majority of this group, 68 per cent, lives in slums since squatting on public and private land most frequently occurs in slums. Surprisingly, 32 per cent of this group also live in formal areas. The finding as such supports the thesis that formal and informal modes of tenure started to have permeable borders.[76]

[74] UN-Habitat (2006). Ibid. p. 12

[75] De Soto, H. (2000). Ibid.

[76] Perlman, J. E. (2002). It All Depends: Buying and Selling Houses in Rio's Favelas. Washington D.C.: IHC publication; Durand-Lasserve, A. Informal Settlements and the MDGs: Global policy debates on property ownership and security of tenure. GUD Magazine, 2(1).

TABLE 6.1. **THERE IS NO DIFFERENCE BETWEEN THE DISTRIBUTION OF OWNERS AND RENTERS IN SLUM AND NON-SLUM AREAS**

GENERAL TENURE TYPE	SLUM		NON SLUM		NUMBER
	Row %	Column %	Row %	Column %	
Dwelling (and/or land) owners	49.4	77	50.6	79	4033
Renters	47.6	18	52.4	20	973
Occupier/invader	68.4	5	31.6	2	190
TOTAL SAMPLE HHS	2584	100	2612	100	5196

Source: UN-Habitat (2010) Secondary analysis of Urban Inequities Survey data for Sao Paulo, SEADE (2006)

Needless to say, understanding the status of tenure security is more complex than the simple declaration of the ownership. The first question to be asked is if a tendency exists among interviewees to over-claim ownership? Assuming that these respondents all own their dwellings, in the legal sense, does the status of ownership per se, bring security of tenure in land? Finally, the team asks, if renters are as "insecure" as claimed?

6.1.2.1. Declaration of ownership: is there an over-claim?

The responses to the question on documentation will be presented in order to uncover if there is a tendency to over-claim. The survey information, evidently, is not sufficient to conclude that the respondents over-claimed ownership, although 23 per cent of declared-owners did not (or could not) answer the proceeding questions on documentation.

Among all the 4,033 declared-owners, seven per cent, 285 household heads, did not respond to the question on documentation (Figure 6.1). Among them, four per cent, 123 household heads, did not know which document they held. Included in this group could be both the over-claimers and young members of the family (who really did not know) responding on behalf of the household head. Hence, we cannot be certain that among the 11 percent all over-claimed. A substantial portion of household heads, 14 per cent (495) admitted that they did not have a document to prove they legally own the dwelling. These findings bring about issues need to be taken into account in establishing a monitoring system: First, data on declared-ownership is too crude an indicator to tell about the situation of security of land tenure in a given city. Second, in order to probe more refined indicators, UISs have to be based on big samples, 4,000-5,000 households, as in São Paulo.

6.1.2.2 Ownership and security of tenure: is there a relationship?

The single question and answer on ownership, albeit in use for decades, is not sufficient to show whether a family is secure or insecure. Depending upon the type of document that households own, security of tenure might vary. Among the inhabitants of São Paulo, in the strictly legal sense, only owners with titles, 37 per cent, or with a concession of occupation, six per cent – altogether 43 per cent – can be considered to have a fully secure status vis-à-vis their relationship to land/dwelling.

The extent to which the 38 per cent of households where a purchase receipt for dwelling/land is kept brings them tenure security needs further discussion. These households definitely do not belong to the legal domain of tenure relationships, but most likely to an informal housing/land market network that could provide legitimacy, because they can prove they have "earned" the dwelling by purchasing it. There is reason to believe that the traits of this group resemble the residents of the favelas.

According to the LIFI experts:

> "The favela is a housing unit built (generally without the permission of owners) on private or public land by individuals or organized groups of low-income people who build the shacks, dig out access tracks and steps, and illegally run power lines (and perhaps install a few water taps), all without the formal agreement of the authorities, who often just look the other way. Informal settlers in the favelas take advantage of urban land left unused for a long period of time. The main difference between a favela and other types of settlements is that there generally is no legal relationship between the occupier and the real owner, whether public or private."[77]

[77] *UN-Habitat (2006). LIFI Report. Saõ Paulo. p. 5.*

FIGURE 6.1. **A SUBSTANTIAL PROPORTION OF THE DECLARED OWNERS DO NOT ANSWER QUESTIONS ON DOCUMENTATION, SAO PAULO, 2006**

5196 Total households in sample

4033 Dwelling owners

3748 Respondents on documentation

3625 Who know documentation

3120 have document
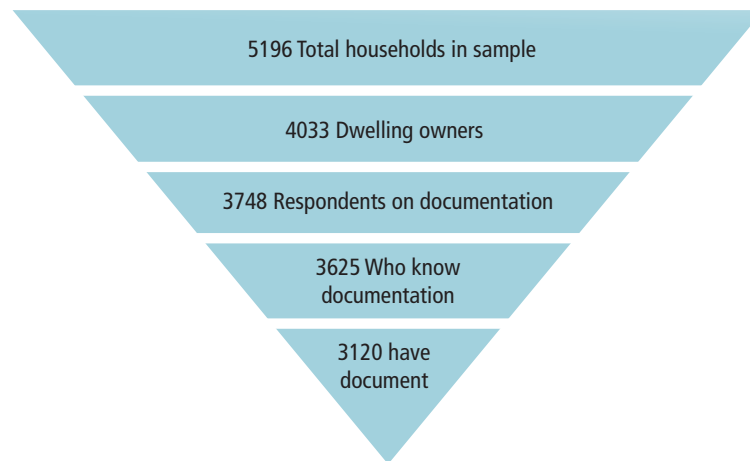
In favelas, it is clear that a relationship does exist between the occupier and a third party, if not the owner. First, the purchase receipt reveals that the occupier is connected to the informal housing market, developer or illegal networks and the settlement itself, which gives them a degree of legitimacy, if not legality. Second, they reinforce their legitimacy, and the relationships, by resorting to extra-legal registry alternatives, reminiscent of the witness-based transactions recorded in the neighbourhood association, for the favelas of Rio.[78]

Insecurity at its most extreme, applies to those declared owners who do not have any (formal or informal), documents – a significant 13 per cent of all "owners" in São Paulo. Possibly included in this group, however, are the squatter settlers who genuinely believe that they own their dwelling due to political support or allegiance to illegal networks. Experts, however, say that the strength of civil society does not seem to explain why people claim ownership.[79]

From the methodological perspective, it can be concluded that the question of ownership, albeit a good starting point for the censuses and survey questionnaires, as a stand-alone indicator does not measure the extent to which the families have de jure or de facto security of tenure.

The distribution of households by types of documentation available to them shows that 60 per cent of title owners live in non-slum areas, while the rest live in slums. Certificates of occupation are rare, regardless of the type of neighbourhood. Private purchase agreements and/or receipts are the most common documents – 39 and 37 per cent in slums and non-slums respectively. Sixty per cent of those households without any documents are in slums. This is not as high as expected (Table 6.2).

The distribution of documents within each type of settlement clearly shows that there is no significant difference between them. In slums, in 39 per cent of cases, the primary document proving ownership or possession of a dwelling is a private purchase agreements or a receipt. The next important document is a title document which 31 per cent of household's had. Finally, approximately one in every five households – 17 per cent – has no document proving legality. The households in the planned and regularised neighbourhoods are not very different. Title holders are the majority making up 43 per cent of households. But they are not the predominant group as 37 per cent of families have purchase agreements showing that unauthorised land development is also valid in non-slum areas. That 10 per cent of families in non-slum neighbourhoods have no documents also illustrates that the degree of tenure security in slum settlements (and others) does not vary significantly as predicted.

6.1.2.3 Tenancy: is it insecure?

Liberal ideology associates the status of tenancy with vulnerability.[80] More recently, though, renters are not approached as a homogenous category. The group of renters who had formal tenancy contracts were regarded as being secure. The main gist of the UN's campaign on "secure tenure for all" is that it carried the concept of tenure security beyond ownership.

Tenants in São Paulo are a small minority and make up 18 per cent of households. Of these, only 29 per cent have the protection of a formal contract, which guarantees (legally) that the two parties (tenants and landlords) honour their responsibilities and ensures their rights are protected.

Bu a substantial group of tenants, 37 per cent, have only private agreements with a landlord, which casts doubt on the extent to which institutions could protect tenants from unlawful evictions.

[78] Perlman, J. E. (2010). It All Depends: Buying and selling houses in Rio's favelas. Paper presented at the World Urban Forum 2010, Rio de Janeiro, produced for IHC.

[79] UN-Habitat (2006). LIFI, Saō Paulo. Ibid.

[80] UN-Habitat (2003). Ibid.

TABLE 6.2. **STATUS OF DOCUMENTATION BY DWELLING OWNERS**

DOCUMENTATION	TOTAL		SLUM		NON SLUM	
	N	%	Row %	Col %	Row %	Col %
Title (proxy landowners)	1387	37	39.4 (564)	31	60.6 (841)	43
Certificate of occupation	228	6	55.3 (126)	7	44.7 (102)	5
Private purchase receipt or agreement	1434	38	48.9 (701)	39	51.1 (733)	37
Other documents	81	2	48.1 (39)	2	51.9 (42)	2
No documents	495	15	60.2 (298)	17	39.8 (197)	10
Don't know	123	3	56.9 (70)	4	43.1 (53)	3
Total	**3748**	**100**	**1798**	**100**	**1968**	**100**

Source: UN-Habitat (2010) Secondary analysis of Urban Inequities Survey data for Sao Paulo, SEADE (2006)

TABLE 6.3. **STATUS OF DOCUMENTATION BY DECLARED RENTERS BY SETTLEMENT TYPE**

DOCUMENTATION	TOTAL		SLUM		NON SLUM	
	N	%	N	%	N	%
Formal and/or written contracts	278	29	136	29	142	28
Private agreements/informal contracts	250	26	108	23	142	28
Other documents	23	2	11	2	12	2
No document	416	43	207	45	209	41
Don't know	6	1	1	1	5	1
Total renters	**973**	**100**	**463**	**100**	**510**	**100**

Source: UN-Habitat (2010) Secondary analysis of Urban Inequities Survey data for Sao Paulo, SEADE (2006)

Finally, the vast majority of tenants, 43 per cent, who appear to have no documents, could be considered very vulnerable because they are not recognised by any party.

According to the survey results, approximately one in five householders in São Paulo is a tenant of one kind or another. Close to one third of them could be considered to be secure in terms of tenure due to the formal or written contracts they got during the renting process. A considerable number of tenants, however, fall between being secure and insecure; their only route to security of tenure is via the informal contract or private agreement they made with the landlord or with a third.

In all, more than half of tenants have either formal contracts or informal agreements of some kind with landowners. Forty-three per cent of tenants being without any documents is too large a high-risk group to be acceptable.

Renters who have formal contracts are distributed equally within slums and non-slums. A higher incidence of informal contracts in formal areas is surprising, but expert opinion on São Paulo's tenure situation explains the contradiction:

> "The worst living conditions in Brazilian cities are found in the corticos (tenements), which are generally older or are dangerous buildings roughly divided into rooms and flats, overcrowded and dirty, and providing, at best, sub-human living conditions. In these settlements, a lack of any legal security persists because the person who actually rented the room out is not the owner and the courts do not recognise that the residents have legal rights of tenure".[81]

The conventional wisdom that tenants in São Paulo are more likely to have insecurity of tenure than owners appears to be supported by the evidence. But the differences

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[81] UN-Habitat (2006). Ibid. p. 5

between types of tenants seem to play a significant role in explaining security of tenure. Apparently, marginal tenants are in the most vulnerable position.

Although renters are more likely to be vulnerable, the formality of tenure arrangements is a stronger determinant of security than the status of ownership. In order to verify this hypothesis with the São Paulo survey data, the household types are grouped into two categories: formal and informal. While the former includes the dwelling owners and renters who hold the documents - title and formal contract respectively – which are essential for their security of tenure, the informal category includes all the rest. Accordingly, only a minority of households - 35 per cent - enjoys absolute security of tenure; the rest are entirely insecure (Figure 6.2).

The relationship between the formal/informal tenure arrangements and the security of tenure, however, is more dialectic than deterministic. While all modes of formal tenure are secure, the opposite cannot be said for all informal modes of tenure. The section below will expand on related issues.

### 6.1.2.4. Beyond the formal tenure arrangements

Is there a fine but important distinction between the different types of informal tenure arrangements? The differences between the intra-informal tenure arrangements are as crucial as the differentials between the formal and informal groups. If the concept of informality is seen to be identical to that of insecurity, in São Paulo two families out of every three – close to 10 million – would qualify as insecure. To argue, therefore, that the households grouped under the category "informal" is a homogeneous block is not realistic. The sheer size of this population and the opportunities provided by São Paulo as a vibrant free-market economy will offer many alternative routes to getting security of tenure than just a single legal route.

In view of this, the research team set out to develop more refined categories of tenure within the block of informal tenure arrangements, drawing from theoretical construct of a the tenure continuum.[82] It is important not to use the generic terminology because, in the context of surveys, the respondents are not expected to answer in legal categories. Instead, classification will be made according to the meta-indicators discussed above.

The result of this, Table 6.4 is a significant step forward in monitoring of security of tenure. The social groups (renters/owners) are merged in an analysis by the criteria of formality/informality in tenure relationships, which in turn is subjected to further grouping according to the degree of security of tenure.

The study forms four categories ranging from entirely secure tenure to entirely insecure tenure. The entirely secure categories include all the legal arrangements

[82] UN-Habitat (2008). Secure Land Rights for All. p.7, GLTN, Nairobi.

FIGURE 6.2. **HOUSEHOLDS BY FORMAL AND NON FORMAL TENURE ARRANGEMENTS, SAO PAULO, 2006**

Formal tenure   Non-formal tenure arrangements
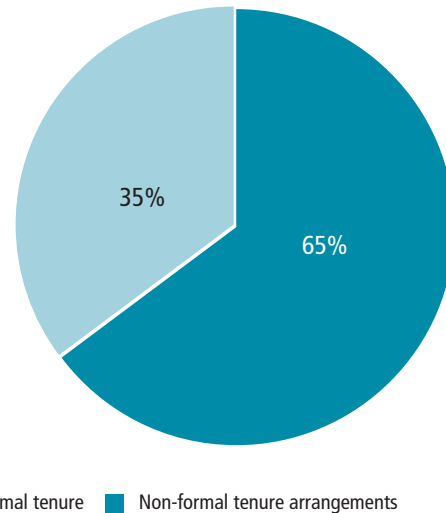
discussed above: the title and the formal tenancy contract kept by the dwelling owner and renter, respectively, are indicative of the package of rights that are recognised by the state.

Among the households of São Paulo, more than one third of households, 35 per cent, is entirely secure. In view of the high population growth rates over the past couple of decades, this finding was not surprising.

The second, the **semi-secure tenure** group, includes the dwelling owners who have certificates of occupation or private purchase agreements/receipts, or tenants on registered contracts. This group is a hybrid which brings together residents who have a document that shows their legal status – certificate of occupation – and an illegal but a legitimate group of people who have a purchase agreement. Certificates of occupation are more tenuous than titles because they are issued by the state – the municipality or local/central governments – and they move the household closer to a formal arrangement of tenure.

In São Paulo, however, that a mere five per cent of households was given certificates of occupation implies that the outreach for government regularisation programmes has not been that successful, as was emphasised by the expert opinion summarised in the LIFI.

Private purchase agreements, on the other hand, are instruments for getting legitimacy rather than legality. That 29 per cent of families in São Paulo, a considerable segment, belongs to this group suggests that the informal housing market provides not only a substantial portion of housing, but also the document which could protect inhabitants from eviction or other restrictions on their rights. It could be assumed that this group is at the point of transition between informal and formal domains of tenure.

TABLE 6.4. **HOUSEHOLDS AND THE EXTENT OF SECURITY, SAO PAULO, 2006**

FORMAL/ INFORMAL	EXTENT OF SECURITY	TENURE CATEGORIES	HOUSEHOLDS	PROPORTION
FORMAL		Dwelling owners holding titles	1387	28
		Renters holding formal/written contracts	278	6
	ENTIRELY SECURE (LEGAL)	Sub total	1675	34
NON FORMAL		Dwelling owners w/ certificates of occupation	228	5
		Dwelling owners w/ private purchase agreements	1434	29
	SEMI-SECURE	Sub-total	1662	34
		Dwelling owners with other documents	81	2
		Renters on private/verbal agreements	250	5
	INSECURE	Sub-total	331	7
		Dwelling owners without any documents	495	10
		Renters on alternative arrangements	23	0
		Renters without documents	416	8
		Invaders/grabbers	190	4
	STRICTLY INSECURE	Sub-total	1124	22
		Unknown	129	3
		TOTAL	**4911**	**100**

Households described as **insecure** include the dwelling owners with evidence of ownership other than title and purchase agreement, two per cent of households in São Paulo, and tenants whose only safety mechanism is a verbal/informal agreement with landlords, five per cent. Together, these groups constitute the vulnerable populations also able to use, to a small extent, some defence mechanisms against possible evictions. They have taken a few concrete steps towards the formal world by connecting to utility supplies and by paying taxes.

The last group of households depicted as **strictly insecure** have the most to lose because, clearly, they have not earned their dwelling, and are therefore not recognised by any party, state or non-state. These households, composed of the owners who admit to having occupied/invaded their dwellings, have no documents, and renters in dwellings without the consent of the landowner are very secretive. Not surprisingly, this group is a significant proportion – 22 per cent – of all households in São Paulo.

Hence, with its portrayal of three different types of tenure security, São Paulo tells the story of three cities rather than two[83] in terms of household security of tenure. Potentially, more than one third of the households benefit from full-security status, another third has developed strong,

legitimate if not legal, buffer mechanisms to strengthen their security of tenure; finally the authorities have many ways to justify evicting the balance of households.

6.1.2.5 Method of dwelling acquisition

The way in which a dwelling is acquired may reflect the range of relationships the owner has engaged him/herself in legitimise or legalise his/her status as an owner. The extent and type of contact with the state or narrower informal institutions/organizations/networks is a critical point in shaping the recognition of his/her tenure status. Generally, the stronger the institutional contact during the acquisition process, the higher the likelihood of tenure security.

In line with this, it could be hypothesised that the individuals' use of public or private housing finance, as a result of which evidence of the relationship with formal institutions is obvious, security of tenure would be stronger. In São Paulo, one in ten owners has used public or private finance companies to buy their homes (Table 6.6).

Inheritance and donations are also secure options for acquiring a dwelling, but describing this category as "entirely secure" could be misleading if the type of document the household has is not taken into account.

[83] UN-Habitat (2010a). Cities and Citizens, Saõ Paulo: a tale of two cities. Nairobi.

TABLE 6.5. **BROAD LAND TENURE CATEGORIES, SAO PAULO, 2006**

FORMAL/NON-FORMAL	EXTENT OF SECURITY	HOUSEHOLDS	PROPORTION
FORMAL	Strictly secure	1675	35
NON-FORMAL	Semi-secure	1662	35
	Insecure	331	7
	Entirely insecure	1124	23
	Sub-total non-formal	3117	65
	Total (excluding unknowns)	**4782**	**100**

The number of families in this category is too small, methodologically, to further break down into types of documents.

Buying privately from an individual may not be clearly connected to security of tenure unless other variables are known. One in five households in São Paulo has acquired their dwelling through direct purchase.

When acquiring a dwelling through self-help, it is argued, the "owners" are the less likely to have institutional contacts. Invading or illegally occupying a dwelling typically shows little or no contact with formal or informal institutions.

A striking fact is that a considerable majority of the people in São Paulo, 56 per cent, acquired their dwelling through self-help methods. Of these, 77 per cent have built their own house. Although the survey did not include a question on whether they received help from relatives or friends, global patterns repeatedly show a collective effort of community or family members in building the dwellings. The rest, 23 per cent, who did not take part in building, took the lead in building the dwelling by planning, organising paid or unpaid labour, buying construction materials and arranging the logistics. As suggested by the LIFI, such processes are more usual in the favelas of São Paulo.

Next in rank, at 23 per cent, is the group of owners who bought their house through private sector developers or private mortgage channels.

Public sector dwellings, combining projects and donations, amount to only eight per cent of the total dwelling types bought. The fact that inherited dwellings make up only three per cent of dwellings bought reveals that there is little inter-generational transfer

Evidently, indicators on the process of acquisition are far from sufficient to be connected to security of tenure. During the EGM held within UN-Habitat, there was some debate about a possible theoretical problem because the type of acquisition may not be a valid marker of security of tenure. The experts argued that the variable of documentation should be the main determinant.

Based on the above, one can partially agree with their argument and continue to assert that, for those families holding less secure documents such as purchase receipts, tax receipts or utility bills only, the process of acquisition would provide some understanding of the level of institutionalisation, market integration and the strength of social networks.

The empirical evidence on São Paulo strengthens the argument of the EGM. Unless respondent-errors played a role in the results, the cross tabulation of documents and the processes do not point to a strong correlation between them.

Of all household heads who self-built/organised their house, close to half of them – 46 per cent – acquired a purchase receipt. (This document could be a receipt for the land provided by the informal market, and/or the construction material). Against expectations, however, 37 per cent of the self-build group acquired titles, casting some doubt on the hypothesis that suggests a link between self-help processes and insecurity of tenure. Another result which does not fit the expected pattern is that the proportion of people without any documents among the self-help group is relatively low at 13 per cent.

6.1.2.6. The two biggest tenure groups in São Paulo

The biggest tenure group in São Paulo, 38 per cent of households in São Paulo, consists of people who acquired their dwelling/land through self-help and kept either a purchase receipt or title. This is followed by the group of families who privately bought their dwelling and retain a title or a receipt, 25 per cent. If it is presumed that the interviewees replied correctly to questions on documentation, this figure may suggest that people within the self-help category have been proactive in integrating themselves into the world of formal registration. The other

TABLE 6.6. **MODE OF ACQUISITION AMONG DWELLING OWNERS, SAO PAULO**

MODE OF ACQUISITION	N	PROPORTION RESPONDING
Self-built (owner worked during construction)	1459	43
Self-organized building process (did not work on construction)	446	13
Public housing finance programmes	244	7
Private finance channels	88	3
Bought privately from individual	1012	20
Inherited	86	3
Donation (either by public or private organization)	25	1
Occupied or invaded	3	0
	3363	100
TOTAL RESPONSE RATE (AMONG 4033 OWNERS)		**83**

possibility, of course, is that what they declared as "title" is not a legal title.

In sum, the process of acquisition needs to be investigated further and combined with qualitative research to be included in a composite index. Currently, this variable is not developed enough to be included in an index and it was decided to do a contextual analysis on the basis of the respondent's declared status as an owner or renter and the declared documentation.

6.1.2.7. Summary assessment of the UIS São Paulo results

The above is a thorough analysis of the situation of the households, based upon the declaration of the household head (or his/her replacement). There are two possible conclusions to be drawn: one is an optimistic scenario, the other pessimistic. In the case of the optimistic scenario, the households of São Paulo are secure, with 70 per cent of families interviewed saying that they had documents that provide full security of tenure for 50 per cent of them and partial security for the other 50 per cent.

Alternatively, those advocating a formal approach to tenure security will consider households in São Paulo to be insecure, as only 35 per cent of respondents (dwelling owners who have titles and renters who have registered contracts) enjoy any legal status. It is proposed that documents that provide partial security of tenure - a purchase receipt, certificate of occupation or informal agreements with landlords for example - be considered as a route to security of tenure. The conclusion, then, is that the individuals/households enjoy reasonable security of tenure.

6.1.3. Contextual analysis results

The separate assessments of the policy environment (LIFI) and the situation of the households are consistent.

The final step of the proposed method is to place the results of the household survey into the context of the policy environment and see if there is a correspondence. The documentation indicators derived from the UIS present many reasons to believe the situation among the households of São Paulo vis-à-vis their tenure security is reasonably positive.

In view of the substantial share of households with absolute insecurity of tenure (23 per cent), the assessment could have portrayed a negative picture. It is not fair, however, to suggest an absolute failure of government policies in a rapidly growing mega-city based entirely on the size of the group with totally insecure tenure. The optimistic scenario is chosen to assert that the majority of households (67 per cent) do have tenure security, albeit with varying degrees.

The critical question is whether the governments (federal and/or local) apply effective policies to boost the urban poor's security of tenure. The LIFI for São Paulo also gives a reasonably positive answer to this question. Even if issues hinder effecting the pro-poor laws, there appears to be enough latitude for the private sector, community networks and self-initiatives to move the poor towards the secure end of the tenure continuum. The conclusion is that the citizens of São Paulo could be considered to have a reasonably secure status within a people-friendly policy environment.

6.2. EVICTIONS IN SAÕ PAULO

Evictions will be reviewed from two angles: the fear of being evicted in the near future, and the incidence of eviction in the recent past. The first indicator illustrates the perception among inhabitants, based either on an objective or subjective assessment by the household head; the second is a factual indicator.

TABLE 6.7. **TYPE OF DOCUMENT BY DOMINANT MODES OF ACQUISITION**

FREQUENTLY SEEN TYPES OF ACQUISITION	TYPE OF DOCUMENTATION	N	% TYPE OF DOCUMENT PER CATEGORY	% AMONG TOTAL HOUSEHOLDS
SELF-BUILT	Purchase receipt	604	46	21
	Title	478	37	17
	No document	165	13	6
	Certificate of occupation	43	3	1
	Other	19	1	0
	Sub-total	1309	100	[45]
PRIVATELY PURCHASED	Title	383	47	13
	Receipt	366	45	12
	Certificate of occupation	29	4	1
	No document	18	2	0
	Other	13	2	0
	Sub-total	809	100	[28]
DEVELOPER-BUILT	Purchase receipt	180	45	6
	Title	158	39	5
	No document	38	9	1
	Certificate of occupation	22	5	1
	Other	3	1	0
	Sub-total	401	100	[14]
MORTGAGE (PUBLIC OR PRIVATE)	Purchase receipt	163	50	6
	Title	90	28	3
	Certificate of occupation	40	12	1
	Other	30	9	1
	No document	0	0	0
	Sub- total	323	100	[11]
INHERITANCE	Title	57	65	2
	Purchase receipt	15	17	0
	No document	9	10	0
	Other	6	7	0
	Certificate of occupation	1	1	0
	Sub-total	88	100	[3]
TOTAL		**2930**		**100**

6.2.1 The LIFI results

In contrast to the positive picture of tenure got from a review of documentation, the policy environment surrounding evictions fails to protect the human rights of the potential evictees or the victims of evictions.

Experts on São Paulo note that forced evictions have increased since the start of the new millennium. Recent examples include the evictions from buildings known as "Plinio Ramos" and "Paula Souza"; both are old buildings in the central district with irregular occupation. The experts also concede that technical and legal support for the poor is not sufficient despite their rights being guaranteed by the Federal Constitution (Article 134). Although the local government has made agreements with the Brazilian Lawyers Association to help poor

people threatened by eviction, results remain to be seen.[84]

The themes of assessment for the policies regarding evictions revolve around three issues: i) multi-stakeholder involvement; ii) processes prior to evictions (consultation, justification and others); legal aid to evictees.

Multi-stakeholder involvement is part of the process defined by Brazil's new Civil Code 2002 (Article 1228), however this law is not implemented and the public has no power in affecting decisions. Media interest in evictions, which focuses on sensational cases only, is limited and could only be drawn by community activism.

Grassroots action is rarely supported by an organized social movement and is mainly spontaneous, except for those activities supported by few small-scale partnership

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84 UN-Habitat (2006). LIFI Report Saõ Paulo. p. 7.

projects involving universities, NGOs and people organized around improving corticos (tenements). The NGO representatives concede that most evictions are still carried out without public participation or media involvement.

The EGM also assessed the processes and legal requirements for i) consultation with residents and their organizations; ii) justification; iii) notification before evictions; iv) recording events after eviction; and v) compensation for evictions. Their assessment on the performance of the state parties on these legal obligations concluded they were less than optimal, apart from the obligation to notify people before evictions. In some sectors, residents sub-letting the corticos cannot even claim for legal protection.

Another critical information illustrates that despite the availability of the pro-poor legislation, bad administration within the relevant public offices could jeopardise the situation of the evictees: Because the evictions are not recorded, the victims are not entitled to legal aid. It is the responsibility of the party who initiates an eviction to keep an official record of the eviction but there is no sanction for those who neglect to do so. The new law provides for repercussions for this neglect, but the law has yet to be implemented.

With regard to due compensation for evictees, the main problem is the inadequacy of compensation rather than the lack of it.

6.2.2 The household survey (SEADE) results

6.2.2.1. Eviction-anxiety

The findings indicate that the level of fear among the inhabitants of São Paulo is very high (Table 6.8). More than 20 per cent of owners or tenants are afraid of being evicted. Although it is difficult to explain the reason for this, a closer look at the types of households shows that those who are afraid have a strong reason to be so, and vice versa. That is, their tenure situation is extremely tenuous. For example, 61 per cent of occupiers and invaders of dwellings/land expect to be evicted.

The second indicator is an expression of confidence that people feel about the governments' capacity and intentions to protect the rights of evictees in the event of possible evictions. The findings reveal that the vast majority of the citizens of São Paulo – approximately 80 per cent – do not trust the government whether they are owners, renters or invaders.

Another cross-variable tabulation, between the type of document that households have and the perception of risk of eviction, suggests a close relationship: 91 per cent of title owners, 82 per cent of purchase document owners appear to feel safe. Not surprisingly, there is also a correspondence between the vulnerability of those households without documents and the fear of being evicted.

Although in material terms tenants with informal contracts or no-documents are, objectively, a high-risk group, their own assessment of risk does not differ from that of tenants with formal contracts. One possible explanation of these negative expectations among renters is the ever-present risk of defaulting on the monthly rent.

Tabulation of the perception variables by type of acquisition does not point to a significant difference in anxiety levels among groups. The most relaxed appears to be those households with a mortgage, with 90 per cent of them being certain that they will not be evicted. Levels of certainty that they will not be evicted among other groups that acquired their dwellings through private purchase or self-build are lower and range between 77 and 80 per cent.

How can this result be explained? It could be due to the strong and sensational media coverage about recent evictions from two old buildings in São Paulo83. Since those respondents with documents that give them a legal or legitimate existence feel much more secure than those without such documents, it can deduced that the perceptions originate from a rational and impartial assessment of their own situation. Thus, it can be safely presumed that the perception about eviction is a reasonably acceptable proxy to measure security of tenure in cases where the questionnaires do not include any other data.

One finding which does not support one of the hypotheses (that renters with formal contracts have reason to feel secure), needs revisiting. The empirical outcome was expected to show a much lower level of eviction fear among those with a formal tenancy arrangement than the actual level. There are two possible explanations: either the hypothesis or the method is incorrect. The possibility of a measurement error is higher. The renters might have equated "eviction" with a landlord's decision to end their

TABLE 6.8. PERCEPTION OF EVICTION BY TENURE TYPE AND TRUST ON AUTHORITIES

GENERAL TENURE TYPE	% NOT AFRAID OF EVICTION	N	% TRUST AUTHORITIES	N
Dwelling owners	78.6	3170	24.4	178
Renters	77.8	757	20.3	36
Occupier/invader	38.4	73	20.6	20
Number responded		5196		1004

Source: UN-Habitat (2010) Secondary analysis of Urban Inequities Survey d ata for Sao Paulo, SEADE (2006)

contract at short notice or with other requests to leave the dwellings. If this is the case, then the question on eviction lacks concept validity. The renters could have had difficulty in distinguishing between "forced evictions"[85] and a landlord's demand that dwelling be evacuated – something which does not necessarily violate the resident's rights but is inconvenient. The UIS questionnaire should be revised to make this distinction.

6.2.2.2. Past eviction experience

The second indicator in the monitoring of evictions in a city is the incidence of actual eviction experience. Ideally, the indicator specifies the period in which eviction took place, but in the São Paulo UIS the period was not specified and families were asked to respond to the query: Were you evicted or removed from your previous home? It is for this reason that the indicator for São Paulo could provide us with a general trend, rather than a specific incidence.

Based on a single question only, this indicator could have potential validity problems. It should be noted, therefore, that the respondent might not differentiate between forced and unforced evictions. One is inclined to accept the current scope (forced/unforced evictions) of this indicator because it measures something very precious, that is, the extent to which households were "evicted or removed against their will". We should also note that it is very difficult, if not impossible, to distinguish between lawful and unlawful evictions with a survey instrument.

A more serious methodological problem is evident from the lower-than-expected response rate of 39 per cent. Presuming that a measurement problem, such as memory-lapse, is not applicable for an event that is impossible to forget, it is probable that the question was not well understood or was intimidating.

Despite these technical weaknesses, however, the result does tell us that the eviction rate is fairly high at four per cent of all households. It is argued that in mega cities, an eviction rate of more than two per cent is considered to be high because "evictions" by nature should be a rare event, unless there is a war or a natural disaster.

6.2.2.3. Contextual analysis

In terms of evictions, both the experience of people and the systematic expert opinion reached the same conclusion: a high proportion of people in São Paulo experience eviction-fear and experts believe that the state of the legal and the institutional policy environment justifies this fear.

85   For more information on detailed definition of forced eviction and its assessment: refer to the following: http://www2.ohchr.org/english/issues/escr/docs/ForcedEvictionsAssessmentQuestionnaire.pdf

Committee on Economic, Social and Cultural Rights, General Comment 7 on forced evictions, 1997, http://www2.ohchr.org/english/bodies/cescr/comments.htm

Special Rapporteur on Adequate Housing, Basic principles and guidelines on development-based evictions and displacement, A/HRC/4/18, Annex I, 2007, http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx

OHCHR/UN-Habitat, Fact Sheet n°21 (Rev.1), the right to adequate housing, 2009, http://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx

The household survey finding that this anxiety is highest among renters is also confirmed by the LIFI's explanations about the plight of the residents who have rented corticos apartments from their illegal owners or have sub-let them from former tenants. The relationship of the tenants to the institutions, in this case, becomes too complicated for legal checks and balances to be of any help. In other words, the fact that there are many stakeholders between the public authorities that could use legal instruments to protect evictees and the resident-tenants themselves, means that these residents are not eligible for protection.

Yet, no explanation exists in the LIFI regarding the eviction-anxiety among tenants who are, in theory, legally protected by formal contracts. In fact, in the part of LIFI that revolves around the remedial and preventive capacity of the governments, the opposite – that the tenant protection laws are very strong – is asserted by the experts. This area needs further qualitative investigation, before a pattern is established. The LIFI of São Paulo reflects a trend very typical of some cities/countries that have legislation almost up to international standards of human rights but falter in its implementation because of many structural issues and an historical legacy of decades-long authoritarian governance systems:

- Weak civil society;
- Insufficient capacity among the technical and legal corps;
- Extremely high population pressure;
- Quest for maximising rent from urban land.

Despite this, however, the LIFI of São Paulo provides an extremely relevant source of information by placing the household survey results into a legal and social context.

6.3. DURATION OF RESIDENCE

The analysis of the proportion of householders who lived in the same dwelling in São Paulo for five years or more was included in one of the household survey monitoring instrument. Although inductions could be made from different components of the LIFI, because there is no component on adverse possession in particular, this section will fall short of the proposed contextual analysis.

The majority of householders in São Paulo (61 per cent) have lived for more than five years in the current residence where they were interviewed (Table 6.12). Therefore, regardless of how they stand in relation to other indicators – documents and eviction experience – they are potentially entitled to urban adverse possession (security of land tenure attained after the squatter households have peacefully inhabited the land for a certain period provided that they meet certain criteria), which is a significant legal opportunity available to the urban poor.

TABLE 6.9. PERCEPTION OF EVICTION OF OWNERS BY DOCUMENT TYPE, DWELLING OWNERS

DOCUMENTATION	POSITIVE EVICTION PERCEPTION	NUMBER
Title (proxy landowners)	90.8	1260
Certificate of occupation	74.1	169
Private purchase receipt or agreement	82.1	1177
Other documents	74.1	60
Without any document	61.0	302
Don't know	65.0	80

Source: UN-Habitat (2010) Secondary analysis of Urban Inequities Survey data for Sao Paulo, SEADE (2006)

TABLE 6.10. PERCEPTION OF LIKELIHOOD OF BEING EVICTED BY DOCUMENT TYPE, TENANTS

DOCUMENTATION	POSITIVE EVICTION PERCEPTION	NUMBER
Formal and/or written contracts	79.9	222
Private agreements/informal contracts	80.0	200
Other documents	78.3	13
No document	75.0	312
Don't know	83.3	5

Source: UN-Habitat (2010) Secondary analysis of Urban Inequities Survey data for Sao Paulo, SEADE (2006)

The Brazilian Constitution, Article 183, spells out clearly the eligibility criteria for adverse possession:

- The private urban area occupied may not exceed 250 m2;

- Occupation must have been continuous for a minimum of five years without legal intervention from the owner;

- The property is used only as habitation for themselves or their families;

- The occupier does not own any other property, urban or rural.[86]

Not all families in this group are eligible for adverse possession rights because some of them may not have fulfilled the conditions other than duration of residence.

What Table 6.12 also shows is that residential mobility is also high – a trend typical in big and mega cities where employment-related migration is high. Approximately one household in five has lived in their current house for less than one year and almost 40 per cent have lived there for five years or less.

What does this finding reveal about tenure security for a significant segment of São Paulo citizens? One possibility is that the demographics and the families' residential status makes them potential candidates for adverse possession. The extent to which these rights are actually accessed is difficult to find out from existing data. Since only six per cent of respondents can show certificates of occupation, it is highly probable that they either resorted to the free-market solutions and gained legitimacy, or could not improve their tenure status.

It is therefore proposed that the documentation and eviction indicators should be related to the duration of residence to enable a better association with security of tenure. In the event that a strong correlation exists between the former indicators and the duration of residence, it is suggested that it is used more than the documentation and eviction indicators because all interviewees (100 per cent) replied to this question. Because this question could be included in surveys that have only small samples, this question presents methodological opportunities.

All the household heads selected for the sample responded to this question: How many years have you lived in this residence? And this presents opportunities in the methodological sense. In small surveys, it could be used as a proxy variable for security of tenure.

6.4 POLICY IMPLICATIONS FOR SÃO PAULO

The monitoring exercise highlighted the different dimensions of security of tenure: documentation and eviction, both from the household and from the policy perspective. The duration of residence, however, could only show the situation from the family's experience. The conclusion, therefore, should be seen in this context. Despite a number of elements missing from the original plan, the São Paulo case study shows that the monitoring system works.

The findings from the household survey and the LIFI, coupled with the rich literature on São Paulo, provide sufficient evidence to draw some conclusions. Drawing on the above analysis, this paper can conclude that the tenure security level for the citizens of São Paulo can be described as medium – a result that matches that of the expert evaluation, LIFI. This conclusion is not reached by

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[86] UN-Habitat (2005). Land Tenure, Housing Rights and Gender in Brazil. Nairobi.

TABLE 6.11. **PROPORTION OF HOUSEHOLDS EVICTED OR REMOVED FROM THEIR PREVIOUS RESIDENCES (CRUDE EVICTION RATE)**

STATUS OF PAST EVICTION	FREQUENCY	PERCENTAGE
Evicted	76	4
Not evicted	1948	96
Total response	2024	100
Total sample size	5196	
Response rate		39

TABLE 6.12. **DURATION OF RESIDENCE AT CURRENT DWELLING, SAO PAULO 2006**

DURATION	FREQUENCY	PERCENTAGE
0-1 year	897	17
2-5	1137	22
6-10	1039	20
11+	3073	41
Total	5196	100

FIGURE 6.3. **HOUSEHOLDS BY THE DURATION OF LIVING IN THE SAME RESIDENCE (YEARS) (NOT AT SCALE)**

taking a simple average of the ratings on documentation and evictions, but by synthesising the total range of information through an evaluative logic.

While the majority of São Paulo households enjoy a legal or a legitimate status in their relation to land, the legislative and institutional framework for Brazil and São Paulo barely functions as an enabling channel for a positive result. The households which can benefit from a range of land rights do so through their own efforts through the channels of a free market economy.

The public policies are, in theory, very progressive and protect the human rights of the urban poor, but the practice is a different picture. Eviction rates, which are far higher than acceptable, have led to a state of eviction-fear among people. This negatively affects families' quality of life even if fear, alone, does not lead to evictions. Threatened by possible evictions, families do not rely on the government to protect them.

Regardless of the fact that the households of São Paulo cannot be considered to have security of land tenure, the success of the policies, on the one hand, and of the society on the other, should not be undermined, in view of the immense demographic challenges. Even the best of governments, markets and people cannot be fully successful if urban mobility is extremely high, as it is in São Paulo, where almost one fifth of households have settled in the last 11 months.

This is not to suggest, however, that the governments should allow only "the fittest to survive" in an environment where all political and economic behaviour is improvised. If the leadership allows only a free-market system, solutions may be reached, but only in 50 years as the history of a number of countries has shown. By contrast, government institutions should be radically strengthened to implement the almost-ideal legislation and gain people's trust, while civil society could boost its role of consciousness raising and social mobilisation.

Mathare informal settlement in Nairobi, Kenya. © UN-Habitat

7. CONCLUSION

The method proposed in this document draws on qualitative findings about city policies (LIFI) and the settlement with the quantitative findings as well as household survey methods such as the Urban Inequities Survey. This method has its strengths but it also has areas that may need further improvements as it is implemented.

The strength of the method is demonstrated by a robust analysis of findings by drawing from the comparative advantages of both techniques – qualitative and quantitative – that reflect both micro- and macro-level information about security of tenure. On the one hand, the probability sampling makes the results representative for the whole population (São Paulo, in this case). Statistics provide a summary indicator that could explain the security of tenure status of a city in one sentence, or with one entry in a table among other regional or global cities. From this perspective, indicators being estimated from large household samples is the preferred method for global monitoring of the MDG indicator – the proportion of households with security of tenure in cities. The statistical result obtained therein, is the universal standard reference for comparing the ultimate situation of security of tenure within cities.

On the other hand, the qualitative part of the method captures the richness of local knowledge gained through years of experience and expertise among surveyors, geographers, politicians, civil society and the private sector. The nuances captured with the expert group meetings and the rationale gained through the debates, adds sense and meaning to statistical findings. The qualitative exercise, LIFI, also helps triangulate the abstract statistics with the reality on the ground. By combining the comparative advantages of both methods – quantitative and qualitative – the contextual analysis that synthesises all three levels of information (city, settlement and household) could be described as the optimal method for understanding security of land tenure within a specific setting.

A problem, however, results when one of the levels is missing. In the case of São Paulo, the missing information applies to the settlement level, but a more likely scenario is going to be something missing at the household level. Regardless of the value added, they contribute to global monitoring and to theoretical discussions. Household surveys based on large samples may be too costly to replicate in a critical mass of cities.

The cost of adding a security of tenure module to existing surveys (partial UIS) may range between US dollar 50,000-80,000. On the other hand, the cost of a full UIS with a large sample is not less than US dollar 200,000. But, the pressure for the monitoring of tenure security at the local level is too great to wait for the perfect method. Therefore, an improved-LIFI combined with a settlement assessment could well serve the purpose of monitoring for the local leaders, administrators and planners and add to universal knowledge.

One finding of the São Paulo case study is that the results of the LIFI and that of the UIS match. In other words, when UIS statistics indicate a positive trend, so does the LIFI rating and vice versa. One should be cautious however, in concluding that the correlation between the LIFI and the household survey results are always valid. One can conclude, however, that when there is a critical mass of pilots in which there is consistency between results acquired from the hard quantitative and the qualitative methods, the implementing agency might consider them as substitutes. The key is to build up more pilots like the one presented here.

This being said, however, this report strongly suggests that the choice of instrument/method is made on the basis of practicality rather than cost, because the ingredients for decision-making are insufficient. Although there is enough evidence to suggest that household surveys are expensive, it is not necessarily true that rapid assessments are cost-effective. Often, highly qualified experts are needed in a rapid assessment to design, carry out and interpret data – whose cost is not yet known – and compile a report. Otherwise, these large sets of descriptive data could remain un-analysed.

The strength of this method (analysis and synthesis of the three domains where land security of tenure manifests itself) could also be its weakness. Due to the many tools used, the system could be too complicated for a layperson to understand. This is not unique; it is also observed in the LGAF and the LPI because security of land tenure is a multi-dimensional entity. For this reason, a set of guidelines for the layperson should also be developed. Similarly a manual for the implementation of the framework should be developed to further elaborate on how the methods could be deployed in specific context or country.

Another area to be addressed is the gender dimension, which is entirely missing from the analytical scheme apart from proposing an indicator on women's perceptions. It is recommended that, where applicable, a separate (or enhanced) exercise be done on monitoring tenure security with women and other vulnerable groups being particularly targeted.

The persistent gap in global monitoring could be overcome by devising a strategy to piggyback on existing household surveys. This strategy has been implemented since 2002 with varied results. Therefore, agencies interested in implementing security of tenure should not only raise funds and transfer them to the research organizations implementing these surveys, but they should also engage in hands-on training to retrieve reliable and valid data.

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ANNEX 1

MONITORING OF TENURE SECURITY OF LAND IN URBAN AREAS – LAND LEGAL HISTORY

The Land Legal History (LLH) was developed to factor in the historical dynamics of land that carry over into the present tenure security monitoring system. Land use planning, effectiveness of pro-poor land policies, the quality of land governance and, finally, the relationship between secure-land-tenure and economic growth and market vitality depend, to a significant extent, on the legal history of land.

With the aim of tracking the impact of the LLH on the current situation of tenure security, indicators were developed (Table 1) and combined under two scenarios: the most and the least optimal historical legacies were developed based on a combination of indicators. Accordingly, the optimal historical legacy is when all the indicators show positive trends.

The case of sub-Saharan Africa was used in constructing these indicators, which constitute a core-set for the region. Indicators should be adapted for each country or region. Experts also have to define distinct historical periods of a country. For example, in the case of Kenya, it was decided that it was appropriate to divide its history into three periods: pre-colonial, colonial and post-colonial. During implementation, however, the internal expert group thought that the post-colonial period should be divided into a further two periods: 1963-1985 and 1985-2010.

The LLH is not a substitute for a thorough historical analysis, which no doubt would create volumes. But to ensure that monitoring was effective and practical, the historical patterns were translated into operational language. Each period was given a score on the extent to which policies satisfied the indicators noted above.

The LLH exercise alone is not the main source[87] of information, but serves as a complementary tool to the LIFI.

The LLH exercise alone, is not the main source of information, but serves as a complementary tool to the LIFI.

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[87] Other very useful tenure security indicators could be generated from administrative sources. Aside from legal history and land use, indicators on access to legal remedies could also be produced from records of courts, tribunals and housing and land administrative agencies (e.g. average time taken to settle disputes related to housing and land rights in courts and tribunals, number/proportion of legal appeals aimed at preventing planned evictions or demolitions ordered by courts, number/proportion of legal procedures seeking compensation following evictions, number/proportion of displaced or evicted persons rehabilitated or resettled, etc.). Such administrative and judicial data could be quite helpful, especially in contexts where land information can be readily available/accessible, reliable, regularly produced, etc.

Also, using the participatory enumeration method developed by UN-Habitat can lead to the supply of the kinds of information that are needed. Rather than creating specialist teams of external enumerators, it is often more effective to have people from the community to be the main enumerators.

TABLE A.1: **INDICATORS DEFINING LAND LEGAL HISTORY (SUB SAHARAN AFRICA)**

INDICATOR	OPTIMAL SITUATION	LEAST OPTIMAL SITUATION
The extent to which non-formal and customary modes of tenure are mainstreamed	Proactive policies are pursued so as to mainstream non-customary and customary modes of ST	Non-formal and customary ST forms are disregarded and considered as criminal
Flexible transition between tenure types (from non-formal to formal, etc.)	Transition from non-formal to formal is possible and the process is free of heavy bureaucracy	Rigid tenure categories
The extent to which customary systems retain their original values of fairness, needs-based land allocation, and their emphasis on the community	Customary systems do retain their values and the community-orientation; but are also adapted for high population pressure and the market economy	Values of the customary system, fairness, community-orientation are destroyed without any hope left for recovery
The extent to which co-existing codes (carried over from history & the more recent ones) of land hamper egalitarian policies	The existence of multiple codes of tenure does not come as an obstacle to pursuing egalitarian policies	Existence of multiple codes work against the urban poor and increase the gap between the rich and the poor
The extent to which diverse codes assist (or hamper) dispute resolution and multiple claims	Legislation from the past and the present is conducive to resolving disputes within a reasonably short time and affordable cost. Multiple claims on land is not very frequent.	Multiple/diverse codes complicate dispute resolution by making them very expensive and long (sometimes generations). Frequency of multiple claims on land is very high
Prospects of lapsing back on the negative codes from the history	Low/no prospects of lapsing back on legal systems from the past which are not pro-poor and egalitarian	Very high prospects of lapsing back on the negative legal systems
Prospects of resuming or adapting the positive past codes to the current conditions	High prospects of adapting the positive past codes to current conditions or resuming them	Low/no prospects
The extent to which co-existence of multiple land codes exacerbates legal literacy	High legal literacy despite the multiplicity of codes	Low legal literacy due to complicated multiple codes

ANNEX 2

LEGAL AND INSTITUTIONAL FRAMEWORK INDEX (LIFI):
NAIROBI

22 JUNE 2010-06-22
FAIRVIEW HOTEL

EXPERT GROUP MEETING REPORT
NEFISE BAZOGLU, CONSULTANT

I. INTRODUCTION AND BACKGROUND

I.1. Objective

The purpose of the Expert Group Meeting was to pilot one of the many tools for the monitoring of security of tenure in land – the Legal an Institutional Framework Index- in the East African context. The result of the pilot, it is expected, would also have other uses: i) to understand the security of tenure in Nairobi, in a systematic way, and , ii) to emulate similar monitoring tools in other settlements.

To this aim, eight experts on Nairobi who represented different groups of stakeholders accepted to participate in a one-day lock-in, far away from their office responsibilities (list of participants on p. 19)

The Expert Group Meeting (EGM) lasted approximately eight hours of intense thinking, debate, consensus building, and finally scoring. Needless to say, sessions of questions and answers also took place between the facilitators from the UN-Habitat and the Expert Group.

I. 2. Opening

The EGM was opened by, Gora Mboup and Clarissa Augustinus who, in their opening speeches thanked the participants for allocating one whole-day from their very busy schedules. They briefed the participants on the background and the ultimate purpose for setting up a monitoring system for security of tenure. They shared the global implications of the Legal and Institutional Framework Index, LIFI, to be piloted during this EGM on Nairobi. Although the LIFI, the speakers emphasised, was a rapid assessment exercise, it had to be rigorous and scientific. Therefore the participants were asked to draw their opinion from their accumulated experience within the realm of the stakeholder group they represented.

The UN-Habitat managers also underlined the fact that monitoring of security of tenure was one of the least-developed indicators of the Millennium Development Goals (MDGs). While all other MDG indicators were based on decades of experience, the ST monitoring only benefitted from an intermittent path of piloting since 2003. In view of this wide gap, the Agency has set out to build a comprehensive monitoring system of which this LIFI EGM was a significant component.

Both speakers noted that the LIFI in particular and monitoring the security of tenure indicator in general, is a high priority area for UN-Habitat. That this EGM was a joint endeavour between the Global Land Tool Network (GLTN) and the Global Urban Observatory (GUO) demonstrates the importance of this gathering was for the Agency as a whole.

FIGURE A.1. **POSSIBLE RESULTS FROM THE CONTEXTUAL ANALYSIS COMBINING THE LIFI AND THE HOUSEHOLD EXPERIENCE**

POLICY ENVIRONMENT		
HOUSEHOLD EXPERIENCE/PERCEPTION	SECURE	INSECURE
Secure	Both policy environment and household experience are secure	Policy environment is insecure but HH feel secure
Insecure	Household feel insecure but policy environment is secure	Neither the policy is secure nor does the households feel secure

Source: UN-Habitat (2003) Guidelines on Monitoring of Security of Tenure

Ms Augustinus drew the attention of participants to the fact that the Security of Tenure was a key aspect of land policy for Kenya, passed last December. She also underlined the fact that UN-Habitat chaired the DPGL, but noted that this EGM was not related to it. The objective of this activity is to be able to measure security of tenure to help state and non state actors to monitor progress. She said that this exercise will be undertaken with a common understanding that various tenure arrangements in the country exist, that they are very complex. She noted that there is added complexity to any exercise aiming to monitor land tenure, needless to say, the LIFI, as other factors, human rights, livelihoods, conflicts, etc should also be kept in mind. The multi-level dynamic of secure tenure – individual, settlement and national- was pointed out as an aspect which the methodology had to address. All these dimensions, she noted, would converge on one question which underlies all issues and policies related to security of tenure: How does one earn the land?

Finally, Ms. Augustinus noted that UN-Habitat was not implementing this exercise in isolation. The results, she said, from the monitoring initiative including the LIFI, will be feeding into the AU-ECA-AFDB's land policy initiative (LPI). She concluded by stating that this EGM was crucial, and hoped that it would be a rich learning opportunity for all.

Questions were raised from the floor about the scope of the LIFI. Ms Augustinus noted that the main reference of the answers and scoring will be national, with a focus on the *interface* between the national and the city policies of Nairobi. Subsequently, the participants, who represented a wide spectrum of stakeholders: the media, UN-Habitat, Ministries of Land and Housing, NGOs, the private sector, the real estate, academia and the DPLG, introduced themselves.

I. 3.   Presentation:

The presentation given by Nefise Bazoglu revolved around the methodological challenges that needed to be addressed in monitoring tenure security. According to her, one of these challenges pertained to the unit of measurement – tenure security of the household, or the security provided by the laws and legislations. What the social sciences offered for monitoring were, in general, surveys focusing on the household. It is for this reason that UN-Habitat's first attempt to monitor this indicator followed this path – adding questions to household surveys that were meant to monitor the Habitat Agenda Indicators, as well as the MDG indicator.

However, with the establishment of the GLTN, it was soon understood that the legal and institutional policy context and the legal history of the land were as significant as the dynamics at the household level. For that reason, the LIFI was developed by an inter-divisional team within UN-Habitat, piloted in a number of cities (Saõ Paulo, Buenos Aires, Bogota, Medellin, Cali, Cartagena) which found the tool quite useful for their local use. The LIFI could both be utilised as a stand-alone tool, as well as combine it with findings from the household surveys.

The UN-Habitat's monitoring strategy is to synthesise the LIFI results with the survey results in order to capture the reality from both angles: the household and laws and institutions as well as the legal history of land.

In order to illustrate the possible combinations that can result from contextual analysis, Ms. Bazoglu, showed Figure A.1 below. Accordingly, the security of tenure indicator of a unit (nation, city or a settlement) could reflect one of the four situations. The first situation, where both the policy environment is favourable for the poor and the people themselves assess their situation as

TABLE A.2. **LEGAL AND INSTITUTIONAL FRAMEWORK INDEX SCORING SHEET, SUMMARY**

GOVERNMENT INTERVENTIONS	VARIABLE (QUESTIONS)	PRE-SCORE (MAXIMUM)	FINAL SCORE (EXPERT OPINION)
Evictions	multi-stakeholder involvement process prior to evictions legal aid support	25	
Remedies (regularisation and prevention)	legislative and policy enforcement equality of access to tenure	25	
Land management & administration	functioning of the land management and land administration institutions	25	
Land market interventions (transferability of rights)	tenure security accepted for mortgages, and, financial mechanisms are efficient and well-established land and housing rental markets are a functional part of transferability rights	25	
Total		**100**	

positive, is the ideal. More specifically, this means that the LIFI results have shown that the legislations are pro-poor, the process of evictions and relocation of evictees are mindful of the internationally recognised human rights norms, and the other dimensions of the legal and institutional environment are fair, equitable, effective and efficient. The positive LIFI results are also coupled with favourable indicators derived from the household surveys: people assess their particular situation of land tenure as *secure*, either due to the documents they hold, the way in which they bought or built the dwelling or the rights they could enjoy and their subjective assessment on the risk of eviction.

The least ideal outcome is when neither the policy environment nor the people themselves feel secure. Although this last situation is the worst, it is methodologically useful as it demonstrates that the policies and subjective experience of the people are consistent. That is, both the experts and the people themselves make the same assessment.

The other two possible outcomes occur when experts make a positive assessment for the legal and institutional environment, but the people's experience and perception reflects a negative situation. Alternatively, and the most frequently witnessed outcome, is when the experts believe that the policy environment is not favourable, but people, due to one reason or another, *do* feel secure.

The presentation ended by Ms. Bazoglu walking the expert group through the LIFI score card, by illustrating the section on evictions. followed by the onset of the EGM, facilitated by Ms. Augustinus. The outline of the LIFI includes the dimensions in the below Table A.2.

The experts were briefed that they would have to reach to consensus on one score that they think, appropriately represents the collective opinion of the expert group, even though they might harbour differing opinions.

I. 4. General comments on the validity of LIFI as a monitoring instrument

Prior to the EGM's scores on different aspects of the LIFI, a summary of methodological comments made by the group will enable the reader to place the LIFI scores better within a wider context. The group dwelt on the need to give separate scores to questions by the following criteria:

1. Informal versus formal land
2. People versus land
3. Laws/legislations and their implementation.

The experts thought, at the onset of the meeting, that it was necessary to differentiate between the legal standing of the formal and informal land sector. Especially participants from the Ministry of Land, and the academia thought that the duality of standards and norms would be an issue in answering the questions covered within the LIFI form. According to them, while the rights and entitlements involving the formal land sector were protected by a well established legislative system, the rights of those settled in informal areas were not. In view of these arguments, after a brief experimentation of disaggregation between the formal and informal, it was noted that the experts would have to take the majority of situations (for Nairobi informal settlements dominated) as a reference in scoring.

The second axis of discussion revolved around the following question: What was the majority? Was it the majority of land, or the majority of people? The experts alerted the facilitators that if *land* was taken as the unit of measurement, then the concept of majority would naturally allude to the formal sector where the minority of Nairobi inhabitants live. If, on the other hand, *people* were the unit of measurement, then majority pertains to the informal areas, because that was where a vast majority of Nairobi citizens live. It was decided that the group should take *people* as the unit of analysis, on the pretext that the MDG indicator on secure tenure defined the situation of households.

Finally, the group members felt their task would be more difficult with, yet another duality: this time, between the *de jure* and the *de facto* situation vis-à-vis the laws. They felt that while the laws and legislations were very advanced, it was their implementation, or the lack of it, that jeopardised the situation of the urban poor. Therefore they suggested that separate scores needed to be given for the implementation and the laws themselves. However, it was suggested that the group shows an effort to reach a synthesis.

I. 5. Process

The participants were each handed out a scoring sheet for each four focus areas of the LIFI which indicated the minimum-maximum range of scores that could be given per sub-component (Annex I). These sheets, however, were provided as a point of reference. The final scoring was consolidated, following a round-table debate. Each expert participated actively and contributed their opinions in view of the stock of experience and knowledge that they had, as well as taking cognisance of discussions.

The Expert Group then engaged in a very profound and also professional debate around the questions included in the LIFI. Each expert expressed their opinions freely without being overtaken by another. In general the questions of the LIFI form were understood with the exception of the Land Market Interventions. The summary discussions and the final score are conveyed in the following section.

II.   ASSESSMENT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR SECURITY OF TENURE IN NAIROBI, KENYA

II.1.   Evictions

The discussion around evictions started with the item on: Process prior to evictions. First, the Expert Group was keen on distinguishing between the lawful evictions targeting those occupiers who trespass, and those justified by the use of occupied land for development purposes (building airports, roads, etc.) and the unlawful ones. The experts converged on the idea that the first group of evictions (which were not considered as evictions as such) did have a series of laws and by-laws (Land Acquisition act/Law) and a legislative framework packaging provisions about the justification, compensation, and other procedures.

In the same vein, those evictees who could show legal evidence of ownership –holding titles- also benefitted from the checks and balances of an elaborate legal system.

Attention was drawn, however, to the fact that the situation was not all black-and-white. The local authorities *did* have by-laws which framed a set of rules and procedures on evictions of households informally settled on land (nuisance act, etc.), but the overall tendency within the legislation left people unprotected against the risk of evictions.

Whether the evictor was a public or a private stakeholder also made a difference. It was underlined by one participant of the Expert Group that evictions effected by public sector actors was subject to a set of legislations in order to protect the rights of the inhabitants or parties concerned, while those enacted by the private actors was not. The group also tabled another fact which blurred the boundaries between 'private' versus 'public' evictions. Very often, it was asserted, that the private parties used the public bodies (the city council or the central government) to carry out the evictions which satisfied private profit motives under the guise of 'development'.

On the other hand, some participants emphasised the need to take a step backward and assess if there *are,* established procedures for carrying out evictions if the second type, which, according to some, did not even exist.

Another perspective to the debate on evictions was brought by the participants representing the NGOs. They believed that the unit of analysis (people or land) for scoring was another complicated area. They wanted to know if EGM will consider the security of tenure for land, or for people. According to them, the LIFI score on evictions should be determined by the 'people' factor, rather than the 'land', because an eviction might be strictly 'lawful' *vis a vis* the legal history of land, but might not be cognisant of the human rights of the occupiers (people) if due process (before, during and in the aftermath of the evictions), is not followed. The expert group agreed

TABLE A.3.   **LIFI – SCORES BY SUB COMPONENTS OF THE INDICATOR ON EVICTIONS**

		FORMAL	INFORMAL		FINAL SCORE
Multi-stakeholder involvement	Yes	Yes (e.g: evictions for road building)	No	No	2/5
Process prior to evictions	Law	Implementation	Law	Implementation	2/15
Justification	Yes	Yes	Yes (Renters Restriction Act)	No	
Notification	Yes	Yes	No	No	
Compensation/ relocation	Yes	Yes	No	No	
Recording	No	No (landowners recorded but not tenants)	No	Yes (evictees themselves to the police stations)	
Consultation	Yes	No (only via the official Gazette)	No	No	
Legal support to potential evictees	No	No	No	No	2/5
Total score evictions					**6/25**

to judge according to the second criteria taking, human rights into consideration, because the lives of inhabitants, and their rights to shelter, education, employment, health, etc. were at stake. At the end of the debate, even the government officials agreed that the justification for evictions should be based not only on legal provisions, but also on social considerations of the settlers. Examples of recent evictions, Karura Forest, Spring Valley, Mombasa Airport, were referred to.

II.1.1. Multi-stakeholder involvement (Table 2; Component 1)

The Ministry of Land representatives noted that there was multi-stakeholder involvement in cases where government projects were at stake. Apparently, during the land clearance for building the planned highways, several stakeholders were involved. However, according to the NGO representatives, stakeholder involvement was only practiced when bilateral or multilateral organizations are among concerned actors. In all other cases, stakeholders are not involved at all. The overall score demonstrates a less-than-average security of tenure: 2/5.

II.1.2. Process prior to evictions: (Table 2; Component 2) Consultation/Justification/Notification/Recording/Compensation-relocation

The EGM scores broken down by: i) formal versus informal

land arrangements, and, ii) the existence of legislation ,versus its implementation, reveal that the overall security of tenure is very low, 2 out of 15, for the processes prior to evictions.

Consultation:

Like in Saõ Paulo, the scores given to this question revealed the weakest link of the legal and institutional framework in Nairobi. The only legal obligation of the parties to initiate evictions was to use the official gazette as the conduit of 'informing'- that was applicable only for the formal owners of land.

Justification:

The EG was convinced that, more often than not, evictions did appear justified, especially when public projects were at stake. However, there was also a general scepticism as to the ulterior- profit- motive behind the decisions to evict, which may not necessarily have justified the uprooting of hundreds of thousands of people from their communities.

Notification:

The Expert Group assessed that this responsibility was not fulfilled on the evictions practiced for cases of informal ownership.

TABLE A.4. **LIFI – REMEDIAL PROGRAMMES: REGULARISATION AND PREVENTION**

	LAND	PEOPLE	FINAL SCORE
Legislative and policy enforcement			
Constitution and land laws protect occupants and their possession rights	5	2	2/5
Coherent, unambiguous and non-contradictory land laws and land-use practices that are pro-poor oriented			2/5
Gap between practice (de facto) and legal (de jure) systems			2/5
Equality of access to tenure			
Laws of property inheritance and property registration are non-discriminatory	Theory 2.5	Practice 1	1.75
Co-tenure registration of multiple household members is possible			2.5
Households have inheritance and development rights			1
Renters have tenure security according to clear regulations and rent is regulated			2.5

Recording:

This stood as another weak aspect of the legislative framework, because even among the registered tenants recording the evictions were not practiced. One positive finding in this regard, was the collective behaviour of evictees at the informal settlements who resorted to self- reporting at the nearest police station, thanks to the consciousness raised among evictees, by the NGOs and the civil rights movements. However, such recording by the police did not yield much added value, as it could hardly be used as an official evidence in Court when seeking for compensation. In sum, the fact remains that the legal system remains free of the obligation to record cases.

Compensation/relocation:

The Expert Group agreed that compensation/relocation functions well for citizens under the formal tenure systems, but not for those covered under informal tenure arrangements.

As discussed above, the overall score -heavily determined by the situation of the informal tenure arrangements- is very low: 2 out of 15.

II.1.3.   Providing legal aid to potential evictees: (Table 2; Component 3)

The Expert Group concluded that a state-provided legal aid system does not exist in Kenya. However, some NGOs, the Pamoja Trust, FIDA, Kituo Cha Sheria to name a few, have a history of providing free-legal aid to victims of eviction. The score is low: 2 in 5.

II. 2.   Remedial programmes: regularisation and prevention

Governments around the world should, ideally, engage in programmes which would prevent irregularities and take measures which would prevent one of the most cathartic and tragic outcomes that could impinge upon the inhabitants of a settlement – being forced out of their dwellings. Evictions not only deprive families of their shelter but also children, of their school, their nutrition, their health, and their jobs. Therefore what the governments do to prevent this outcome shows the extent to which policies are pro-poor. The Expert Group was asked to assess the performance of the government to take preventive measures.

II.2.1   Legislative and policy enforcement: (Table 3; Component 4)

Constitution and land laws protect occupants and their possession rights:

The first area of discussion took place around the legal provisions for adverse possession. According to some participants 90 percent of Nairobi inhabitants who were informally settled in cities remained without any protection. By contrast, the representative of the real estate sector said, that there was a window of flexibility. For example, she noted, there were some protective mechanisms for those who had informally settled in a particular place / settlement for more than 10 years. Also noted were the Landlords and Tenants Acts. The Ministry of Land participant also noted that the law for protecting slum dwellers are also in place. As a result, the experts decided to score land and people as 5, and 2 respectively.

Coherent, unambiguous and non-contradictory land laws and land -use practices that are pro-poor oriented and the gap between the practice (de facto) and legal (de jure) systems is limited:

Not much discussion was made on these criteria as all experts agreed that the gap between the *de jure* and *de facto* situation was a big issue. The fact that the majority of citizens fell outside the remit of the law, was a big problem. The score was 2 for each sub component of this question.

II.2.2   Equality of access to tenure (Table A.4; Component 4)

Laws of property inheritance and property registration are non-discriminatory

Prior to debate and scoring, the Expert Group was given an explanation by Ms. Augustinus on the scope of the sub-component. She said that the non-discriminatory provisions should be assessed from a wider angle, to also include ownership, property, use rights, rather than, only, inheritance. The Expert Group recognised the fact that that the laws were neutral towards all social, racial, ethnic and gender groups. However, some participants indicated that such neutrality remained in theory, and that in practice there was, discrimination. The Registry of Land Act, according to the Expert Group, was positive, but due to weak implementation, this sub-component was assessed as 1.

For example, the participant representing the Academia conceded that the Nubian community was, indeed, discriminated because their citizenship was being questioned. For that reason they had difficulty getting citizen identification documents.

Subsequently, the debate expanded to include the situation of the Customary Law. By some criteria, even the Customary Law was found to be discriminatory.

Co-tenure registration of multiple household members is possible

The group tended to agree that, in theory, different household members (most particularly the spouse of the household head) had equal inheritance and development rights. Yet, in practice, the women are discriminated. The Ministry of Land participant noted that, although hard to access, the women *did* have the rights. He also noted that in order for women to claim inheritance and development rights, they should be included in the initial nuptial agreement document.

TABLE A.5. **LIFI- LAND ADMINISTRATION PRACTICES**

		FINAL SCORE
Basic land registration and recording systems are in place and operational		3
Institutional capacity, capability and stability are considered acceptable		1/2/2
Services are affordable and transparent		
Land dispute resolution systems are in place & accessible	Systems in place	2
	Accessible	2

Households have inheritance and development rights

Even in the informal settlements, the right to inherit and develop do exist. However, there are obstacles on the way to implementation. The power of a particular household to exercise this right depends on the decision of the Chief, the City Council or the Government, which may not always be based on objective criteria. Depending on the location of and the type of land the residents could exercise their right to develop. The overall score, 1, reflects that this is another are where there is room for improvement.

Renters have tenure security according to clear regulations and rent is regulated

The group noted that the case of tenants in Nairobi was quite dramatic, as a considerable proportion of evictees are renters. The landlords in Nairobi, the experts said, had a record of using violence against tenants. The opinion of participants was mostly shaped by this past image.

Yet, it was also indicated that the security of tenure for renters was covered by the Rent Restriction Act which guaranteed protection of tenants paying up to Ksh 2500 of monthly rent, and living in the dwelling for less than five years.

The group tended to conclude that tenure security for renters was not well regulated. However, based on her own experience of attendance in tribunals aiming to solve landlord-tenant disputes, the representative of the Real Estate sector was quite adamant about her positive impressions as to how the RRA protected tenants. She also noted that the number of court cases were quite high.

The differing opinions were consolidated, at the end, at a score of 2.5.

II.3. Land Administration Practices: Functioning of land Management and Land Administration Institutions

Basic land registration /recording systems are in place and operational

The Expert Group decided that the land for the majority of people living in the informal settlements are not registered. A case in point is Korogocho. The experts stated that, according to the registry, the land in this neighbourhood legally belongs to the government. Yet, the same neighbourhood embraces tens of thousands of families who have, through one way or another, either occupied land, or rented from occupiers. They might or might not have a document as a proof of legality or legitimacy, but no paper trail exists as to who uses the land, for what?

On the formal ownership front the land is registered on the names of legal owners, but the system still operates manually – which was thought to hamper the effectiveness and efficiency of the administration. This variable received a score of 3 in 5.

Institutional capacity, capability and stability

Institutional capacity, capability and stability are considered as at reasonably acceptable standards. The related departments of universities do provide high standards of education to develop capacity on quite technical matters. Yet, the score is low on the front of 'capacity' due to reasons of quantity- the number of surveyors are insufficient to meet the demand for technical services. Another issue is the not-so-competitive levels of salaries which, the experts thought, might reduce the appeal for being a surveyor or a land specialist.

On the capability aspect, although the level was assessed as satisfactory, the professionals often felt disempowered due to political interference. The Chiefs and Assistant Chiefs allocate land to various people, for myriad purposes without basically informing land registry offices.

TABLE A.6. **LAND MARKET INTERVENTIONS AND TRANSFERABILITY RIGHTS**

LAND MARKET INTERVENTIONS AND TRANSFERABILITY RIGHTS	7. tenure security accepted for mortgages and financial mechanisms are well established and efficient		
	Transaction cost of enforcing collaterals are low due to the efficiency of land administration, advantaging the urban poor	3/5	
	Registration or recording offices are decentralised allowing transactions within reasonable distance for all	0/5	
	8. land and housing rental markets are a functional part of transferability rights	8/10	
	Is tenure security accepted as guarantee for mortgage loans?		
	Do land/housing markets allow for rental transactions that have positive impacts in terms of efficiency and equity for the poor populations		
TOTAL			11/25

Stability of staff is assessed as satisfactory, by the experts, as the related offices do not suffer from high turnover rates among the mid and lower ranking staff. The Expert Group noted, however, that there are some signs of demand from other markets for the Kenyan surveyors and land experts, the demand is not as strong as for other Kenyan professions, teachers, physicians and nurses.

Affordability and transparency

The group opted to rate these separately, and scored each as 1. The transparency, according to the academia, was intact. It was indicated that the law does permit any stakeholder to place a search on the situation of any piece of land. Yet, the group decision on the score remained at 1. The fact that there are 49 steps to receive a title, and that for each step clients spend Ksh2000 on the average (the total would amount to Ksh100,000) made the Expert Group to attach a low value to question of 'affordability' – 1.

Land dispute resolution mechanisms are in place and accessible

According to the representative of the private sector, access to information is difficult and, both the Court, and the Registry create a number of obstacles on the way to resolving conflicts and disputes. Another area in need of improvement, according to the Expert Group, was the accessibility to these offices. On the other hand, some experts noted that what should improve in these offices was more the lack of expertise. Very often, they agreed, the clients do not get the information they needed to help resolve disputes. To ensure fairness of assessment, the Expert Group also indicated that the City Council does have good surveyors, and that they function actively, on the ground. Final decision was to score both, 'systems in place' and 'accessibility', each, as 2.

II.4. Land Market interventions for 'transferability of rights'

Tenure security is accepted for mortgages and financial mechanisms are efficient and well-established

This was the area of LIFI which required a long session of question and answer. The intent behind the question was to measure the extent to which the poor could use their land as a collateral to gain access to capital.

The expert representing the Academia thought that interventions to stimulate the market depended on many other factors than the eligibility for mortgage. In the strictly legal sense, the poor can apply for mortgage because tenure security is accepted as collateral. In fact, there are some banks who also accept share certificates as a reliable document.

However, it was noted, that both on the demand and on the supply side, other factors seem to play a more important role in determining access to mortgage. On the one hand, the banks as the primary source of mortgage, are more interested in the applicant's status of job security and the levels of a steady income, than in the security of land tenure.

On the other hand, the demand level from the poor people is low, as they generally prefer to refer to their relatives, or domestic savings, in order to averse risk. One reason for this is that the cost of processing and registering is very high: Ksh20,000.

Land and housing markets are a functional part of transferability rights

The Expert Group thought that the land and housing markets *are* a functional part of transferability rights, after the explanation made by Ms. Augustinus who said that this question aims to understand the impact of the transfer of rights between tenant-to-tenant (formal or informal) or

owner-to-tenant on the land and housing markets. Ms. Bazoglu gave the example of Cairo, for a dysfunctional example of how the land and housing markets were almost frozen due to the rigid rent control act.

One member of the Expert Group thought that these transfers occurred also within the context of sub-markets. The rights that could be transferred from owner-to-tenant is limited only to occupancy rights. There also exists tenant-to-tenant transfer by the entitlement of lessees to sublet. The overall score of this section amounts to 11.

II.5.   Overall LIFI evaluation:

The synthesis of these components show that experts agree on the finding that tenure security in Nairobi is quite low: 44.75/100. The experts especially underlined the fact that, of all the components, the worst rating applies to evictions: the residents of informal settlements in Nairobi are extremely vulnerable to evictions.

Another finding is that public policies are not geared towards taking remedial and preventive measures in order to reduce the risk of evictions. The land management and information systems stand at a reasonably acceptable level although the duality between the informal and formal owners of land jeopardises the security of tenure.

III.   SITUATION OF HOUSEHOLDS BY TENURE TYPES

Finally, the Expert Group was asked to make an informed guess on the types and the proportion of tenure in each category. They were given a pre-developed form on types of tenure derived from the responses of individuals to household survey questionnaires.

The seven hours allocated for the EGM was not sufficient to finish the rating and guessing the approximate proportions for different types of tenure. The Expert Group ran a number or rounds in order to reach the total 100, but, the meeting had to end when one or more categories were over-estimated, as the result totalled to 115.

Thanks to the initial assessment of the Expert Group on the proportion of two broad categories (proportion of households with formal and informal tenure were guessed to be at 35 percent and 65 percent, respectively) an in-house EGM in UN-Habitat finalised the exercise. The ideal method, however, is that the same group should complete the exercise. The reason why another group completed the table was due to reporting reasons. Accordingly, the most prevalent groups are the i) renters without written contracts; followed by ii) households heads declaring themselves as owners without documents. After this group come the iii) renters holding written contracts. Next is the category of: iv) owners with non-formal documents and so on.

The groups most-at-risk are the very marginal households where people have declared to have invaded/grabbed the land/dwelling, or live rent-free without the information of the landlord. But such households are only 5 percent.

The important finding is that, the two groups which rank after the 'worst', in terms of insecurity of tenure – category (i) and (ii) combined, constitute half the households. If the most-vulnerable group, land grabbers and clandestine renters, the share of households that are not secure in Nairobi stands at 55 percent. The group in-between, dwelling owners with a document that is not a title (purchase agreement, certificate of occupation, a tax or utility bill) are represented at quite significant proportions – 12 percent. The Expert Group household guesstimate exercise reveals that the total LIFI score, 42.25 does reflect that the not-so-optimal policies do affect the situation of households.

IV.   CONCLUSION

The LIFI on Nairobi was successfully implemented as a pilot. The process, both for the participants and the facilitators, was challenging due to time constraints and the format of the LIFI questionnaire. The recommendations drawn from this exercise could be summarised as follows:

IV.1.   Range of total LIFI scores by cities is narrow

The score of Nairobi amounts to 42.75. As a stand-alone exercise, this rating seems acceptable. The methodological problem emerges as global comparisons are made. Unfortunately the minimum-maximum total LIFI score does not show high variation, 42.75 – 53.0. The tendency to cluster in the median is a frequent problem in rating. In view of this , we could recommend that the following measures be taken:

- Convert all scores to the Likert Scale where answers to all questions are subject to the same scale. This is a five-point ranking system which starts with 0=strongly disagree, and stretches into 4=strongly agree).

- Avoid averaging scores

IV.2.   The questionnaire is too long

We suggest that the last section Land Markets is eliminated as it is the most time-consuming component of the LIFI, as it is difficult to explain its relevance to the monitoring of security of tenure. It could be reduced, only to the question on mortgages, and incorporated into other components.

IV.3.   The LIFI form is necessary but not sufficient to measure security of tenure

It has to be complemented with other forms, including the Rapid Assessment forms on the Land Legal History and the Situation of Households by Tenure Types. The former was piloted within the UN-Habitat (Attached) and the latter, piloted within the same EGM, proved to be quite successful.

IV. 4. Pre-session briefing is essential

In order to avoid discussions on methods/definitions/concepts, bring the Expert Group to the same understanding, a through pre-session briefing should be done. The LGAF initiative of the World Bank could be emulated in this regard.

This would also prevent long discussions on issues of duality: formal versus informal; land versus people; legislation on paper and implementation.

In sum, the LIFI Nairobi was a very fruitful exercise which could also be used for the local setting.

TABLE A.7. **LIFI - SUMMARY EVALUATION**

GOVERNMENT	MAXIMUM SCORE	FINAL SCORE
Evictions	25	6
Remedies (regularisation & prevention)	25	13.75
Land administration practices	25	14
Land market interventions (transferability rights)	25	11/
Total LIFI score		**44.75**

TABLE A.8. **HOUSEHOLDS BY TENURE TYPES, NAIROBI**

No	CATEGORY OF INDIVIDUAL HOUSEHOLDS (HHS)	%	DEGREE OF SECURITY	TERMINOLOGY
1	Dwelling owners (DOs) holding titles [proxy landowners]	8	10	Titles, Sectional titles, 99-year registered lease; freehold; registered sub-leases
2.	DOs holding other documents	12	6	Letters of allotments; share certificates; temporary occupation licenses (non-res); plan approved by local authority; utility bill (owns the building, not land)
3	DO's without documents	24	4	Informal structure owners (letters from chiefs or committee/elders)
4	Renters holding formal contracts	15	8	License; contracts
5	Renters w/ informal, verbal contracts	36	2	Agreement (written or oral) between two individuals.
6	No contracts (squatters of squatters)	2	0	
7	Invaders/grabbers ?	3	0	
	All households	**100**		

PARTICIPANTS

Experts

Odinda Opiata:

Haki Jamii (NGO) the organization is currently working closely with the Ministry of Lands. Trying to develop a framework on anti-eviction.

Victor Liyai:

Government:Ministry of Land. Land transformation Unit which is in charge of the development of National Land Policy. He thought that whatever transpires in the EGM will be of great help.

S. Kaburu:

Government: Ministry of Land, Slum Upgrading Department. Particularly interested in alternative secure tenure options.

Theresia Munyua:

Government: Ministry of Housing. She recently moved from the MOL's Slum Upgrading Department

Eric Makokha:

NGO: Shelter Forum. This forum represents 'people's settlements' – an alternative word to slums, which residents prefer to identify themselves with.

Jeanette Elspet:

Media: ex-BBC, currently with UN-Habitat

Ibrahim Mwathane:

Private sector: Land Development and Governance Institute. He mentioned about his experience in public and private sector and about the fact that he lead another process for the development of indicators.

Prof. Saad Yahya:

Academia: University of Nairobi

Mary Gachocho:

Secretariat, DPGL.

Practitioners

Bernadette Gitari:

Real estate agent, Knight Frank

Professionals

Collins K'owour

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THE GLOBAL LAND TOOL NETWORK

The main objective of the Global Land Tool Network (GLTN) is 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. These include the establishment of a continuum of land rights, rather than a narrow focus on individual land titling, the improvement and development of pro-poor land management, as well as land tenure tools. The new approach also entails unblocking existing initiatives, helping strengthen existing land networks, assisting in the development of affordable gendered land tools useful to poverty-stricken communities, and spreading knowledge on how to implement security of tenure.

The GLTN partners, in their quest to attain the goals of poverty alleviation, better land management and security of tenure through land reform, have identified and agreed on 18 key land tools to deal with poverty and land issues at the country level across all regions. The Network partners argue that the existing lack of these tools, as well as land governance problems, are the main cause of failed implementation at scale of land policies world wide.

The GLTN is a demand driven network where many individuals and groups have come together to address this global problem. For further information, and registration, visit the GLTN web site at www.gltn.net.

ABOUT THIS PUBLICATION

This publication, *Monitoring Security of Tenure in Cities: People, Land and Policies*, presents an innovative method to ascertain the extent to which security of tenure can be measured at three main levels. Targeting cities in developing countries, the methodological framework presented in this publication is entrusted in the concept of continuum of land rights where tenure can be realised at various levels: individual, household, settlement or community, city and national levels. Various options to measure tenure security at each of these levels are presented. You will also find in this publication a review of the experience of several agencies and individual academics in measuring tenure security. From these reviews, lessons are drawn and gaps are identified, which then formed the basis of the range of methods presented in this report.

The methodological framework presented here makes use of the SMART principle of indicators development and reporting. One of the innovative approaches put forward in this framework is the community or settlement-based security of tenure which can be mapped, assessed, evaluated and analysed. The framework also demonstrates how one can best make use of household surveys to measure the range of tenure arrangements and security of tenure. At the policy level, the results of the pilots of Legal and Institutional Framework Index (LIFI) are presented to show how LIFI can be used to measure security of tenure at various levels.

It is anticipated that the methodology developed and presented in this publication would service the global reporting to the United Nations Millennium Development Goals, inform local and national security of tenure policy formulation; and contribute to ongoing regional initiatives such as the African Union-led Land Policy Initiative, and the World bank-led Land Governance Assessment Framework. Urban actors, economists, development partners working on land policies, land administration and information will find this publication of great interest.

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