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**CAN LESSONS BE LEARNT FROM
IMPROVING TENURE SECURITY IN
INFORMAL SETTLEMENTS?**

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**Can lessons be learnt from improving tenure security in
informal settlements?**

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Abstract

The implementation of ‘Western’ land administration systems (the classical approach) often failed in Sub-Saharan Africa for several reasons. And when (partly) successful, it did not benefit the poor. Recently more attention is given to the inclusion of customary and informal tenure in land administration. This is referred to as the innovative approach, which should be able to protect informal rights in a land administration programme.

Recent land policy reforms in Sub-Saharan Africa implemented innovative tools in order to, amongst others, improve tenure security for the poor. In addition, in many cases bottom-up initiatives to improve tenure security have been undertaken. Tools are for example occupancy licenses, customary leases, certificates, etc. In this way a continuum of land tenure rights, as e.g. presented by UN-Habitat (2004a), can be distinguished and recorded. The continuum is redesigned as a continuum of tenure to analyse the relationships between the existing tenure situation in an area in combination with the applied methods of tenure regularization.

Examples of improvements on tenure security in informal settlements in Ghana, Namibia and Tanzania are described, based on literature study. They are analysed in the continuum of tenure and rated for the actual outcome of the improvement (which can even be negative). A similar method has already been applied to assess the innovative tools for improvement of tenure security in the rural areas of Mozambique, Uganda and Zambia (Van Asperen & Zevenbergen, 2006).

The effectiveness of the different approaches is further discussed; lessons can be learned from these approaches. In addition, trends are observed which should be taken into account for future research and policy development.

Introduction

Almost a billion people are presently living in informal settlements in the urban areas of developing countries, in many cases without secure tenure. This number is projected to increase to 1.5 billion by 2020 and 2 billion by 2030 unless urgent action is taken. In some countries, the proportion of people living in unauthorised settlements is already much higher than those in formal land and housing markets (UN-Habitat, 2003b).

Land is an important economic asset in almost all societies and can contribute to economic development and sustainable growth. Therefore, land has a potential to contribute to poverty reduction, especially in developing countries. Providing poor people with access to land (ownership/possession) and improving their ability to make effective use of the land they occupy is central to reducing poverty and empowering poor people and communities (Deininger, 2003). One of the main requirements for an individual to use land economically and to be willing to invest is to have tenure security, to be assured of the land right for a certain period of time.

A simple taxonomy of tenure systems is:

- Legal or state: based on written law, designed and executed by state bodies;
- Customary law: based on unwritten law and customs, valid within a homogenous group, like a tribe;
- Religious: based on religion like Islam or Hinduism;
- Informal: in all other cases: people have acquired 'land rights' without using any of the above-mentioned channels.

This paper focuses on tenure security in Africa. Generally spoken, it can be said that before colonialization customary tenure was the major system. The colonial powers introduced state law, however they implemented state tenure only for the important economic areas, like urban areas and suitable agricultural land for commercial farmers. After independence, this situation continued to exist. Due to the rate of urbanization and commercialization of agricultural economies, tenure security came under pressure. Due to the growing lack of land for low-cost housing, informal tenure became apparent as well. Informal tenure normally has a high degree of insecurity. However, customary tenure systems can function properly. For example, customary tenure is generally secure within the local community. For the villagers themselves titling is unnecessary. This might change due to external developments like the introduction of a market economy, urbanization or incoming investors. It is very important to realize that multiple tenure regimes may exist in an area, that they may overlap and that they continue to change and adapt themselves to the ever changing environment. Religious tenure will not be discussed in this paper, as it is not applicable in any of the cases.

Till the end of the last century the main solution to improve tenure security in Africa was systematic titling: the introduction of registration systems originating from the developed world to issue formal titles under statutory tenure as already partly existed. Almost all attempts however failed. Or even worse as UN-Habitat (2003a) describes: Large scale and rapid tenure reform, even where government has the best of intentions, can lead to a loss of

security. In general, the loss of security often affects the less privileged. Fourie (2002) even states that land titling systems are not pro-poor and instead support the needs of the elites.

During the last years, after the failure of classic titling, new land laws are or have been introduced and discussed. These laws are an attempt to move away from colonial forms of land administration on the one hand, but also to develop land administration systems and laws that more closely reflect the social land tenures on the ground (customary and/or informal (Augustinus 2003). Before the actual situation in three countries will be given, tenure security in informal settlements and the continuum of tenure will be discussed in general.

Tenure security in informal settlements

Land tenure security can be defined to exist when an individual perceives that he or she has rights to a piece of land on an continuous basis, free from imposition or interference from outside sources, as well as the ability to reap the benefits of labour and capital invested in that land, either in use or upon transfer to another holder (Place et al., 1994). This definition has three components: breadth, duration and assurance within a legal and economic dimension.

- Breadth: the legal quantity or bundle of rights held (use, exclusion, transfer);
- Duration: length of time during which a given right is legally valid;
- Assurance implies that rights are held with certainty.

Tenure security includes both ‘objective’ elements (nature, content, duration and enforceability of the rights, state guarantee, quality of boundary descriptions, conflict handling) and ‘subjective’ elements (landholders’ perception of the security of their rights) (Kanji, et al., 2005; Deininger, 2003). Objective security is often referred to as *de jure* security of tenure, while *de facto* security corresponds with the subjective elements. *De jure* security is normally easier to determine by assessing the laws and regulations related to land issues, although *de facto* security might be more important.

Informal settlements are settlements established by people who have occupied an area of land without explicit permission of the owner and built their houses upon it, usually through self help processes (UN-Habitat, 2003b). Another characteristic of informal settlements is the non-compliance with respect to land use plans and regulations for subdivisions.

Tenure security plays a major role in effective protection against forced evictions. Secure *de facto* tenure is what matters to informal settlers first and foremost – with or without documents. It is the protection against eviction that gives the house its main source of value. (UN-Habitat, 2003b). Under international law, ‘forced eviction’ is defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and /or land which they occupy, materials, facilities and infrastructure.” (UN Habitat, 2004b). In addition, tenure security can also provide a wider range of transfer possibilities (allowing increased pay off of investments) and access to credit, for example mortgage (Deininger, 2003). For access to credit, *de jure* security is more important than *de facto* security.

The current situation in informal settlements in Africa with respect to tenure security is concluded by Rakodi (2004):

- Informal land delivery systems are in part a continuation of earlier land administration practices and in part a response to the failures of the formal tenure and land administration systems.

- Informal systems of land delivery are the main channels of housing land supply.
- Informal land delivery processes are often effective in delivering land for housing, because of their user-friendly characteristics and social legitimacy.
- Urban growth and development increase the pressure on such social institutions, and in some cases, they weaken and break it down, leading to increased tenure insecurity.
- Wholesale titling is often not appropriate:
 - Titling increases the value of urban land, making it even less accessible to low-income groups.
 - There is lack of institutional capacity to sustain it.

As tenure security has objective and subjective elements, it is difficult to assess it. First of all, tenure security is related to a tenure category, which relates directly to people. One has to realise that many stakeholders are involved as well: previous right holders (farmers under state or customary law, investors/companies), in customary cases so called secondary right holders (grazing, collection of fruits and herbs). This paper studies the tenure security in informal settlements. Strong threats of eviction will give informal settlers low levels of security, however, it may maintain a high level of security for an eventual original land owner. At this point, it is evident that policies dealing with tenure security are highly politically motivated. In order to assess tenure security one has to be aware of the already mentioned difference between *de jure* and *de facto* security.

Indicators for *de jure* tenure security can be found through studying the land laws, procedures and institutions dealing with land issues. Examples are:

- Proportion of households with formal documents (Millennium Development Goal nr 7, Target 11, Indicator 32, UN-Habitat 2003 b);
- Quality of land related laws and regulations (available tenures, gender equity);
- Capacity of land administration bodies (number of professionals, time and costs needed for registration);
- Effective land dispute handling (number of courts and judges, time and costs for court cases).

Nkwae (2006) suggests the following indicators for *de facto* security:

- level of threat of eviction and demolition;
- provision of social services and infrastructure;
- passage of time since or age of the informal settlement;
- socio economic status of inhabitants in the settlement;
- level of property investment.

Awareness and judgement of the statutory land management procedures might be added as well. Most probably, the *de jure* security forms a part of *de facto* security.

Improving tenure security

Tenure regularization is seen as one part of the solution to improve the livelihoods of land holders in informal settlements. Ooko Midheme (2007) defines tenure regularization as a deliberate process aimed at bringing the informal and unauthorized settlements within the official, legal and administrative systems of land management. There are three main types:

- Formalization: the political or administrative acknowledgement or recognition of informal settlements in the official city administration, like anti-eviction laws or designate informal settlements as special planning areas.

- **Legalization:** the process of providing legal backing to the existing tenure systems on community or municipality level.
- **Titling:** this refers to the registration of individual or group rights into a land register, often combined with cadastral survey.

The above listed types of regularization are state driven. Additionally, communities themselves can also act to improve security of tenure. Such community action can be described as the process whereby the community itself regulates tenure within the existing legal framework.

At last, individual user action may have an effect on the tenure security as perceived by the individual. User action covers a wide range: it might be transfer or subdivision of any land right, which may happen in any tenure system, or even development activities. Such actions can be informal (illegal, unauthorized) or legal. Development activities, like erection of a wall fence, may contribute to a higher level of perceived tenure security. Individual user action is not discussed in this paper, as it is focused on the improvement of tenure security for communities.

The continuum of tenure

In literature, several continua of land rights have been designed (UN-Habitat 2004 a, Payne 2004, Mabugunje 1992). These continua help us to understand the relationships between land rights, tenure systems and tenure security. Most of them have a large level of detail, as they combine various tenure systems with other relevant laws and tenure formalization (for example planning and anti-eviction laws). These laws, even political statements, have an effect on tenure security. In order to analyse the relationships between the existing tenure situation in an area and the applied methods of tenure regularization, the continuum is redesigned as a continuum of tenure (see figure 1). The continuum is based on the following categories:

1. Informal
2. Customary
3. State-leasehold
4. State-freehold

The list is generally ordered according to an increasing level of tenure security, however, this may not be valid in all cases.

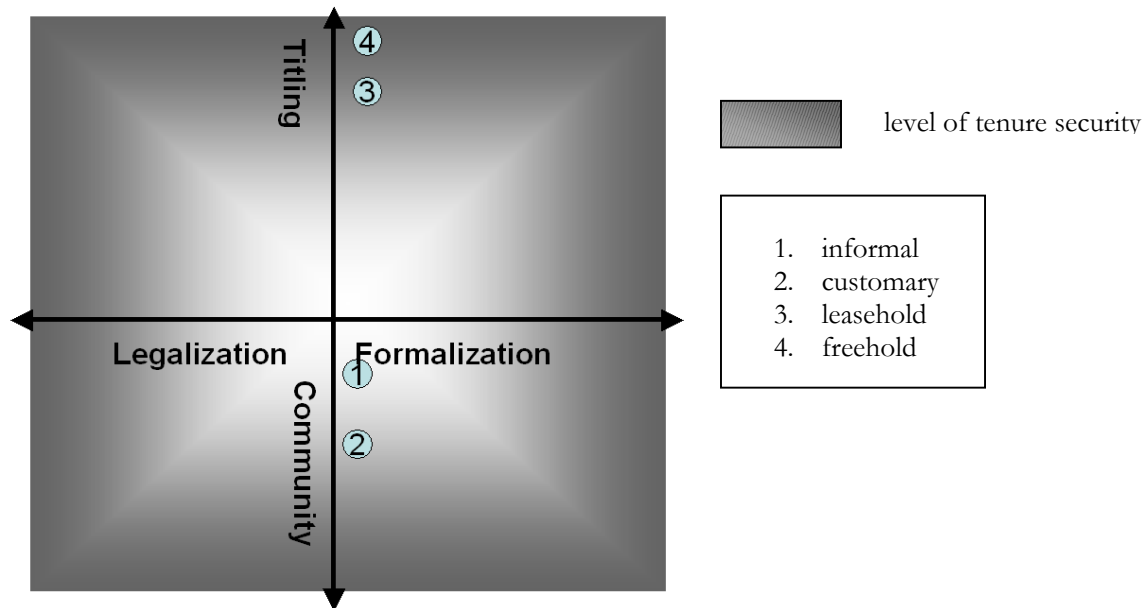


Figure 1 The continuum of tenure

Along the axes, the means for improving tenure security are set out: three types of tenure regularization and community action. Concerning the cases to follow in this paper, tenure security is considered as perceived or *de facto*, as is most important for the community.

Figure 1 shows the theoretical starting point of an area having multiple tenure systems. Statutory tenures have in general a high level of tenure security, due to titling, whereby the level of leasehold is slightly less than freehold. Informal tenure is considered to have the lowest level of security, and customary tenure a modest level. Tenure security for both informal and customary tenure is in principle strongly related to community recognition.

In order to check whether the continuum can play a role in the search for effective tenure regularization methods, three case studies are carried out on tenure security in informal settlements in Ghana, Namibia and Tanzania (for application in rural areas, see Van Asperen & Zevenbergen, 2006). The case studies are based on literature studies and have not been validated in the respective countries. The position of tenure categories within the continuum is rather indicative in all three cases, however, the relative position should correspond with reality.

Ghana

Ghana has multiple tenure systems. Originally, various types of customary tenure existed. They can be broadly classified as Stool Lands, Skin Lands and family lands. During colonial times state tenure has been imported and resulted in a separate category State Land. Nowadays, approximately 22% is State Land. In the Constitution in Ghana, it is stated that customary law is officially recognized, meaning that customary land tenure is an official legal form of tenure. Various customary rights exist, like allodial rights, customary freehold and sharecropping.

Strictly spoken, Ghana has no informal settlements, as almost all people acquire plots through customary channels. However, the existence of multiple tenure regimes is a source of land

related conflicts, leading to tenure insecurity and a heavy burden for the judicial system (see for example Crook et al., 2007). Examples of land related conflicts are described in Gough & Yankson (2000), like multiple selling of the same plot and boundary disputes. COHRE (2006) reported for 2005/2006 the following forced evictions: 800 people from Legion Village and 2000 traders from Kantamanto market.

The rapid urbanization leads to a rapid growth of settlements at the fringe of Ghanaian cities, having the same physical characteristics as informal settlements. Within a Ghanaian context, it is more appropriate to discuss tenure security in peri-urban areas, rather than informal settlements.

In order to tackle the lack of tenure security in peri-urban areas (amongst others), the Land Administration Programme (LAP) has been set up. Its main aims are (Larbi, 2006):

- Enhanced economic and social growth and poverty reduction through improved access to land and enhanced security of tenure;
- Expanded role of civil society and private sector in land administration;
- Improved governance.

One of the measures is the establishment of new or strengthening of existing Customary Land Secretariats (CLS) (Antwi, 2006). At least one CLS has been established in each of the ten regions in Ghana (Fiadzibey, 2006). Pilots have been carried out in order to find optimal ways to register customary land rights (Antwi, 2006). At this moment, it is impossible to study the effects of the introduction of LAP and CLS on tenure security. However, many scholars are concerned with the role of chiefs: for example Antwi (2006): The risks to the CLS concept are that occupiers of stools/skins may use enhanced and equipped CLS to further tendencies of dispossessing their subjects of lands. These risks seem to be realistic when referred to the role of chiefs, where Ubink (2006) concludes that many of the chief's current practices in peri-urban Kumasi are diametrically opposed to descriptions of customary law in authoritative literature, case law, and sections in the constitutions of Ghana. The role of chiefs is more often criticized (Abudulai, 2002; Gough & Yankson, 2000), although last reference also provides examples of chiefs dealing with land in a proper way, resulting in development of the area.

Despite the studies mentioned, Mends & de Meijere (2006) conclude that the customary land tenure system can well cope with the drivers behind urbanization, though there are some problems identified in the process such as tenure insecurity, lack of urban facilities and management.

Based on the materials studied, it is rather difficult to design a proper continuum. A first attempt is made in figure 2. The current available tenure categories are:

- Leasehold (3): having a relative high level of (*de jure*) tenure security through titling;
- Customary (2): having a modest level of security, partly assumed to be based on the constitutional recognition of customary law (formalization).

Recent developments:

- a) A number of chiefs do not act according to customary law in land matters, leading to decreased levels of security;
- b) The Land Administration Project is expected to provide higher levels of tenure security through registration of customary land rights (2a), where the contribution of formalization is assumed to have diminished.

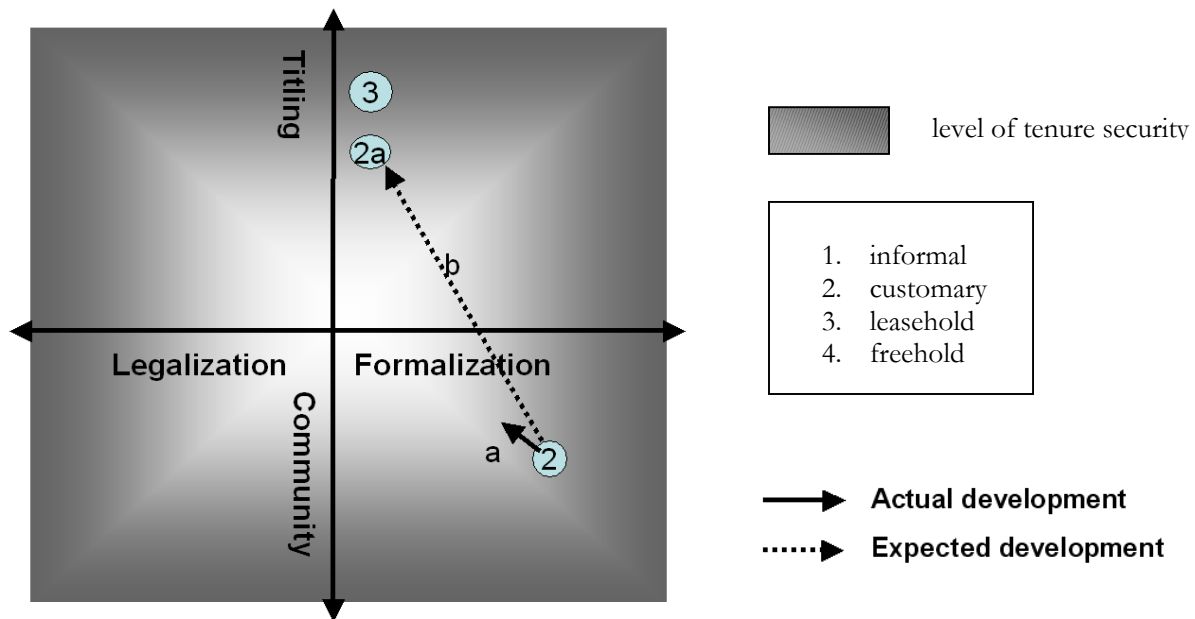


Figure 2 Ghana: continuum of tenure

Namibia

In Namibia two main tenure categories exist: state land (freehold) and communal land (individual use and communal grazing land). The Local Authorities Act of 1992 brought all land under the jurisdiction of municipalities. As a result, customary areas changed jurisdiction, having serious effects on the tenure situation. Customary land right holders and informal land right holders were reclassified as tenants, as they had to pay a monthly plot rent to the local authority. Informal settlement dwellers are reported to be 'accepted' by the authority, only the ones living in so-called impermanent houses, like iron shacks are particularly vulnerable to eviction (Fjeldstad et al, 2005). COHRE (2006) reported on the eviction of 30 families in Windhoek in 2005/2006.

Christensen (2005) describes the following characteristics of urban tenure in Namibia (amongst others): growing demand for serviced land, official provision of residential plots failed to keep pace with this demand, lack of institutional capacity to grant freehold titles. It was therefore decided to develop a second property registration system, which is parallel to and interchangeable with the existing system, one providing an affordable, more secure, but simple right, which can be upgraded according to what the government can afford at any given time. As a result, two new tenures were introduced:

1. starter title: a statutory form of tenure registered in respect of a block of land;
2. landhold title: a statutory form of tenure with all of the most important aspects of freehold ownership but without the complications of full ownership.

The most important difference is that the starter title is given within a block, without delimiting the extent of each individual plot. The block parcel may be held in ownership with a government body, community organization or even private developer. Within the block the starter titleholder must abide by the rules set up through the community association. The starter title is transferable; it cannot be used as collateral for credit. In addition, the landhold title can be used as collateral for credit.

The Flexible Urban Land Tenure Bill has been drafted to a final version in 2004, till this moment it has not passed Parliament. As the law has not been implemented yet, the real effect cannot be determined. Despite this lack of development, Fjeldstad et al. (2006) reported on the operations of the Shack Dweller Foundation Federation of Namibia (SDFN), which are to a large extent based on the principles of the Flexible Urban Land Tenure Bill.

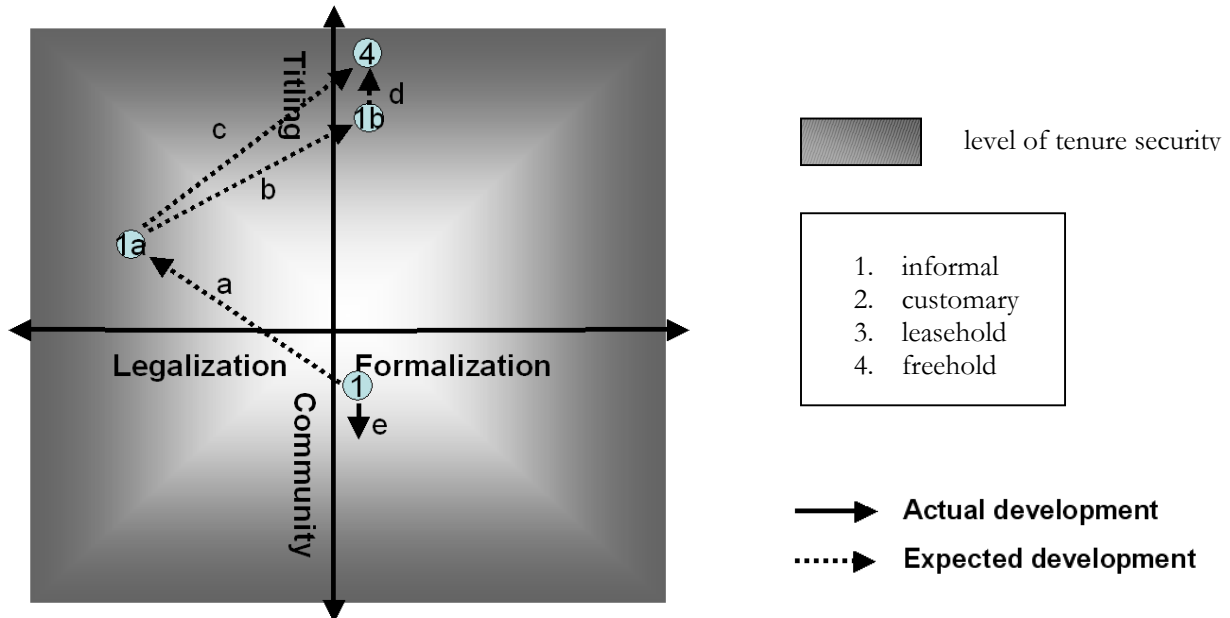


Figure 3 Namibia: continuum of tenure

The Namibian continuum of tenure is given in figure 3. The current available tenure categories are:

- Freehold (4): having a high level of (*de jure*) tenure security through titling;
- Informal rights (1): a relatively low level of security, as little regularization methods have been applied

Recent developments:

The planned introduction of the Flexible Urban Land Tenure Bill:

- a) Starter title (1a): assumed to offer a higher level of security through legalization;
- b) The possibility to upgrade a starter title to a landhold title (1b), assumed to offer a higher level of tenure security through titling;
- c) The possibility to upgrade a starter title to a freehold title;
- d) The possibility to upgrade a landhold title to a freehold title;

The operations of the Shack Dweller Foundation Federation (the scope of operations is unknown):

- e) Community action is assumed to provide a higher level of security.

Tanzania

In Tanzania, statutory, customary and informal tenure systems exist. In urban and peri-urban areas, customary systems are rarely applicable.

The land policy, dated from 1995, made two important statements with respect to tenure security:

- Customary tenure was recognized by law and made equal to statutory tenure;
- Informal settlements would not be cleared, unless in hazardous environments.

In addition, all inhabitants of informal settlements were promised to record and register their land rights.

Statutory tenure is regulated under The Land Act, 1999 No. 4. The main category is a granted right of occupancy: renewable rights of occupancy for periods of 33, 66 or 99 years. This tenure category has to be registered at the Ministry of Lands, Housing and Human Settlements, resulting in a Certificate of Occupancy.

Outside the legal system, a robust informal property market exists. Informal transactions are often based on written agreements and witnessed by neighbors, friends or relatives. Local grass root leaders often oversee these transactions and may stamp and register a copy of the agreement (Wairimu Wanjohi, 2007). These documents are admissible in local courts. The described informal system can be considered more secure than customary land tenure in rural areas, because of the system of informal land registration.

In order to comply with the land policy, the Land Act provided for a new tenure category: a derivative right out of a parent right of occupancy for inhabitants in informal settlements (Ramadhani, 2007). A so-called residential license is issued for a renewable term of two years. The license is upgradeable into a Certificate of Occupancy. The licenses have to be registered at the municipal Land Register. The license can be used as collateral for credit. The actual implementation of registration of these licenses started with the launch of the property rights registration project in 2004. The overall goal was to create a comprehensive land and property register showing the status of every individual plot of land within the unplanned settlements of Dar es Salaam.

In March 2007 several ITC-students finished their M.Sc. research projects dealing with informal settlements in Dar es Salaam, Tanzania. They looked at various effects of the introduction of residential licenses. Keeping in mind the small sample sizes and the short period of project implementation, the following observations were drawn from these studies (Ramadhani 2007, Ooko Midheme 2007, Wairimu Wanjohi 2007, Namala Malusimbi 2007):

- Only 20% of identified properties (total 220000) have taken their Residential license. It was further observed that issued licenses were not collected in many cases from municipality offices.
- Transfer and registration mainly occurs through the informal ways despite the possibility of residential licenses.
- Informal landholders feel secure through the mode of land acquisition and social recognition, length of occupation and housing consolidation and the lack of threat of eviction.
- Most holders of residential licenses reported to have sufficient security of tenure, however, some reported loss of security due to the short term of the license, which caused uncertainty for renewal. Compared to the minimum period for a right of occupancy of 33 years, this is rather short.
- A drawback for a license holder is the duty to pay ground rent.
- Possession of residential licenses is of marginal importance to access credit.
- Comparison of the project with a community approach in another Tanzanian informal settlement indicated that the community approach might result in outcomes favoring more residents than the project is assumed to achieve.
- Ooko Midheme (2007), citing a government official, suggests that the ultimate aim of residential licenses is that they are to be upgraded into certificates of occupancy.

With the available materials, it is possible to create a continuum for Tanzanian tenure, given in figure 4. The current available tenure categories are:

- Right of occupancy (3): assumed to be comparable with leasehold tenure;
- Informal rights (1): having a relatively high level of security, based on the constitutional recognition of customary law (formalization) and the existence of a robust informal land market (community action).

Recent developments:

- Introduction of the residential license (1a): assumed to provide for an equal level of security through titling;
- The apparent wish by official authorities for upgrading of the license to Certificate of Occupancy;
- Due to the short tenure period of two years, the level of security tends to decrease.

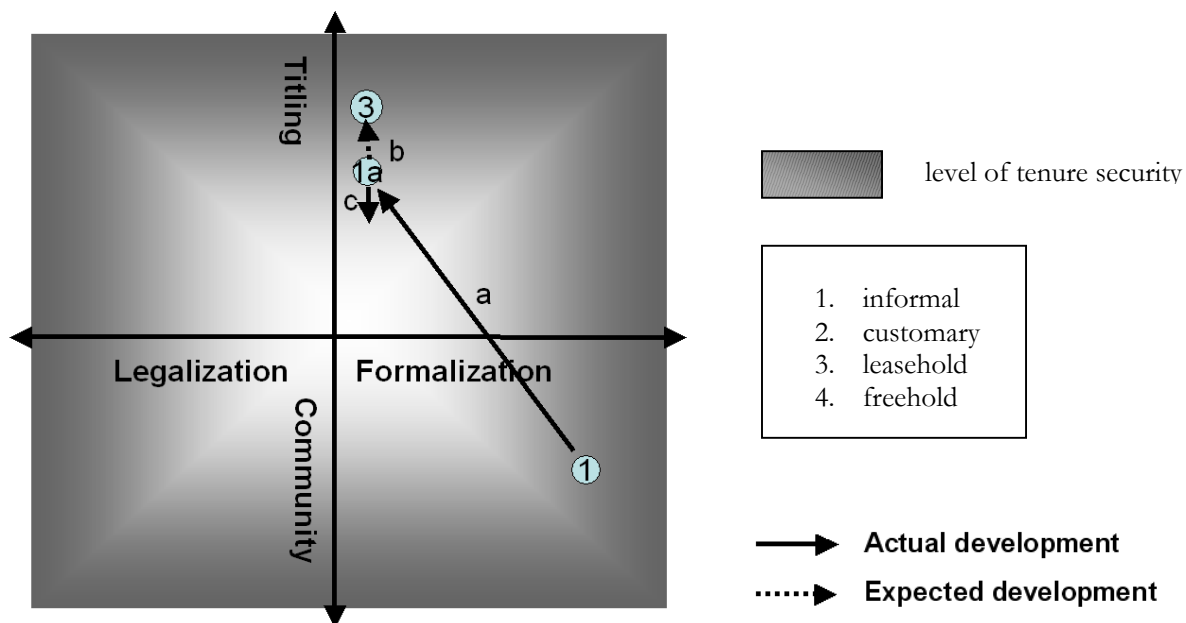


Figure 4 Tanzania: continuum of tenure

Conclusions

On the basis of the development of the continuum of tenure and the case studies the following conclusions are made:

Concerning tenure security

Tenure security might be high in informal settlements (also concluded by Rakodi, 2004); in such cases implementation of state controlled land regularization might be difficult as benefits for settlers will be low.

A tendency is observed that the limitation of lawful eviction (formalization) has a greater effect on tenure security than flexible titling on the short run.

Concerning tenure regularization

A tendency is observed that state authorities regard flexible tenure regimes as intermediate steps towards formal leasehold or freehold tenure. However, for informal right holders they might be sufficient for the long term, as long as an acceptable duration is guaranteed and more facilities (like access to credit) are made available.

A tendency is observed that some regularization efforts are designed to increase government control of the area, which is promoted through promising a higher level of security and increased access to credit to informal right holders.

Concerning community action

Concerning land management, the quality of local leadership differs from country to country, the role of chiefs in Ghana is questioned, and the role of grass root leaders in informal settlements in Dar es Salaam seems to be supportive and effective.

Where implementation of state laws (land and planning) is slow, a tendency is observed that community groups take over to improve their situation. In other words community organization is important, where good governance of local leaders is one of the factors determining the success of any project on improving tenure security.

Recommendation

The continuum of tenure is a tool to make tenure situations easily comparable. Future field research should be carried out in order to validate the continuum as used in this paper and to verify the observed tendencies in literature.

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