



*Land Tenure Insecurity in Asia
and the Pacific:
From Crisis to Catastrophe*

Luke Millar
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About the Author

Luke Millar is an International Program Coordinator for Habitat for Humanity Australia and member of the ACFID Shelter Reference Group.

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Introduction

"Whilst another man has no land, my title to mine, and your title to yours, is at once vitiated."

- Ralph Waldo Emerson (1803 -1882), American poet and essayist.

Equitable access to land is a growing problem, particularly in the global urban South. As authorities in Asia and the Pacific are buckling under the challenge to adequately accommodate an estimated 120,000 new residents every day (UN Habitat, 2014), this demographic megatrend, driven by economic globalisation, is resulting in the phenomenal growth of urban slums. Globally, it is projected that slum populations will grow from 1.6 billion in 2005 to 2.7 billion in 2030 (Asian Development Bank, 2010). Bearing in mind the human development challenges that accompany slum living, we are moving, in no uncertain terms, from crisis to catastrophe.

For people living in slums, the relationship to land is tenuous and the living conditions are wholly inadequate. Officially 'illegal' with respect to land they occupy, state services such as electricity, water, and waste removal are often not extended to them. These growing billions are, in a significant way, invisible.



Source: www.earthrights.net/wg/mod1-draft.html

Insufficient attention and funding is being directed to address this situation. Urbanising spaces need increasing supplies of secure land and more accessible and diverse kinds of land tenure. Foreign aid programs that help create and implement inclusive land laws through state capacity building and empowering landless communities to organise and advocate for formalisation are limited. This is perhaps due to donor reluctance stemming from the complexity of effective land tenure programming and the growing, and interrelated, point of political sensitivities around land as its worth skyrockets.

Seeing land access as a part of the poverty puzzle and as something that is determining disadvantage, may seem like common sense. However, awareness is not universal - even within international development circles whose focus is, of course, poverty reduction. This paper will attempt to bring attention to the exploding land tenure crisis in Asia and the Pacific. The two central considerations of this paper are that in the context of modern urban spaces, particularly in the developing world, **land and life opportunities are linked**, and that, **if left on the periphery of ongoing discussions around human development and justice in an age of mass urbanisation, insecure land tenure will prove deleterious to life opportunities on a scale larger than commonly recognised.**

Section 1 will outline the economic forces behind urbanisation and the consequence of growing numbers of the poor residing in informal slum settlements before arguing for the significance of these rates of informality on global efforts to reduce poverty and encourage human development.

Section 2 will attempt to clarify what it is that we understand by land, and how throughout history this understanding has changed as land has gone through processes of formalisation. It will investigate the reasons for land formalisation and how it has occurred through state-led, legislative land reform. Taking the two main types of land reform as 'redistributive' and 'tenure strengthening', and by sectioning off redistributive reforms as those relevant to rural areas in the last century, this section will turn towards elaborating the role of tenure strengthening reforms in meeting the demands of today's urban settings in the region. In order to clear space for non-market tenure strengthening alternatives, this section will conclude by advancing an argument for the social function of land.

Section 3 will advance a holistic approach to urban development, including attention to innovative tenure solutions, in order to raise awareness of the potential short comings of the Australian Aid program's new infrastructure focus. The paper will present the aid program's focus on building infrastructure as one part of a much larger urban development puzzle – and one that if done in relative isolation has the potential to exacerbate tenure insecurity for the urban poor. This paper will conclude by putting forward a case for quality social and NGO support for the government's infrastructure development so as to be consistent with responsible holistic infrastructure development programming. The aim of exploring these issues is two-fold. Firstly, it aims to build a critical awareness of the matters around land tenure within Australian civil society - especially among opinion makers, advocacy networks, and international NGOs. Secondly, it is hoped that through a timely refocus on the issue of land tenure insecurity, civil society in Australia can work *with* the government on its new infrastructure development plans in a way that simultaneously supports greater tenure security for the growing urban poor in our region.

Definitions:

Urbanisation refers to the process by which a large number of people become permanently concentrated in relatively small areas, forming cities (WHO, 2010).

Land tenure relates to the legal relationship individuals or groups hold with respect to land. Land governance refers to ways in which property rights such as the use, control, and transfer of land are allocated in society. As a formal right, land tenure rights are explicitly acknowledged by the state and are protected using legal means (FAO).

Land Access pertains to 'the opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity, or the enjoyment of recreation and rest. Land access is obtained by direct occupation, exchange (purchase or rental), through membership of family and kin groups, or allocation by government, other land owners or management authorities (UN Habitat, 2008).

Security of tenure refers to the certainty that a person's rights to land will be recognised by others and protected in cases of specific challenges. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction (FAO).

Slum households are defined as a group of individuals living under the same roof in an urban area who lack one or more of the following:

- Durable housing of a permanent nature that protects against extreme climate conditions;
- Sufficient living space, with no more than three people sharing the same room;
- Easy access to safe water in sufficient amounts at an affordable price;
- Access to adequate sanitation in the form of a private or public toilet shared by a reasonable number of people; and/or
- Security of tenure that prevents forced evictions (UN Habitat, 2008).

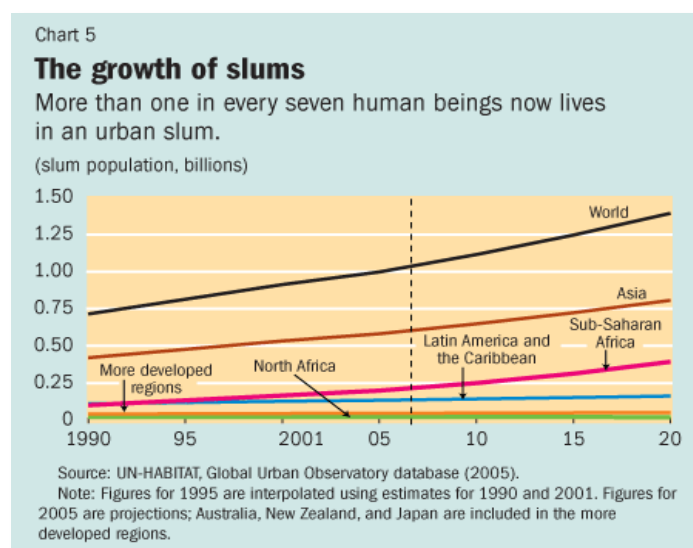
1 Linking land and life opportunities

1.1 Contextualising the crisis; land tenure insecurity, urbanisation, and global capitalism.

In 2008, for the first time in human history, more people lived in cities than in rural areas (IHC, 2009). This demographic trend of urbanisation is being driven by global capitalism. Since the end of the Cold War there has existed - it can be argued - a worldwide economic system wherein the 'outcome of the investment-profit-investment cycle... brings about the constant disposition for the system to expand' (IHC, 2009, p.11). Today's world is one of instant communication, efficient transportation systems, and the continuing breakdown of inter-country trading restrictions. The global commodification of products and labour has allowed for unparalleled amounts of global capital to be invested in cities. It is in cities that unprecedented population densities provide economies of scale that 'attract entrepreneurs, facilitate business and investment, and provide markets' (IHC, 2009, p. vii).

The promise of urbanisation is thus one of economic growth. As globalising cities are centres of capital accumulation, financial opportunity is causing unprecedented population movement in the Asia Pacific. In the deepening grip of global capitalism, the resulting economic restructuring in the 'manufacturing and service sectors in urban areas... are fragmenting and specialising, creating diverse and abundant (low) income earning opportunities for rural migrants' (HFHI, 2011, p. 4). The statistics of urban-rural migration are indeed striking with more than 50% of the world's population – roughly 3.5 billion people – living in urban areas (Global Communities, 2012).

While the opportunity for economic growth is surely present, the challenges of urbanisation *are* the real and defining challenges of our time. Finding safe and healthy living environments that are affordable to the urban poor is perhaps the greatest urban challenge of all. Quite clearly, as the chart below shows, the challenge at present is being radically unmet.



Globally, approximately one billion live in slums and the figure is growing daily. Over the next 30 years, trends indicate the vast majority of urban populations' growth will occur in the cities of developing countries. The explosion of urban poverty and slum settlements saddle the poor with crowded, unsanitary, and insecure shelter with limited-to-no basic services.

Property markets are not immune to the realities of supply and demand, and have responded as markets do by increasing in value. Low income urbanites and rural migrants are being increasingly priced out of the official property market, relegating both groups as a consequence to inhabit informal settlements throughout the urban developing world.

To understand why slums are growing in the context of urbanisation, the economic reality outlined above can be elaborated on in two important and interrelated respects. The first aspect is financial systems in the developing south, which are often unprepared or unsuited to lending to low-income earners. The reason attributed to this is, according to Kelly and Baumann (HFHI, 2011), is 'a weakness in internal capital markets in post-colonial and other developing countries, which are often dominated by foreign banks and oriented toward... export/import sectors and the local elites' (p. 5). The second factor is one of governance, or, more specifically, urban authorities' unwillingness to address either side of the supply/demand equation (p. 5).

The case of Manila

Metro Manila's ongoing assimilation into the global flow of trade and investment has resulted in a shelter crisis of epic proportions (Shatkin, 2004, p. 2469). In making the connection between globalisation, social inequality, and growing rates of informality or insecure land tenure, Shatkin (2004) argues:

(T)he globalisation of Metro Manila and other cities in Asia has contributed to a growing housing crisis that is evident in the increasing difficulty that low-income urban residents face in accessing legal shelter close to sources of livelihood. (Economic growth has) fostered a growing contradiction between widespread urban redevelopment and consequent rise in property values, and the shelter needs of a growing contingent of urban poor who are dependent on the urban economy (for work). (p. 2470).

The urban working poor hold down jobs - whether formal or informal – that vitally support these emerging urban centres. As factory workers, taxi drivers, teachers and vendors, they are contributing members of society whose low income makes them unable to afford legal land. In similar cities in the Asia Pacific, urban reality is:

splitting into different separated parts, with the apparent formation of many 'microstates'. Wealthy neighbourhoods provided with all kinds of services, such as exclusive schools, golf courses, tennis courts and private police patrolling the area around the clock intertwine with illegal settlements where water is available only at public fountains, no sanitation system exists, electricity is pirated by a privileged few, the roads become mud

streams whenever it rains, and where house-sharing is the norm. Each fragment appears to live and function autonomously, sticking firmly to what it has been able to grab in the daily fight for survival' (Marcello, 1993)

The outcome of capitalist urbanisation results in a *spatial change* in the way global Asian cities are organised. A visit to Mumbai, Manila, Phnom Penh or Jakarta, among others, reveals this urban spatial reality clearly. The division is one between classes of people who can afford formal urban plots or apartments and those who cannot and are forced to live in deprivation within city slums.



Urban Slum, Manila, BBC

1.2 Insecure land tenure and poverty

Poverty, understood as an individual's inability to meet their basic needs, is widespread in urban areas of Asia and the Pacific. With 743 million people living in absolute poverty, the Asia and Pacific region still has the largest absolute number of people living in poverty in the world (ESCAP, 2012, p. 109). Estimates are that 40% of the region's population is living on less than \$2 a day (ESCAP, 2012, p. 109). As inequality rises, conditions for the urban poor are getting worse as the scale and speed of urbanisation increase the numbers of officially landless peoples, causing further overcrowding in informal slum settlements.

Insecure land tenure engenders deprivation among individuals and families in four major ways (DFID, 2002, p. 3); without secure land there is no secure shelter, no guarantees of access to basic services, no reliable base for economic enterprise, and limited if any means to access credit.

Insecure Land and Shelter Poverty

Informal land is often marginal land along river sides, around lakes, or adjacent to, or on top of, waste disposal sites in urban and peri-urban spaces. While these locations are the most vulnerable to weather events such as flooding and high wind, informal settlers are dis-incentivised from investing in upgrading their vulnerable, makeshift shelters for a variety of reasons. For one, the threat of eviction discourages investment in upgrades for fear that the improvements will be destroyed if and when the bulldozers arrive. Another obstacle is the difficulty of upgrading shelter in

cramped quarters without the surrounding infrastructure like roads and drainage. Another reason for entrenched shelter poverty is the higher costs associated with informal and over-priced service provision (stolen electricity, for example) that can erode the small savings that individuals and families may be able to build.

Insecure Land and Service Delivery Failure

Lying at the heart of much of the deprivation experienced in slum settlements in Asia and the Pacific is the endemic failure to deliver basic services. The daily struggle for clean water, sanitation, electricity, education, health care and transport is one that is often lost. City authorities are charged with providing these basic services, however, for those without proof of ownership, access is often denied. For political reasons, the supply of basic services may legitimate the informal settlement, making it harder for the government to evict them when the land is needed for other reasons (ADB, 2010). Economically, as an ADB article explains: '(a)uthorities and service providers resist from providing permanent utility connections to structures that appear to be nothing more than temporary shelters – for if the dwellings are torn down, or the residents evicted or resettled elsewhere, they would be unable to recover their investment' (ADB, 2010, p. 2).

Insecure Land and Economic Enterprise

Despite the well-documented informal economies of some of the more established slums in parts of India and Africa, land insecurity undermines the ability to use one's home and land as a site for business activity. Evictions or threats to evict can interrupt business activity and prevent people from re-investing profits to upscale or improve business activity, regardless of whether it is formal or informal. Connected to projects run by Habitat for Humanity Australia, communities with new-found tenure security in Indonesia and Cambodia have established small-scale chicken farms and/or opened or expanded shops selling basic goods such as food, cleaning products, and kitchenware.

Insecure Land and Access to Credit

Financial institutions in developing countries are often unprepared to provide appropriate financial services to the poor (HFHI, 2011). Internal capital markets in many developing countries are dominated by foreign banks or like-minded national banks that have traditionally focussed on the import/export sectors and local elites (HFHI, 2011, p. 5). Make-shift homes on informal land are not an economic asset in the eyes of lending agencies. Without collateral, regular banks will deny informal settlers the much-needed credit to upgrade their homes or establish or expand a business. Even in situations where collateral is not an issue, the inability of individuals in slum settings to produce relevant documents and proof of identity further restricts access to credit. While micro-finance institutions have made a significant difference in this space, it has not yet reached sufficient scale.

Permeating each of the above areas of tenure-induced deprivation is a more fundamental dispossession, namely, the effective seizure of any formal access to justice (ADB, 2010). Informality with respect to land excludes many urban poor from accessing formal legal dispute resolution processes. This denial of any formal recourse to justice when informal asset disputes emerge further provokes mistrust of authorities and diminishes the sense of individual agency in society.



Slum riots, Manila (South China Morning Post)

1.3 Land tenure insecurity and human development

In the context of rapid urbanisation in the developing nations of Asia and the Pacific, how urban land is understood, valued, and administered is of central importance to human development outcomes. This is so because, to a significant extent, ‘property systems set the ground rules that make possible the ability of people to develop their individual capacities within larger social organisations’ (Crawford, 2011, p. 1094). This link between secure and adequate shelter and human development is strengthened within a social justice framework set out by Martha Nassbaum.

Nassbaum’s ‘Capabilities Approach’ to human development is a theory of justice and entitlements that aims to tackle entrenched inequality and suffering. Within this context it aims to identify a set of key opportunities that should be provided by a minimally just society (Crawford, 2011). It is an attempt to frame the issue of poverty and development in a way that asks: ‘What are people actually able to do and be? What real opportunities are available to them?’ (Crawford, 2011, p. x).

Nassbaum’s Capabilities Approach ‘focuses on the protection of areas of freedom (opportunities) so central that their removal makes a life not worthy of human dignity’ (Crawford, 2011, p. 31). Within this paradigm, opportunities and options are to be equated with freedoms. As a development theory, Capabilities Approach is focussed on choice and on respecting the powers of people’s self-definition with reference to the political, social, and economic environment in which we live and how a person is able to operate within them (Crawford, 2011). In terms of social justice, it does not aim to level out inequality like the strict egalitarianism of the sort Utilitarians like Peter Singer espouse, but instead looks at ample social minimums that everyone in society is avail themselves of.



Urban slum, Phnom Penh, Cambodia

As a way of understanding and measuring poverty alleviation, Capabilities Approach challenges the dominant - arguably crude - and exclusively economic GDP model of measuring development's progress. This paradigm shift has been instituted by Nassbaum's work with Nobel Prize winning economist Amartya Sen and is the foundation for the annual Human Development reports published since 1990 by United Nations Human Development Report Office.

For Nassbaum, ten central capabilities are required in order for a life of human dignity to be lived. Two connections to secure tenure can be found within the 10 central capabilities listed. The first is related to 'control over one's environment' where having property rights on an equal basis with others should be a key state provision in order for one to live with dignity (Crawford, 2011, p. 1098). The second connection is associated with decent housing being a requirement for the capability of bodily health. The literature around human development and central capabilities as they pertain to habitation rights also extend beyond founding the physical conditions of a secure and healthy life to include social elements. Crawford (2011) argues that secure housing is connected to an individual's ability to operate cooperatively within social contexts.

Secure housing links in tightly with the very conditions required for human flourishing, including health, education, livelihood opportunities, and community empowerment. Pro-poor, inclusive property rules are a powerful institutional mechanism for greater social justice. For individuals to thrive and communities to be stable, the state has a responsibility to provide the legislative conditions by which all citizens have equal basic opportunities to live with dignity.

2 Land and its changes through stages of formalisation

A broad-stroke overview of the history of how land has been understood and used will help put today's urban land tenure crisis into context. A closer look at land over the past 100 years reveals an effort to formalise land through reforms aimed at land redistribution in communist and post-colonial countries. This history demonstrates land's centrality to government-led attempts at greater social and economic equality. Over the past 40 or so years in developing countries, urbanisation has presented authorities with a new set of challenges. In response, pro-poor land reforms have begun to shift from redistribution to tenure strengthening practices in the urban age.

2.1 History of land

As hunters and gatherers, for 200,000 generations, human communities operated without fixed territorial borders (Oestereich, 2000). Over the last 200 generations, as agrarian practices took hold and sedentary lifestyles became more common, our relationship with demarcated areas of land has strengthened (Oestereich, 2000). This relationship is characterised by a more efficient use of land and an accompanying rise in population density. While land access in earlier periods of the agrarian epoch was organised around the control of a leader (such as a King or Queen), more recent civil land systems common first to the global North became increasingly characterised by individual property rights, transferable in a market-based system.

In the West, the Romans were the first to implement systemised and documented individual land holdings, allowing the treatment of land as an economic good. The Roman system went on to influence property laws in much of the Islamic and Christian world (Oestereich, 2000). Colonisation help spread these legal norms throughout Africa and the Orient. The reacquisition of land by communist governments, who were determined to reclaim all the means of production within their borders, seem now an anomaly on the road to near-universal individual property rights. Since the end of both the colonial period and the fall of much of the communist world, it can be said in rather broad terms that much of the land across the world is administered via a state-based individual property rights approach, or approximations thereof. The global reach of capitalism has further institutionalised individual property rights, locking in one form or another of land as an exchangeable good subject to market forces.

2.2 Formalisation of property rights

The historical development of what we understand by land has been driven by processes of land formalisation. The formalisation of property rights and how it unfolds is based on country context and specific formalisation goals. Formalisation takes place to fulfil a number of objectives, including the establishment of law and order and increased economic efficiency.

The establishment of law and order

Formalisation of property rights seeks to make land administration more efficient. In a customary tenure environment, information on land, people and their rights may be held, unwritten, within a community through collective memory and the use of witnesses. Formalisation of property rights means a shift toward systematically recording information in some form of land registration system, allowing greater institutional integration and increased tax revenue. Formalisation of property rights is particularly amenable to areas of high population density, where customary tenure systems and dispute resolution systems are weak or absent.

Increasing economic efficiency

Formalisation of property rights is believed to create positive incentives for individuals and communities to invest in and protect land and natural resources by reducing conflict in families, communities and nations. Formalisation of property rights strengthens enabling environments for growth leading to financial empowerment, and entrepreneurial activities, investment, trade and export opportunities.

2.3 Land reform as land redistribution

Many countries have considered land reforms to be a crucial element in bringing about desired social transformation by breaking the hold of the “feudal class” on peasants. Land reforms involved a major redistribution of land from large landowners to landless people, tenants, and smallholders. These kinds of reforms took place in the socialist revolutions of Russia, China, Eastern Europe, and parts of Asia, Latin America, and Africa in the twentieth century. In the context of post-colonial development in Africa and Asia, the international system has paid significant attention to redistributive land reform as a means to alleviate poverty through increasing agricultural productivity. The aim was to bring about economic development by alleviating rural poverty, increasing agricultural productivity and strengthening the new nation state through state action-land reform.

Prior to independence, land reforms in most countries in the South took place based on traditional, agrarian principles in areas specified by rulers. After independence, the need for a unified, all-embracing model of land management led to the nationalisation of land being viewed as a panacea for streamlined development. The huge bureaucracy that states had to build for this was, however, unprepared and incompetent (Oestereich, 2000). Often less centralised young governments struggled to reconcile the traditional concepts of command over land and resources that the people were used to, with the requirements of modern economics. Often recognised as a failure, pro-poor land reform routinely became victim to elite capture and often functioned to solidify class division in spatial terms.

2.4 Land reform as tenure strengthening

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Rapid urbanisation fuelled by rural-urban migration in much of Africa, Asia and Latin America has led to a clear spatial representation of tenure insecurity. The response has included slum legalisation and regularisation schemes under the influence of the World Bank and other aid agencies, based on the declarations of Vancouver (1976) and Istanbul (1996). The shift in land reforms toward strengthening tenure has occurred mostly in urban areas and through a process of land re-titling. This re-titling has seen customary or informal land claims converted into statutory rights.

While there are different ways to strengthen tenure through the diversification of tenure forms, including rental and collective arrangements, the very process of re-titling is complex and involves a commitment to action from the state and the community or communities in question. From the government side, there often needs to be an appropriate legal framework in place which can require changes or amendments to existing land laws. Considerable political will and bureaucratic skills are also required as well as the ability to invest in infrastructure such as roads, electricity, and drainage once the land is formalised. On the beneficiary side, there needs to exist within the community the will to undergo a timely and often contentious land demarcation process, which can include the need for negotiations between informal settlers who occupy unequal-sized plots of land. Significant community solidarity and organisation must be maintained in order to develop and submit claim documents and proof of identity with local authorities.

2.5 Tenure strengthening reforms and the social function of land

The era of tenure strengthening reforms has just begun. As the figures in Section 1 indicate, the problem of insecure tenure is snowballing. Where tenure strengthening can help create the necessary conditions for human survival and flourishing, they can and must be pursued. However, such a quest will involve a degree of state intervention into free market functioning, putting pro-poor land reforms at odds with neoliberal market-based system of land that singles out its 'exchange-value' at the expense of any other defining characteristic. This collision suggests the need

to revisit our definition of land as a purely exchangeable good, subject to market forces. To soften this strict and singular market-based conception, land's 'social function' is a useful conception to bring forth the 'use-value' of land as a priority.

In liberal, individualist societies, private property as secure, free-hold land tenure is viewed as a buffer to power politics - insulating the individual from 'unnecessary' state meddling. Transferrable, exclusive, and enforceable - land ownership is often understood as radical expression of freedom and a key ingredient to the 'good life' or the 'Australian dream'. However, by limiting property to a commodity with an attending speculative exchange value, capitalist urbanisation is spatialising class in new and terrifying ways (Harvey, 2014).

Sitting outside of this liberal conceptual framework for understanding land as an economic good exists an alternative social notion that highlights land's social function. The notion of land's social function is not new to capitalist, liberal democracies. 'States inherently recognise the social function of land through... adverse property laws, and the urban planning that designates spaces for public use and environmental protection' (United Nations, 2013, p. 14). Land's social function calls into question the liberalist's commitment to limiting the scope of state intervention in the domain of individual property rights, opening up the moral question; how do you balance the individual ownership model of land with an appreciation for land's ability, when distributed more evenly, to create inclusive and equal societies?

This debate over the most desirable approach to viewing land fits firmly within the field of political philosophy. It connects to questions about 'how things ought to be?' and 'how society should be structured to allow for human flourishing?' While these are lofty questions about the design of the 'good society', the debate is very much alive in today's everyday lived experience.

In the urbanising Asia Pacific region, the appropriate property rights system is of extreme importance for the future of the growing urban poor, and for cities as a whole. While the two systems outlined above represent idealist positions (that is, liberalism's focus on individual freedom versus the socialist's emphasis on the communal benefits) there exists a pragmatic middle road that can and should merge the two approaches by offering within one statutory property rights system a suite of formalisation avenues (private, communal, open access, and state) that through legal frameworks place significant value in land's social function. This 'merging' is about carving out a space for a use-value system in an otherwise overwhelmingly exchange-value system context. Consistent with this standpoint, the United Nation's Special Rapporteur on adequate housing named 'promoting the social function of property' as one of her ten guiding principles to assist states and other actors in combating the crisis of land insecurity in an urbanising world. In the report, the Rapporteur argues for the strengthening of diverse tenure forms, including statutory, customary, and religious and hybrid schemes by noting that:

(c)ontrary to the dominant discourse on tenure, freehold titles are not the sole instrument of tenure security. Often, policies that promote individual freehold simultaneously reduce support to other tenure arrangements. Such policies risk excluding and undermining the tenure status of large segments of urban and peri-urban populations, particularly the poorest, leading to retrogression in the enjoyment of the right to adequate housing. (United Nations, 2013, p. 4)

By expanding the conceptual framework of liberalism with regards to land, policy-makers across the Asia Pacific are afforded a more flexible toolkit of land formalisation procedures that can adapt to, and better resolve, issues surrounding informal settlers and the accompanying human development obstacles.

An example of the institutionalisation of the social function of land can be seen in the Cambodian context. Cambodia presents a range of telling examples for land tenure issues, both good and bad. For present purposes it is worth focussing on the Royal Cambodian Government's land concessions for social purposes (known as Social Land Concessions (SLC)). SLCs are a 'legal mechanism specifically defined as having a social function and were established in the Land Law 2001 to permit the orderly transfer of state private land to private individuals or groups for social purposes, specifically, for residential and family farming' (Council of Land Policy, 2002, p. 1). While the arguably opportunistic implementation of this policy provision has been the subject of much debate¹, it shows, at least in a legal setting, an instance of when, within the larger environment of global capitalist investment and the deregulation of a nation's economy, a space for property's social function has been carved out in the interests of the poor.

¹ SLCs can be used to address 'residential land shortages, landlessness, requirements for resettlement, distribution of demined land' (Council of Land Policy, 2002, p. 1). Resettlement programs common in Phnom Penh have drawn significant criticisms, raising the legitimate question 'what function was the SLC really designed for, and was it drafted and/or implemented in the spirit of property's social function?'

3 *The role of civil society - advocacy and programming*

To address the issue of land tenure insecurity in Asia and the Pacific, two things need to be done. First, a *shifting in perspective* needs to occur with regards to how land is understood and administered. Secondly, in utilising the space created by a renewed, socially progressive conception of land, *quality programs* need to be launched that take communities from insecurity to security with regards to tenure in concrete and practical ways.

3.1 Activist civil society and shifting value contexts

‘Shifting perspective’ refers to the cognitive and normative transitioning from an exclusive privileging of land as an economic asset to one with a reinvigorated appreciation of land’s social function. Civil society, through sustained advocacy efforts, can be effective at shifting value contexts within society. Value contexts and the norms they create affect how we understand and form opinions about certain issues.

‘Activist’ civil society, as it is sometimes referred to (Kaldor, 2003), includes social movements, NGOs, and individuals who - usually through an appeal to justice - are motivated to influence the conditions in which we live. In seeking to change opinions on a particular issue among decision-makers and the general public, activist civil society challenges the dominant discourse on selected issues through awareness raising and public mobilisation. Whatever the alternate vision, to be successful a true shifting in perspective requires a degree of message consistency and publicity.

One example related to land is the articulation of the notion of the ‘right to the city’ through ‘promoting land as a human right and stressing the need to recapture the social function of property’ (Kothari and Chaudhry, 2012, p. 38). Rights-based campaigning has a long and successful history. The language of human rights has provided a compelling framework within which activist civil society has been able to garner significant public support and mobilise policy makers to make legislative changes (examples include the American civil rights movement, pro-gay marriage campaigns in Europe and the US, and global poverty reduction campaigning such as Make Poverty History).

The ‘right to the city’ is about the city-dwellers’ right to create, within a community context, urban environments suitable for living. It is driven by an understanding of the ‘mutual inextricability of all human rights... (and an acknowledgment of the) current failure to secure the rights of adequate housing and land... result(ing) in a cycle of deprivation that has impeded the enjoyment of several related human rights, including the rights to food, water and health’ (Kothari and Chaudhry, 2012, p. 39). This ‘right’ implicitly carries with it the questioning of whether urban land ought to be left to the whims of global capitalism or instead be approached with deference to the social goods these spaces can produce.

3.2 Tenure-strengthening programs – innovation after policy change

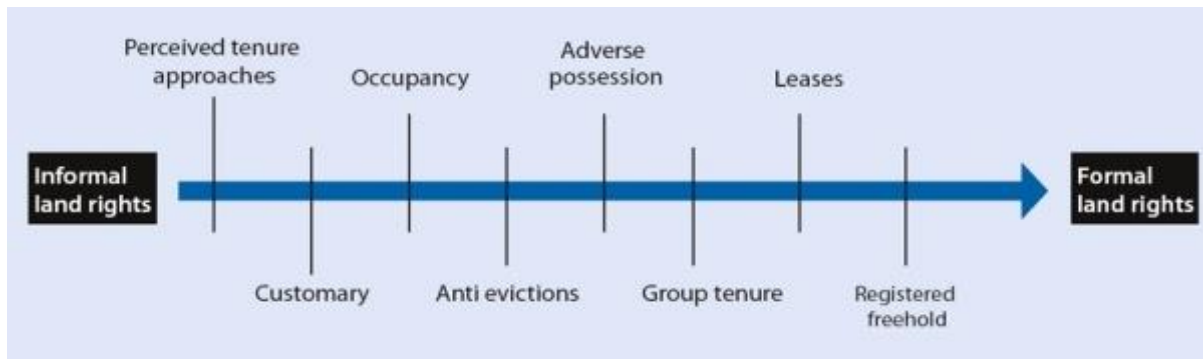
Placing the ‘right to the city’ within a human rights framework could, within democratically accountable contexts, result in policy adjustments that better deal with the issue of land tenure insecurity in urban centres of the developing and developed worlds. Improving, and in some cases creating, more appropriate policy settings will allow governments, NGOs and communities to implement programs that achieve greater levels of tenure security.

This programing would ideally leverage opportunities within new legislative climates that prioritise the social function of land for the urban poor. Innovative projects should experiment with tenure-strengthening initiatives that combine community will, NGO expertise, and government support in a bid to transition families from urban slums without basic services to registered, demarcated plots with state service delivery.

There are four recognised approaches to positively affecting the land tenure insecurity crisis gripping much of Asia and the Pacific; (1) preventing new slum growth through promoting economic opportunities in rural and peri-urban areas, (2) forward-thinking urban planning based on population projections, designating land in advance with affordable secure tenure arrangements, (3) improving the strength of tenure in existing slum sites through a range of tenure alternatives, and (4) relocating slum dwellers to formal land alternatives nearby with affordable secure tenure arrangements.

The right approach will of course depend on context. Approaches 1 and 2 are preventative measures of potentially great value that can minimise the projected human development catastrophe Section 1 has set out. These are the kind of forward-thinking changes that informed, empowered and aware governments can make, often with technical support from development agencies. Approaches 3 and 4 are reactive measures to the existing crisis and set the parameters for the kind of interventions that are being trialled on the ground. In situ strengthening of tenure (approach 3) need not be limited to formal beneficiary registration and land titling. In fact, what is needed is a greater experimentation with the securing of land *through diverse tenure forms*. As the UN’s Special Rapporteur on adequate housing suggests, we must look beyond individual land holdings or possession rights to explore alternate tenure arrangements such as use rights, rental, or collective situations may provide tenure solutions that ensure security for the urban landless (United Nations, 2013, p. 4).

The range of tenure modes can be understood as a continuum. Incremental movement along the tenure continuum from informal to formal land rights is a practical and effective approach to secure land in ‘the short-to-medium term... at a large scale... (while) authorities can develop more comprehensive and locally-sensitive long-term alternatives’ (UN Habitat, 2008, p.11).



Source: UN Habitat

Instances of movement along the continuum to help with tenure insecurity have been encouraging. For example, Land Proclamations in the Philippines ensuring informal settlers on public land could not be evicted benefited more than 645,000 families between 2000-2002 (UN Habitat, 2008). In Bangkok, low-income communities have successfully engaged with land owners in a practical arrangement that allows them to secure the land and use it on a short-to-medium term lease basis while the property gains value before it is then developed (UN Habitat, 2008).

Battambang Slum Formalisation project.

Habitat for Humanity Australia, in partnership with Habitat for Humanity Cambodia, is formalising an urban slum area in Battambang city in the North-West of Cambodia. This project is a good example of the use of alternate tenure arrangements to incrementally move informal settlers toward greater tenure security.

Land tenure insecurity in cities is a growing problem in urbanising Cambodia. To address the issue, the Municipal Government of Battambang approved the conversion of urban land from public state land to private state land, allowing for the delivery of secure tenure for informal settlers under the Social Land Concession (SLC) process. The legal mechanism itself has seldom been tested, however. In this context, Habitat for Humanity is working with the communities and the city government to increase the understanding of the SLC process among concerned communities, and test the land law by assisting informal settlers to organise documentation and lobby the government in order to transition themselves, through the SLC process, from insecure land to secure land in an incremental fashion.

The project will look at securing for families a Social Land Concession certificate which allows them to use the land in the medium term. After a five year period of continuous residency, the families will then receive the land title.

3.3 The Australian Aid Program and infrastructural development.

With the election of the Abbott government, the Australian Aid program has undergone significant changes in where, how, and through whom the aid program will be delivered. One notable shift is a renewed focus on infrastructure development as a key part of the new economic development paradigm for Australia's overseas development assistance (ODA). The government maintains that for Asia and the Pacific 'one of the largest constraints to development... is inadequate infrastructure... (and that) region is estimated to need more than US\$8 trillion worth of infrastructure by 2020' (DFAT, 2014).

In positioning infrastructure development as a key development assistance priority for Australia, the government argues that

'infrastructure drives economic growth by facilitating trade, stimulating enterprise opportunities, generating employment and providing poor people with access to basic services. The poor also benefit indirectly from the contribution that infrastructure makes to economic growth through a reliable energy supply, better roads, improved water supply, access to sanitation, rehabilitated railways and ports and modern telecommunications' (DFAT, 2014).

While infrastructure is a key component of growth and has long been a part of development aid from rich countries to poor, concerns abound regarding the disadvantages infrastructure development may have for the vulnerable, especially those without legal land to protect them from eviction resulting in what is known as 'development induced displacement'. To protect the vulnerable, it is clear that any renewed focus on infrastructure development will need to be aware and incorporate a framework for holistic urban development.

As a large and growing literature on the issue confirms, informal settlers will be negatively impacted by infrastructure development unless a large number of conditions are met. In the interests of preventing 'development induced displacement', infrastructure projects should, in cooperation with government, first recognise the rights of "illegal" squatters, minimise resettlement wherever possible; and where relocation is necessary, develop a resettlement plan and livelihood regeneration strategy that adequately compensates evictees the cost associated with relocating.

The setting of robust safeguards is essential; however, they are insufficient in themselves. As was made clear by the Cambodian railways resettlement complications (Aid Watch, 2012), the strict monitoring of the proper implementation of quality safeguards needs to occur. Community-based organisations and NGO participation in the independent monitoring of infrastructure projects is key here².

² The role of community-based organisation (CBOs) can be under-acknowledged and undervalued in donor countries such as Australia where non-government participation in aid implementation is usually restricted to partner NGOs. In the case of

As yet, it is unclear how DFAT-funded infrastructure projects will be implemented. It may be fair to assume from the government's rhetoric that micro-level urban programming in other countries is unlikely. If it involves, as one might expect, DFAT funding partners such as the Asian Development Bank or others to implement the projects in-country then the government's own promotion of a holistic urban development framework including attention to issues surrounding land tenure will help set the tone for quality safeguards and their monitoring.

The challenge for Australian NGOs is to consult heavily, lobby intensely, and monitor vigorously the era of infrastructure development ushered in by the coalition government. Sustainable urban development for the poor will require a balanced approach to infrastructure development; one that squarely places access to secure land as a key consideration of the approach.

In bilateral aid negotiations with recipient countries, the government must imbed infrastructure projects within a broader framework of equitable urban development sensitive to the vulnerabilities of the poor around land access. It must tie funding to the implementation of an appropriately robust set of safeguards that are enforced through rigorous monitoring processes by independent observers, including CBOs and NGOs. In welcoming further Australian NGO assistance in urban development in the region, the government must increase funding to tenure strengthening programs in Asia and the Pacific. All of this presupposes the successful adoption by the government of a civil society-led counter-narrative to land. Institutionalising the social function of land in the government's development approach will involve evidence-based research that clearly sets out the problem as it continues to expand, coalition-building among NGOs, CBOs and civil society actors to draw attention to the benefits of land conceived as something other than a purely exchangeable economic good, and a government that looks beyond just GNI figures toward the preservation of basic opportunities for all.

the urban poor, CBOs, particularly those connected to national or global coalitions have an impressive track record of achievements through successful mobilisation, advocacy, and problem solving strategies at the community-level. CBO coalition Slum Dwellers International (SDI) is a case in point. By engaging directly with governments and international organisations, SDI advances the needs of slum dwellers and in doing so disrupts the common narrative of slum dwellers being voiceless, invisible, and without agency.

4 Conclusion

Land Tenure insecurity in Asia and the Pacific is being exacerbated by the demographic trend of urbanisation. Tackling land tenure insecurity is a crucial step toward securing global development goals. This paper had argued that land tenure stands as a kind of gatekeeper to the vast human development benefits that shelter affords – a development argument put forward by organisations such as UN Habitat and Habitat for Humanity, who are but two in a growing coalition of actors that are attempting through advocacy and programming to plug the hole in broader poverty reduction efforts that have largely, hitherto, skimmed over shelter’s importance.

The right to the city has put land’s social function back on the map; however, efforts to upscale and entrench the normative commitments to equitable access to land must endure. It is true that examples of pilot projects are increasing in number, however tenure strengthening projects, whether ‘in situ’ or via relocation, are simply not keeping pace with the problem as it snowballs across the region.

While urbanisation is bringing into sharp relief the significance of shelter, the call is still under-acknowledged in Australian development circles. The government’s infrastructure program in Asia and the Pacific will, no doubt, further underline the need for innovative land tenure policy support and programming.

The government’s renewed infrastructure focus should not move to implementation without it:

- Embedding infrastructure development plans within a holistic framework for urban development that includes pro-poor policies for stronger land tenure status
- Connecting infrastructure project funding to the upkeep of quality safeguards that protect the urban poor, and
- Increasing funding to Australian NGOs for tenure strengthening projects as a part of larger shift in Australian ODA directed toward urban issues.

In order to achieve these commitments from the government, Australian civil society in connection with relevant regional and global coalitions, including urban-based CBOs, should:

- Challenge the dominant understanding of land as an economic good by advancing its social function
- Build coalitions and expertise around land issues and urbanisation to advocate to the government on the issue’s importance for 21st century development in the Asia and Pacific region.
- Facilitate discussions between local CBOs and governments in order to advance the rights and promote the agency of organised and dedicated groups of urban poor people, and
- Research best practise around appropriate safeguards and vigilantly monitor their implementation so as to protect the vulnerable from the negative effects of infrastructure development.

5 Further reading and sources of information

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