

LAND RECORDS FOR THE POOR

PARTICIPATORY. AFFORDABLE. CREDIBLE. EQUITABLE.

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THE CHALLENGE

Conventional land administration systems rarely improve tenure security for the poor.

Many people, especially poor and disadvantaged people, do not have their tenure relations to land included in a formal administration system with women, in particular, more likely to be excluded from such a system. Without recognized tenure rights, the poor lose the associated

benefits such as: 1) improved tenure security; 2) increased investment in the land; 3) increased land value and marketability; 4) increased access to credit; and 5) fewer disputes and forced evictions. Also, local (and national) governments would not be able to better manage land use and development, and mobilize resources.

THE NEW APPROACH

To improve tenure security for the poor, a range of types of land tenure beyond individual titles, a “continuum of land rights”, is promoted and is increasingly accepted worldwide.

In many developing countries, only some segments of society have statutory land rights framed by formal law. Most rural and forest areas in these countries are under a customary land tenure system, whereas large parts of the cities, certainly the slums, are under an extra-legal or informal land tenure system. Titling, regularization or upgrading projects aimed at bringing more land relationships under a statutory administration have had limited effect. A continuum of rights (see diagram below) encompasses all forms of relations in which people hold land, and also aims to protect non-formal or intermediate relationships against land grabbing and eviction.

THE INNOVATION: “PRO-POOR LAND RECORDATION”

For a “continuum of land rights” to work at scale, a more affordable, simpler and credible land recordation system is needed.

To cater for a continuum of rights we need a continuum of land recording. We need to rethink conventional land administration systems and find innovative solutions that are cheaper, simpler and community-owned. Pro-poor does not mean low technology. GLTN has been working on land tools that fit this approach, such as “participatory enumerations” and a Social Tenure Domain Model (STDM), a pro-poor land rights recording system. The suggested recordation system fits between these but can be combined with either.

INITIAL DESIGN OF THE SYSTEM

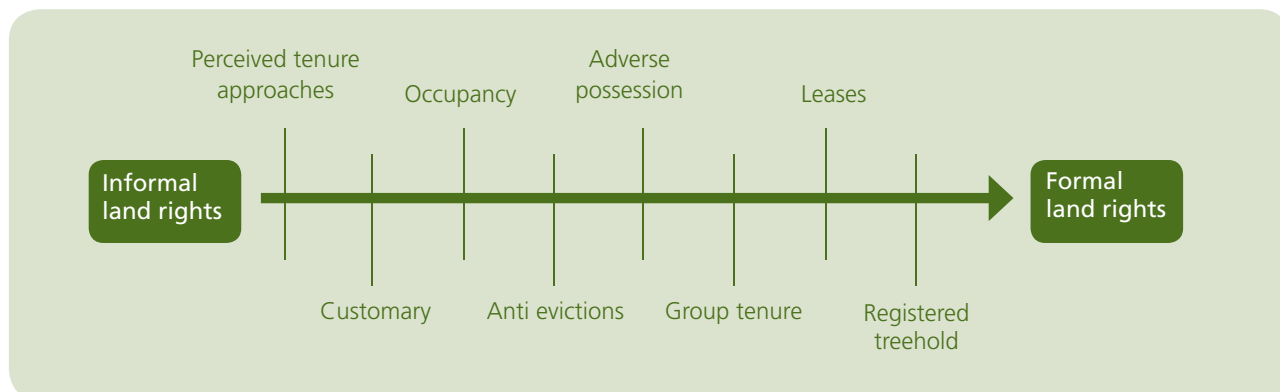
The design of a pro-poor land recordation system is based on a community driven process that involves community leaders, a barefoot land officer and a local record keeper.

Local knowledge and procedures are used to inform, acknowledge and complete the intended land transactions.

The system should build on existing local approaches. In many situations the social land tenure system includes elements that would form an integral part of a pro-poor system. Community rules in identifying leaders should be followed. Recognised leaders know the local rules and the various land interests in the community. They will know whether the person selling the land is entitled to sell it, whether the buyer meets the criteria to acquire the rights, and the family law appropriate to the parties. They will also act as witnesses.

Community process outcomes will be formalized and written down by the land officer.

The design builds on the increasing trend for non-formal land transactions to be recorded on paper. The first step is to use a standardized form to record transactions (pre-recordation). This will help people to remember some elements, introduce equitable policies and facilitate later recording, processing and re-use. The forms should accommodate diversity and overlap in tenure arrangements and family relations, but bring clarity. Ideally, a neutral but informed person could help to clearly identify the intentions of the buyer, seller and community, and to document these correctly and clearly. It is not their role to judge the relationship between the parties or the changes being negotiated.



A NUMBER OF KEY PRO-POOR DESIGN ELEMENTS ARE CRUCIAL FOR SUCH A SYSTEM.

1. The recordation system should be affordable for the state and its citizens particularly the poor to enable the country to scale up the system. It also needs to be transparent, accessible and equitable to ensure delivery to the poor.
2. The system has to deal with complex, layered rights. Next to formal tenures, it needs to take care of customary and informal systems, as well as secondary rights.
3. The system should build on social tenures rather than strict paper trails. It is important that the system is simple, quick and inexpensive and avoids costly experts and fees.
4. The land recordation system should be physically close to the people to improve record accuracy, to ensure ease of access and to improve land management and planning.
5. Complete data should not be a priority at the first stage of the design. Less accurate forms of boundary and rights data would be sufficient and non-conventional boundary markers should be allowed.
6. A spatial index map should be introduced early to identify on the ground the land described in the document. A simple geometrical index can be created. Maps may already be available.
7. The pro-poor land records' office should not be a totally independent entity, but ideally should be embedded in the larger public administration structure.
8. The system has to deliver preventive justice by having land records that contain objective information that clarifies the rights and contractual relations, and limits the need to go court.
9. The system should build on co-management of pro-poor land records, including identifying witnesses, creating evidence, building the currency and legitimacy of land records. Strong checks and balances are needed to protect vulnerable groups.

The documents will be recorded by the local record keeper.

The next step is to record the information in a land recordation system and this is only possible if standardized forms and the land officer are in place. The record keeper will keep systematic indexes. The first is the name index, where one can search for someone both as a seller and as a buyer. The second is on the land. Each piece of land linked to a form or transaction should have a number that is then used for all subsequent forms linked to that land. One weakness of this system is how to establish whether a subsequent transaction affects the same land or not. This can be improved by putting the number on the house structure and on a graphical index (map).



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



Typical housing settlement in the poor neighbourhoods of Uganda. Photo © UN-Habitat / Danilo Antonio

The records will be inspected jointly, which increases the status and use of recorded information by formal public sector agencies, offices that manage disputes, and the community.

The pro-poor system should have support from both the community and the state. The state should have mobile units to make inspections and to train and develop the capacity of the record keepers and land officers. They could make backups of the records as a safety precaution. Community leadership could also play an inspection role that would be vital to improved governance. Although evidence that is counter to that on the recorded land documents should still be allowed, information on the records will eventually be accepted as being more accurate if recorded information is perceived as more credible than verbal information, and if earlier recorded information has priority over information recorded later.

CONCLUSION

Land registration is not a neutral process. It usually aims to create “active” tenure security so that documented (“titled”) land can be managed in a formalized system. For poor people, the priority is “passive” tenure security so that they may avoid eviction or losing their right to the land. A “continuum of land recording” approach can develop into one that also increasingly supports “active” tenure security, but which begins the process from the more protective “passive” side.

The first steps in designing such a system are presented here and need to be shared for debate, improvement and help. An in-country assessment should be done to ascertain whether such a system is needed and useful, and how the initial design should be adapted to a local context. There should be an assessment of the strengths and weaknesses of community leadership, development of land officer and record keeper capacities. Government support should also be ensured. GLTN partners are committed to further work on this.



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