

GLOBAL NETWORK FOR PRO POOR LAND TOOLS

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December 2005

INTRODUCTION

The land sector is made more complex by an emphasis on doing business as usual, conventional approaches and vested interests that resist change. Yet the land problems of this region, and in the world, keep expanding. One index of this is that we probably have 1 billion slum dwellers currently in the world. We in the land sector need to urgently develop new approaches that also address the issues of the poor and are gendered. If we do not do this we will not be able to deliver security of tenure to the majority of people in our country, also within the time limits set by the Millennium Development Goals, namely 2015 for rural land and 2020 for a proportion of urban land.

UN-HABITAT, working with partners, including the World Bank, the International Federation of Surveyors, ITC and others, is therefore focusing on promoting the agenda of the creation of pro poor gendered land tools, hence this workshop. My speech will focus on examples of innovations, especially from Africa, where many innovations are taking place. It will then go on to describe the Global Network of Pro Poor Land Tool Developers which is being created to promote this agenda and assist in the documentation, dissemination and development of the needed tools. It will also high light some of the pro poor gendered land tools which we need to work on.

LAND INNOVATIONS IN SUB SAHARAN AFRICA

Most developing countries, and many transitional countries, have to deal with multiple land systems because of their history, especially colonial history. I will take one region –Africa, to illustrate why innovation is important and what impact innovation should have on capacity building, research, the way we think, and the way we do business in the future, especially if we are to deal with global poverty issues.

In Sub Saharan Africa most countries are dealing simultaneously with both customary and ‘so-called modern’ or statutory systems of land tenure. The ‘so-called modern’ systems are generally based on individual title. To deal with the colonial legacy of the land tenure system in Africa we need to alter the laws and regulatory frameworks of countries so that families and groups, rather than just individuals, can also acquire secure tenure. We are aware that this situation also exists in many parts of the Asia/Pacific region. Given that African land administration systems have tended to be focused on individual land titles for the middle and commercial classes, new innovative and affordable approaches also need to be developed. Many African countries are at the forefront of new innovations in land tenure and land administration and these are addressed below.

The transformation of a land administration system is a large undertaking and normally involves a number of separate agencies. Also, transformation involves alterations in power and patronage, and it requires extensive civil society debate at national and local levels. An additional complexity is that land is cross-sectoral and of course is considered key to poverty alleviation. In 5 country case studies undertaken of countries innovating (Ghana, Mozambique, Namibia, South Africa, Uganda) it took at least 8 years, and often 11 or more, for a country to get from discussing land policy to the point of implementing it at scale.

That is, tenure issues are extremely complex. No single tenure option can solve all these problems. Policy on land tenure and property rights can best reconcile social and economic needs by encouraging a diverse range of options rather than putting emphasis on one option, such as land titling. This will involve adapting and expanding existing tenure and land administration systems where possible and introducing new ones selectively. UN-HABITAT advocates a continuum of land rights and legal instruments, with land titling being only one of the legal instruments.

UN-HABITAT encourages Member States to develop affordable land tenure and land administration systems that can be used by the poor. UN-HABITAT held an Expert Group Meeting in 2004 co-organised with the Federation of International Surveyors and the Commonwealth Association of Surveyors and Land Economist, on the issue of innovative pro poor affordable systems in the Africa region. It is clear that many Member States are already pioneering new forms and opting for an approach of incremental upgrading. For example:-

- In Tanzania residential licenses in urban areas can be converted to full title later.
- In Rwanda the law, which still has to be implemented, is based on formal registration at national level only where plots are larger than 5 hectares, otherwise local registration methods are to be used.
- In Namibia the flexible land tenure system is under consideration where there will be individual starter titles which are group based and are capable of being upgraded later to individual title.
- In Ethiopia certification in 2 phases is under consideration with a less complex form and a more comprehensive form.
- In Uganda there are two options, ownership title and a certificate of occupancy, also over the same parcel of land.
- In Lesotho three forms of leases are under consideration with different levels of technicality, primary, demarcated and registrable. Also under consideration is the creation of land records prior to land registration.

Another country that has made a lot of progress towards innovative forms of tenure and land administration is Mozambique. In 1997 the Land Law was passed whereby occupancy rights were accepted as full rights equivalent to registered land rights. Also oral evidence equates title evidence. In Mozambique an investor obtains a land title only after thorough adjudication has been done to check that the rights of occupants have not been over-ridden and/or that they have reached agreement with the investor. This is a very pro poor approach but which has not yet been applied to urban areas as the regulations for urban areas have not yet been passed.

The common characteristics in the new laws being passed in Africa are based on a number of themes. The first theme consists of the characteristics associated with the PRSPs which have become cross cutting themes also affecting land namely:- poverty alleviation, decentralization, governance and transparency, service delivery,

protection of women. The PRSP characteristics when applied to land administration and land information management take the form of:-

- Decentralized local land administration offices.
- Cheap and/or free titles or rights and/or tenure protection for the poor.
- Information campaigns at national and/or local levels about people's land rights.
- Adjudication procedures that also protect the occupants of the land not just those being titled or holding registered titles.
- The removal of land professionals from routine operations to management.
- The incremental upgrade of rights over time.
- The adaptation of the conventional land registration system to accommodate the poor and other forms of legal evidence used by the poor to protect their assets.
- The protection of women's land rights (e.g. prioritised allocation, co-ownership).
- No systematic titling.
- No rigid boundaries in customary areas.
- The avoidance and/or delay of adjudication of individual rights.
- The development of spatial information systems as a public good for the delivery of economic and social services.

The second set of characteristics found in innovations in Africa relate to dispute resolution. This aspect was central to many of the discussions associated with the laws and their designs even if it was not always explicit in the law. This aspect became a significant cost factor for Uganda that led to an inability to implement. An earlier draft of one of South Africa's land law was considered too expensive in terms of the institutional structure required to deal with this issue.

The third set of characteristics relate to the technical design of the land administration system and these include:-

- Accuracy of parcels.
- Type of rights allocated.
- Adaptation of the conventional system to the new law.
- A range of cost avoidance characteristics. A number of these can be found in the designs, such as the use of technicians rather than highly qualified professionals for routine operations, the removal of lawyers from routine operations, and that there is no full scale upgrade of the conventional system, and no systematic titling.

One of the most critical issues to be addressed in the land administration designs relates to the fact that the design has to have national applications, be affordable to the poor, and yet not over-ride customary and informal (local) tenure where it is the tenure of choice.

In general African countries found that conventional systematic titling approaches following the rest of the world were unaffordable and not relevant to local requirements, and therefore innovative non conventional approaches to land administration were introduced.

A fourth set of characteristics is found in the new approaches, which seek to eliminate gender-based discrimination regarding land, housing and property rights. Due to colonial influences, individualization of land tenure, land market pressure and other factors, many customary laws and practices have been eroded over time; the forms of solidarity that used to exist and protected women from exclusion, have now disappeared in many areas. The HIV/Aids crisis has further worsened this situation: land grabbing combined with discriminatory rules and/or practices discriminating against women result in increases in eviction of women by their in-laws or their husband. In addition, we know that HIV/Aids affects more women than men. Secure tenure would be a mitigating factor for women in dealing with HIV/Aids, while the lack of secure tenure increases women's vulnerability to HIV/Aids. In times of conflict and post-conflict, discrimination against women proves to be a major stumbling block to reconstruction and rehabilitation. Many women find themselves as widows after a conflict, unable to access land because of legal or customary discrimination against widows inheriting land.

Innovative approaches that seek to remedy and improve these urgent problems include: -

- The adoption of the African Union Protocol on the Rights of Women in Africa in July 2003 in Maputo, Mozambique and its ratification by countries such as Senegal, Lesotho, and Guinea.
- Explicit recognition of equal rights of men and women, and the explicit prohibition (without exception) of gender-based discrimination laid down in the Constitution (e.g. Rwanda, Senegal, Uganda, Ethiopia, Eritrea, Tanzania), combined with declarations that any other law or custom inconsistent with the Constitution is void (e.g. Uganda and Mozambique).
- Explicit recognition of women's equal right to land, combined with a prohibition in regard to discriminating against women in their access to land, laid down in land legislation (e.g. Tanzania).
- Recognition of a form of co-ownership or co-occupancy of land or a house occupied by a family or household and joint registration of such land or house (e.g. Tanzania and in a weaker form Uganda).
- Affirmative action policies, e.g. land allocation to women headed households (e.g. Zambia, Tanzania, Eritrea) combined with credit assistance to develop land.
- Legislation dealing with property and inheritance rights of HIV/Aids orphans (Kenya) and equal inheritance rights for widows/widowers country wide.

UN-HABITAT is assisting Member States wherever we can to develop new approaches to supply security of tenure to the urban poor. For example, we have been working with the Ministry of Water, Lands and Environment, in Uganda, in partnership with the World Bank, to assess the land innovations which have been introduced in that country. As development partners we are calculating the cost to the state and to the citizen, of the innovative designs for tenure security, their impact on poverty and on women's land rights, and we are finding out how the new land law can also be applied to the urban areas. We intend to follow up this partnership with the World Bank, to assist other Member States as well, and to facilitate them to upscale their land innovations.

I have used the Africa region as one example of innovation. We know that appropriate innovation is required throughout the world. One of the key reasons why Sub Saharan Africa can be used as an indicator of future trends is because there is a general acceptance that non conventional approaches are also required. Some countries in other regions, such as Brazil, the Philippines and India with the famous Bhoomi work, have also introduced innovations, but in general Africa is the only region introducing land innovations in many countries.

However the implementation of these innovations is not running smoothly. There are problems with scaling up, vested interest involvement, lack of political will, lack of capacity etc. and there is work to be done to move them forward. Part of the role of the Global Network of Pro Poor Land Tool Developers is to do this. Also these innovations have raised additional technical and institutional challenges in regard to land tenure, land administration, land information management, land tax, planning and servicing and cost recovery, that have to be addressed. Meeting these challenges is critical as people try and address the issues of our times, such as poverty, the management of cities, environmental sustainability, supplying adequate housing for all and so on.

INTER-DISCIPLINARY CHALLENGE

Land and information innovations, that draw on global Best Practice for poverty alleviation, are useful in local contexts also to the poor and/or are shaped to the demands of a changing world, also in terms of new technological developments, need to be created by multi-disciplinary/trans-disciplinary teams. Scalable innovations generally cannot be developed by working within one land discipline, also because land and the spatial information linked to it are highly complex subjects with extensive vested interests. Multi-disciplinary teams need to share knowledge about the substance of the matter and they also have to change their usual methods of approaching their work.

As a social scientist I have worked in the land titling field for years and observed the behaviour of role players. There are at least two very different sets of people. On the one hand role players come from a social science, economics, political science, geography, social forestry background, and on the other hand, from a land surveying, computer science, forestry, geology, planning, valuation, engineering type background. Lawyers fall into both sets. Judging from many forums these different role players are still mostly talking past each other, though this is slowly improving. To create pro poor innovative land tools, where land policy programmes are translated into specific steps to be taken in individual countries, will require integrated work by the whole range of role players.

Many of us are becoming increasingly aware that it is not possible to change land administration systems by working optimally within each silo, but that instead we have to work out optimal solutions across the whole land sector within the socio-political context. Also as individuals we need to be open to hear criticism across the disciplines as we search for optimal solutions across the silos.

I have been arguing for years that increasing our global understanding, description and analysis of land and spatial information related issues is necessary, but not

sufficient, to be able to deliver land-related changes in countries, regions and at a global level. Instead we have to link the description and analysis of these issues with implementation, drawing from the type of approaches found in surveying, valuation, forestry, registration and planning –which put an emphasis on the delivery of land, information and other services. That is, to be able to create viable innovations which can change people’s lives at scale we need to alter our approach to how we go about our business. We need to 1/describe, 2/analyse, 3/set the agenda for research into the creation of tools, 4/develop the tools which allow us to implement large scale changes in the land related arena, 5/implement at scale with evaluation. Given the nature of land, this can generally only be done in-country, with the country, and with multi-stakeholder involvement. However, global, and especially regional, best practices are also often capable of adaptation.

GLOBAL NETWORK OF PRO POOR LAND TOOL DEVELOPERS

A global network for the development of pro poor gendered land tools is currently being put together, with UN HABITAT as the hub, but with many other global partners such as the World Bank, FAO, a number of donors such as Sweden and Norway, the Millennium Challenge Corporation, the International Federation of Surveyors, ITC, the Lincoln Institute and others. The main outputs of the Network will be firstly, pro poor gendered land tools at the implementation level. Secondly, a key output is the improved integration of actors within the global land industry and thirdly the delivery of security of tenure of the poor for the MDGs, also through the Global Campaign for Secure Tenure of UN-HABITAT. It is also intended that the network will raise the political profile of the land tool agenda, also by using the UN system.

The network is also about scaling up innovative land tool work already being undertaken by partners and will include evaluations of impacts, to learn lessons also to feed back to policy makers and a peer review mechanism of donor programmes. UN-HABITAT has been working with the World Bank in Uganda, for example, in the creation of an innovative land tool there. UN-HABITAT and FIG will also work with the World Bank in assessing the Bank’s work in India. FAO and UN-HABITAT are working together on producing manuals on how to deal with land administration issues in post crisis situations. This EGM is an example of collaboration between many of the Network partners including FIG, ITC and the World Bank.

Potential partners in the network include:-

- UN bodies
- Research institutions
- Member states (where tools are developed).
- Donors.
- NGOs.
- Professional bodies

There are already many networks operating in the world and it is important that the envisaged network adds value. Therefore it should be a network of networks and the thematic focus of the network should be:-

- Management/administration
- Information/planning
- Rights and records
- Law and enforcement
- Tax/valuation

An initial agenda of the pro poor land tools needed includes:-

- Indicators to measure tenure security
- Land administration for post-conflict areas
- In-country capacity building and education
- Gendered tools
- Diverse forms of land rights
- Land records management for transactability
- Post conflict land administration
- Estates administration (HIV/AIDS areas)
- Land administration and governance tools
- Technical/legal policy e.g. user fees
- Management of state land
- Geodetic for Africa
- Spatial units for non parcels
- City wide slum upgrading
- City wide spatial planning
- Regional land use planning
- Cost benefit analysis, GIS tools
- Non customized GPS tools
- Gender friendly affordable adjudication
- Expropriation and compensation
- Measuring tenure security for the MDGs
- Continuum of land rights
- Land readjustment (slum upgrading and/or post tsunami)
- Deeds or titles
- Capacity building for sustainability
- Land access/land reform
- Key characteristics of a gendered tool
- Land tax for financial and land management
- Modernization of land agencies budgeting approach

All these tools involve a range of cross cutting issues namely:-

- Developing countries
- Post conflict/disaster situations
- Governance
- Informality (customary/informal)
- Gender aspects
- HIV/AIDS, orphans

It will not be easy to develop these tools as firstly, most of them will require that we work through central and local governments, and other stakeholders at country level, which takes time and resources. Secondly, these tools have to be gendered and we do not yet have a methodology to guide us in the creation of gendered land tools at scale. UN-HABITAT is working on this with partners. Thirdly, for the land tools to be useful they have to work also for the poor at the grassroots level, and we therefore need to create a robust grassroots mechanism. Fourthly, implementation at scale will take political will. Fifthly, for the tools to be useful they have to be applicable to, and capable of adaptation to, local conditions.

To conclude, currently we are preparing for a 10 year programme and multi-donor basket funding starting at the beginning of 2006. The Network will be launched at the World Urban Forum in June 2006. Finally, the findings of this Expert Group Meeting, together with other meetings held in the Arab World, Russia and CIS and Sub Saharan Africa will be presented at a special event at the World Urban Forum on Innovative Land Tools.

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