

PERSPECTIVES OF SECURITY OF LAND TENURE SYSTEMS FOR URBAN HOUSING IN N'DJAMENA, CHAD

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ABSTRACT

In the complexity of land tenure systems in the cities of developing countries in general and in sub-Saharan Africa in particular, secure land tenure through the formal provision of individual property title may not be the only prerequisite for the integration of urban poor in the city. Security of land tenure does not always seem to be measured by formal title and statutory legal tender papers. The pros and cons of different tenure options in different contexts are not adequately known to make policy judgments. This paper therefore, attempts to examine what forms of tenure arrangements, in Chadian cities, are able to support the poor by means of the welfare distribution, improving their living conditions, facilitating their empowerment and access to the market value of their property. The paper therefore recommends that land tenure has to be seen as part of a package of policy measures intended to improve the efficiency and equity of urban land and property markets and improving the living conditions of the people. It is vital to address the development of systems and products that can be used by the majority of people.

Keywords: *Land tenure system, perspectives of security, Urban housing, N'Djamena*

INTRODUCTION

With the rapid pace of urbanisation in developing countries, informal settlements have become an alarming reality and one of the most complicated problems of modern time in cities. This phenomenon of high population growth associated with in-migration to urban areas have caused wide spread increase of land use and land values in peri-urban areas engulfing the rural villages and affecting the existing land tenure systems. Indeed, there exist various forms of land tenure in the cities of the sub-Saharan Africa, therefore, creating a complex pattern of rights and other interests. This land tenure diversity includes customary, statutory, religious and informal systems, which present major problems in the overall urban management process.

United Nations urban indicators do not adequately capture this complexity in the attempts of solutions. It is important to provide a more accurate and adaptive reflection of urban poverty reduction through land titling and access to housing, the associated security of land tenure and the extent of jure property rights applicable to all land tenure systems for both men and women. It is clear that land and housing are the most significant vehicles for saving and the largest item of expenditure for the majority of households particularly for the urban poor. Therefore access to housing and property rights have been recognized as important means for poverty reduction. According to UNCHS-HABITAT, 'Security of land tenure is a fundamental requirement for the integration of the urban poor in the city and one of the basic components of the rights to housing. It guarantees legal protection against forced eviction... the granting of extension of secured land tenure to access to land ownership (UNCHS-HABITAT, Global Campaign for Secure Tenure, Concept Paper, 1999). The following objectives were set out to achieve in the course of this study:

1. To examine the perspectives of security of land tenure in Chadian towns as related to the existing policy and laws.
2. To examine the constraints of security of land tenure in Chadian towns and its consequences in urban housing.
3. To make policy recommendations for promoting effective land tenure security programmes in Chadian towns.

TYPES OF LAND TENURE SYSTEMS OF URBAN HOUSING IN CHAD

The term tenure is derived from the Latin word 'tenere' which means to hold and defines the social relations between people in respect of land, which is

the object of the tenure. Land tenure also defines the method by which individuals or groups acquire hold transfer or transmit property rights in land (Ogolla, 1996). Property rights may include a variety of different rights for example to build, to use, to transfer, to hire, etc. The rights may be transferred or transmitted either together or individually at the discretion of the holder with or without limitations depending on the land tenure system. Formal rules of land tenure therefore define the nature and content of property rights in land or other resources and the conditions under which those rights are to be held and enjoyed.

Security of land tenure however, is the ability of men and women to maintain the rights and conditions that permit and secure the use of land. It is essentially a social contract through which the community bestows to an individual or household the right to develop a portion of land. Security of land tenure furthermore is a critical socio-economic and psychological right granted to individual or to groups under different forms of land tenure. It allows people to benefit from their possession and ensure that their children have future ownership and rights to use of land and their property. Land tenure systems in CHAD broadly fall into two groups: rights that are held through traditional systems, and right that derive from the colonial system introduced and maintained through laws enacted by colonial and then the national assembly. The former is loosely known as customary land tenure bound through traditional rulers. The latter body of law is referred to as statutory land tenure, secured and expressed through national law in various Act of the assembly.

Customary Land Tenure: This refers to unwritten land ownership practices by local communities under customary law. CHAD, being a diverse country in terms of its ethnic or clan composition has multiple customary land tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However, most customary land tenure systems exhibit a number of similar characteristics as follows:

- √ Firstly, individuals or groups by virtue of their membership in some social unit of production or political community have guaranteed rights of access to land and other natural resources (Ogendo, 1979). Individuals or families thus claim property rights by virtue of their affiliation to the group.
- √ Secondly, rights of control are vested in the political authority of the unit or community. This control is derived from sovereignty over the area in which the relevant resources are located. Control is for the purpose of guaranteeing access to the resources and its redistributive both spatially and inter-generationally. Its administrative component entails the power

to allocate land and other resources within the group, regulate their use and defend them against outsiders (Ogola, 1996).

√ Thirdly, rights analogous to private property accrue to individuals out of their investment of labour in harnessing, utilizing and maintaining the resource. Thus, the present developer of some piece of land has the greatest right to it. These rights transcend mere use fruct and encompass transmission and in some communities transfer (Elias, 1956).

√ Lastly, resources that do not require extensive investment of labour or which by their nature had to be shared are controlled and managed by the relevant political authority. Every individual member of the political community has guaranteed equal rights of access thereto. The regulatory mechanisms imposed by the political units such as exclusion of outsiders, seasonal variations in land use and social pressure ensured sustainable resource utilization.

Statutory Land Tenure: This system otherwise known as Freehold Land Tenure system confers to the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time or for perpetuity (Decree No. 188 - PR of August 1st 1967). Freehold land is governed by the registered land Act. The Act provides, that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds, which restrict the use for a type of development or activity. It is to notice that land individualization was initiated by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest. This principle for privatisation was laid down and implemented before the independence.

Lease Hold Land Tenure: Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is also subject to certain conditions which must be observed. Leases are also granted by the government for government land, the local authorities for trust land and by individuals or organisations owning freehold land (De Soto, 2002)

Public Land Tenure: This is where land owned by the Government for her own purpose and which includes unutilised or un-alienated government land reserved for future use by the Government itself or may be available to the general public

for various uses. That land is administered under the government land Act. Such lands are vested in the president and who has, normally through the commissioner of lands who has the power to allocate or make grants of any estates, interests or rights or over un-alienated government land. The Government Land Act does contain any notion of trusteeship by government of the land to her people. Indeed, the Government at times acts as a private owner and allocates parcels to those in its favour.

THE ROLE OF SECURITY OF LAND TENURE

It is a well known fact that lack of land tenure security is a cause of inconvenience for the urban poor. Land tenure security is essential to stimulate the development of land. Security of land tenure provides urban poor with a sense of security and makes them less vulnerable to risks, such as loss of physical capital, social and informal networks for jobs and safety nets and inability to use the house as a resource when other sources of income are reduced.

Land Tenure security programs, being concrete evidence of recognition of the urban poor presences in the city, can also contribute to social and political empowerment of the poor. It is more than a difference of social status and adds to that, lead the urban poor to have access to decision-making and thus citizenship. When property rights is secured, citizens can depend upon these rights in participating in private transactions, which further provide individuals with incentives to produce goods and services. When land titles and land tenure are secure, land holders may utilize their property rights as collateral for loans and lenders are confident that their titles or liens against real property collateral will be enforceable; they will accept interests in land as security for loans in amount up to the fair market value of the property interest.

Thus, security of land titles and enforceable mortgage rights together create access to significant amounts of capitals. With the possibility of access to credit, individuals may improve their land, establish business, hire employees, pay wages and generate profits. From increased profits and incomes, individuals involved in all sectors will have capital to buy services and goods from vendors whose incomes and businesses also will improve commensurately. From the increased incomes, profits, and property values, taxes will be paid, thereby increasing the nation's income. These are theoretical approaches of solving the problem of urban poor using security of land tenure. But practically, in the complexity of land tenure systems in N'Djamena, many other ways have to be followed, and the reality may be different depending on the preference and attitude of the urban poor and what he/she intends to do with his/her land.

PROCESSES OF SECURITY OF LAND TENURE IN CHADIAN TOWNS AS RELATED TO THE EXISTING POLICY AND LAWS

The land law in CHAD is widely dependent on the colonial land policy and its major impediment to spatial planning and development is the weakness of the enabling laws, which are supposed to guide the practice of the profession. The existing legal tools for execution of physical planning are outdated, inappropriate and ineffective. The legal provisions available for execution of physical planning are amounted to three laws and their enforcement decrees all dated since 1967. They are:

- 1 Law No. 23 bearing regulation of landed property including all government and private properties.
- 2 Law No. 24 bearing landed property regime comprising customary and statutory laws and land registrations. In this Law, it is stipulated that all unregistered land is related to a vacant land and remains a property of the Government. This law is largely misinterpreted particularly in N'Djamena where some officials used it to dispossess people from their land and where high speculation went up to five times the price of a plot.
- 3 Law No. 25: it identifies the land recovery process by the Government. It concerns of expropriation, eviction, clearing out and the ordering of some areas in the city. This aimed at traditional areas with irregular structure and spontaneous or informal settlements.

These three laws are followed by three enforcement decrees as follows:

- (i) Decree No. 186 - PR of August 1st 1967 on Landed Property and Customary Rights Organization.
- (ii) Decree No. 187 - PR of August 1st 1967 on Landed Property and Customary Rights Organization.
- (iii) Decree No. 188 - PR of August 1st 1967 bearing the enforcement of the laws related to land property status.

Due to the fact that the legal existing provisions are plagued with major fundamental problems and made them outdated, inadequate and inefficient; many people in N'Djamena use illegal ways to get a plot of land. For example, land allocation takes eight stages to follow from parcelling to the registration of the land through the delivery of building permit. These complex and cumbersome administrative processes obliged many people, which completely ignored the legal process by arranging with traditional chiefs to get land at the outskirts of the town. These practices are so rampant and are the cause of urban sprawl. Surveys showed that about 77% of households live on the illegal occupied land (Djeroh, 2004).

In this situation, the percentage of squatter households can be probably the most useful proxy measure for assessing the level of security of land tenure in Chad. In N'Djamena, squatter households are those, which have no title to the land on which they stand. In these areas, many cases arise: on public land, structure owners have temporary occupation licenses obtained from traditional authorities, or verbal permission or a letter signed by witnesses. On private land, the landowner normally gives permission to build and collect rent. The majority of the informal settlements are therefore not inhabited by 'squatters' in the classic sense that they have invaded the land or occupied it without the owner's consent. Renting by the room is the common form of house tenure accounting for about 80% of residents (Djeroh, 2004).

In these informal settlements, some chiefs and elders derive a considerable income from allocating public land by granting permission to construct and improve temporary buildings. Indeed, this is one of the major sources of income for many even some officials and it is alleged that this income trickles up to higher levels. At the higher levels, large areas of land within informal settlements and elsewhere are allocated to individuals as part of the system of political patronage, rendering the application of the law less effective.

Under these conditions, lack of official documents may expose a household to a precarious existence, but if a household is surrounded by thousands or hundred of thousands of others in the same situation with the complicity of some authorities, the perceived risk may prove to be negligible. This proves that the poor in N'Djamena do not give high priority to security of land tenure. They give even less priority to the possibility of owning land or a house in the city. Higher priority is given to personal security in cases such as when women street vendors are robbed of their earnings at gunpoint at the end of the day. They are more concerned about problems which impact directly on their ability to earn a living, including access to health and education services. In fact, the ability to earn an income or keep a job are often more important considerations among residents of informal settlements in N'Djamena than security of land tenure. That is why, for example when given the option to rent or own a house, many of them prefer to rent. In cases where they are given the chance to own a house, most choose to sell it as soon as they obtain a title deed (UNCHS-HABITAT, 2002).

While land tenure through ownership may be desirable for some, the majority will continue to rent and for many, this is a preference. Such a situation is partly related to attitudes to living in the city. Most of N'Djamena inhabitants do not consider the city to be their true home; for them, their home is the ancestral

land or village. Therefore many prefer to invest in their home areas in the villages (Djeroh, 2004).

CONSTRAINTS TO SECURITY OF LAND TENURE IN CHADIAN TOWNS AND ITS CONSEQUENCES IN URBAN HOUSING

Lack of land tenure security is a cause of inconvenience for the urban poor. But conventional land titling is broadly criticised in terms of a number of approaches such as: to what extent titling improves productivity and alleviates poverty or whether it supplies urban land tenure security for the majority and facilitates housing for the poor and whether the majority of users in CHAD in particular and developing countries in general benefit from the system and whether western forms of titling are appropriate.

Land registration systems are seen as centralized and expensive to the user as they are designed for use by the middle class and educated or previous settler population (Dorner, 1992; UNCHS, 1998). It can only record legal land parcels and not the majority percentage of illegal land parcels and customary areas which exist in most developing countries (Bruce and Migot-Adholla, 1993). Also land registration systems are based on colonial laws in regard to family law, inheritance, forms of evidence, administrative procedures, etc., and therefore not user friendly to local often customary conditions (Payne, 1997) usually based on individual rights and unable to accommodate group rights and family rights (Dorner, 1992; Jansen and Roquas, 1998) not transparent and user friendly, especially to women (DeZeouw, 1997).

A review of urban land tenure system in other developing countries such as Kenya, Cote d'Ivoire and Burkina-Faso etc. shows that not all stakeholders are positive about it. Only business and middle class people are generally satisfied with freehold. The problems associated with freehold land tenure system are therefore twofold. Firstly, there are problems associated with individualizing the rights. Secondly, there are problems solely related to freehold, for instance, freehold title adds enormous value to land. The interlinked problems that stakeholders have with freehold for urban poor can be described as follows:

- i Only a small proportion of households can afford even the subsidized cost of a site with a title (UNCHS/Habitat, 1998). Therefore freehold cannot serve low-income groups to any great extent;
- ii Freehold for all is not always a possibility because of governments' lack of financial and human capacity (Durand Lasserre, 1998);
- iii With a market-based approach, freehold titles make the land attractive to speculators who hold the land as an investment and a hedge against

inflation (Huchzermeyer, 1999). This has the effect of displacing the low-income population and creating unutilised vacant land where densification was planned. Public money is misdirected when subsidies are used to enable low-income groups to obtain freehold title, as there is wide-spread evidence of downward raiding as occupants realise the true market value by selling to higher income groups (Payne, 1997).

Where there are numerous tenants in an informal settlement, freehold often force existing low-income tenants out of an area, as they can no longer afford the rents, which rise dramatically after titling (Payne, 1997). Women's land rights tend to be nested in the land rights of the family. By individualizing the rights when titling takes place, women can become landless. Also, when the rights are initially created women, and especially widows, can lose their land rights to male members of the family who tend to be recorded as the head of household. The provision of freehold to informal settlements encourages squatting as a way of obtaining land rights eventually (Awela, 1998).

Also, the ability to make substantial profits merely from holding and transferring land, without investing in its improvement or paying taxes on its increasing market value, serves to attract even greater levels of investment undertaken by professional squatters. This reinforces land price inflation (Payne, 1997). Lastly, freehold will not make it automatically possible for households to obtain a mortgage. If household incomes are too low, financial institutions can be lost interested in lending, even if the applicant has freehold title. In some countries like CHAD the capacity of the financial institutions is not enough to meet demand (Payne, 2001). Finally, land titling contributes to the breakdown of society and does not accommodate existing local practices (Dorner, 1992; Jansen and Roquas, 1998). It has negative effect on the poorest of the poor generally the target of donor programmes and cannot adequately supply land tenure serenity for low-income housing in urban areas.

CONCLUSION AND RECOMMENDATIONS

From the above discussion, what should be suggested when formulating or implementing an urban land tenure policy is that land tenure issues cannot be isolated from other related policies of urban land management. Land tenure has to be seen as part of a package of policy measures intended to improve the efficiency and equity of urban land and property markets and improving the living conditions of the people. It is vital to address the development of systems and products (both land tenure and information) that can be used by the majority of people such that:

- (i) it accommodates local land tenure rules (customary and informal) and bottom up public participation approaches.
- (ii) it facilitates group (including family) approaches, and not just individual.
- (iii) it contributes, in measurable fashion to the access to housing and alleviation of poverty, the increase of productivity.
- (iv) the systems that are affordable, decentralized, transparent and user-friendly, especially to women and other vulnerable groups, and which therefore increase good governance are encouraged.
- (i) decentralised technical processes which are transparent easily understood and widely accepted by local people are adopted.
- (ii) it initiate new approaches to supply land tenure security to the majority, by the documentation of rights and boundaries for customary areas or informal settlements, without using cadastral surveys, centralized planning and conveyance undertaken by property lawyers.

There is need for new approaches to education, training and research to facilitate new regulatory or legal frameworks.

Pursuing this course would also involve another major paradigm shift. That is, western approaches and tools are not to be used as a first choice when undertaking re-engineering in the developing world. Although in both the developed and developing world the people involved in land management share similar goals, they do not necessarily start from the same position. As developing countries do not often have all required conditions in place, it is not possible to utilize western approaches as turnkey solutions. Instead we have to work at building the underlying conditions that will make it possible to attain the same goals, by creating new relevant tools and adapting western tools to local conditions. That is, in the developing world we are starting at a different point and have to use different tools to achieve similar objectives to the developed world. Some of these similar objectives include, land tenure security for the majority, including investors and the poor; and better governance and land information for decision makers, for the planning of services and revenue generation.

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