



SESSION 7

Urban Land Reform, Tenure Options and Land Administration

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The International Federation of Surveyors is an NGO recognised by the UN and the World Bank. It comprises national member associations that cover the whole range of professional fields within the global surveying community. The Federation provides an international forum for discussion and development that aims to promote professional practice and standards.¹

¹ <https://www.fig.net/>

The session was moderated by **Charl-Thom Bayer**, former Head of the Department of Land and Property Sciences, NUST

Editorial note: The initial introduction that the speaker gave about the International Federation of Surveyors was edited, as much of the information was readily available on the Federation's website.

Introduction: Urban Land Reform, Land Administration and Tenure Options

Land administration is the way in which the rules of land tenure are applied and made operational. *Land management* is the process of managing the use and development of land resources in both urban and rural settings.

The processes of land administration include the transfer of rights in land from one party to another through sale, lease, loan, gift or inheritance; the regulating of land and property development; the use and conservation of the land; the gathering of revenues from the land through sales, leasing and taxation; and the resolving of conflicts concerning the ownership and the use of land. Land administration functions may be divided into four components: *juridical, regulatory, fiscal and information management*. These functions may be organised in terms of agencies responsible for surveying and mapping, land registration, and land valuation.

I argue that every tenure option emerges from the land management of any country, or society or community.

Land reform is a programme which aims to rationalise, with due process and through equitable means, the existing pattern of land use and ownership in urban and urbanising areas. As such, it involves the imposition of certain limitations on the use by the owner of his/[her] property. I have seen the case of Namibia presented at the [Global Land Tool Network] platform,² namely that taking land from commercial farmers to redistribute it to previously disadvantaged people happens through due process; but is it equitable? That is why we need to ask these two questions together. We also need to manage citizens' expectations in a sustainable manner.

I find the following steps useful in engaging with urban land reform:³

- Step 1: Know your territory.
- Step 2: Develop a city-wide approach to redevelopment.
- Step 3: Implement neighbourhood plans with community stakeholders.
- Step 4: Make government effective.
- Step 5: Create a legal framework for sound redevelopment.
- Step 6: Create marketable opportunities.
- Step 7: Finance redevelopment.
- Step 8: Build on natural and historic assets.
- Step 9: Be sensitive to gentrification and relocation issues.
- Step 10: Organise for success.

I have selected three case studies from China, Rwanda and my own country, Ghana, in order to show what drives different tenure options in these places.

Urban Land Reform in China

Modern land reforms began in the mid-1980s following a successful experiment in Shenzhen with a Special Economic Zone on its border with Hong Kong. In [the Zone], State-owned land was leased to foreign corporations. The [Chinese] Constitution was amended in 1988 so that land use could be transacted according to law. Previously, China did not have this type of system. In 1990, China officially adopted land leasing as the basis for assigning land use rights to urban land users.

In the current property rights regime, use rights for specified periods ranging from 40 to 70 years can be obtained from the State through the up-front payment of land use fees. This is creating a massive financial asset for them. The fees are determined by the location, type and density of the proposed development. This separation of land ownership and use rights allows the trading of land use rights while maintaining State ownership of land: the State maintains the ownership and it sells the user right to you. If you have the user right, you can also sell it to somebody else.

For the Chinese Government, this separation offered three advantages: first, market mechanisms could help guide the allocation of land resources; second, land use fees would provide local government with a new source of revenue; and third, by retaining state ownership, social and political conflict would be minimised.

The pace at which this transformation is taking place offers rare challenges and opportunities. For land policy researchers, China offers opportunities to explore questions central to international urban policy debates:

1. How do market forces shape the internal structure of cities?
2. Can markets provide safe and affordable housing for all segments of the population?
3. Are markets the primary cause of urban sprawl?

For academics and practitioners involved in education and training, China offers the challenge of sharing the lessons of Western experience without encouraging the Chinese to make the same mistakes. In the process, both researchers and trainers can improve the process of development in the world's most rapidly urbanising nation.

Urban Land Reform in Rwanda

I present the case of Rwanda because there is hardly a conference on land-related issues without someone citing the massive progress Rwanda has made. Rwanda started with a National Land Policy in February 2004 and passed a Land Law in 2005. The National Land Policy put great importance on appropriate land administration systems as being key for land tenure security, providing the possibility of registering and transferring land and, thus, of

² The Global Land Tool Network is an alliance of international partners contributing to poverty alleviation through increased access to land and tenure security (<http://www.gltn.net/index.php/about-us/about-gltn>, last accessed 31 July 2019).

³ See Katz, B. (2003, July 9). Seizing City Assets: Ten Steps to Urban Land Reform. Presented at the Vacant Property Forum. Retrieved from https://www.brookings.edu/wp-content/uploads/2016/06/20030709_katzvacantland.pdf

investment in land. They needed to have a clear distinction between urban land and rural land, [and] a clear separation of public land and private land. They needed to decentralise land administration procedures, provide strong institutional arrangements to coordinate all the systems, and embark on systematic land registration both in urban and rural areas. To this end, Rwanda chose appropriate technology to map the rural area, i.e. a global positioning system (GPS) for tourists, although it is less accurate than a professional GPS. They needed to know where and how big a property was so that they could undertake the task in a reasonable time.

Everyone knows that land is a valuable asset; but it is also a very contested one and a source of various conflicts. [For example,] the Liberian war started as a political issue, and then it shifted to the issue of land ownership. Getting land reform right is critical to both poverty reduction and a peaceful and secure country. Thus, land reform is identified as a priority in the Government of Rwanda's Vision 2020 to improve the security of tenure by clarifying and registering land rights in order to ensure that all Rwandans, irrespective of gender, enjoy the same rights to land. The Rwandan Government also aims to improve land values, promote investment and contribute to sustainable land use and management.

Urban Land Reform in Ghana

We have two parallel land systems. The first is the statutory tenure and State land management system, where the government acquires land from communities through compensation that it deems fit. Government runs this system through the Lands Commission, the Land Valuation Board, and the Land Title Registration System. We have a lot of chieftaincies as Ghanaian society is clan-based; and all these chiefs have land. To administer the revenues flowing from this resource, there is an Administrator of Stool Lands. We also recognise the importance of surveying, so we have a Survey and Mapping Department, and an Environmental Protection Agency. The courts also play a key role in this: they allow for change in tenure through identification and judgements. Therefore, the courts are also part of the framing of the land tenure options that we have in Ghana within the statutory tenure system.

Then we have the customary land tenure and management system, which deals with what I mentioned earlier regarding the chiefs having land; we call this the *Allodial Title System*. Even though the chiefs hold the land in trust, and it is a fiduciary relationship between them and the subjects of the clan, the chiefs are always pocketing the money and never account for it. So, this trust relationship is always a challenge.

At the customary level, there is what we call *families*. They are not clans, but they are families. There are families who descend from a long heritage of owning land, and this is recognised by our Constitution. And then we also have private interests confronting these.

I did not expand on the benefits of customary land tenure in Ghana because there is little to say about that, but I will share with you the weaknesses. The weaknesses emerged from the weakening of the fundamental principles of customary land law. If customary law were codified and written, then you could always refer to it. But because it is only documented by word of mouth and keeps evolving through time, it becomes increasingly problematic – as land started having monetary value. The weakening of the fundamental principles of customary land law and the breakdown of the trusteeship ethos have resulted in landlessness (some chiefs can sell all their land to one investor without the knowledge of their subjects), homelessness, endemic poverty and general insecurity for women and men alike in peri-urban neighbourhoods. Land conflicts, protracted litigation and adjudication failures, documentation bottlenecks and uncertainty are widespread problems with informal land markets.

What did Ghana do? They decided to balance the two: statutory and customary land tenure and management. The chiefs own about 80% of all the land in the country, so they are a big force to reckon with. The State has only 20% of the land, and they cannot get land unless they appropriate it from the chiefs. This means that you have to do some balancing. This resulted in what we call *vesting orders*, in other words, vesting land in the President of the Republic. In theory, when customary lands are vested, the beneficial interests rest with the community whilst the legal estate is transferred to the President. In this case, whatever happens, the stools (communities) benefit from this operation: any revenue that emerges through this transaction goes to them. However, for management purposes, the ownership is vested in the President.

Conclusions: Teach less, Learn more, Do much

China asserted State control over land to accelerate development, which was the major vision for tenure options. In Rwanda's case, they wanted to manage potential conflicts by enhancing access to land and reducing poverty. With regard to Ghana, there was the need to balance customary processes with statutory regulation for inclusiveness.

Now I ask one question: in Namibia, which options will we choose? Which option are we going to rethink?

I have gathered some wisdom through interactions with the survey team from Cambodia. The discussions were about how they have emerged from a bitter war to address some of the issues of land tenure. Sar Sovann, a friend of mine who is retired now, shared with me what the vision of land administration in Cambodia is: *No cry, no laugh, only smile*. If you cry, it means land has been taken away from you unfairly, and this is what they want to avoid. If you laugh, it means you got it on a silver platter; you have cheated or you have more than the others. Only smile means that we are in-between and it's fair. Therefore, they bring people along in that corridor – with only smiles.

I have developed these approaches to reform. I say Teach less. When I talk about Teach less, I am referring to the principles. In any academic session we can research so many things, but what should be important to us are the underlying basic principles which you need to apply. This is what I learned from Sar Sovann, to teach less. Let them bring you all the loads of data, laws, assessments, historical evidence, and all that, but take the principles and apply them.

He also said *Learn more*. By learning more he meant that you should be learning facts and that your facts should be based on logic. To have a practical tenure system that works for all, you must be factual and logical in all your dealings.

And then he says *Do much*. By this we mean “be flexible and be balanced”.

We all know that planning is multifunctional: that it involves various tasks, roles, and professions. What I would like to highlight is the need to manage high-level collaboration, consultation and coordination between and amongst stakeholders from all scales as a policy objective for any country. I hope that whatever we are going to rethink, we will measure it with the integrity that it deserves.

Discussion

Charl-Thom Bayer proposed focusing the discussion on the institutional point of view and how the sustainability of urban development could be seen from that perspective.

A participant from the LAC raised the issue of 99-year leases, noting that they were sometimes problematic when being transferred to another lessor. She asked the speaker if he knew of cases where a 30- or 70-year lease had expired and what had happened on its expiry.

Mr Tenadu clarified that, in such cases, the only right that the beneficiary had was the right of use; so, the only thing that the beneficiary could dispose of was the right of use. A beneficiary could sell that right to an investor.

The same LAC participant asked what would happen in the last year of the lease.

Mr Tenadu responded that it was a matter of economics. The right of use over land with only one year left in the lease was worth less than one with 29 years left – unless that right of use was renewable. He also mentioned that the nature of the development associated with the leased land would add other variables, e.g. developing a factory would differ from building a housing estate.

Mr Bayer stated that, in the case of Namibia, it was not the technical capacity or skill of the surveyor that was the problem, but the costs associated with property transfers. He explained that some informal settlements had been surveyed, but that the costs and procedures from that point on to the transfer of ownership to the land occupants entailed high costs.

The LAC participant responded that although that might be the problem in urban areas, in her experience the problem in rural areas was the lack of surveying professionals.

Mr Bayer referred to a study⁴ that had looked at communal farms in northern Namibia. The study had found that, while all of the communal farms had been surveyed and their diagrams had been registered at the Deeds Office, no leasehold rights on communal lands had been registered. Furthermore, while survey costs had been covered by the State, the cost of transferring a land right seemed to be an obstacle, Mr Bayer stated. In these circumstances, he felt the issue was more socio-economic in nature than a matter of deficiency in the land administration system. He also mentioned a certain tendency of traditional leaders wanting to keep some degree of control over land allocation in areas *under their jurisdiction*. This tendency was not, in Mr Bayer's view, one of authoritarianism, but because land transactions were already working to some extent and the usefulness of formalising land rights was unclear.

Mr Tenadu pointed out that, in Africa, traditional land allocation mechanisms were something that could not be neglected, and that imposing land administration systems from Europe could be unproductive.

An unidentified participant asked about cases leasehold rights in urban areas.

Mr Tenadu explained that urban areas in Ghana still had a dual system of traditional and statutory land management. However, he emphasised that it was particularly in rural areas that one needed to recognise and empower what already worked.

The LAC participant said that traditional land rights could also be problematic. She illustrated this by describing how land was sometimes allocated traditionally to a person while the house in fact performed the function of a ‘family house.’ This created a situation in which the head of a household was able to sell or transfer the house, while in practice they were displacing a larger number that also had a right over such ‘family house.’ She stated that the LAC had some cases of families seeking assistance because the head of their household had sold the land on which they had all depended. She added that there had been other cases as well, e.g. where some had been tricked into selling their properties by signing sale agreements without knowing what the documents entailed. She also noted that original Katutura houses were subject to 99-year leases, but that their occupants had been able to purchase

4 Werner, W., & Bayer, C.-T. (2016). Leasehold as a Vehicle for Economic Development. Retrieved from Legal Assistance Centre & Namibia University of Science and Technology website: <http://ir.nust.na:80/xmlui/handle/10628/587>

outright ownership of the land and the dwelling(s) on it for a certain amount before Independence in 1990.

Mr Tenadu stated that such cases had more to do with poverty and a lack of education, rather than shortcomings in the system itself.

Mr Bayer cautioned that tenure systems needed to recognise the situation on the ground. He mentioned how group rights that were supposed to protect the land rights of a group in fact empowered individuals, creating uneven land rights within the group. For example, he explained how programmes like the MHDP could be reviewed not only to entail group rights, but also sensitivity to the situation on the ground. He asked how group rights worked in respect of the Flexible Land Tenure⁵ scheme or sectional titles. Among the challenges in maintaining group rights, in his view, was that they required resources and cooperation – either in the form of body corporates or voluntary organisations. He also raised the question of how group rights beneficiaries could eventually ‘graduate’ to individual ownership if the situation required.

An unidentified participant stated that group rights, particularly in urban areas, depended a lot on affordability and legislation. He explained that local government in Namibia operated on a cost-recovery basis; however, the professional costs involved in formalising land tenure, coupled with legislation setting high standards, created an affordability problem for the potential owner.

Mr Tenadu referred to work undertaken by the Global Land Tool Network, where the concept of a continuum of land rights was established.⁶ He suggested using this concept to reflect on where Namibia found itself.

An unidentified participant emphasised the need to produce local definitions for Namibia in terms of what was meant by culturally acceptable, affordable and social housing.

Mr Bayer encouraged seeing Namibia’s informal settlements as not completely ‘unregistered’. For example, he noted some informal settlements had numbered structures and there was some form of registry of plots in the settled area.

An unidentified participant from the City of Windhoek cautioned that unlawful land occupations could also become politicised, and that relocation could become complicated if political support happened for electoral purposes instead of as a human rights issue.

Mr Bayer pointed out the contradiction between the lack of serviced land and the simultaneous resistance to densify land uses to make serviced land more affordable.

The same unidentified participant from the City of Windhoek responded that the challenge lay with councillors who sometimes resisted the notion of densification.

An unidentified participant pointed out that densification required a revision of urban planning and an increase in public amenities.

Mr Bayer reminded participants that culture changed, illustrating his point by describing how a young university graduate might not necessarily be interested in a freestanding house but might prefer a flat in an apartment building. He suggested that, as an alternative to defining culture and catering for that, envisioning flexible options in a changing environment would be more strategic.

5 See Christensen, A. (2017). The Flexible Land Tenure System in the context of the Sustainable Development Goals (ILMI Working Paper No. 6). Retrieved from Integrated Land Management Institute website: <http://ilmi.nust.na/sites/default/files/2017-CHRISTENSEN-The-flexible-land-tenure-system-in-the-context-of-SDGs-WEB.pdf>

6 See Barry, M., & Augustinus, C. (2016). Framework for evaluating continuum of land rights scenarios (Report No. 4). Retrieved from UN Habitat : Global Land Tool Network website: <https://glt.n.net/home/download/framework-for-evaluating-continuum-of-land-rights-scenarios/>