Between a rock and a hard place – negotiating a space for the poor in expanding cities

Geoffrey PAYNE and Evelyn TEHRANI

KEY WORDS: Titling, legalisation, property rights, security, land supply

SUMMARY: The need to improve security of tenure for the estimated 924 million people currently living in slums and to reduce the need for future slums is recognised as a key component of the Millennium Development Goals. However, the MDG target only addresses a small proportion of this total and an even greater effort will be needed to tackle the problem at the scale required. It is therefore disappointing that many of the world's leading bi-lateral agencies have reduced their focus on urban issues at the very time that more than half of the world's population will be living in urban areas, and when urban growth and urban poverty are both increasing. This paper reviews some of the issues facing policy makers, especially in Asia, and also assesses the current debate on policy options. It concludes with some recommendations for an incremental tenure policy based on empirical research in Cambodia

THE CONTEXT:

The United Nations estimates that over the next 30 years "virtually all of the worlds population growth will occur in the urban areas of low- and middle-income countries [and] increasing numbers of the world's poor will be city dwellers" (Millennium Project). Rapid urban growth is exerting enormous pressure on local capacities and creating a new challenge for development professionals due to the distinctive characteristics of urban poverty.

Current debate is producing a common theme: securing access to land for the urban poor is critical for poverty reduction, institution building, good governance at the local and national levels, and conflict prevention. Designing and implementing pro-poor land policies is therefore a precondition for building effective states, ensuring sustainable development, and realising the Millennium Development Goals. Land tenure and property rights constitute a key component of any effective land policy.

However, the reality is that the urban poor are being squeezed out of options for obtaining legal and affordable housing by higher land prices which now bear little relationship to levels of household affordability. Land and property prices are increasingly driven not just by increasing populations, but by competition between countries and cities to attract inward investment and the penetration of market forces into all sectors of economic life, especially land, even in countries where it has been managed for centuries by customary practices. At the same time, traditional options of settling on unused public land and building informal settlements are declining as all available land is already settled and many national or state governments are evicting settlers from such locations. As if these constraints were not enough, regulatory frameworks often impose unrealistically high standards, restrictive regulations and complex procedures which all add to the costs which private sector developers have to charge, further reducing access to legal housing. The poor are living between a rock and a hard place.

It is perhaps ironic that at the very time when the world's population is about to become predominantly urban, and when urban growth and urban poverty are both increasing in Asia and other parts of the world, many of the major bi-lateral development agencies (eg the UK Department for International Development, the Swiss SDC and the Netherlands) have actually reduced their interest in urban issues and disbanded departments dealing with urban issues. The amount of research on urban issues is reducing as a result, despite the need for more. A key issue on which more understanding is urgently needed is land tenure and property rights, especially in urban areas, where regressive land markets are making access to legal shelter increasingly difficult.

What options are there for improving tenure security and increasing the supply of affordable land for the poor under such conditions? Land policies need to have three broad components:
- Improving security and living conditions in existing slums and informal settlements,
- Providing alternative options for groups which have to be relocated and
- Increasing the supply of affordable land to reduce existing shortages and meet future needs.

IMPROVING EXISTING SETTLEMENTS AND RE-SETTLING COMMUNTIIES WHICH NEED TO BE RELOCATED:

For the approximately 1 billion people presently living in various forms of sub-standard or unauthorised housing, improvements need to address their legal status and physical environment. While many governments in Asia and Africa have dealt with these settlements by using forced evictions and relocating people to inappropriate sites outside the central areas of cities, this approach often increases vulnerability and can lead to further illegal settlements being built when people return to urban centres for work and access to services. Governments often do not have the resources required to fully upgrade settlements. By increasing security for people in informal settlements there is evidence that people will increase their investments to improve their own settlements, housing and economic circumstances.

Land titling as the preferred option:

The recently established UN Global Tool Network and the High-Level Commission on the Legal Empowerment of the Poor have given added impetus to discussions and initiatives on property rights and ways of improving security of tenure for the poor. Whilst we are pleased to note that the Commission intends to focus on establishing and promoting universal principles and will apparently recommend a range of options in addition to titling, this remains a key feature of many internationally and nationally funded policies. Policies to address the legality of informal settlements and reduce poverty have mainly focused on large-scale individualised land registration and titling programmes. Such programmes have been initiated in Africa, Asia and Latin America especially during the last decade and usually form part of broader, nationwide programmes to incorporate informal sector activity into the formal economy and planning framework. With few exceptions, the stated objectives of such programmes are to:

- Increase tenure security for farmers or residents of informal urban settlements

- Reduce poverty by enabling the new owners to use their property as collateral for obtaining formal credit to invest in businesses or home improvements
- Encourage internal and external investment
- Reduce transaction costs for property transfers and promote more efficient land and property markets
- Ensure that properties realise their full market value
- Increase government revenues for funding public services and facilities.

These approaches are based on the assumption that only individualised titles will enable people to access credit, provide people with the security they need to invest in improvements to their land and property, and encourage external investment thereby leading to economic growth. However research suggests that titling may not necessarily increase investment and productivity (Razavi 2003) while alternative forms of tenure do not preclude economic development or local investment and can even be seen as more secure than legal markets by local people (Payne 2005). The social legitimacy of the tenure system is much more important, and in areas where the government allocation of individual titles is not efficient or equitable for the urban poor illegal land and housing markets will be stimulated anyway. Equally, a loan may not be given even with a title if the house or land in question is of poor quality and is deemed insufficient as collateral.

Whilst research has demonstrated that some titling programmes have realised many of the above objectives in rural areas, there is also anecdotal evidence from Asia, Africa and Latin America which indicates that this process has led instead to increases in landlessness, inequalities in land, the accumulation of land by elites and the erosion of user rights for the poorest and most marginal groups. Equally, processes of formal registration and titling often involve excessive financial and administrative burdens which many governments can not meet. In order to provide individual titles, settlements and plots have to be surveyed, increased land disputes have to be resolved and land titles have to be issued for each household. There is also the risk of prolonging the problem rather than resolving it by encouraging in-migration to the settlements waiting to be upgraded, increasing land prices suddenly which will encourage residents to sell-up for short-term gains, and forcing the poorest groups out as a result of increasing rents or eviction. Until more empirical evidence is obtained on the outcomes of such titling programmes, caution is recommended in adopting them as a general approach.

The problem is that there is a dearth of independent empirical research on the social and economic outcomes of titling programmes in urban and peri-urban areas to assess which of these assessments is correct[1]. The research that has been done is largely in rural areas, yet the social and economic outcomes of titling programmes are almost certain to be different in urban areas due to higher property values, higher densities of commercial and industrial activity, higher densities of poor rental tenants, and higher population growth rates. It is therefore critical to fill this gap in research before large-scale titling programmes are adopted as the primary policy option by international donors and national governments.

---

[1] This has been confirmed by members of the land titling e-mail discussion group (forum@landtitling.net) which exchanges and reviews papers and research on titling programmes. The group now has 84 members from a wide range of countries and institutions in public, private and civil society sectors. Participants at this meeting are welcome to join the group if they are interested.

The existing evidence is inadequate to providing policy makers with the necessary guidance in formulating effective and appropriate tenure policies in urban areas where different social, cultural, economic and historical conditions as well as different legal systems apply. More independent empirical research is therefore needed to fill this gap and a proposal is currently being developed to identify and commission reviews of a representative range of examples[2].

The primary objective of the research is to collect detailed evidence and provide an objective assessment of the extent to which urban and peri-urban land titling programmes have realised their objectives and addressed the different needs, cultural practices, legal traditions and economic circumstances existing in the case study locations. If funding is obtained, we hope that the research will be undertaken in time to contribute to the work of the Commission and the Land Tools Network.

Alternatives to titling:

It is clear that titling is not the only way of improving tenure security for the urban poor. Research carried out in 16 countries has revealed a large number of ways in which tenure security is being provided to meet the needs of different social groups (Payne 2002). These include:

- Community Land Trusts which have been used in a number of communities in Kenya,
- The Certificate of Rights in Botswana, which enabled many poor households to improve their security of tenure
- Communal land rental in Thailand, whereby communities living on private land came to an agreement with the land-owners to occupy an area for a specific period which they could otherwise never afford to live in,
- Adaptations of customary tenure in parts of sub-Saharan Africa (especially in Mozambique and Ghana)
- The Concession of the Real Right to Use land in Brazil's favelas, and
- The Certificate of Comfort available to squatters on public land in Trinidad, which protects large numbers of squatters from eviction in Port of Spain.

All of these options have a place in tenure policy. However, none is without some limitations. It may well be therefore that the most effective tenure policy is one which offers a wide range of options, so that all social and economic groups can find one that meets their immediate and longer term needs. Policies which emphasise a single tenure option fail to reflect diverse, changing needs.

---

[2] An international review of individualised land registration and titling programmes undertaken in urban and peri-urban areas is currently being prepared by Geoffrey Payne, Alain Durand-Lasserve, Edesio Fernandes and Carole Rakodi. We would welcome suggestions from participants of possible examples of land registration and titling programmes in urban and peri-urban areas which could be included in the research. Information on possible case studies and local researchers able to undertake such research should be sent to Geoffrey Payne at gkpayne@gpa.org.uk as soon as possible.

How can tenure policy incorporate a wide range of informal settlements into a more formal land market in ways which do not create adverse impacts on the poor, particularly tenants and women? Based on research in Cambodia and a number of other countries, a five stage approach is proposed as a means of improving tenure security and strengthening property rights.

A key consideration in the Cambodian proposal was to stabilise the existing situation so that people could go to work in the morning, confident that their home would still be there when they returned. A second priority was to prevent any sudden change of property values as this could distort both expectations and market behaviour. For example, a windfall profit due to a squatter house suddenly increasing dramatically in value could attract downward raiding from developers or speculators who had a far better appreciation of the real value of newly titled land than the existing occupants, and could therefore buy them out for less than their land was really worth. Secondly, the prospect of gaining such windfalls, could lead to other groups invading vacant land in the hope of repeating the process, thereby leading to an actual increase in illegal development, instead of the intended decrease. Finally, property owners with new titles would be tempted to significantly increase the rent of any tenants, leading to large-scale eviction of the poorest groups.

Accordingly, an incremental approach was adopted in Cambodia. At each step, it was envisaged that security would be increased, people would invest more and the differences in land and property values between the existing informal settlements and the formal developments would be gradually reduced to the point where they were indistinguishable. This involved a five step process as follows:

1. ***Announce a moratorium on evictions*** to provide basic short-term security for ***all*** households in slums and unauthorised settlements. This can best be achieved through land proclamations or moratoriums. A simple statement by the relevant Minister is often sufficient to reduce uncertainty and stabilise situations. The proclamation or moratorium should last for a specified period in order to provide basic security and enough time to survey all extra-legal settlements and identify any that are in areas subject to environmental hazards, (e.g. floods, landslides, etc) or required for strategic public purposes. A period of 6-9 months should be sufficient in most cities, though it could be extended if necessary. Decisions on which settlements are to be relocated should be subject to independent review to avoid land-grabbing by elites. A small increase in property values can be expected from such a step.

2. ***Offer Temporary Occupation Licences or Permits*** to residents of all such settlements, and priority for relocation to sites that offer close access to existing livelihood opportunities (e.g. street trading) and services (i.e. not out of the city). Temporary Occupation Licences or Permits can be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites and preparing those sites. Again, these can be extended if required.

3. ***Offer communal tenure options, such as communal leases, or communal land rights*** in all extra-legal settlements considered acceptable for in-situ upgrading. These would provide medium term forms of tenure with increased rights, but not necessarily full titles.

Where possible, the precise form of such tenure and rights should be based on tenure systems already known to local communities.

Customary or communal tenure options, such as communal leases, or communal land rights (CLR) may be acceptable to residents and can reduce the administrative burden on land management agencies. This will allow such areas to receive services and environmental improvements through a participatory process of physical and socio-economic development. It will also increase security without stimulating rapid increases in land prices which could attract downward raiding by higher income groups and the displacement of very poor tenants. For unauthorised settlements on private land, options can include land sharing, under which settlers may be provided long-term tenure on part of their site and the landowner develops the remainder. Local authorities can assist this approach if they permit relaxation on planning or building restrictions so the landowner can recoup any lost profit or income. Temporary land rental is another way of reconciling conflicting interests.

The duration of such forms of tenure should be based on local conditions but may reasonably be expected to be between 3-10 years. During this period, communities would be encouraged to form representative community organizations that would be qualify to meet specified standards of good governance. A further increase in property values could be expected during this step. Those communities able to demonstrate this would be eligible to proceed to Stage 4. Those that failed to meet the criteria would be entitled to renew their CLR for a further of period.

4. All communities that meet the good governance criteria will be eligible to receive *Communal Land Titles (CLTs)*. These will be based on accurate surveys of the settlement and will record all properties and residents in the area, but do not need to distinguish between owners or tenants, since they can resolve any problems within the community. The titles can be made available at a nominal cost and will therefore provide permanent security to all residents. Finance institutions should be encouraged to offer loans to residents in such settlements, especially since property values would have increased noticeably as a result of reaching this step.

5. Households seeking *individual titles* would need to obtain the agreement of the community and be responsible for agreeing plot boundaries with their neighbours and resolving any conflicts between owners and tenants, etc. They would also be responsible for financing and completing the necessary administrative procedures, including the appointment and payment of surveyors and lawyers.

This incremental approach could provide a sustainable, practical and socially progressive way of improving the tenure security and rights for millions of the urban poor. They could also improve the functioning of urban land and housing markets by gradually reducing the disparity in land values between formal and informal areas, stimulating economic development and improving the effectiveness of government in urban management. They could also operate in conjunction with other forms of tenure, such as private and public rental, leasehold or co-operative housing. In countries where customary systems of land tenure are widespread, as in Papua New Guinea and

many parts of sub-Saharan Africa, variations on these options would need to be developed. Whilst the proposals have not yet been adopted in Cambodia, they are presented today as a contribution to discussions on options elsewhere.

INCREASING THE SUPPLY OF NEW AFFORDABLE DEVELOPMENT:

Given that the number of slum dwellers is projected to increase to 1.5 billion by 2020 and to 2 billion by 2030 unless urgent action is taken, increasing the supply of land for housing is a major requirement if sustainable development is to be achieved.

With land markets dominated by the price mechanism, supply will be determined by the ability and willingness of land-owners and private sector developers to bring land into urban use. Their ability to increase supply in forms which people can afford will in turn be determined by the regulatory framework within which they are required to operate. In many countries of Asia and elsewhere, regulatory regimes actively discourage effective private sector provision by imposing overly high planning standards, restrictive regulations and complex procedures which significantly increase costs and prices. Regulatory reform is urgently needed to reduce such costs[3] and it is recommended that governments and municipalities undertake a review or regulatory audit of the planning regulations, standards and administrative procedures involved in processing applications for planning and building permission. Research has demonstrated that these significantly increase the costs of private sector developments, reduce access by lower – and even many middle – income households to legal shelter and help account for the significant proportions of unauthorised urban development in many parts of Asia. For instance in the context of Cambodia it was found that if unnecessarily restrictive regulations for road set-backs were reduced only 10% of the informal settlements from the side of roads would actually have to be relocated while still meeting public safety needs.

As for the willingness of land-owners and developers to bring unused land into urban use, greater use needs to be made of property taxation. There is considerable scope for introducing or increasing property taxes in many Asian countries, both to increase government revenues to finance urban development and also to discourage long-term speculation. For example, a large proportion of land around Hyderabad in India is held by middle-income households as a long term pension investment, yet this forces poorer households to move even further out, placing a greater strain on transport and services provision networks. Taxing such landholdings could encourage such areas to be brought into development for the general benefit of the city and particularly the poor. However, Hyderabad is also a leading example of how administrative procedures can improve urban governance, through the creation of a network of online 'one-stop-shops' to help people in their dealings with government departments which has simplified and reduced the costs of administrative procedures.

Finally, the public sector can make a positive contribution to increasing the supply of affordable land through incentives to the private sector and land-owners. Among the examples worth considering are:

---

[3] The need for reviews and reform of regulatory frameworks to improve access to legal housing for the urban poor is discussed at length in Payne, G and Majale, M (2004) The Urban Housing Manual: Making regulatory frameworks work for the poor. Earthscan.

- Land-pooling and readjustment, which is practised widely in Japan, South Korea, Thailand and Malaysia. It is also known as land consolidation in Taiwan and Indonesia, and as land pooling in Nepal and Australia[4]
- Land sharing, by which land-owners are encouraged or required to allocate part of their land for existing settlers in return for planning permission to develop the remainder for profit. Relaxing planning restrictions to enable a land-owner to realise more profit on part of the land can help to offset the opportunity and construction costs entailed in accommodating existing settlers.
- Transferable Development Rights, as applied in Mumbai, India[5]. These separate the development rights from the ownership of land, where development is to be discouraged and make them transferable to lands where development is considered desirable. In other words, the parcels of land where development rights originate and where they are consumed are different. TDRs have proved an effective way of guiding investment, especially under conditions of land price inflation.
- Mixed income developments. For some years, developers in Malaysia were required to provide for a combination of different income groups in any private sector housing development. This not only ensured a socially balanced mix, but also increased access by lower income groups to formal housing. However, such approaches are likely to prove limited if they prevent developers from realising an acceptable level of profit.

Conclusions:

The options identified above need to be seen as a range of measures to be applied and adapted to suit local conditions. None of them are without limitations, but all of them can form part of innovative, pragmatic and progressive urban management strategies. Some countries, such as Thailand, are adopting such innovative approaches at the scale needed and are using public sector authority and resources to complement inputs by civil society and private sector groups. Identifying an appropriate range of options and such complementary roles will be a key ingredient in creating dynamic urban centres in which the poor can benefit as well as contribute.

Geoffrey Payne and Evelyn Tehrani
Geoffrey Payne and Associates
34 Inglis Road
Ealing Common
London, W5 3RL
UK
gkpayne@gpa.org.uk
evelynmari@yahoo.co.uk
www.gpa.org.uk

---

[4] See, for example, Archer, R 'The potential of land pooling/readjustment to provide land for low-cost housing in developing countries' in Payne G (editor) 'Making Common Ground: Public-private partnerships in land for housing' Intermediate Technology Publications, London 1999
[5] See Adusumilli, U 'Partnership approaches in India' in Payne (editor) 1999 *ibid*.

November 2005

REFERENCES

Payne, G ed. (2002) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London

Payne, G and Majale, M (2004) The Urban Housing Manual: Making regulatory frameworks work for the poor. Earthscan.

Payne, G (2005) 'Getting ahead of the game: A twin-track approach to improving existing slums and reducing the need for future slums' *Environment and Urbanisation* Vol. 17, No.1

Razavi, S ed. (2003) Agrarian change, gender and land rights. London: Blackwell Publishing

BIBLIOGRAPHIC NOTES

Evelyn Tehrani

Evelyn Tehrani joined the GPA team as a research associate in November 2002. She has a BSc in Social Anthropology from the London School of Economics and went on to do a Masters in Gender and International Development at the same university, from which she graduated with a distinction in 2001. Her research interests are gender, rural-urban linkages and development, land tenure and property rights, homelessness and migration.

In her 3 years at GPA she has assisted in managing a number of GPA projects, including the most recent DFID funded projects - 'Progress in the Provision of Secure Tenure for the Urban Poor' and 'Regulatory Guidelines for Affordable Shelter'. She also edited the CD-Rom accompanying the 'Urban Housing Manual' (2004) and wrote the methods and resources section. At The World Urban Forum 2004 Evelyn was the panellist representing gender issues for the UN-Habitat networking session on 'Land and Urban Poverty'. Most recently In July 2005 she was invited to present the recommendations of a Cities Alliance, UN-Habitat and GTZ funded GPA project on 'Improving Tenure Security for the urban poor in Phnom Penh' at an international workshop organised by UN-Habitat, COHRE and the municipality of Phnom Penh.

She is currently the research co-ordinator at Crisis the UK Homelessness charity with responsibility for undertaking and commissioning research to raise awareness of the causes and nature of homelessness, to find innovative and integrated solutions to it and to share good practice.

Geoffrey Payne

Geoffrey Payne established Geoffrey Payne and Associates in 1995. Before and since that time, he has undertaken consultancy, research and training assignments in most parts of the world. He has taught in several universities, written, edited or contributed to many publications and participated in numerous international conferences and workshops.

During a career of over thirty years, he has specialised in urban housing, local land development, land tenure and project design issues in developing countries. This has included urban housing sector reviews, assessments of policy options and the development of local level planning projects in several countries. A central theme of his work involves building local capacity to reduce urban poverty. He has managed a number of international research projects funded by, among others, the UN, World Bank and UK Department for International Development. Most recently he has contributed to projects on the 'Regularisation of Squatters in Port of Spain, Trinidad' for the Inter-American Development Bank, the 'Simplification of urban development administrative procedures - Lima, Peru' for the International Finance Corporation and managed the project 'Improving Tenure Security for the urban poor in Phnom Penh' funded by Cities Alliance, UN-Habitat and GTZ.

He has been an External Associate Adviser to the British Council on architecture, town planning, housing, urban design and land policy since 1996 and a member of the Core Group of the Network-Association of European Researchers on Urbanisation in the South (N-AERUS) since it was established in 1997. In 2003 he became the founding member of a Framework Arrangement with DFID to advise on Architecture, Physical Planning and Urban Development.

His recent publications include:
'The Urban Housing Manual: Making regulatory frameworks work for the poor' (with Michael Majale) Earthscan 2004.
'Land, Rights and Innovation: Improving tenure security for the urban poor' (Editor and contributor) Intermediate Technology Publications, London 2002.
'Urban land for all' drafted report/booklet for UN-Habitat, Nairobi, 2004.
'Getting ahead of the game: A twin-track approach to improving existing slums and reducing the need for future slums' Environment & Urbanization Vol 17, No 1 April 2005
'Between Command and Market Economies: The Changing Roles of Public and Private Housing Sectors in Transitional Economies' (with R. Grover) in Zetter, R and Hamza, M (eds) 'Market Economy and Urban Change: Impacts in the Developing World', Earthscan, 2004, pp147-162