

# **Urban land tenure and property rights – issues and options**

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# Scale of the challenge

- About 1 billion people live without basic services or adequate security of tenure and property rights, often in unauthorised settlements.
- The UN expects this to increase by nearly 37 million a year to 1.5 billion by 2020 and possibly 2 billion by 2050.
- Forced evictions and market driven displacements are increasing in many countries.
- This represents a massive political, institutional and professional challenge.

**Living on \$1 a day in cities requires ingenuity, such as occupying land nobody else wants.....**



# Orangi with open drains before upgrading



# Orangi after NGO supported community upgrading of services



See  
Before

# ORANGI TOWN

Map Showing Existing  
Sewerage and Drainage system



# Perween Rahman - the leader who gave her life



# Surabaya improved kampung



# Entrance to improved Kampung



# Nature of the challenge

- Land and housing embody powerful cultural, historical and political forces, which cause many wars, as well as low level conflicts and suffering.

# Defining land tenure

Land tenure can be defined in many ways. I use:

- *The mode by which land is held or owned, or the set of relationships among people concerning land or its product.*

Land tenure systems vary considerably between different cultural and economic contexts.

# Defining property rights

- Property rights are similarly defined as *a recognised interest in land or property vested in an individual or group and can apply separately to land or development on it.*
- Rights may cover access, use, development, inheritance, or transfer, and may exist in parallel with ownership.
- The ways in which a society allocates tenure and rights to land is an important indicator of that society, since rights to land can be held to reflect rights in other areas of public life.

# Regimes of tenure and rights

- Customary
- Statutory (including private, public and communal) and
- Religious (e.g. Islamic)
- Legal plurality exists in many countries

# Customary tenure regimes

<b>Characteristics</b>	<b>Strengths</b>	<b>Limitations</b>
<p>Ownership is vested in the tribe, group or community. Land is allocated by customary authorities such as chiefs.</p>	<p>Widely accepted. Simple to administer. Maintains social cohesion.</p>	<p>May lose its legal status in urban areas. Vulnerable to abuse under pressure of urbanisation. Poor customary leadership may weaken its legitimacy.</p>

# Statutory private tenure regimes

Characteristics	Strengths	Limitations
Ownership in perpetuity (freehold) or for a specified period (leasehold)	Provides a high degree of security. Freedom to dispose, or use as collateral for loans. Maximises commercial value, enabling people to realise substantial increases in asset values.	Costs of access can be high. Collateral value may not be relevant if incomes are low/financial institutions are weak. Property values can go down as well as up and may trap the unwary in properties worth less than they paid for them.
Rental of privately owned land or property	Good security if protected by legally enforceable contract. Provides tenants with flexibility of movement.	Open to abuse by disreputable owners. Deterioration may result if maintenance costs not met.
Combination of delayed freehold and rental in which residents purchase a stake in their property (often 50%) and pay rent on the remainder to the other stakeholder (shared equity)	Combines the security and potential increase in asset value of delayed freehold and the flexibility of rental. Residents can increase their stake over time, ultimately leading to full ownership.	Requires a legal framework and efficient management.

# Statutory public tenure regimes

<b>Characteristics</b>	<b>Strengths</b>	<b>Limitations</b>
Rental occupation of publicly owned land or house	Provides a high degree of security providing terms and conditions of occupation are met.	Limited supply may restrict access. Often badly located for access to livelihoods. Terms often restrictive. Deterioration may result if maintenance costs not met.

# Religious tenure regimes

Characteristics	Strengths	Limitations
<p>There are four main categories of land tenure within Islamic societies. 'Waqf' land is land 'held for God', whilst 'mulk', or private lands, are also protected in law; 'miri', or state controlled land which carries 'tassruf' or usufruct rights, is increasingly common, whilst 'musha', or communal land, is based on tribal practices of allocating arable land and is falling into disuse.</p>	<p>Sometimes facilitates family/group tenures and accessible and affordable land management procedures</p>	<p>Because they are outside the commercial land market, waqf lands are often inefficiently managed. Inheritance disputes can cause land conflicts</p>

# Non-formal tenure regimes

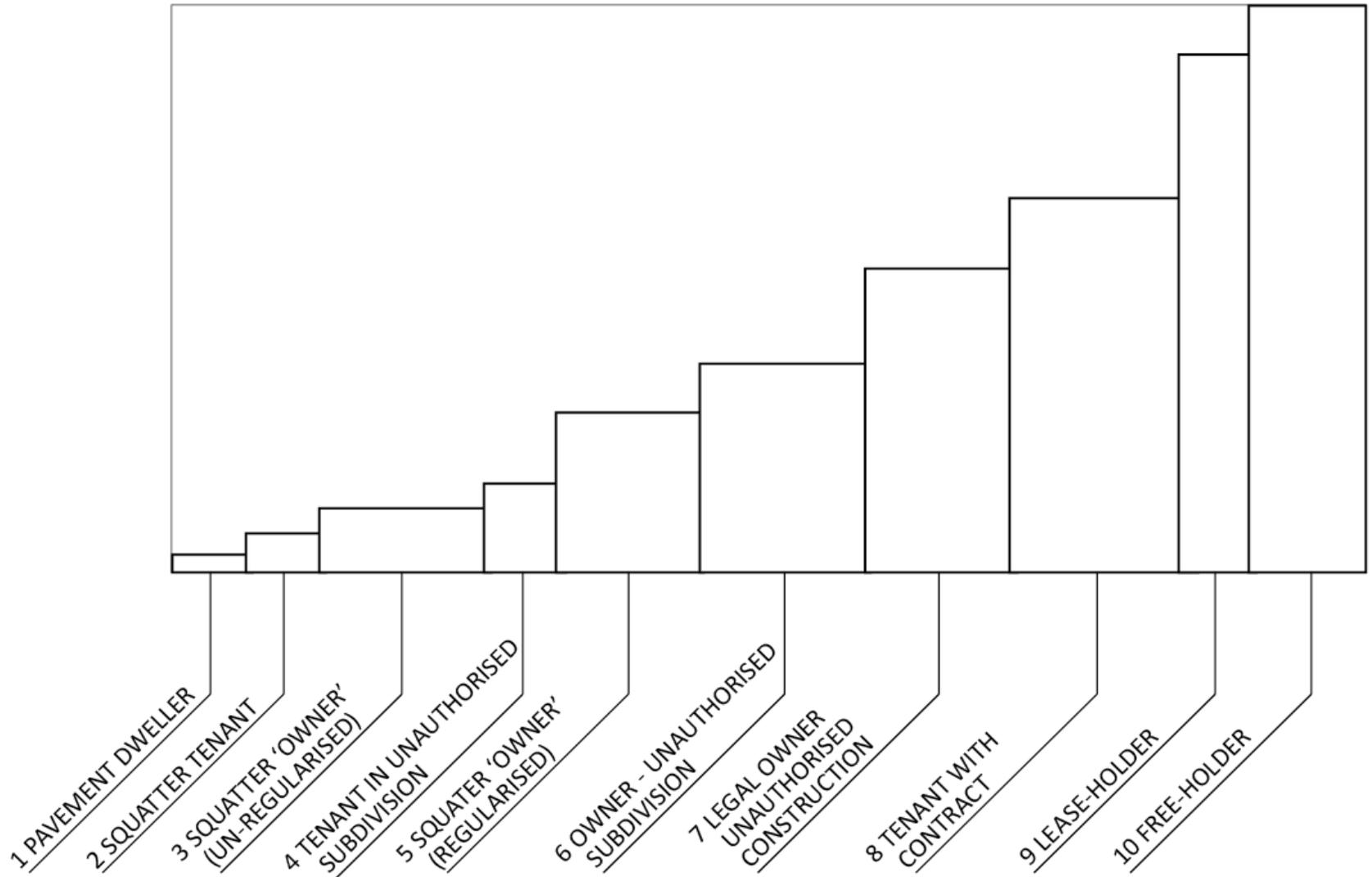
<b>Characteristics</b>	<b>Strengths</b>	<b>Limitations</b>
<p>These include a wide range of categories with varying degrees of legality or illegality. They include regularised and un-regularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. In some cases, several forms of tenure may co-exist on the same plot, with each party entitled to certain rights.</p>	<p>Some of these non-formal categories, such as squatting, started as a response to the inability of public allocation systems or commercial markets to provide for the needs of the poor and operated on a socially determined basis.</p>	<p>As demand has intensified, even these informal tenure categories have become commercialised, so that access by lower income groups is increasingly constrained.</p>

# The tenure continuum

Within each regime, it is common to find a wide range of categories, including:

- Pavement or street dweller
- Squatter tenant
- Squatter 'owner'
- Tenant in unauthorised subdivision
- Owner of unauthorised subdivision
- Legal owner, unauthorised construction
- Tenant with formal contract
- Leaseholder
- Freeholder with mortgage
- Freeholder without mortgage

TENURE SECURITY IN LAW  
(DE FACTO RIGHTS MAY VARY CONSIDERABLY)



High Security											
	<b>Degree of security</b>										
	Low security										

<u>Tenure category</u>	Homeless	Tenant			Possessor			Lease-holder		Free-holder	
	Pavement dweller	Squatter tenant	Tenant in unauthorised subdivision	Tenant with contract	Squatter 'owner'	Owner in unauthorised subdivision (Declaration of possession)	Urban legalisation	Lease-holder (CRRU)	Lease-holder (CSHU)	Legal owner Unauthorised construction	Free-holder

<b>Property rights</b>											
Occupy/use/	x*	x*	x	x	x	x	x	x*	x*	x	x
Enjoy					x*	x*	x*	x*	x*	x*	x
Dispose										x*	x
Restrict					x*			x	x	x	x
Buy					x*	x*	x*	x*	x*	x	x
Inherit		x*	x*		x	x	x	x	x	x	x
Develop/improve					x*	x*	x*	x	x	x*	x
Cultivate/produce		x	x	x	x	x	x*	x*	x	x	x
Sublet		x*	x*		x	x*			x	x	x
Sublet and fix rent			x*		x*	x*					x
Pecuniary								x*	x		x
To access services	x	x	x	x	x	x	x	x	x	x	x
To access formal credit									x*	x*	x

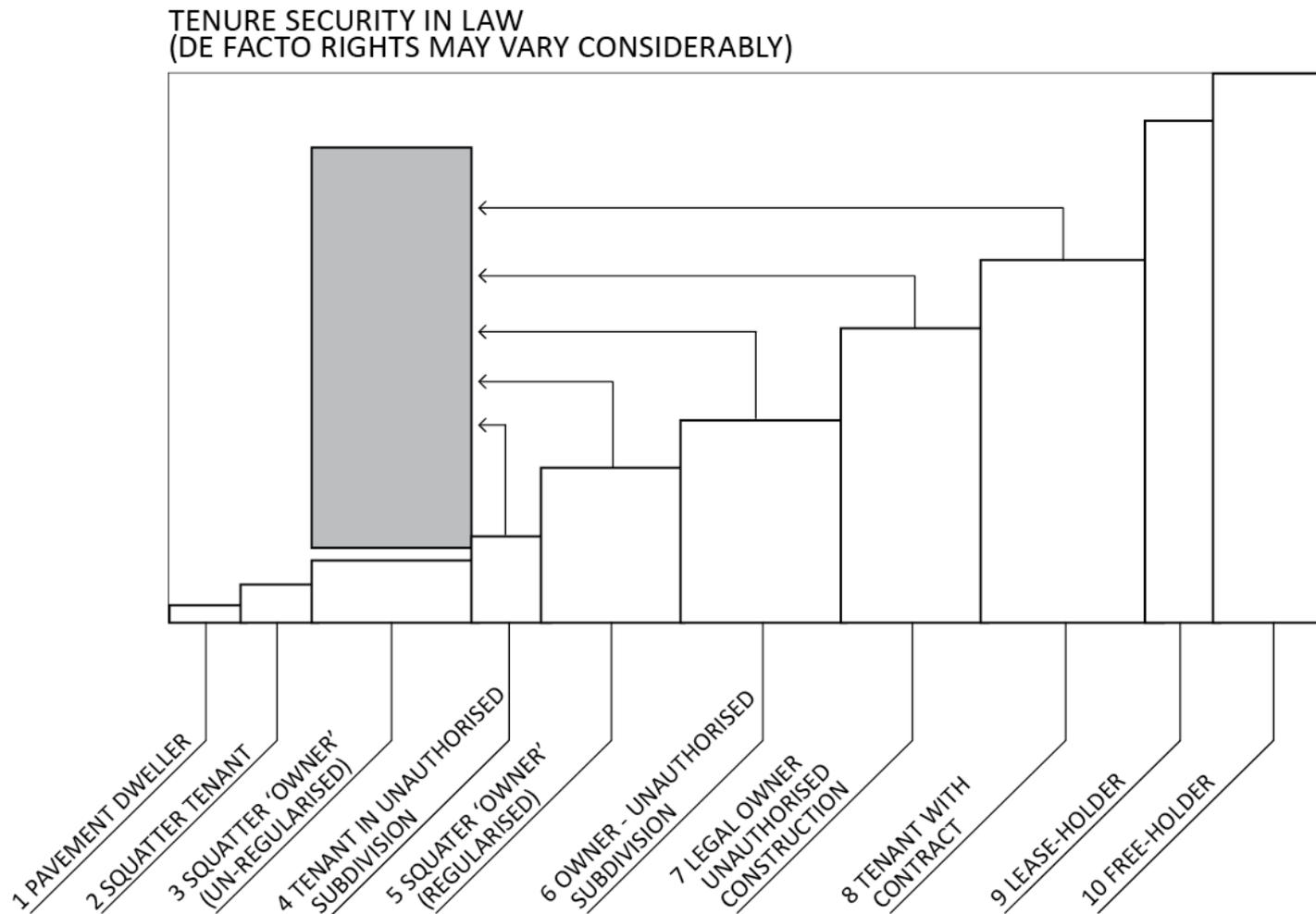
# Tenure policy objectives

- Encouraging investment in housing
- Improving access to formal credit
- Improving the property tax base
- Increasing public sector influence over land and housing markets
- Improving the efficiency of land and housing markets
- Increasing the equity of land and housing markets.

# Is titling the answer?

- The evidence shows that titles generally increase tenure security but will *not* improve access to credit unless owners are reasonably well paid in secure employment – it will not help the poor.
- Other options are available which provide sufficient security for people to invest what they can.
- Titling may distort land and housing markets with unintended negative consequences!

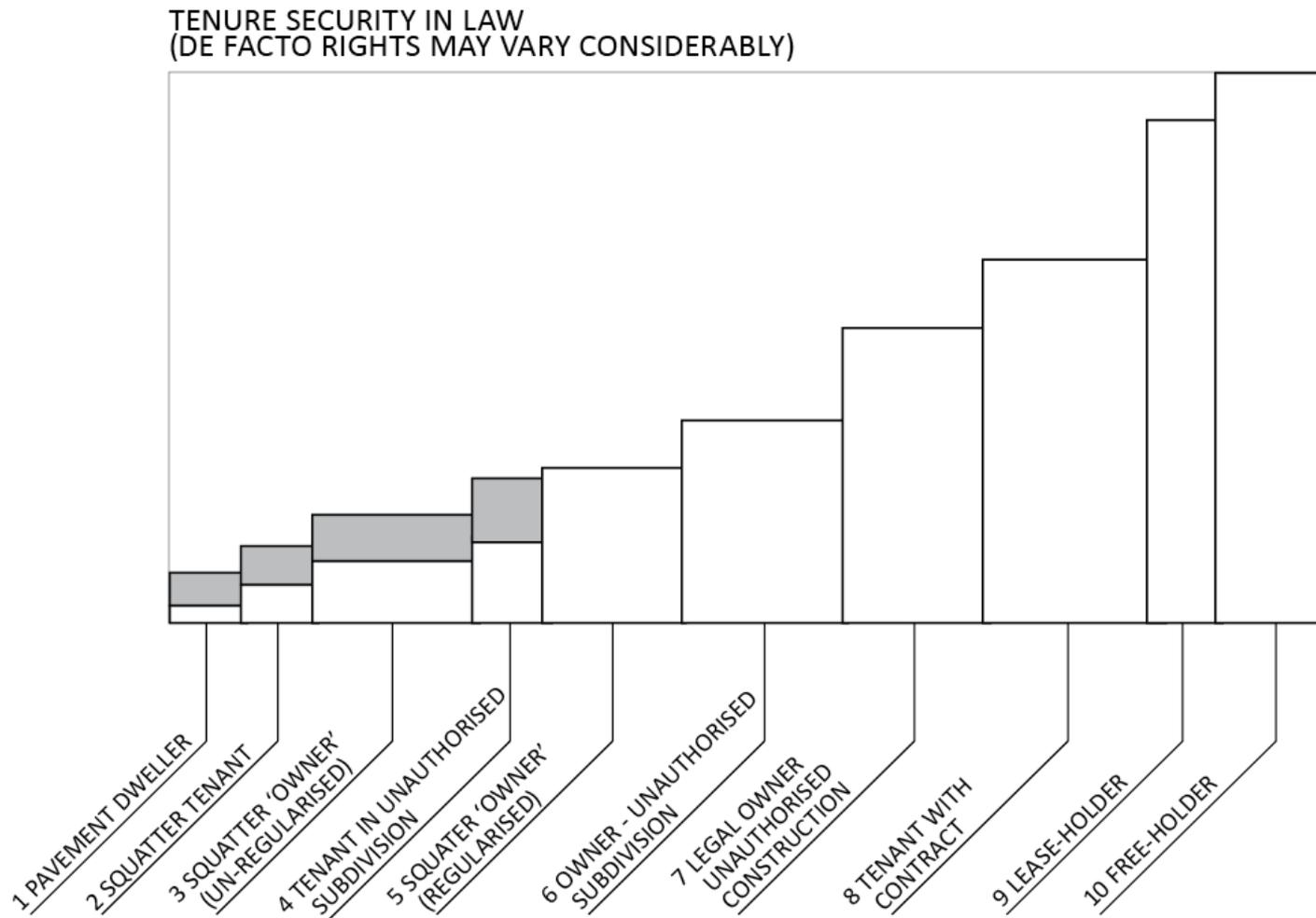
# Likely consequences of providing titles to 'owners' of squatter houses



NB: For simplicity, this illustration deletes customary and Islamic tenure categories

This figure demonstrates that the provision of full, formal tenure status to informal settlements raises their commercial value and can therefore actually reduce tenure security for the most vulnerable social groups, such as squatter tenants. It also creates new, or intensifies existing, land and property market distortions.

# Likely consequences of improving tenure rights in unauthorised settlements



NB: For simplicity, this illustration deletes customary and Islamic tenure categories

The figure suggests that a rights base approach increases tenure security for the most vulnerable social groups. It also increases social equity without distorting land or property markets.

# Tenure policy options

## **Short term tenure options:**

- MORE (Moratorium on Relocations and Evictions)
- Temporary Occupation Licenses (TOL)
- Certificate of Comfort

## **Medium term tenure options:**

- Communal Trust/Lease
- Individual lease
- Private rental
- Certificate of Rights

## **Long term tenure options:**

- Communal ownership/titles/Communal Property Associations
- Co-operative ownership
- Condominium ownership
- Social concession
- Public rental, and
- Individual ownership or title.

# Principles for progress

- Tenure systems are extremely complicated
- Social legitimacy is vital
- Property ownership is not appropriate for all social groups
- Ownership is unlikely to increase access to credit if incomes are low and uncertain
- Accept the benefits of a pluralistic approach and diversity of tenure and supply options
- Accept that change takes time!

# Putting it into practice

1. Prevent forced evictions and relocations
2. Upgrade and/or provide short term tenure options in settlements not in environmentally or strategically important locations
3. Undertake a regulatory audit to reduce entry costs to legal land and housing options
4. Promote Multi-Stakeholder Partnerships and a wide range of supply options
5. Start with pilot projects at as large a scale as possible.

***Thank you!***

Further information on land tenure issues,  
including several publications, can be  
downloaded free at:

[www.gpa.org.uk](http://www.gpa.org.uk)