

# Empowering the Poor Through Property Rights

# EXECUTIVE SUMMARY

## Property Rights are Human Rights

'Everyone has the right to own property alone as well as in association with others ... .

No one shall be arbitrarily deprived of his property.'<sup>1</sup>

**P**roperty rights must be understood as a fundamental human right.<sup>2</sup> The body and mind are the first and most immediate property of persons and thus respect for this property is related to the respect of the integrity of the individual.<sup>3</sup> Throughout history the idea of human rights has developed in close association with the idea of private property rights.<sup>4</sup> Early defenders of human rights considered property rights as important as freedom of religion and freedom of speech. But the majority of the world's population does not have adequate access to secure property rights, and their realisation remains an arena for social and political contestation.

### **Absence of Property Rights and Poverty**

The absence or insecurity of property rights is a central and ubiquitous cause of poverty, not only in the very poorest states, but also in middle-income countries such as Brazil, Russia, India and China.<sup>5</sup> The relationship between absence of property rights and poverty is moving from argument and anecdote to comparative analysis and measurement. Secure property rights facilitate economic transactions, ensure efficient and sus-

tainable resource use, allow for the evolution of effective credit markets, improve business climate and investment opportunities, and ensure economic accountability and transparency. Equally, the absence of such rights undermines economic development and hinders governance. Analysis of the World Bank's Country Performance and Institutional Assessment (CPIA) ratings for 2005 indicates that on a scale of 1 to 6 (with 1 being the lowest score), only five of 76 developing countries scored 4 on objective measurement of property rights and rule-based governance.<sup>6</sup> As all five are small island states, this indication confirms that property rights of the absolute majority of the people in developing countries are not protected in theory or practice, contracts are not enforced, and registries and other institutions required to protect property function poorly or not at all.<sup>7</sup>

### **Especially Vulnerable Groups**

Certain groups are frequently and systematically disenfranchised through lack of access to property rights in many countries. Women, who constitute half of the world's population, own around 10 percent of the world's property.<sup>8</sup> Virginia Woolf eloquently expressed the long arch of history that has not only excluded women from property in

the West, but that has made entire state institutions masculine preserves.<sup>9</sup> Even when women have *de jure* property rights, their *de facto* control of land is tenuous, and men largely mediated access. In Imo and Abia states in Nigeria, for example, average household farms are 9.8 hectares, of which only 2.4 hectares are allocated to women. However, this land is not a claim, but rather a lease, which women must organise from their husbands. Further, widows cannot own land; their husband's family keep it in trust for their children.<sup>10</sup> As Robin Nielsen has pointed out: 'At various stages in women's lives, their rights to land are dependent on fathers, brothers, husbands and sons. A more precarious foundation for land rights is difficult to imagine.'<sup>11</sup> Ensuring that women's names appear on land records, that their rights are enshrined in communal property systems, and that inheritance rights of widows and daughters are established and protected, would go a long way towards improving their condition. This is essential to empowerment and the promotion of entrepreneurial activity and should be placed at the centre of property reform efforts.

Equally, indigenous people around the world tend to suffer from weak or prescribed property rights not adequately recognised by law. These groups often hold land collectively, so ownership and access patterns do not always fit easily into imported, non-indigenous property systems of absolute and individual nature. As they are largely disenfranchised, the customary land rights of the indigenous tend to be overlooked. The Abayanda Pygmies in Uganda, for example, have been entirely dispossessed of their land; they have endured persistent lack of recognition by the central government of legitimate claims to their property. Indeed, the problem is far from solved in developed countries. In 1902, Norway passed legislation requiring full knowledge of the Norwe-

gian language for property ownership, effectively making it impossible for the indigenous Sami to own land.

In 2004 an International Labour Organisation (ILO) expert committee concluded that an Act passed in 2003 to rectify centuries of exclusionary practices still did not meet the minimum standards for the ILO convention on the rights of indigenous and tribal peoples.<sup>12</sup> Global reform of property rights regimes must allow for formal recognition of customary land rights as the basis for inclusive property systems that include indigenous peoples. There are some good examples in The Commonwealth Native Title Act of 1993 in Australia, and the landmark Te Ture Whenua Maori Act in New Zealand, both of which respect the customary land rights of indigenous groups. Although time will tell if laws of this nature can change deeply entrenched exclusionary practices, but legal empowerment for poor indigenous groups will certainly remain key to tackling this challenge in both OECD and developing countries.

Urban slum dwellers are also excluded from formal property systems. At least a third of the world's poor, or a billion people, are living in slums without legal protection of their assets.<sup>13</sup> Ironically, it is often insecurity of land tenure and wrongful loss of land in rural areas that encourage the poor to escape, while their property rights in urban areas are no less tenuous. The reality of urban slum dwellers is sub-standard housing conditions, forceful evictions, extortion, social exclusion, and environmental degradation, among other problems. The situation prevents development of adequate housing stock and the emergence of robust property and credit markets. Informal property systems are often perpetuated in conflict-affected countries by flows of refugees and Internally Displaced Persons (IDPs) from ru-

ral to urban areas, and this leads to further insecurity and overcrowding.

Legal access to property rights for various groups is clearly an over-arching and universal issue that should be at the centre of global efforts to empower the poor; but it has in fact received very little coherent analysis to date. To unpack the relationship between poverty and property rights we must understand that it is these rights that provide the basis for economic growth. The global economy grew very slowly until the beginning of the 19<sup>th</sup> Century. Before then, and for thousands of years, notes Jeffrey Sachs, ‘there had been virtually no sustained economic growth in the world’.<sup>14</sup> However, with the advent of the industrial revolution and economic expansion, assets expanded and property rights evolved. Slowly the idea of private property ownership came to underpin economic development in the West. While social, economic and political stability was upset by two World Wars and the Great Depression, the GI Bill of Rights in the United States, the Marshall Plan and the incipient economic and political union in Europe, and rapid development in East Asia supported the growth of a middle-class that led to further consolidation of legal property systems in these regions. The transformation from predominantly extralegal property systems to formal property rights entrenched in law has since come to support functioning market economies and polities.

## The Building Blocks of the Property System

This transition has reduced global poverty substantially, but as outlined above, billions of people around the world still lack secure property rights, which hinders their economic, political and social security. In order to examine how poverty can best be relieved, and why access to prop-

erty rights is fundamental to the empowerment of the poor, it is necessary to identify building blocks of a fully-functional property system. Such a system operates in the following four ways:

- 1) As a system of rules that defines the bundle of rights and obligations between people and assets.**<sup>15</sup> Property ownership creates ties that bind individual citizens together through the formation of networks of economic and legal rights and corresponding obligations. The credible enforcement of these rights and obligations requires a judicial mechanism that allows for equitable, transparent and efficient dispute resolution.
- 2) As a system of governance.** Property systems are a central facet of state functionality, and as such are an important measurement of fiduciary and administrative effectiveness. The institutional order of the state is based on technical rules and relationships which define interactions between stakeholders, ranging from direct ownership of land to promulgation of rules that govern security of land and house tenure, land planning, zoning, taxing and other aspects of property management. Technological innovation, which has radically reduced the cost of information, has generated the possibility for further transparency and accountability in property systems as an instrument of governance.
- 3) As a functioning market for the exchange of assets.** A fully functional property system allows land, houses, moveable property, equity shares, and ideas to be transformed into assets to be bought and sold at rates determined by market forces. This subjects the exchange of property to a level of transparency and accountability, and allows for the development of financial mechanisms — including credit

and insurance — to facilitate transactions and improve economic outcomes. Land, houses and moveable property can thus be leveraged, and assets transformed from static investments into capital which can be bought and sold. However, property rights are a necessary but not sufficient precondition for the development of these financial mechanisms; they also develop through partnership between the market, special funds targeted at access to finance, and the state.

**4) As an instrument of social policy.** In the absence or failure of the market, the state often plays a direct role in addressing the needs of the poor. The state has at its disposal instruments that can be used to endow its citizens with assets as they relate to property, such as public housing, low interest loans and the distribution of state land. Such instruments help to overcome natural competition for assets. The state also supports social cohesion through the development of co-ownership of infrastructure and services by government and the citizen, supporting the equilibrium between individual and collective interests. Provision of infrastructure by the state critically affects the value and desirability of assets, and can therefore fundamentally affect opportunities for the poor.

## Dysfunctionalities in Property Management

These four key building blocks can be viewed as a coherent framework through which to understand property rights. It follows that analysis of these blocks allows us to identify where dysfunctions in property management might arise and where there are disconnects within key elements of this framework. As far as the poor are concerned, they have trouble getting property in the

first place (unfairly limited access). Where they have assets, their rights are often not adequately recognised, or enforced, or given full backing of the law, and are consequently vulnerable to being lost. Unfairly limited access to property and insecurity of assets are caused by dysfunctions in the property system that can be understood fourfold:

**1) Misalignment of social practice and legal provision.** Social practice and law reinforce each other when aligned towards common objectives, but when misaligned can undermine state legitimacy and accountability and weaken ties of citizenship. Law must evolve organically to suit the context in which it is to be applied and should not be perceived as the instrument through which a minority imposes its power. Legal aspects of property systems must grow from land practices on the ground and incorporate customary interactions and networks. There have been two common sources of misalignment. Firstly, some states, particularly during the colonial period, imposed property systems on vast tracts of land that were previously regulated through customary regimes of rights and obligations. The result was a major gap between daily practices of the people and requirements of formal law. Secondly, in urban areas, as de Soto has pointed out, ill-conceived laws have forced millions of people into informality, as gaining access to land for housing is a lengthy process, measured in terms of years if not decades.<sup>16</sup>

**2) Misuse of rules governing property.** While rules for property systems may be both appropriate and equitable, they may still be open to abuse by those in power. Rules are resources that can be subverted to serve the interests of the few, through corruption and lack of transparency, rather than acting as a framework

for empowerment of the many. Equally, land regulations, rather than providing a framework within which parameters for property management are set and transactions enabled, can become mechanisms for restriction of property rights and bureaucratic mismanagement.

### **3) Lack of access to information and justice.**

Even where cadastres, land registers and other repositories of property titles, records and documents exist, restriction of access to such information reduces the transparency and efficiency of property transactions. Governments must work to make information on property available to the general public and seek to collect further data and opinion in innovative ways through the promotion of opportunities for public debate on property and citizen resource rights, and strengthening of knowledge sharing and analysis on these issues.

**4) Misuse of eminent domain.** Corrupt governments can use the inherent power of the state to seize private property and thus confiscate assets of the poor in the name of the public good. The primary remedy against wrongful or unjust loss of property is a just policy of land acquisition and resettlement; it can include innovative approaches, such as offering partnerships to the poor in developing assets created from investment in infrastructure and services. International financial institutions, particularly the World Bank and the Asian Development Bank, moved systematically in this way in the 1990s to address the adverse impacts that developmental projects had on the standard of living of the poor. At the national level, however, practices differ widely and abuse, with regard to use of eminent domain (for depriving the poor of their assets), continues to be a problem. Reform of compulsory acquisition mechanisms is necessary,

as demonstrated most palpably in Zimbabwe recently, one of the few countries today which constitutionally permits appropriation without payment of any compensation.<sup>17</sup> Review of 20 land acquisition laws in Sub-Saharan Africa<sup>18</sup> indicates three sources of this type of legal disempowerment: (1) process of acquisition, wherein, for example, compensation valuing billions of dollars remains unpaid in some regions without clear avenues of redress; (2) the basis for compensation payment, which routinely fails to take into account real costs to the loss of land, and (3) manipulation, through purposeful or poorly specified definition, of what constitutes 'public purpose'.<sup>19</sup>

## **Property Rights and Legal Empowerment**

Property rights are defined through law, and therefore the Legal Empowerment of the poor, as citizens, can only come about through the protection of those rights. However, legal status can have strikingly different impacts upon citizenship: it can become an instrument for the creation of opportunities for exercising rights, create entitlements to rights for specific categories of people, or repress or deny contestation of those rights to others. H.L.A. Hart's distinction between internal and external views of the law shown in Table 1 is instructive.<sup>20</sup>

Since internal actors are positioned in a hierarchy, the extent to which legal status produces loyalty to the social order depends on feedback loops. 'Loops' between and among the actors affect the degree of efficiency and effectiveness of the administrators in delivering rights or enforcing obligations in a manner that incorporates accountability. The 'user' perspective is essential for the legitimacy of the system, as legitimacy is the outcome of the degree to which people, once granted

**Table 1 Mapping the dynamics of legal status**

External	Internal
The public, social movements	The authorizing environment for rule-making (Parliament, Congress, Cabinet Board of Corporations)
Legal community of practice	Composers/Drafters (Constitutions, primary, secondary legislation, by-laws, manuals)
Judicial Review, civil society and media	Administrators/Organisers
Excluded/ineligible people	Users/citizens

a particular legal status or set of rights, such as property rights, come to identify and endorse the social order so produced. External actors are positioned to push the frontiers of the existing social order by questioning the balance between solidarity and inequality. They catalyse changes to existing citizenship arrangements, in questioning the fairness or effectiveness of an existing legal status, and in the creation of new legal status for specific groups. The creation and expansion of citizenship rights is a process of contestation that can lead to new interpretations of old laws and the promulgation of new laws, or the creation of new mechanisms to deal with issues that do not fit into an existing framework. Thus, groups that question the status quo can prove that the law is malleable, just as indigenous groups have fought for, and won, recognition of customary land rights in Australia or New Zealand.

However, the provision of property rights in law does not always guarantee equality in practice. While states can attempt to balance inequality and solidarity, discrimination and social classifications remain entrenched in many societies. Inequality can stem from deep-rooted cultural distinctions such as caste, gender and race, and the challenge then is to create conditions for property rights not just at the legal level, but through mechanisms that can fundamentally change mental models and social practices at all levels of society. Even in the European Union,

where equality of men and women is a fundamental axiom of policy, gender mainstreaming in social policy still remains a significant challenge, according to a recent European Commission report on social inclusion.<sup>21</sup>

The degree to which an order is open or closed, to extending legal status to new groups or to changing the status of existing groups, is an important test of its capacity for coping with change. Even when creation of status is open in theory, mechanisms are needed to create trust in the social order. If property rights are legally extended to a previously disenfranchised group, that group must believe that their property will not be seized through misuse of eminent domain.

Therefore, context-based legal reform is critical to governance in developing countries. There can be no blanket approach: expansion of property rights in a coherent manner requires understanding of trends and a tailoring of provisions to context. There must be a degree of coherence to laws based on fundamental rules, or those laws will not be respected. If *de jure* property rights do not correspond with *de facto* property practices and customs, the subsequent legal misalignment will undermine rather than strengthen the system. Disorder and dysfunction has its own stakeholders, and if resources are seen as zero-sum, change can be perceived as highly threatening by entrenched interests.

Property systems consist of a bundle of rights and obligations. In OECD countries, an entire series of legal innovations has evolved to allow for cooperative arrangements that underpin this dynamic and support transparent, effective property-based economies. The same type of thinking has not been applied to developing-country contexts to examine precisely how property arrangements could be modified, and interactions codified, in ways that would allow the poor to leverage their assets and become legitimate stakeholders in global property systems. Urban slums represent land that could be a valuable asset when conceptualized in a different way as part of coherent urban planning strategies. Latent assets must be leveraged and their stakeholders — the poor — brought into dynamic new partnerships to align law and practice in ways that allow for the systemic expansion of property rights.

## Key Elements of a Reform Strategy

This process creates both a national and global public good, and to bring it about governments of developing countries must enter into a double compact - with their citizens and the international community. To level the playing field for the poor and operate in a manner that best serves the interests of the disenfranchised, international actors must develop long-term partnerships with national governments on property rights as part of the broader economic governance agenda. A reform strategy for effectively functioning property systems that empower the poor should be based on land tenure security, creation of opportunity for investment, and adequate management of risk. The elements of such a strategy must:

**1) Promote Legitimacy by Adequate Participation and Deliberation.** In general, future reform will require a legitimate state. For implementation at all levels, reforms must be based on

deliberation and inputs from those that they are intended to affect. This will bring focus on relevant issues, engender acceptance by local communities, and reduce the cost of reform. In Peru between 1996 and 2000, for example, 3,500 meetings were held on land titling processes in different settlements around the country, helping to improve community satisfaction with property reform efforts.<sup>22</sup> In particular, the groups outlined above - women, indigenous groups, and urban slum dwellers - and other excluded groups, must be given special attention as part of this process. Support for initiatives such as the establishment of coalitions between urban and rural poor around common concerns including the effects of the rural exodus on rural economies and urban poverty are a productive starting point.<sup>23</sup>

**2) Support Parallel Interventions.** Implementation of rules that underpin a functioning system for access to, and registration of, property, do not automatically create the mechanisms necessary to support this system. By giving attention to the four building blocks of the property system, governments must carefully plan and sequence the interventions that will create the corollary financial and legal instruments that underpin effective property rights and facilitate access to managerial ability, technology, credit, and markets for new property owners to become competitive. The evolution of efficient financial markets will depend on the ability to use land, and other property, as collateral. In developed countries, more than two thirds of small business loans are secured against land and real estate. Experience in South Africa and Brazil demonstrates that unconventional avenues (e.g. partnerships and joint ventures with old land owners) may be a useful first step. Governments should also develop methods for in-



creasing finance for land reform and post-land acquisition services, including land banks, land-for-debt schemes and land for taxes.<sup>24</sup>

**3) Facilitate Private Sector Involvement.** The state needs to set the parameters within which private sector investment can take place, and remove any disincentives to this process. Fees for property transactions, which in some developing countries can be as high as 30 percent, act as an unnecessary form of taxation that inhibits the free exchange of land through market mechanisms and excludes the poor. Official land taxes must also be set at an affordable level for the poor and subsidies and tax provisions that provide distorting privileges to large-scale farmers should be removed. In Mexico, for example, certain groups 'prefer not to regularise the land for human settlement to evade having to paying land tax, which promotes informality in land markets.'<sup>25</sup> Investment climate surveys indicate that access to land was the main obstacle to conducting and expanding business by 57 percent of the enterprises interviewed in Ethiopia, 35 percent in Bangladesh and 25 percent in Tanzania and Kenya.

**4) Promote Property Rights through Individual and Corporate Ownership.** Property law should offer clear and simple options of legal personality and corporate ownership for small businesses and corporative associations of the poor. Legal personality so designed opens up a wide range of possibilities of ownership by human individuals, by members of collectives, and by collectives. Pro-poor property rights systems facilitate the ability of people to pool and leverage modest resources and limit liabilities in case of business failure or exit of partners. One of the keys to economic success of small entrepreneurs in the developing world is the

limited liability of business owners, thus offering the possibility of controlled failure without disastrous economic consequences for the vulnerable individuals involved. This legal instrument of limited corporate liability has to be extended to the poor micro-entrepreneurs and rural producers. It constitutes one of the main advantages of formality of corporate ownership and can trump unavoidable disadvantages.

**5) Create Systems for Collateralising Moveable and Intangible Property.** Although many of the citizens of the developing world lack secure rights to use and transfer real property, most of them own some tangible (moveable) or intangible property.<sup>26</sup> To the extent that this type of property is held securely *and* can be used to access credit and to create and grow businesses, the poor will have increased opportunities. Experience in a variety of developing countries (Georgia, Madagascar, Colombia, Albania, Bosnia among them) suggests that there are important legal reforms that would allow the poor to leverage movable and intangible property.

**6) Co-management of Natural Resources.** The majority of the rural poor depend to a large extent on non-arable resources such as forests, pastures, swamplands, and fishing grounds. These resources require careful management to avoid rent-seeking and corrupt practices that result in environmental degradation and economic inefficiencies. The state should enhance the asset base of the poor by enabling community-based ownership and management of private commons, but it will have to play the role of conflict manager among the communities and among individuals. In the case of fossil energy resources requiring capital intensive extraction, treatment and distribution, the state should utilise transparent and fair auction procedures when involving the private sector, linked to

conditionality of local community development. These procedures could be regulated and implemented on the basis of multilateral charters.<sup>27</sup> In the case of state co-ownership of fossil energy reserves, the local populations should be included in the chain of value addition by tradable shares in general public funds. Distributing among the poor shares or other forms of ownership participation in state owned companies that exploit the natural resources will provide them with capital that, *inter alia*, can propel the expansion of small businesses. Another option is distributing titles to special funds created by governments to invest profits yielded by commodities.<sup>28</sup>

**7) Utilise Modern Technology.** Manual systems of land registration are highly labour intensive and lead to significant error and duplication. Moreover, the costs of manual land survey and registration processes are often prohibitive. Recent advances in technology, including the widespread availability of satellite imagery and handheld GPS devices, together with institutional arrangements that put local actors in charge of systematic adjudication, can significantly reduce the cost and effort of issuing land registration documents. Moreover, modern technology can help to improve transparency and at the same time make land administration more accessible.<sup>29</sup> There are caveats to this process, identified in the report.

**B**ased on these principles, developing country governments, supported by the international community, must devise a series of innovative, pro-poor land reform policies that are distinctly focused on ensuring that more of the benefits of property systems accrue to those at the very bottom of the economic ladder. A careful stocktaking of such efforts already underway in various parts of the world, including analysis of conditions that

gave rise to such efforts, and possibilities for their expansion, will be instructive. We can develop transitional reform mechanisms from experience in the Philippines, for example, where the national government employs intermediate instruments of land tenure, such as land proclamations, to assure the poor that they will not be evicted from land they occupy, and that social services will be improved while plot ownership is formalised.<sup>30</sup> Or we consider how the South African experience with Mzansi accounts, providing low-fee banking for poor people working in the informal sector, could be replicated elsewhere.<sup>31</sup> Modalities exist to empower the poor through property rights, but we must now scale up and catalyse them.

## Conclusion

Legal Empowerment of the Poor through property rights requires sustained efforts. Property systems that exclude large segments of the global population from property rights have to be discontinued and we must expand the zone of legitimate land tenure through improved access and security. Developing country governments must enter into a compact with their own citizens and with the international community to support this reform. The aid community understands that property rights must be a central tenet of any efforts to reduce poverty, and allocates funding on this basis. Today, the key challenge is to consolidate thinking and draw good practice from effective interventions to date to improve pro-poor outcomes, develop effective land management institutions, establish clear rules for the management of public land, and strengthen the institutional framework and mechanisms for land transfer and access. Property rights are too central to human dignity and prosperity for current thinking and practice to continue. Only with empowerment through property rights can we truly seek to reduce global poverty and reduce inequality.

## I. Introduction

As these lines are being written, close to 30,000 of India's roughly 170 million landless people are marching peacefully to Delhi on the highway. They demand not to be driven off their land just because it was declared state property; they demand property documents or the formal registration of documents in their possession; they demanded that unused state land be allocated to them, and they demand state protection against violent guerrilla movements. The fulfilment of these demands, and the solution to many other property-related problems identified in this report, requires strong, sustained and context-based reform. Such reform has to be founded in political will and the associational power of the poor, exemplified by the marchers in India.

Legal Empowerment of the Poor is a framework of action which takes such demands seriously. It recommends the promotion of domestic legal and administrative frameworks providing the poor opportunities to use their talents and to transform their impressive economic efforts into an increased and secured asset base. The agenda implies a general reform of the law from an instrument of domination into a system of effective protections and opportunities for the poor.<sup>32</sup>

On the input side, the emphasis of legal empowerment is placed on participatory and accountable forms of law-making and public administration, giving voice to the poor and increased ownership of the framing of their legal and social environment. Regarding the means, legal empowerment stresses the critical importance of the following: granting legal identity and access to justice to all human persons, small business corporations, and civil society associations (see Chapter 1 of this report); securing property rights of the poor as asset holders through comprehen-

sive and context-based property rights systems; protecting the poor as workers (see Chapter 3), and creating an enabling business environment for small entrepreneurs and the self-employed (Chapter 4). On the output side, a result-oriented legal empowerment agenda stresses effective protection of livelihoods of the poor and, more originally, measurable creation of new opportunities for diversifying livelihoods, thereby improving lives. Escape from the poverty trap and creating a more decent life are seen as the principal aims.

Property rights stand for the bundle of liberties and claim rights tied to the allocation of a resource to a natural or legal person, corporation, collectivity, association, etc. The concept of property rights as human rights and as part of Legal Empowerment of the Poor implies two agendas: legally enforced protection of the assets of the poor, and general promotion of access to property by the poor.

Through sustainable ownership and/or security of tenure<sup>33</sup> individuals and communities become more autonomous. Even with modest assets, as holders of property rights, individuals and groups become more active as independent members of their communities and nations. Private property rights allow people to pool their assets into transparent structures of co-ownership with fair exit options. This is critical for the poor who have very few assets but who can achieve social and economic leverage by pooling assets into legally recognised common or community property. Reliable and equitable property rights systems help settle competing property claims and facilitate the identification of responsibilities and liabilities. The increased social stability and trust emanating from robust property rights systems create appropriate environments for business and investment. Secure rights to use and trade property provide strong incentives to maintain and conserve re-

sources. Individuals and groups with such rights tend to invest in the resources they hold. In general, property rights give people a horizon to plan the future for themselves and their communities.

## Structure and Goal of this Chapter

None of the above-mentioned benefits can be achieved easily with one-size-fits-all models. This chapter elaborates the main features of reform with a special but non-exclusive emphasis on the poor. Section 2 identifies the most vulnerable segments of society and the relation of their poverty and exclusion to the problem of property rights protection. Section 3 briefly assesses the barriers and facilitators of change, drawing attention to social actors as well as structural conditions favouring status quo or change, while Section 4 contains a concise compilation of lessons and experienced consequences of past reform activities, and prepares the ground for the main discussion, in Section 5, on proposals within the four building blocks of the property system. The proposals aim at reforming the property system (viewed as an arrangement of rules defining or enabling bundles and bearers of property rights) in such a manner that it would enable the poor — especially women and indigenous communities — to access and to secure property. The suggestions should also help to reform the property system so it could serve as a form of governance, as a functioning market of assets (including the poor in the chains of value addition), and as a system of social policy with targeted measures of capacity building and access to property and housing.

**P**arallel reform work, sustained by constant monitoring in all four dimensions, is advocated in order to achieve real progress. Common formal features of policy design and prioritising are dealt with in a special paragraph of Section

5. The establishment of fully functional property systems and positive effects for the poor is first and foremost a national and local reform issue demanding the renegotiation of institutional, legal, and social relations at the national and local level. However, an additional section of this report also points to important subsidiary and stabilising action by donor countries and multilateral arrangements.

This chapter deals with the most general features of pro-poor property reform and is thus not to be read as a national or local implementation report. It builds, however, on lessons and practices that have proven beneficial in many different contexts and that have been highlighted in numerous national and grass roots consultations of the CLEP. Our recommendations, therefore, deserve to be seriously considered and further tailored to local-reality context by property rights reform in the developing world.

Although not repeatedly mentioned throughout this chapter, the members of our working group acknowledge the efforts of numerous governments, international organisations, and NGOs in the field of property rights. And as many members are themselves part of past and ongoing efforts in the field, our chapter was not written with any pretension to invent a ‘wheel’. The intent is that it would serve to raise political awareness and communicate a set of selected policy options for decision makers in the hope of improving substantially equitable property rights protection for the poor and societies at large. The general treatment of such a sensitive and context-dependent issue implies an inevitable trade-off between simplicity and comprehensiveness.

It should be noted at the outset that the chair, rapporteur and contributors to this chapter (named at the beginning of this volume) have all

contributed to its substance. But as drafted and synthesised by the rapporteur, the content might not always represent all the viewpoints and priorities. Positions taken should thus not be directly attributed to all contributors — some positions, in fact, remain controversial among them. There are two general points in relation to which the contributors voiced conflicting views to the rapporteur: the first concerns the role of the state; the second, the role of the market. While some see the state as an indispensable part of the solution to the problem of faltering property rights for the poor, others emphasise that it is rather part of the problem or even the root cause. And, while some see the market as an opportunity for the poor to work themselves out of poverty, others stress the fact that market forces marginalize the poor and drive them into misery.

A closer look reveals that these diagnostic view points are often context-dependent. To realise property rights for the poor, both the state as enabler and lender of last resort in regulation and rule implementation, as well as the market as prime producer of resources, need close attention. Both state and market have indeed been neglecting or harming the poor, but in the fight against poverty there is no alternative to the dynamic relation between a reformed and more legitimate state and a functional market that includes the poor in the value chains. This chapter therefore stresses the dynamic interdependence of state and market and the equal importance of their reform in the efforts to empower the poor through property rights. There is consensus among the members of the working group which prepared this chapter that the state as such should not be the default owner of land property and natural resources. The state is, however, indispensable as regulator, enabler, and auctioneer of equitable property relations. Increasing the

legitimacy of the state thus belongs at the centre of the national and multilateral agenda of property rights protection.

Realisation of property rights is about creating a positive feedback loop between the functionality of property governance by the state on the one side, and the meaning this systemic functionality has for the people in their everyday life and customs. Importantly, neither of these two elements is to be understood as rigid and unchangeable.<sup>34</sup> Culture and customs are subject to constant change due to urbanisation, population growth, migration, social differentiation, technological development, etc., and so are the state's institutional rules and formal procedures. If property rights are to bring substantial benefits to the global poor, the formalised property systems of poor countries and the social practices have to evolve together and in response to each other.

## 2. Faltering Property Rights: the Nature and Scale of the Problem

Absence, unjust allocation, or insecurity of property rights harm the poor and hinder sustainable development of a society.<sup>35</sup> Faltering property rights protection is related to the disenfranchisement of billions of poor people. In many cases, the inappropriate property rights system is the immediate cause of continued social, economic, and political disenfranchisement. This section will highlight the most critical areas as well as the most vulnerable groups of people affected by the dire consequences of the absence or dysfunction of property rights protection.

### Growing Slums and Legal Voids

At least a third of the world's poor live in irregular settlements without coherent legal protection of their assets. Population and urban settlement growth projections predict an aggravation of the problem. The UN Human Settlements Programme holds that over the next 25 years more than 2 billion urban dwellers could be added to the close to 1 billion now living in slums, with some 2.825 billion requiring housing and urban services by 2030. If no action is taken most of this growth will occur outside the legally protected sector.<sup>37</sup> The consequences of the exclusion of the poor as a result of rapid urbanisation and modernisation are being acutely manifested around the world. In the final analysis, among all the causal factors for displacement, first and foremost is lack of security of tenure for the poor, who have no enforceable property rights or access to justice.

### Box 1 The world's poor: a demographic note

Globally 53 percent of the population is defined as poor by the 'living under US\$2 a day standard' or 3.4 billion people. The poor live in mainly six regions and particularly three: South Central Asia (which includes populous India), the even more populous China, and Sub-Saharan Africa. They represent the majority in South Central Asia (75 %) and Sub-Saharan Africa (75 %) and just under half of all Chinese (47 %). Together the poor in these three zones comprise 70 percent of the global poor.<sup>36</sup>

### Dire Consequences and Missed Development Opportunities

Without enforceable property rights, residents of informal settlements are often subject to forceful eviction. They must fend for themselves or pay bribes to local landlords to defend their right to occupy land, protect it from harmful encroachment, and settle disputes. Lack of protection, of tenure and of legal leverage for economic activity, decreases productivity. It leads to social exclusion, reproduced over generations and visible in the spatial segregation of the poor in the urban housing environment. Environmental and behavioural degradation is closely linked to the vicious circles perpetuated by faltering property rights systems which fail the poor and slow down the development of society at large. Residents in extra-legal settlements have no legitimate way to transfer a home to a family member or heir nor to rent or sell to another. Illegal black land markets emerge and abusive practices become prevalent. Due to a lack of property rights guarantee, many assets in developing nations are not fungible. The poor and their potential business partners have no criteria to establish or realise the potential of their assets. There is no clear reciprocity for holding each other accountable and no sufficient ba-

sis to protect transactions or to pool assets with others. For the national economy, extra-legality sets off a cycle of disinvestment in housing; it represents a lost opportunity to stimulate productive economic activity.

## Rural Poverty and Property Rights

Despite continuing urbanisation, two-thirds of the poor live in rural areas. Ninety-five percent live in China, South Central Asia and Sub Saharan Africa. Together these rural poor account for around half the world's total poor.

### Rural Land Relations and Extreme Poverty

Insufficient land to live on, and insecure access or rights over land, are well recognised factors in sustaining poverty.<sup>38</sup> Rural landlessness is often the best predictor of extreme poverty and hunger. Inadequate rights regarding land often result in entrenched poverty and are significant impediments to rural development and to alleviation of hunger.<sup>39</sup> Elimination of the causes of tenure insecurity is thus imperative for fighting poverty.

### Rural Land Relations and Armed Conflict

Conflict over rural land ownership and access is almost always near the centre of armed civil conflict.<sup>40</sup> With various degrees of prominence, war over land access has been a driver, such as between the land rights of farmers and pastoralists (Burkina Faso), citizens and strangers (Côte d'Ivoire), indigenous and proto-colonial groups (Namibia, Liberia, Mozambique), and ethnic groups (Rwanda, Burundi, Sudan, Uganda). Essentially, it is about conflicts of interest — and *legal* rights — between the rural rich and rural poor. Not surprisingly, attention to the legal rights of the majority of poor is often an early platform of post-conflict reforms, most recently in Sudan and Liberia,<sup>41</sup> quite aside from the

need to address conflict-induced land losses and occupations.<sup>42</sup>

## Natural Resources

Land is not the only aspect of rural property disorder. The majority of rural poor depend upon forests, pastures and swamplands. Forests alone account for 3.8 billion hectares, of which one billion grow in Asia and Africa, the two poorest regions.<sup>43</sup> Issues of who legally owns these resources, the land on which they grow, and to whom the rental (concession) and product values accrue is an urgent concern of the rural poor.<sup>44</sup> As the tenure and benefit share of foreshore and seedbed resources, fish-rich swamplands and (especially near-surface) minerals all deliver millions of dollars annually to non-customary owners and, notably, to governments, there are ownership issues to be considered.

The importance of water rights and their relation to land rights is likely to increase. Already today, close to one third of the world's population suffer from moderate to high water shortage. The World Commission on Water estimates that the demand for water will increase by around 50 percent in the next 30 years and that around 4 billion people will live in severe conditions of water shortage by 2025.<sup>45</sup> Increased pressure on water resources is a result of population increase as well as economic growth. The value of land and real property often depends directly on the existence of adequate water rights. In this situation property rights defining who has access to water will play a key role. Decisions about water rights will become increasingly important with direct impact on rights and opportunities concerning the use of land.<sup>46</sup>

## Women Especially Affected

*Women own less than 10 percent of the world's property.*<sup>47</sup> They constitute half the world's popu-

**Table 2 The rural poor in the poorest regions of the world  
(Population figures in millions)**

Poorest Regions of the World**	Total Population 2005	Percent defined as poor*	Number of poor 2005	Percent in rural areas	Est. number of rural poor
Sub Saharan Africa	752	75	564	66	372
South Central Asia	1615	75	1211	70	848
China	1304	47	613	63	386
North Africa	194	29	56	53	30
Latin America and Caribbean	559	26	145	24	35
Eastern Europe	297	14	42	32	13
	4,721	56	2,631	64	1,684

\* Excludes Europe, Oceania, North America, etc.

\*\* The Population Reference Bureau uses the internationally-recognised criterion of living on less than \$2 a day as the measure of poverty.

lation, they produce between 60 and 80 percent of the food in developing countries, and they are responsible for rural households in increasing numbers. Much of the misery in the developing world is due to statutory and customary property systems which disenfranchise women.<sup>48</sup> Where women have property rights, they often come in 'thin bundles' as compared with men.<sup>49</sup> Too frequently women face barriers to owning, using, and transferring or inheriting property. Women face forcible eviction from their homes and their land (over which they had customary or other rights) by family members, traditional authorities and/or neighbours.<sup>50</sup> Property grabbing exacerbates urbanisation trends, sending more women to informal settlements and slums from urban areas. The problem is intertwined with that of inheritance, as many widows are evicted from land and property. Barriers exist *de jure* if statutes or regulations prohibit women from using, owning, or inheriting property. Enacting formal laws that provide a woman with property rights does not necessarily mean that she will be able to exercise her rights. Often, barriers to the exercise of property rights are found to exist *de facto*, in

consequence of poor enforcement of formal rights or of social norms.

Creating enforceable property rights is essential to empower women in both rural and urban settings.<sup>51</sup> Women who own property or otherwise control assets directly gain from such benefits as use of the land and higher incomes as well as having a secure place to live.<sup>52</sup> Empowering women with property rights does a great deal to alleviate poverty and malnutrition, as women who earn more spend a higher proportion of their income to keep their children healthy and well-fed.<sup>53</sup> Providing women with the right to use, own, and transfer moveable and immovable property is important to promote entrepreneurial activity and to provide women with a platform for building strong families and strong businesses.

### Indigenous People

*Definition of Indigenous Peoples Has Yet to Reach Satisfactory Maturation:* Indigenous peoples distinguish themselves by being historically, socially, economically, institutionally and politically marginalized. That they are usually<sup>54</sup> a minority



in their countries is added reason to take special steps to ensure that their interests are not ignored. Indigenous peoples are generally described as numbering around 300-370 million people within up to 5,000 distinctive groups. In June 2006, the UN Human Rights Council adopted *The Declaration on the Rights of Indigenous Peoples*, drafting of which had begun in the 1980s. The definition of indigenous peoples has seen repeated amendment<sup>55</sup> and remains contested, particularly on the African continent. This was a factor in the failure of the Declaration to meet UN General Assembly approval in November 2006.

### Focus on Indigenous Tenure Systems

Many indigenous lands have been and still are declared public or unoccupied because they are held collectively according to conceptions of ownership and access that do not fit well with imported property systems. This lack of status has consequences for indigenous asset holders and society at large and is a critical issue, globally, for property rights reform. In addressing problems of land issues of indigenous peoples around the world, it is advantageous to focus upon indigenous land tenure systems rather than

on the identification of indigenous *people per se*. This sidesteps the troubled definition as to who is and who is not ‘indigenous’ and has the added advantage of zeroing in on the systemic issues of indigenous or customary tenure regimes.

Where ethnic and indigenous minorities are identified and territorially placed, it may be unnecessary to belabour distinctions between the indigenous and their tenure systems. In such cases, it is advisable to simply promote their territorial autonomy and sovereignty. It should include their stewardship over natural resources, and extend to matters of property — and all with outside intervention kept to a minimum. Focus on indigenous or customary tenure systems is critical in the two regions where the poor are most numerous — Sub-Saharan Africa and Central Asia — and where delimitation and identification of indigenous peoples is difficult and contested.

### Important Numbers of Customary Land Holders

Customary land holders comprise roughly two billion people in Africa, South East and South Central Asia and Latin America and the Caribbean. Given that around 80 percent of these rural dwellers are defined as ‘poor’ — i.e., living on

**Table 3 Main Regions Where Customary Land Tenure Operates**  
(Population figures are in millions)

Regions	Population 2005	percent Rural	Number Rural	percent defined as poor*	Number of poor 2005	Number of rural poor
Sub Saharan Africa	752	66	496	75	564	372
North Africa	194	53	103	29	56	30
South Central Asia	1615	70	1130	75	1211	848
South East Asia	557	62	345	56	312	345
Latin America and Caribbean	559	24	134	26	145	35
	3,677	60	2,208	71	2,288	1,630

Source of base figures: Population Census Bureau, 2005.<sup>56</sup>

under US\$2 a day standard — then 1.6 billion people may be defined as ‘the customary poor’.

## **Refugees, Internally Displaced Persons**

The disorder of property relations created by internal or interstate conflict deserves special attention.<sup>57</sup> Putting property relations back in order or providing adequate compensation to victims is at the heart of sustainable peace building.<sup>58</sup> The situation becomes more dramatic when natural disasters strike. In recent memory, the numbers displaced by the three major disasters since the end of 2004 (the tsunamis of 26 December 2004, Hurricane Katrina of 29 August 2005, and the earthquake of 8 October 2005 in northern Pakistan and adjoining areas in India and Afghanistan), is around 2 million, according to the Representative of the UN Secretary-General on the human rights of internally displaced persons.<sup>59</sup> Given the fact of global warming, and the increasing number of natural disasters, the number of displaced persons falling into uncertain property relations is likely to grow. Also, empowerment of the poor through property rights has to be seen as most urgent for orderly reestablishment of property relations after disasters and for the development of reliable insurance schemes.<sup>60</sup> Hurricane Katrina victims had property rights and insurance schemes that mitigated their losses. The poorest people of the world lack and desperately need such securities.

## **3. Barriers versus Facilitators of Change**

There is evidence of enormous social and economic potential in the establishment of property rights systems for all societies.<sup>61</sup> This insight leads to the question as to what actors and structural barriers prevent societies from adopting generally beneficial property rights systems and what can be done to overcome these barriers.

### **Resistance of Powerful Social Actors**

Private owners of illegally occupied property often resist allocating land to squatters against market value compensation.<sup>62</sup> Some business actors profiting from monopoly-like positions want to avoid competition. They resist legalisation and undermine good governance.<sup>63</sup> Lawyers and notaries profit from the complexity of legal property systems excluding the poor.<sup>64</sup> State officials profit from bureaucratic complexity of the system through gatekeeping and bribes. Entrepreneurs in the informal sector refrain from registering businesses and property to avoid taxes and costly regulations.<sup>65</sup>

### **Structural Obstacles and Facilitators of Change**

Actors tackling the task of reform also have to be aware of structural causes of stagnation or change. The distribution of power plays an important role in determining the likelihood of the emergence of fair property rights systems. Land and income distribution is another factor in this regard. Indeed, it has been shown that the nature of the prevailing political regime and land and income inequality are important determinants of property rights structure.<sup>66</sup> When political power

is concentrated in the hands of the few, and/or land and income distribution is skewed resulting in extreme inequality, political authorities are unlikely to implement and enforce property rights in an equitable manner.<sup>67</sup> This indicates that the evolution of property rights systems is to a large extent determined by historical conditions, such as the distribution of factors of production.<sup>68</sup>

## Realising Turnaround

Understanding the likely impact of reforms on non-poor groups with significant influence is critical to assess potential support and opposition for reforms.<sup>69</sup> Besides promoting pro-poor property rights it is therefore important to establish property rights systems that are beneficial for middle classes and groups with significant assets and political influence. The message to all is that in the absence of generalised and equitable property rights systems much of economic activity does not develop its full potential even for powerful actors<sup>70</sup>; there is a high likelihood of social unrest<sup>71</sup>; there may be under-accumulation of human capital resulting in a low quality labour force, and little demand for credit resulting in underdeveloped financial institutions and ultimately hindered growth. There is also less foreign investment or flight of capital when property rights are not guaranteed.

Provided that inequalities are not too extreme, equitable property rights may emerge precisely because of their beneficial consequences for groups with significant assets and political influence. They may also emerge out of the desire of elites to avoid adverse consequences from exceeding numbers of poor people not having access to property rights.<sup>72</sup> Indeed, several recent examples in Asia, where political leaders induced progressive reforms, including equitable property rights, are illustrative of precisely this

scenario. The emergence of property rights and the distribution of resources may have mutual causal effect.<sup>73</sup> Examples of countries like China and Singapore teach us that an alternative route of political authorities consenting to reforms is a possibility where inequalities are less extreme. The issue of better understanding how to devise mechanisms for convincing the political authorities or circumventing their influence in order to induce the reform constitutes an important challenge. An important implication of this view is that a drastic one-time reform may have long lasting consequences, setting the process of ever improving distribution along side with more equitable property rights systems.

## 4. Learning from the Past

Learning from previous reforms in view of improving practices carries considerable burdens of judgment as one tries to measure the possible applicability of particular lessons to future reforms in very different contexts. What is provided in this section is a compressed selection of lessons to give actors on the ground better conditions to reach their own informed judgment.

### Problematic Practices and Omissions

**Six general lessons from past mistakes are presented as follows:**

- 1) *Disregarding that effective property rights for the poor are the result of power relations and systemic interaction.* Many efforts to give the poor effective and enforceable property rights have focused on necessary technical and legal issues at the expense of paying attention to how power relations influence the property rights system in its impact on the most vulnerable members of society. This has hindered effective realisation of theoretically anticipated reform benefits for the poor. Associational power of the poor, more symmetric information, legal literacy, procedural assistance and institutional capacity building are as important as the formal legal instruments of property rights.<sup>74</sup>
- 2) *Failing to assess the credit market environment* of the property system and assuming that credit markets will evolve automatically from property rights. In general, rates of mortgaging remain very low in developing countries, partly due to low demand, partly due to availability of less risky alternative sources of loans than possible foreclosure threatens and in the past partly due to low values in a market.<sup>75</sup> Given the reluctance of banks to destroy

the entire livelihood of a poor family in the event of foreclosure and the likelihood of local resistance to attempts to take or sell off the collateralised property, there is limited access to mortgages and credit, especially in rural areas.<sup>76</sup> Understanding the role of credit markets in relation to property rights formalisation has led to some important shifts in donor land policies in recent years. It is now accepted that for markets to move land and real property to the poor in a sustainable manner targeted credit must be provided.

- 3) *Assuming that the state is strong and trustworthy* and that therefore property titles and registries as well as the guarantee of transactions are reliable and corruption proof.<sup>77</sup> In many countries land administration is one of the most corrupt public services. The most egregious examples include irregularities and outright fraud in allocating and managing public lands. Even petty corruption in regular service delivery can involve large sums and have far-reaching economic consequences.<sup>78</sup>
- 4) *Failure to include moveable property and shareholder schemes of ownership and value addition* in policies promoting property rights. The asset base of the poor can be extended by innovative forms of non-real estate and non-credit based corporate shareholder ownership and by using moveable property as collateral. Unlike land and housing, the reproductive potential of non-tangible forms of property is potentially unlimited.
- 5) *Repressing Opportunities alongside with Risk.* Even a moderate increase in the liberties and entitlements that come with private property, be it owned by individuals or groups, can often create considerable benefits.<sup>79</sup> Thin bundles of property rights, reducing the fungibility of

property, contribute to the exclusion of the poor from the chain of value addition in case of land development, compensation payments, and general increase of property value. The risks of the land and financial market have invited special policy measures which are supposed to protect the poor from predators and harmful market forces. Such practices mainly include conditionality of forming collectives in order to register property under a single legal entity, restrictions on the right to transfer (moratoria) after land privatisation or titling, quantitative ceilings of ownership, special qualification to profit from land and real estate redistribution. The incentives to form collectives are beneficial where they are related to and protect existing communal structures.<sup>80</sup> They are often dysfunctional in contexts where a majority or a very active minority of people wants to act as individuals or small family groups and where the moratoria are too long and time is not used for capacity building.<sup>81</sup>

6) *Failure to conceive gender equitable property rights systems.* In many countries, formal statutory law operates in conjunction with customary law and cultural norms and practices based on patriarchal attitudes which make it difficult to enforce women's legal rights to land as wives and daughters. Individualistic statutory law favouring the male household head and customary practices and hierarchies combine into a mix that is harmful for women. Where customary law and more gender conscience statutory law conflict, oftentimes the customary law trumps. In some instances statutory law has erased customary practices favouring widows or women in general. Legal reform does not improve the precarious property rights situation of women if there are no enforcement mechanisms, and if legal assist-

ance and support services are not affordable or accessible for women.<sup>82</sup>

### Lessons from mistakes related to land and real property:

- 1) *Failure to address the problem of landlessness* and extremely unequal land distribution. Market based reforms are not the definite solution to this problem, but land purchase and redistribution of underused land by the state, multilateral donors or land-banks by private foundations can avoid the social unrest and withdrawal of private investment usually caused by compulsory acquisition and expropriation.<sup>83</sup>
- 2) *Retaining that customary tenure and interests in commons does not represent private property rights in and of themselves* and are therefore not eligible for registration without conversion into imported forms.<sup>84</sup> Sustaining versions of collective assets in particular as 'un-owned land' or default state-owned, instead of registering these as the private, group-owned property of communities has deprived millions of poor of a secure asset and income base. Customary tenure systems were thought to provide insufficient tenure security. They were assumed to impede farmers from making necessary investments in land and they were associated with the 'tragedy of the commons.'<sup>85</sup> Research has shown that such systems can be effective. By default and notwithstanding important qualifications, customary tenure systems are to be considered as providing an adequate framework for private group-owned property. They have been flexible and responsive to changing economic circumstances.<sup>86</sup> They limit the property rights bundle to a specific group of people as the bearers of those rights. The household, the village, and the kin group often provide insur-

ance against risks, access to informal credit, and security. Lineage rules of inheritance help enforce intergenerational transfers. The threat of social exclusion is a major instrument of enforcement of the rules. In other words, essential functions of the property rights system are fulfilled by customary systems and ought to be legally reinforced.<sup>87</sup>

- 3) *Assuming high demand for formal entitlement*, i.e. assuming that rural and remote landholders felt their rights to their house and farm plots are threatened or that they explicitly want to raise loans on the basis of formal titles to these assets.<sup>88</sup> Paying insufficient attention to the time and financial costs of titling, to both government and landholder.<sup>89</sup> In particular assuming that titling always has to be cadastre-based and rest upon expensive survey and mapping.<sup>90</sup>
- 4) *Assuming that titling is the precondition for property security* when other measures offer more immediate and simpler ways of securing the assets of the poor, especially in remote rural areas. Even in rural African contexts, where individual titling of land may not be desirable or feasible and the use of land as collateral for credit is only a remote possibility, providing poor land owners or users with documented rights can yield significant benefits.<sup>91</sup>
- 5) *Failing to pay attention to pro-poor land market development* and failing to assess the impact of the land market on the poor.<sup>92</sup>
- 6) *Failure to Simplify Land Administration for the Least Advantaged Customer*. In many countries, land administration functions are dispersed among many Ministries (justice, environment, agriculture, urban, finance, land reform, forest, mining, etc.). This creates grey zones of overlapping competencies as a

breeding ground for non-transparent practices. Even if responsibilities are clearly assigned and overlaps avoided, this creates confusion among users, prevents realisation of economies of scale, and thus increases the cost of providing land administration services to the detriment of the poor.<sup>93</sup>

- 7) *Failing to Restrict Eminent Domain*. There should be a strict focus on using eminent domain as *ultima ratio* in providing essential public services rather than as a means to improve general public utility. The latter promotes illegitimate alliances of state ownership and powerful particular interest and severely damages the property rights of marginal land users by excluding them from adequate compensation or inclusion in chains of value addition through property development.
- 8) *Insufficient Revenue Sharing in Gains from Natural Resources*. There has been lack of attention to the possibility of community based natural resource management in the case of forests, fishery, and water. There has been insufficient participation of citizens in the revenues from the extraction, treatment, and distribution of natural resources.

## Experienced Consequences

- 1) *Enduring extra-legality of the majority of asset holders* despite existing property systems and titling programmes is a persisting phenomenon. It is due to imperfect implementation in some cases but in many other settings it is the result of a mismatch of official institutions and local practices.
- 2) *Disruption of Existing Tenurial Arrangements*. Careless implementation of formal documentation may have the effect of inadvertently disrupting existing tenurial arrangements.

There may be sound policy reasons for seeking to modify or eliminate some existing tenurial practices. It is important, however, that any such reforms are the result of informed and participatory decision-making, and not the inadvertent result of poorly designed or implemented titling processes.

- 3) *Concentration and Discrimination.* In many countries, including the countries of the former Soviet Union, it has been observed that some people may be less well positioned to participate effectively in the documentation and registration process than others, with the effect that their rights are poorly protected. Individuals who loose in such contexts are usually women, absentee right holders or mortgagees, and in general people with less education and limited access to information becoming victim to manipulation and fraud.
- 4) *Increase in Disputes.* Registration of land is expected to reduce the incidence of land disputes, by clarifying boundaries, by resolving ambiguities about rights over land and by putting in place a registration system that is transparent, reliable and accessible. In the short term, however, the process of adjudication and formalisation of rights may bring to the surface latent disputes that may have otherwise remained below the surface. Such potential risk needs to be assessed in the planning phase of a reform project.
- 5) *Capitalisation: Difficult for the Poor in Absence of Adequate Land and Capital Markets.* State of the art analysis reveals only a modest positive effect of land titling on access to mortgage credit, and no impact on access to other forms of credit. It shows no effect on the labour income of the households holding new titles. However, it is shown that moving a poor

household from uncertain usufructuary rights to a more complete bundle of property rights substantially increased investment in the family houses. Property registration and guarantee of the homes reduced the size of families and these smaller families invested more in the education of their children. Another study finds that formal property rights lead to more available time for productive activities of property holders who do no longer need to defend their assets.<sup>94</sup>

Property rights bring increased economic benefits when linked to a functional credit system and market, but they do not, by themselves, cause the emergence of a functional and pro-poor credit system.<sup>95</sup> Legal property rights effectively lead to credit and investment where robust financial markets exist and where there are further incentives for investment.<sup>96</sup> Even when in possession of titles and registered property, small-scale farmers and the urban poor most often do not put their land or modest dwellings at risk by using them as collateral for credit.<sup>97</sup> Tenure security and economic benefits other than capitalisation via collateral of land property seem to be primordial for the poor. Although they are efficient producers, small-scale farmers and business people tend to lose out in land and financial markets which are regulated with provisions that privilege consolidation. Market based land reforms therefore now tend to be accompanied with targeted credit for the poor.

- 6) *Costs and Benefits of Property Rights Protection.* From the perspective of the poor and the state, the costs of formal titles have to be weighed against the costs of insecurity of tenure, or against informal costs (bribes) in obtaining titles which harm the poor and the state.<sup>98</sup> In many unreformed contexts, only few

households can afford the cost of a title.<sup>99</sup> As will be discussed, adapting laws and procedures to the social context can considerably reduce the costs of titling and registration by reducing administrative inefficiencies and by the use of modern technology. Legally enforced property rights systems are not necessarily cost ineffective and expensive.<sup>100</sup>

7) *Fees and Taxes*. The integration of irregular settlements into legal property rights systems increases tax revenues to governments.<sup>101</sup> On the other hand it is obvious that inappropriate fees and taxes can push people back into extralegality.<sup>102</sup> As far as the poor are concerned, registration fees and taxes have to be set at minimal levels. The key elements that have to be in place for property tax reform: existence of adequate technical expertise; appropriate land records and administration are required as the basis for the property lists; sufficient flexibility to allow the phasing in of major changes is essential to forestall challenges and resistance to changes; political understanding and will are perhaps the most critical preconditions if the substantial challenges of implementing a highly visible, difficult to evade, tax, are to be overcome.<sup>103</sup>

## 5. Recommendations for Reform and Improved Action

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The diversity of contexts and stakeholders affected by problems of faltering property rights, as well as the high complexity of the issue, does not indicate that there will be a one time, one-size-fits-all solution. What is needed is a serious and continuously monitored reform process and parallel interventions inducing far-reaching and sustainable reforms of the four building blocks of the property rights system; that is: (1) reforming the property system as one of rules defining or enabling bundles and bearers of property rights allowing the poor to access and secure property alone, as members of communities, or as communities; (2) reforming it as a system of governance so that targeted actions securing the property rights of the poor can be taken effectively and legitimately; (3) reforming it as a functioning market of assets to include the poor in the chains of value addition enabling them to become capable market participants, and (4) reforming the property system as one of social policy with targeted measures of capacity building, information, and access to property and housing. Parallel reform work sustained by constant monitoring in all four dimensions is advocated to achieve real progress. Common features of policy design and prioritising are also dealt with in this section, and outlines are presented of important subsidiary and stabilising actions that either have or can be taken by donor countries and multilateral organisations.

### **Reforming Rules Regarding Bearers and Bundles of Property Rights**

Property rights stand for the bundle of liberties and claim rights tied to the allocation of a resource to a natural or legal person. The property



system as a system of rules regarding the bundles and bearers of property rights determines who can legally own property, what is recognised as property and what can be done with property. Laws should promote rather than limit or discriminate against bearers of property rights; they should allow freedom to bestow sufficiently thick bundles of property rights on individuals or groups and should not unduly limit the scope of creative activity that can be invested in property.

### Individual and common Private Property

*Promote Individual and Corporate Legal Identity; Limited Corporate Liability.* Property law should offer clear and simple options of legal personality and corporate ownership for small businesses and corporative associations of the poor. Legal personality so designed opens a range of possibilities of ownership by individuals, members of collectives, and by collectives. A legal person can hold property as an individual, but the definition of a legal person can also be extended to a collective or common property of a myriad of members, who in turn may own some property rights individually. Pro-poor property rights systems facilitate the ability of people to pool and leverage modest resources and limit liabilities in case of business failure or exit of partners. One key to economic success for small entrepreneurs in the developing world is the limited liability of business owners, allowing for controlled failure without disastrous consequences for the vulnerable individuals involved. This legal instrument of limited corporate liability has to be extended to the poor micro entrepreneurs and rural producers in the developing world in a simple, straightforward manner. Its main advantage is formality of business ownership that trumps disadvantages of formality such as tariffs and taxes, provided these are affordable.

*Promote Associational Property Structures.* Housing and land associations prove how individual and common property can be combined to favour people with limited assets without disenfranchising them to a collectivity. The association, as legal person, is owner of the real property and collectively responsible for mortgage loans, giving the association more leverage in negotiating loans and public services. Members, however, get tradable rights to plots, houses or apartments, and contribute to repayment of the overall loan through monthly rent. Apartments or plots are increasingly sold at open market prices, but association members have pre-emption rights to enter into the agreement at an agreed price.<sup>104</sup> The idea is to provide a form of ownership to balance the interests of the individual or family with those of a broader community. With this purpose, Australia introduced *Strata Title* in 1961 to better cope with apartment blocks. Other countries have adopted the Australian system of apartment ownership, including Canada, Singapore, Indonesia, Malaysia, Fiji and the Philippines, and still others have successfully created their own schemes. *Strata* title is not only applicable to vertical living but also to cluster living in slums. In many developing contexts, there has been a tendency for law to prescribe in too much detail the structure of local organisations and the rules by which they can operate. At the same time, injecting greater formality and accountability into local organisations is obviously important.

*Simplified Property Rights Certification.* Some countries have adopted simple, locally administered processes to confer legal land rights as alternatives to conventional land titling. They are practical, inclusive, benefiting growing populations of the rural poor,<sup>105</sup> and are being increasingly used to enhance urban land tenure security.<sup>106</sup> As many require no prior physical planning,

## Box 2 Acquiring property rights for the poor

In **Pakistan**, incremental expansion of urban services allowed conversion of informal settlements (*katchi abadis*) in Hyderabad into legal housing neighbourhoods. In **Trinidad and Tobago** these alternative instruments have the advantage of being part of an incremental process of acquiring secure tenure. There, the State Land (Regularisation of Tenure) Law of 1998 paved the way for progressive issue of Certificates of Comfort, Statutory Leases and Deeds of Lease to informal settlers on state land. A similar model has been under development in **Namibia** since the late 1990s and proposes a continuum comprising Starter, Landhold and Freehold titles. In **Brazil**, the *usucapião* is a form of adverse possession over private land, so there is no need for authorities to issue a title: the judicial sentence declaring that a new real right over the land has been constituted over time is the legal document necessary to promote land registration and ownership transfer. This can be done individually or collectively,

and people get freehold rights either individually or in a form of co-ownership. It is a form of prescriptive acquisition, a real right (in the legal sense), and not temporary. It can be sold, inherited, etc., and there is no reason for banks not to accept it (Fernandes 2005). In **India** it is common practice to issue pattas giving rights to the poor over government land. The patta, a document issued by the Land Revenue Department, may be freehold or leasehold (99/30/10/1yr), renewable or not. It specifies conditions for use, transfer and inheritance, and may be used to regularise occupation or assign new plots. The patta is usually given free of cost, or with a small fee, and needs no registration to avail of rights specified. In states like Madhya Pradesh, Andhra Pradesh, Rajasthan and West Bengal, it can be mortgaged against housing loans. If patta land is required for any 'public purpose', the holder has to be allotted alternate land. In Andhra Pradesh alone, more than 10 million pattas have been issued since 1962.

(Banerjee 2006)

infrastructure, or surveying, they offer widespread coverage at low cost, affordable by the poor.

### Recognising Customary Tenure and Communities as Bearers of Property Rights to Land and Natural Resources

Individual titling and/or alternative measures for incremental consolidation of property claims are appropriate and beneficial in many urban contexts.<sup>107</sup> In rural contexts, especially in Africa and parts of Asia, they need to be phased in from other forms of tenure security or replaced by new approaches to securing tenure to more fully cover the spectrum of the local economic practices and conditions. The 1990s and early 2000s are replete with examples of legal reforms in the direction of recognising customary land rights (mainly in Africa, and notably in Tanzania, Uganda, Mozambique and some West African countries), and indigenous

land rights (Philippines, Cambodia, Australia, and a number of countries in Latin America). These innovations come from different contexts that may limit comparability; nevertheless, one can extract common threads and identify common problems that will require attention in the years ahead.<sup>108</sup> Broadly speaking, these laws share some of the following characteristics or aspirations:

- They recognise that in many contexts the social and economic value of land is best realised by allowing land relations to be governed by rules of the community in which the land is located, rather than by imposed systems of property law.
- They reflect a conviction that community-based tenure regimes are often better at providing security of tenure to individual cultivators. Often, individual cultivators fear dis-

possession by government or outsiders, rather than by others within the community.

- They acknowledge that community-based systems are also often better at reflecting the complex rights that individuals, families and groups have over land, including secondary rights of access and use — rights that might be distorted or lost by titling according to a standardise format that is not adapted to local realities.
- They recognise that a community's relationship with land is more than an aggregate of individually occupied plots: it is a system that includes natural resources used in common.

*Communal lands and common natural resources.* Including grazing lands, forests, water, fisheries, in many poor countries are a special case of customary tenure and crucial for the improvement of the legal and economic status of the poor. They are vulnerable to degradation and appropriation by powerful chiefs, outsiders, or state bureaucrats unless common property resource management systems are reinforced by legal sanction.

Increasing access to, and the locally beneficial productivity of land and natural resources, can be achieved by:

- Reaffirming and codifying customary rules in participatory ways, reflecting diversity in the ethnic, historical, and social construction of land. Also setting legal boundaries, identifying existing rights that may overlap or be of a seasonal nature (e.g., between herders and sedentary agriculturalists), and registering them as appropriate and orderly tradable.
- Allowing communal land ownership as one legal option and regular management decisions in an accountable body that functions transparently — for example, as an incorpo-

### Box 3 **Namibian land reform**

In **Namibia**, legal reforms in 1996 created a framework for community-based natural resource management (CBNRM). Namibians who form conservancies now have legal rights to manage wildlife and to benefit from tourism. With these secured rights, rural Namibians have reduced levels of poaching, have seen wildlife numbers increase substantially, and are seeing their ecosystems rebounding. A related benefit is that rural Namibians now have opportunities to pursue a new set of entrepreneurial ventures. They are empowered to build businesses based on eco-tourism and related activities. These businesses help to diversify livelihoods and provide valuable benefits for conservancy members. Namibia's experience with CBNRM may provide a strong model for other countries: devolving secure legal rights to local people is promoting positive outcomes, both in terms of conservation and economic development. *Source: Boudreaux 2007*

rated user group — and having clear rules for conflict resolution that are respected by all involved. Arriving at culturally appropriate legal forms for such bodies is key.

- Ensuring that customary forms of tenure can evolve towards more formal types of tenure through well-defined and transparent processes, if and when, in the judgment of those concerned, the benefits from more individual ownership exceed the cost.<sup>109</sup>

The status of informal rights has come strongly to the fore. Most derive from, and are sustained by, community-based arrangements — i.e. indigenous or customary regimes. If inroads made thus far evolve and expand, some 400 million Africans could benefit. No fewer than 40 million Indonesians, or 40 million South Americans — and millions of others globally — could also benefit, should comparable tentative shifts mature. The

implications promise socio-economic changes never quite achieved in previous reforms towards redistribution, collectivisation or conversionary titling. Obviously, where states are too weak to control local war and drug lords, devolving land ownership or management to local communities is not an option to empower the poor.

### Critical Issues in the Recognition of Customary and Indigenous Tenure Systems

**D**rafting of laws that recognise customary tenure and that accommodate a number of such tenure systems within a national legal framework is a complex task. It is possible to identify a number of challenges that are likely to require attention from both drafters and implementers:

*Identifying Communities and Evolving Practices.* State recognition of customary or community-based tenure requires identifying, with some degree of precision, the community whose property rights are being recognised, the area over which it has legitimate claims and the institutions or decision-making processes whose decisions and outcomes are entitled to respect by formal legal institutions. If carelessly done, formal recognition may have the effect of unduly privileging one of several competing local visions of what constitutes a community, and what rules or authorities are legitimate.

*Balancing Respect for Local Decision-making with Human Rights and Accountability.* In some contexts, custom may run contrary to a vision of human rights enshrined in a national constitution, particularly where it comes to the treatment of women and minorities. A similar dilemma arises when it comes to ensuring minimum levels of accountability and transparency within customary structures. However, customs are not rigid and unchanging. It is thus possible to aim at a

process in which customary practices evolve in response to social development and human rights principles.<sup>110</sup>

*Protecting Customary or Indigenous Rights while Enhancing the Ability of Communities and Individual Households to Explore New Economic Opportunities.* There is no inherent contradiction between giving increased legal recognition to customary or indigenous tenure systems and promoting economic growth — indeed, in some contexts it is argued that the former is a pre-requisite for the latter. But the choice of legal techniques may skew the balance between protection on the one hand and the ability to adapt to new opportunities or challenges on the other. Protecting the integrity of local systems against the incursions of richer and more sophisticated outsiders may, as a starting point, justify short-term restrictions on the alienability of land. The question is whether emphasis on protection reflects the needs and aspirations of local people in rapidly changing economic environments. Some laws provide avenues for communities or individuals to attract outside investment on their land, subject to an internal process of approval. There are in some cases opportunities for individuals or groups to ‘opt out’ of local tenure systems in favour of acquiring individualised titles under a state-sponsored scheme.

*The Challenge of Capacity and Conflict.* Devolving greater authority to local institutions — whether traditional bodies or local governments — has its justifications. The question to be asked in each case, however, is whether specific reforms assume the existence of greater capacities at various points in the system than in fact exist, or can be expected to exist in the near future. In many contexts, conflict-ridden areas will not allow for community based land and natural resource management and require tighter central control. The challenge of capacity and conflict extends

#### Box 4 Focus Africa

Customary rights may now be registered without conversion into introduced forms in Uganda, Tanzania and Mozambique; the same is proposed in Lesotho, Malawi and Madagascar. Customary properties other than common properties may be registered in Namibia and Botswana (since 1968). Although not defined as customary rights, given their abolition in 1975, existing occupancy may also be registered 'as is' in Ethiopia. Customary rights in Mali, Niger, Burkina Faso, Benin, Côte d'Ivoire, Ghana and South Africa may be certificated with substantial effect, but with required or implied conversion into existing statutory forms on final registration. Described incidents of customary rights reflect 'customary freehold' and/or as customarily agreed by the modern community. Most laws allow for customary rights to be held in perpetuity, raising their status above that of leasehold or similar statutory forms common to most of Africa. Freehold is available mainly in Southern Africa. Only Tanzania and Mozambique endow customary interests with unequivocal equivalency with imported tenure forms. Uganda proclaims this but also provides for conversion of customary certificates into freehold tenure. Lesotho and Malawi propose something similar. Mozambique does not practice

what it preaches, giving investor interests in customary lands more support than customary interests.

The status of unregistered customary rights — more than 90 percent of all rural landholding — is often ambivalent and remains permissive, pending registration. Customary rights not registered are explicitly protected in Uganda, Tanzania Mozambique and in a different manner, in Ghana. Customary owners in Côte d'Ivoire have a short time limit within which rights must be registered to be sustained. The movement of customarily held land out of government land/public land classes is clearest in Uganda, where public land is abolished, and Tanzania, where it becomes 'village land'. More than individual title is recognised. Family title is widely provided for, especially in Ethiopian law and Malawian policy. Adoption of procedures, limiting transfers of family land without support of spouses, is provided in Uganda and Rwanda and proposed in Malawi and Lesotho. A presumption of spousal co-ownership exists in Tanzania land law. Efforts to secure such a presumption failed in Uganda. Ethiopia and Eritrea recognise male and female property rights distinctly.

Sources: Alden Wily and Mbaya 2001; Alden Wily 2003c

to education and awareness of property rights among the common people, which is discussed in a subsequent section.

#### Measures to Make Property Systems More Gender Equitable

The UN Research Institute for Social Development notes that there has been 'both considerable progress throughout the 1990s in making formal laws pertaining to land more gender equitable, as well as repeated failures in actually putting statutes to work.'<sup>111</sup> Developing countries have, in many cases, enacted laws and policies to provide women with greater rights to control and manage property. Promising practices combine

institutional measures, legal prescriptions and social policy:

*Special Units to Monitor Gender Issues.* Policymakers should establish special units to constantly monitor gender issues and follow up on enforcement. In some environments, police services and court systems fail to enforce women's property rights. When property rights exist *de jure* but not *de facto*, policymakers face difficult choices: expend resources to better ensure enforcement or work to shift social norms. In countries with limited capacity the former route is difficult. In any country the latter is a major educational challenge. There is need for context-specific investigation of how best to shift social norms in ways that

welcome women holding secure rights to property. This may well be a time-consuming process of norms evolving. It is an area in which much additional research is needed.

*Joint Titling Efforts and Common Property.* Governments should register household property jointly in the name of both husband and wife. By virtue of marriage or sustained free union (domestic partnership) real and moveable property held or bought by the male partner should automatically be considered the co-property of the woman. Women usually do not have the means to contribute 50 percent to the purchase of property in marriage.

*Inheritance.* The primary way the poor acquire land is through the family and by inheritance.<sup>112</sup> Many formal or informal legal systems favour men in distributions made by inheritance.<sup>113</sup> In some cases, inheritance and succession laws provide widows with only temporary rights to use spousal property after their husbands die. These rules subject women to the potential of property grabbing. Many countries have amended constitutions or implemented legislation to guarantee the rights of women to inherit property on an equitable basis with men. However, in some countries may override these provisions by custom or family law, while a number still maintain discriminatory provisions in their legal codes.<sup>114</sup> Thus, for women, the existence of inheritance rules that call for male and female heirs to receive equal consideration in testamentary distributions are an important step on the path towards empowerment. There is some evidence that changing formal inheritance laws may have the unintended consequence of prompting men to specifically disinherit female heirs to avoid passing property to them.<sup>115</sup>

*Education and Information.* Women may be unaware of their legally guaranteed property rights.

This on-the-ground reality suggests that there is a continued need to educate women and girls as to their legal rights to own, use and transfer property and to communicate to society broadly the nature of these rights.

### **Intellectual Property Rights and the Rights of Indigenous Peoples: The Task Ahead**

In most cases intellectual property is only indirectly linked to the economic activities of the poor. However, in the case of indigenous people the issue of intellectual property is often related to forms of dispossession and property misuse. Discussions have focused on a wide range of issues, including moves to strengthen protection of traditional cultural expressions (TCEs), traditional knowledge (TK) and genetic resources (GR) against misappropriation and misuse.<sup>116</sup> In analogy to this report's focus on indigenous forms of tenure, rather than indigenous people as such, this section of the report pays attention to these forms of intellectual property rights rather than to the identification of their bearers. The UN Human Rights Council (Declaration on the Rights of Indigenous Peoples), the Convention on Biological Diversity<sup>117</sup>, the WTO TRIPS Council, UNCTAD, UNESCO, the FAO and WIPO have paid increased attention to the protection of TCEs, TK, and GR.

Some view intellectual property rights as a useful instrument for the conservation of TK, GR and TCEs and as a tool for implementing a benefit-sharing. Others are more critical and fear a trivialisation of traditional cultures and possible misappropriation. Others still point to a fundamental conflict between the very notion of intellectual property and the cultural values and moral perception of many indigenous populations. While indigenous notions of collective ownership and trans-generational custodianship might be compatible with the overall idea of (intellectual)

property, some indigenous peoples aim to prevent appropriation of natural and cultural resources. In such cases, there is a fundamental conflict between indigenous rights and (intellectual) property. In fundamental opposition to some indigenous cultures, many intellectual property systems recognise rights on inventions pertaining to living matter. In conventional patent systems, matter known to the public belongs to the so-called public domain, thus preventing their protection and allowing their free use by anyone. Worse for some indigenous people, the concept of public domain associated with traditional intellectual property laws has allowed for the appropriation of GR and TK for the development of inventions that are subsequently patented.

*Intellectual Property Rights in Context.* The rights of indigenous peoples depend on and interact with a wide range of other measures and policies, such as land tenure, environmental laws and protection of endangered species, health, food and agriculture, water quality, cultural heritage protection, access to and exploitation of natural resources, environmental management, and soil conservation. Within this broader horizon, intellectual property rights may play a positive role in encouraging creation or protection of indigenous rights. Such a role includes, for example, the protection and disclosure of new intellectual creations through the laws of patents and industrial designs or avoiding confusion and deception and preventing unfair competition through the protection of trademarks and geographical indications. Equally relevant are the safeguarding of the integrity of, and rights of attribution to, certain works and creations through moral rights' protection in copyright, and the protection of undisclosed information from bad faith use or appropriation. An example of the use of intellectual property rights in the protection of traditional knowledge relates

to traditional medicines in the People's Republic of China, in respect of which several thousand patents have been granted in past years.<sup>118</sup>

*Way Forward.* Notwithstanding useful aspects, many questions remain as well as important concerns:

1. Conventional intellectual property rights might not offer indigenous peoples adequate protection in situations where the resource, knowledge or cultural expression is already publicly known. In this case, the creation of *sui generis* systems of protection is needed.
2. The overall purpose of intellectual property rights for indigenous people in both positive protection and negative protection needs to be further evaluated.
3. Existing and future systems must ensure that they do not contribute to an undue misappropriation of certain intellectual assets of indigenous peoples.

*International Dimension.* In addition, because GR/TK and TCEs are often exploited in countries different from the countries of origin, there are calls to establish international instruments that take account of the intangible nature and cross-boundary nature of those components of indigenous life and heritage. This will require examination of complex issues, such as the question of ownership/custodianship of rights, form of protection to be granted, ways for ensuring nationals of one country to enjoy rights in foreign countries, question of fair and equitable benefit-sharing in the international context, recognition of personal or moral rights of indigenous people, ensuring that known resources or knowledge already in the public domain cannot be subject to intellectual property rights, and the need for enhanced international cooperation in areas such as mutual information, registration and management of rights, among others.

*The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional knowledge and folklore* (IGC), established by WIPO Member States in 2000 has adopted an inclusive approach. The IGC has been exploring the potential of protecting rights of indigenous peoples through conventional intellectual property rights and through *sui generis* systems<sup>119</sup>, working towards an understanding of how best to protect TK and TCEs against misappropriation, clarifying issues such as the positive and negative protection and working on a better understanding of the international dimension of such protection. The IGC process has resulted in draft objectives and principles for the legal protection of TK and TCEs against misappropriation and misuse.<sup>120</sup>

## **Reforming Property Governance in view of the Least Advantaged Customer**

The property system is upheld by a system of governance which includes the institutional order of the state, procedural rules and relationships of interaction between state and stakeholders, ranging from property registration, spatial planning, zoning, taxing and other aspects of property management, and enforcement. Since a property system with general deficits will not produce beneficial results targeted to the poor, this section presents broader reform combined with measures that particularly promote the inclusion of the poor in effective property rights protection.<sup>121</sup>

### **Changing Legislation**

Reforming the property system to produce tangible benefits for the poor might imply the need to change the law or introduce new legislation.<sup>122</sup> Such procedures are time consuming and hard to predict in their final outcome due to political contingencies. It is thus advisable to first design the

most urgent policy measures needed to improve the property access and security for the poor, and then to assess if the legal basis for the measures is sufficient. If this is the case, it might be more efficient to seek improvement within a given legal framework. In many cases, however, the implementation of pro-poor property rights, especially for customary owners and women, requires legal (statutory or customary) or even constitutional reform.<sup>123</sup>

A government's large-scale ownership of land, its ability to impose planning restrictions and to expropriate without adequate compensation, contributes to tenure insecurity and often demands legal reform as well. Reform might be undertaken with clear goals of what the new pro-poor property law should look like: allowing private individual or group owned property of land under customary tenure; allowing the franchising of micro-enterprise with limited liability; allowing the use of moveable property as collateral; creating legal figures of associational property which allow the poor to pool and exit property; protecting women's property in and outside the marriage and in inheritance; restricting eminent domain, and introducing protective pro-poor zoning laws, among others. However, the inclusive procedure of making, implementing, and monitoring the consequences of the law by further regulations, as well as securing sustained support for the law from different stakeholders and agents, are as important as the content of the law itself. Political constellations might make sweeping and comprehensive reforms possible and hence advisable in some contexts. If not, it is also possible to approach the reform of property law in a more process-oriented manner. The following guiding principles have been useful in endeavours in different national contexts, where a one-time sweeping reform was politically impossible:



- Where consensus is hard to obtain and/or medium-term effects hard to anticipate, a pragmatic and incremental approach to legal reform is often the best approach.
- Legal and regulatory reforms can be obtained with the support of beneficiaries. But their short-term benefits have to be assessed in light of the provision of public goods and long term effects.<sup>124</sup>
- Legal and regulatory obstacles can be identified with the help of communities.<sup>125</sup>
- Applying a learning-by-doing approach to legal and regulatory change is beneficial for the progress of the reform project.<sup>126</sup>

In efforts to merge legality and legitimacy to solidify effective impact and equity of property law, communication and consensus-building measures have proven to be of vital importance. Given the political sensitivity of property issues, securing and maintaining high-level consensus and commitment to property reform is critical, especially as such support can falter during changes in the political administration, for example. Therefore, a consensus-building and communication strategy must be designed and implemented to sustain broad support.

### Reform Priorities in Land and Real Property Administration

A land and real property administration system that is generally dysfunctional will not all of a sudden produce targeted measures that benefit the poor. It is therefore advisable to make the system as a whole more efficient and friendly to the least advantaged customer. The combination of organisational simplicity and accessibility significantly improves the efficiency of registration and administration, thereby increasing tenure security of broad sectors of the population and,

as a result, public support. Effectiveness of legal provisions depends on availability of institutions for enforcement. In particular, many of the expected economic benefits (especially exchange and use of land as collateral) from secure land rights will not materialise unless a well-functioning, transparent, and accessible land administration system is in place.<sup>127</sup>

*Simplicity.* Every political entity should only have one or a strict minimum of well-coordinated property administration agencies. The integration of the cadastre, property, intellectual and commercial registries contributes to improved output legitimacy and investment climate. Experience worldwide shows that delays and tenure insecurity, due to rivalries and conflicting interests, are inevitable when a number of competing agencies are simultaneously responsible for the implementation of property rights.<sup>128</sup>

*Accessibility. Local Presence.* The locations of the agency should be as decentralised as possible and easily accessible for the poor who are unable to bear the costs of travelling long distances in order to register or transfer property.

*Reduced Transaction Costs.* Efforts to reduce the number of days it takes to formally register property can have a positive effect in terms of reducing transaction costs. So too can reducing the number of steps buyers and sellers must follow before formal transfers take place. However, in addition to such changes, countries should be encouraged to take additional steps to reduce transactions costs in property markets, mainly in organising public and private legal services in a pro-poor manner.<sup>129</sup> A key reason for land sales to be driven into informality, which can over time threaten the integrity of the registry information, is the desire to avoid high levels of taxation, mainly in the form of stamp duties, or the need to make informal payments. In

addition to setting clear fee structures that are well publicized, reduction of stamp duties, possibly by replacing them with a land tax to be assessed at the local level, would be desirable. Such a tax, complemented by a capital gains tax if necessary, could encourage productive land use and reduce incentives for speculative land accumulation, thus making productivity-enhancing outcomes from land sales markets more likely. Moreover, adjudication and dispute settlement can be embedded in a cost-saving, community-based participatory process. It is cost-effective for the state to invest in the capacity of a pool of potential conciliators at a community or district level of government.<sup>130</sup> For any first-time registration of land rights to have a lasting and pro-poor effect, it needs to be integrated with systems to maintain registry records up to date in a cost-effective way that is in line with what users are able and willing to pay.

*Modern GPS and Information Technology.* In many contexts of the developing world, the technical costs of titling and land registration have been considerably reduced by computerisation and GPS systems.<sup>131</sup> Modern technology can help to improve transparency and at the same time make administration more accessible.<sup>132</sup> As the purpose of land registries is to give public notice of land ownership and transactions, making registry information available publicly on the Internet and promoting Internet access can reduce transaction cost and by allowing independent cross-checks, greatly increase public confidence in them. The transition to an all-digital, internet-enabled land registration system is not without pitfalls. Corruption can easily increase in the early phase, because the opportunity for altering the records before digitisation is high. The introduction of all-digital and internet-based registry systems has to be carefully prepared and pre-emptive action to the altering of records taken. Corruption is reduced dramatically once the sys-

tems are operational.<sup>133</sup>

*Financial Self-sustainability.* Land administration institutions will be viable in the long term and independent from political pressure only if they can sustain their recurrent operations financially, without charging more than the poor are able to pay. This in turn is a precondition for all the other benefits from land administration to materialise.

*Separation of Powers of Land Registration and Public Land Management.* Land administration, i.e. all matters relating to land rights should be independent from the authorities in charge of state land management and use. This reduces the possibility of abusive practices where the state is only the means through which individuals pursue their particular interests and of which the poor are usually the first victims.

### **Increasing Transparency in Public Land Use and Planning**

**G**overnments' large-scale ownership of land, its ability to impose planning restrictions and to expropriate without adequate compensation also contributes to tenure insecurity of the poor who have no government lobby.<sup>134</sup>

*Define Government's Land Rights and Duties and Establish an Inventory of Government Land:* In virtually all countries, the government nominally owns large amounts of land. However, the extent of such claims and associated rights and obligations are often not well defined. At worst, this encourages sell-offs of public assets to the well-connected leading to a speculative accumulation of large non-productive land holdings or concessions. Keeping public land at the necessary minimum and defining the responsibilities of different levels of government in terms of managing public land would be a first step that should be followed by a inventorying and registering of state land

and the establishment of transparent administrative processes at all levels for granting, selling, and leasing of state lands.

*Strictly Circumscribe Conditions for Expropriation of Land:* As transferring land from agriculture to non-agricultural or urban uses is a corollary of economic development, an important issue that undermines tenure security in much of the developing world — and which has often caused great hardship to former land owners — is the government's far-reaching ability to expropriate land with real compensation often far below market rates. The threat of expropriation has served to undermine tenure security and investment and has also led to informal sales in anticipation of expropriation that often invited corruption and shady property deals involving state agencies. Productivity was impaired as the state apparatus had often neither the means nor the incentives to invest in or effectively use the land acquired, thereby often leaving the potentially most valuable land undeveloped. One reason for this is that, in many countries, even land for private uses will first have to be acquired by the state, something that can greatly increase the transaction cost faced by private investors. Eliminating such rules, constraining expropriation to cases where a narrowly defined public purpose is at stake, while allowing land owners or users to negotiate directly with interested parties in the remainder of the cases (with the possibility to draw on mediation if needed) can eliminate a key source of uncertainty and corruption.

### Zoning and City Planning

Zoning and planning is one of the main causes of exclusion of the poor from legal and formal city and peri-urban development processes. On the other hand, the right use of zoning and spatial planning can become a formidable instrument of legal empowerment.<sup>135</sup> Although this is perhaps

most commonly a feature of the rural-urban zone of transition, it is also a feature within urban areas, and within rural areas.<sup>136</sup> Especially changes in use from agriculture to urban residential or commercial purposes usually multiply the value of land significantly, and consequently augment the potential for abuse. Peri-urban areas need to be better planned if they are to be more effective in promoting sustainable pro-poor urban development. The ambit of interventions has to expand beyond slum upgrading and tenure regularisation to defining the urban development framework within which access to land and land development rights for the poor becomes possible.<sup>137</sup> Spatial and urban planning can be a major driving force behind higher living standards and wealth generation.<sup>138</sup> The relevance for urban planning is heightened in the idea that responsibility, incentives and ownership should be aligned to maximise desired ends.<sup>139</sup>

*Eliminate Inappropriate Planning Regulations.* Overcoming extra-legality in urban areas will be impossible without a careful review of planning regulations - some of which, such as minimum lot sizes, were designed with the explicit purpose of segregating property markets. While regulations may be introduced with more benevolent goals, they may nonetheless affect the poor negatively and, through their impacts on urban forms, be environmentally and socially harmful. While it will be dangerous to generalise, in practice the only reason for the continued existence of harmful regulations is either limited knowledge on alternatives or the fact that they benefit powerful vested interest groups who are generally not the poor.

*Establish Transparent and Participatory Land Use Planning:* Even if rules are well justified, in many countries, land use planning follows non-transparent and highly centralised processes. This

implies that rules often have little relevance for the reality of the poor. Focusing central efforts on defining clear performance criteria for land use and ways of enforcement while leaving detailed planning to the local level are likely to result in plans that focus on relevant issues, have higher local acceptance, and thus stand a better chance of actually being implemented.

*Avoiding Ghetto-formation by Mixed Neighbourhoods.* New and 'good old urbanism' defines alternatives for urban growth and communities based on concepts of mixed neighbourhoods, mixed land use, diversity and public identity. These concepts work towards integrating urbanism and environmentalism, and joining rather than segregating the poor and ethnic minorities in diverse communities.<sup>140</sup>

*Special Social Interest Zones.* Forming mixed neighbourhoods does not substitute for additional zoning and planning measures that can work to improve existing slums. Here, special interest zones can create protective and empowering environments of residence and business activity for the urban and peri-urban poor. In Brazil several planning measures have been taken to provide secure conditions of living and livelihood for the poor. For instance, urban zones which have favelas, corticos (collective housing, popular subdivisions), and other forms of housing and home-based economic activities on vacant lands, can be declared as ZEIS or Special Social Interest Zones under municipal law. Special rules are drafted and simplified procedures adopted for each ZEIS by a local committee for regularisation of land occupation and use of land by the poor. ZEIS have now been adopted relatively successfully by a number of Brazilian cities.<sup>141</sup>

*Conditionality for Private Developers.* One im-

portant provision, for instance of the progressive Urban Development and Housing Act of 1992 of the Philippines<sup>142</sup>, is Balanced Housing Development whereby developers of proposed subdivisions are required to develop 20 percent of the land for housing low income communities. A similar provision of the Government of the Indian state of Madhya Pradesh enacted as part of the Colonisers' Act requires 15 percent of the land to be reserved for without shelter households or payment of a sum equivalent to the officially determined price of the land to be reserved. The policy has made land available for housing more than 6,000 poor households in central city locations in the city of Bhopal alone and substantial funds for land procurement and development.<sup>143</sup>

*Density Mixed Use Zones* legitimise densely built, small plots and home based businesses. The draft Nation Slum Policy of India<sup>144</sup> proposes to integrate informal settlements into city planning by designating them as high-density mixed use zones, to legitimise densely built, small plots and home-based businesses. It also proposes that only slums in environmental risk areas and land use zones for essential services and facilities should be relocated. All others should be regularised and their land use zoning should be changed to high-density mixed-use. The National Housing and Habitat Policy propose that land should be zoned for housing the poor in city master plans.<sup>145</sup>

*Reversing the Development Sequence in Slum Upgrading.* The strategy of reversing the development sequence by first allotting secured plots with only bare minimum services, with provision for incremental improvement gives the poor sustainable ownership and participation in the value increase of property. Such measures match the affordability of allottees and assure that even the poorest get access to secure land and housing,

which develop into a fully serviced neighbourhood in the longer term.<sup>146</sup>

*Supporting Street Entrepreneurs.* Many Indian states have adopted the Central Government's National Street Vendors' Policy of 2004, aimed at recognising and planning for the informal but widespread activity of hawking and vending in cities and to provide basic facilities such as space, water and sanitation and access to credit.<sup>147</sup> The policy itself was framed after more than a decade of lobbying by NGOs and street vendors federations. Under the policy local governments of cities such as Bhopal, Hyderabad, Kolkata and Delhi have delineated Hawkers' Zones. Initial indications are that this has ended harassment of the poor and provided them with security to carry out income earning activities.<sup>148</sup>

*Involving Stakeholders in Spatial Planning.* The strategy of using a survey to make claims and draw attention of the authorities to poor living conditions was first used in Mumbai in 1987 by pavement dwellers supported by *The Society for the Promotion of Area Resource Centres* (SPARC). This was followed by women pavement dwellers identifying potential vacant lands in the city for their relocation, and forcing the city government to act. This strategy paved the way for civic authorities to recognise the role of civil society organisations in developing responsive housing solutions for the poor, and later participating in framing the relocation and rehabilitation policy for the World Bank funded Mumbai Urban Transport Project. Similar initiatives are taking place in Thailand with the support of CODI (Community Organisations Development Institute), which is a government organisation created to facilitate local housing improvement and livelihood initiatives of community groups.<sup>149</sup>

## Implementation and Dispute Settlement

*Expand Options for Conflict Resolution.* Implementation is a decisive element of property rights governance. Where it fails, it can nullify or considerably reduce the effectiveness of all other elements. Developing countries are often at loss of stable and predictable implementation and dispute settlement institutions. Traditional institutions can resolve some forms of localised disputes. But they are not well equipped to address disputes that cut across groups from different communities (e.g. nomads and sedentary agriculturalists), across ethnic boundaries, or that are between individuals and the state. Even so, expanding the range of options to resolve land conflicts systematically and out of court can have large benefits, especially for the poor and for women who otherwise are often unable to enforce their legal rights.<sup>150</sup> In many contexts, *Third Party Arbitration Courts* (TPACs) can be considered an economic and social success. These mechanisms offer effective protection of property rights and/or effective resolutions of disputes over contested property arrangements, especially for disenfranchised women.

Alternative dispute resolution is very promising but has its pitfalls. In general, success of alternative dispute resolution depends on certain standards and practices. An important condition is the right of poor people to appoint judges of their choice for dispute resolution. But it is equally imperative that the alternative dispute resolution mechanism be linked to formal enforcement and not operate totally outside the realm of the legal system. Rules have to be crafted in accordance with the formal legal and informal social context. If supported by aid, financial sustainability should be guaranteed for the time after donor support has stopped.<sup>151</sup>

*Include Property Issues in Post-conflict Settle-*

*ments and Natural Disaster Management.* In the many situations where land issues have often been at the root of broader civil strife, failure to devote proper attention to these issues, including ways of managing land access by returnees, can easily undermine their sustainability of such settlements and sow the seeds for violence. Learning from successful examples to address land-related grievances and settle large numbers of people in a rapid and decentralised way together with ways that will prevent limited conflicts from festering and escalating into larger ones can help to avoid much broader clashes, often with very damaging humanitarian and economic consequences.<sup>152</sup>

## **Reforming the Property System as a Market of Assets for the Poor**

A functional property system allows for the transformation of assets into fungible property rights and for the exchange of those rights in open markets. In order to benefit the poor, real property and credit markets need to be developed and they need to be regulated where they systematically work against the poor. In general, reforms should aim at opening the door to the poor to a broadened asset base. Guaranteeing the poor the right to property and to leverage property in the market is a multi-stakeholder task best achieved by close partnerships between the state, the private sector and civil society.

### **Market Development**

*A Pro-poor Framework for Land Sale Markets.* Historically, most land sales were due to distress that required defaulting landowners to cede control of their land to moneylenders, who amassed huge amounts of lands.<sup>153</sup> However, data on land sales over 20 years in India illustrate the importance of land sales markets and of being in the land markets: First, they transferred land

to better cultivators and from land-abundant to land-scarce households, allowing the land-scarce to improve their welfare<sup>154</sup> without making sellers worse off. Sales markets were indeed thinner, more affected by life-cycle events, and less redistributive than those for rentals. Land sales markets helped purchasers, many of whom were formerly landless, to accumulate non-land assets and significantly enhance their welfare.<sup>155</sup> Efforts at redistributive land reform will need to aim at complementing what market forces are achieving. Market development with the poor in mind ought to be pursued by:

- Granting freedom of contract, definition of obligations, remedies for failing to fulfil obligations and for terminating obligations orderly, guidance on how to conclude a contract, definition of forms of contract (oral or written); identification of invalid transactions.
- Making land purchase and sale easier for the poor by minimising conditions such as formal education or experience in agriculture. Provide model sales contracts the poor can rely on.
- Keeping leasing rules simple and clear.
- Reducing transaction costs for the poor by avoiding overly precise mapping, avoiding repetition of platting parcels, not covering initial platting fees for the poor.
- Avoiding notary fees for small transactions; keeping registration fees and transaction taxes very low for small transactions and exempting new and small land owners from registration fees and tax; putting to severe need test and cost-benefit analysis every administrative intervention into land deals and eliminating interventions which do not stand the test.
- Granting preferential rights to buy to co-owners, neighbours, or leaseholders of land.

Ceilings of ownership work in some contexts for some time but have adverse consequences for the poor in the long run.<sup>156</sup> Sales moratoria are considered a successful practice, provided the time is used for public education on land values, financial literacy, and participation in land markets.<sup>157</sup> Where the moratoria extend over a longer amount of time, they install barriers which do not correspond to the needs and capabilities of the poor. Notwithstanding prohibitions, land pawning transactions, direct sales, sales through waiver of rights, sales through pawning, and sales through land conversion arrangements are sometimes widespread. Ultimately, these transfers augment the risk of losing land rights.

*Bringing the Poor into the Market: Opportunities and Responsibilities of Medium and Large Companies.* Large companies, regardless of their industry, can stimulate local markets and increase the value of the real, moveable, and equity property of the poor by enabling them to become active participants in their chains of value addition. Inclusion of the poor in the value chain creates business opportunities for the next decade. Designing business models to address this challenge opens new opportunities for company growth as well as for broadening the assets base for the poor. Many business leaders now believe that the planet's poor must become part of company growth strategy, and that the presence of their enterprise in a developing nation will be crucial to their long-term success, with the advantage going to early movers. To be successful, however, such projects must be based on the real needs, capabilities, and realities of low-income communities.<sup>158</sup>

The focus on business implies focus on profitability. If the projects realise the goal of profitability, this means that they have no limited, fixed budget. The new business can thus become replicable and lead to a remarkable empowering impact. Provid-

### Box 5 Sale of land: examples of legal issues

In the collective certificate of land ownership award (CLOA) system of the **Philippines** not even a majority of the collective can decide to sell, mortgage or use the title as collateral to obtain formal credit. Under the Comprehensive Agrarian Reform Program of the same country, there was a prohibition on any form of transfer within 10 years of award. In addition, a five-hectare ceiling on ownership was set and only qualified farmers can buy awarded land. This did not stop but increase transfers and pushed them into extra-legality with adverse consequences for the poor (NCLEP Philippines 2006). In **Armenia**, a three-year moratorium was imposed after land privatisation in 1991. In **Ukraine**, a 6-year sales moratorium will expire in 2005, but many exemptions have circumvented this measure. A **Kyrgyz** moratorium on the sale of agricultural land was put into place when land was privatised and allocated, but it was subsequently lifted in September 2001. The **Moldovan** Land Code contained a 10-year moratorium on sales that was declared unconstitutional and lifted in late 1996. Some countries have attempted to protect new landowners from the danger of mortgage foreclosure by setting moratoria on mortgages; for example, a 1997 **Russian** law prohibited mortgages on agricultural land (Russian Law On Mortgage 1997).

ing business solutions for the poor and with the poor can cover a multitude of activities. The guiding principle is that companies should engage the poor in a business relationship that relates directly to their core commercial operations.

The poor may be customers and can profit from more affordable products.<sup>159</sup> The poor may also be business partners, suppliers, and/or distributors. The poor can be considered as partners creating added value at every stage of the delivery of a service/product designed to serve their needs.<sup>160</sup> By bringing small entrepreneurs and local small

and medium enterprises (SMEs) into their value chains, established international business can empower the poor and accelerate skill transfer.<sup>161</sup>

Companies addressing basic needs, such as utilities and health care providers, can contribute significantly to local development by expanding their services to more low-income communities.<sup>162</sup>

Extractive companies often find themselves doing business with low income governments and communities through their drilling and mining contracts, licences, fees and royalties. They thus have a major influence on the paths of development of poor countries.<sup>163</sup>

### **Moveable and Intangible Property: A Missing Piece of the Development Puzzle**

Although many of the citizens of the developing world lack secure rights to use and transfer real property, most of them actually do own some tangible (moveable) or intangible property (business skills and informational schemes).<sup>164</sup> Peasants and urban street entrepreneurs alike use moveable property as means of production. To the extent that this type of property is held securely and can be used to access credit to create and grow businesses, the poor will have increased opportunities.

*Collateralising moveable and intangible property* can play an important role in a nation's development strategy.<sup>165</sup> In many parts of the developed world, a broad array of personal property, both tangible and intangible, can be used legally as collateral to secure a loan, whereas in many parts of the developing world, only a small fraction of this property can be used as collateral.<sup>166</sup> There is evidence that expanding the number of items that can be used legally as collateral reduces the cost of credit. And because more people can borrow if more types of property can be used as collateral credit markets become more competitive. Lenders pass along their savings to customers,

by reducing fees and offering lower interest rates and competitive forces also help to keep the price of credit lower than it otherwise would be.<sup>167</sup>

For small-scale enterprises, such cost savings can have a major positive impact. SME entrepreneurs of developing countries routinely list financing and access to credit as their major obstacle to growth.<sup>168</sup> To the extent that collateral law reform makes borrowing easier and less costly, it could very well serve to promote SME development in many countries.

*Creating a public moveable and intangible property registry* (or, more simply, a registry listing stolen items), and enacting legal reforms that make it easier to use moveable and intangible property as collateral, will expand access to credit for the poor. Experience in a variety of developing countries (one should include here Georgia, Madagascar, Colombia, Albania, and Bosnia, among others) suggests that there are at least three important legal reforms that would serve to allow the poor to leverage movable and intangible property. These are:

- Allowing for freedom of contract in loan agreements so that borrowers are free to use moveable and intangible property as collateral. Lenders and borrowers should be free to determine, between themselves, which property will be used as collateral for a loan.
- Provide secured creditors with first priority with pledged collateral. Evidence that a creditor is secured may be obtained from a collateral registry.
- Creditors should be empowered to enforce collateral agreements quickly by means of summary proceedings.

If developing nations allowed borrowers greater freedom to use moveable and intangible property



as collateral more of the poor would be able to create credit histories. For borrowers, the greatest risk is losing real property. With moveable property, the loss is proportionate and collateral can be better matched to the size of the loan.<sup>169</sup> The poor may be understandably hesitant to use the title to their home as collateral for a loan, but if they can use a refrigerator as collateral, they may be able to borrow smaller sums that will help them start or build a business or send a child to school.

Creating a moveable and intangible registry is less expensive than the creation of land registries — it may take as little as \$500,000 and no more than two years of time to create a self-financing moveable and intangible property registry.<sup>170</sup> For developing countries, amending laws and regulations on collateral, in conjunction with the establishment of registry may be a feasible, cost-effective and pro-poor development strategy.

When conditions of instability and conflict exist, when the rule of law is absent, and when other institutional structures do not appear to be functioning, one should expect that reform aimed at improving the security and usefulness of moveable and intangible property would not, by itself, create economic growth.

## Equity Based Asset-Building for the Poor

### *Creating Property Value for the Poor by Shareholder Systems*

Innovative forms of non-real estate can extend the asset base of the poor and non-credit based shareholder ownership, enabled by the fungible nature of property rights. Unlike land and housing, the reproductive potential of non-tangible objects of property is potentially unlimited. While the private sector is at the heart of this enterprise, the state has an important role to play in

guaranteeing contracts and transactions and in creating an overarching enabling framework for equity based pro-poor business and banking practices.

*Natural Resources Requiring Capital Intensive Extraction, Treatment and Distribution.* In the case of state co-ownership of fossil energy reserves, the local populations should be included in the chain of value addition by tradable shares in general public funds. Many of the poor people of the world live in lands rich in natural resources that are controlled through government ownership. Distributing shares to populations or other form of ownership participation in state owned companies exploiting natural resources will provide the poor with capital that can, among other things, propel the expansion of small businesses. An alternative option is distributing titles to special funds created by governments to invest profits yielded by commodities.

Recent experience in Kenya is illustrative of how the poor are willing to convert their rights into capital, given the right framework. The offering of Ken Gen State Owned Corporation intended to raise 8 billion Kenyan Schillings, but instead raised 26 billion Schillings and drew three times the number of anticipated investors, many of who immediately tripled their money. As a result investments in the stock market have grown since 2002 from 50,000 investors to more than 750,000 with much of the growth coming from rural areas. The exchange's total value jumped from 1 billion Schillings to 12 billion Schillings, an amount that is predicted to grow following the biggest initial public offering in Kenyan history of cell phone giant Safaricom. Natural resources rich countries such as Iraq, Venezuela, Chile, Peru, Congo and South Africa could easily empower their poor people by directly transferring property of their oil or minerals.<sup>175</sup>

## Box 6 The Grameen Bank

Still the 7.06 million poor borrowers of the bank, of which 97 per cent are women, own the most illustrious example of a broadening of the asset base of the poor by shareholder strategies. Borrowers of Grameen Bank at present own 94 per cent of the total equity of the bank. The government owns the remaining 6 percent. The Grameen Bank is impressive in size and impact. It has 2,399 branches. It works in 76,848 villages. Total staff is 22,169.<sup>171</sup> Loan recovery rate is 98.28 per cent.<sup>172</sup> Grameen Bank finances 100 per cent of its outstanding loan from deposits of which over 60 per cent come from the bank's own borrowers. Many borrowers are moving ahead in businesses faster than others. Grameen Bank provides larger loans, called micro-enterprise loans, for these fast moving members. There is no restriction on the loan size. So far 1,085,959 members took micro-enterprise loans. A total of Tk 23.42 billion (US\$364.91 million) has been disbursed under this category of loans. Average loan size is Tk 21,566 (US\$313), maximum loan taken so far is Tk 1.2 million (US\$19,897).

Scholarships: Scholarships are given to the high per-

forming children of Grameen borrowers, with priority on girl children. Up to March 2007, scholarships amounting to US\$550,000 have been awarded to 48,974 children. During 2007, US\$775,000 will be awarded to about 30,000 children, at various levels of education. By March 2007, 15,754 students received higher education loans, of them 14,739 at various universities; 176 are studying in medical schools, 335 are studying to become engineers, and 504 are studying in other professional institutions.

**G**rameen Bank-Created Companies: A number of companies were created by Grameen Bank, as separate legal entities, to spin off some projects within Grameen Bank funded by donors. Donor funds transferred to Grameen Fund were given as a loan from Grameen Bank.<sup>173</sup> Grameen Bank created an internal fund called Social Advancement Fund (SAF) by imputing interest on all the grant money it received from various donors. SAF has been converted into a separate company to carry out its mandate to undertake social advance activities among the Grameen borrowers, such as, education, health, technology, etc.<sup>174</sup>

*Banking for the Poor.* As often mentioned, the poor still make relatively little use of titles as commercial credit. This is due to the perceived risks involved, as well as the difficulty or impossibility of accessing credit. One effort to begin to address the problem associated with low levels of banking activity among low-income earners are Mzansi accounts, low-fee bank accounts designed for people working in the informal sector. These accounts are offered by a group of South African commercial banks in conjunction with the South African Post Office, and they have been quite successful. They allow people to become 'banked', providing a means to establish a credit history while risking less than the title to real property.

## Reforming the Property System as an Instrument of Social Policy

Property reform with the poor in mind can be an efficient instrument of social policy with benefits for society at large. The state can foster the social fabric through property rights, such as in housing and neighbourhood development, low interest loans and the low priced sale of state land tied to conditions of productivity and market based redistribution of private land. Local political authorities can also see the reform path towards more equitable property regimes as an opportunity to install participatory processes and broader social dialogue in order to promote self-responsibility and social cohesion via ownership not only of property but also of the policy processes that establish property rules.

## Enhancing Access to Land and Real Property

Landlessness is one of the greatest predictors of poverty. Increasing security of property rights will have limited direct benefits for those who do not have any real assets at all. While land rental markets can, in rural areas, provide an important avenue for greater land access by the poor and landless, they need to be complemented by other measures to increase the asset endowment of the poor in situations where huge inequalities persist.

*Create an Enabling Environment for Rental Markets.* In most developing countries land and real property rental markets are underdeveloped. But land and real property rentals are increasing. Productivity-enhancing rental transactions will not fully materialise or the poor may be excluded, if leasehold tenure is insecure or restrictions constrain land leasing.<sup>176</sup> Replacing them with policies that facilitate renting will improve access to land by those remaining in the rural sector.<sup>177</sup> More robust and transparent guarantees should strengthen the position of slum dwellers in rental arrangements and protect them from arbitrary eviction.

*Legal Recognition of Informal Settlements.* Ensure the property rights of urban shanty-dwellers and rural state land squatters by granting them title to their already occupied lands or suitable alternatives (see Section 5 of this Chapter), and introduce anti-eviction rights, limitations of compulsory acquisitions, resettlement policies, adverse possession rights and family/group rights.<sup>178</sup>

*Making Land Reform Effective for Increasing Productive Assets by the Poor.* Land markets, or formalisation of existing land rights, are not a panacea for addressing structural inequalities which reduce productivity of land use and hold back development.<sup>179</sup> To overcome the legacy of

### Box 7 Mexico: the poor rely on pawnshops instead of banks

Most Mexican citizens do not have access to banking and only 13 percent hold mortgage debt. In the absence of financial institutions, the poor and lower middle classes rely on pawn shops. As movable collateral valuation of consumer goods is difficult to establish, the value of the collateral typically short-changes the consumer. The annualised rate charged by these pawnshops ranges from 48 percent charged by a non-profit pawnshop to 160 percent by a for-profit pawnshop. Some pawnshops will accept houses as collateral (whether the underlying land is legally owned or not) in exchange for three year loans.

(*La Crónica de Hoy*, El top ten de la usura: la casa de empeño Mister Money cobra 159.6 percent de interés anual; Prenda Fácil, 146 percent; Montepío 48 percent. Mexico City, October 9, 2006.)

such inequality, ways of redistributing assets such as land reform will be needed. While the post-war experiences of China, Japan, Korea and Taiwan show that land reform can improve equity and economic performance, many other cases where land reform could not be fully implemented or even had negative consequences illustrate the difficulties involved. Where redistributive land reform is found to be more cost-effective in overcoming structural inequalities than alternatives, it needs to be complemented by access to managerial ability, technology, credit, and markets for the new owners to become competitive. A possible alternative, the impact of which needs to be explored more systematically, is the distribution of small house and garden plots to the destitute to increase their food security and social status while at the same time allowing them to climb at least the first rung on the property rights ladder.

*Community-Based Land Reform.* As an alterna-

tive to authoritative reallocation of land, community-based land reform projects provide funds to groups of beneficiaries to purchase land. While being market-based, the idea behind such measures is that land sale markets often do not move land to those who have none or to small efficient producers. The provision of funds is made available under the condition of a productive purpose and when land markets are sufficiently developed. The procedure is legally less complicated and politically less sensitive than in compulsory acquisition programmes. Legal reform might be required in the determination of legal personality of associations or incorporations for the groups eligible for funding, but it is probably best to let beneficiaries experiment with a number of possible associational forms. Legal conditionality regarding the groups of beneficiaries does, however, leave room for the pursuit of other social purposes. In Andhra Pradesh, for instance, purchased land is given in the name of women only.<sup>180</sup>

*Limit Administrative Controls on Sales.* Often there is little justification for policy measures to restrict land sales which drive land sales underground and undermine access to formal credit. If there is an issue of asymmetries in power, access to insurance, and information leading to undesirable land market outcomes or speculative land accumulation, safety nets and other measures, including ways of redistributing land, will be more appropriate to prevent distress sales. Moreover, land taxes with temporal and user-oriented conditionality can curb speculative demand and encourage better land use, while providing revenue for local governments.<sup>181</sup>

*Make benefits from past land reform permanent:* There are also many situations where those who have received land rights in the past are unable to enjoy the full benefits because they have not received full ownership rights or because transfer-

ability of their rights was restricted. As second generation problems can threaten to undermine earlier successes, it will be important to provide full ownership rights to those affected, if need be by identifying innovative approaches — e.g., a credit-financed purchase of residual ownership rights by one of the parties involved.

### **The Beneficial Effects of Property Related Education and Relevant Information.**

**H**ouseholds' awareness and information of rights has a significant and large impact on the positive outcomes of property regimes.<sup>182</sup> There is evidence of a strong and positive relationship between households' objective knowledge of the law and land-related investments and, through such investments, on productivity and land values. The fact that often only a minority of land users is aware of relevant legal provisions implies that the lion's share of the associated productivity gains remains to be realised. Given their low cost, especially if compared to efforts to demarcate lands, programmes to disseminate the law and make households aware of their rights could thus have very high returns and should accompany any property rights reform policy. Scientific evidence as well as grass-roots consultations by the Commission on Legal Empowerment of the Poor demonstrates that social policy should promote legal literacy and procedural assistance to close the discrepancy between legal provisions and ground realities, and to help those who are given rights through the law to exercise them.<sup>183</sup>

### **Promoting Access to Housing**

Urban Infrastructure projects, housing and property rights creation can be pursued together and are mutually reinforcing.<sup>184</sup> As a sector, housing is a local economic activity, generating income,

employing local labour, and re-circulating income into the local economy. Housing production produces spill over effects such as the development of skilled labour, and production of household goods.<sup>185</sup> Further, from a macroeconomic perspective, the housing sector has a broad impact on economic performance affecting prices, investment and employment, strengthening the financial sector and fiscal budget, and having a pervasive impact on the economy.<sup>186</sup>

*Access to Housing as a Poverty Alleviation Strategy.*<sup>187</sup> Decent and safe housing provides a stable place for family activities; it enables the storage, preservation, and preparation of food; it is a fixed location for delivery of services such as water and collection of household refuse for orderly disposal; and, it serves as a protected place to guard possessions from environmental damage or theft.<sup>188</sup> Loss of housing, tragic anywhere, can be catastrophic in the developing world.<sup>189</sup> Housing stability is a particularly important poverty alleviation strategy for women. In developing economies the home not only serves as shelter but also is frequently a place for business.

*Housing Finance.* Analysis by UN-Habitat reveals that the global housing needs cannot be met by aid or state subsidies alone. Meeting the housing needs of the world's poor will require economic growth (job and income generation) and housing finance. However, stimulating housing production and catalysing financial markets have other positive effects, that go beyond the development of the housing itself. In markets where financial institutions are not active because a market is untested, governments can leverage private sector financing by providing credit enhancement to support borrowers, developers or lenders; using subsidies judiciously to leverage financing, assuring transparency; and facilitating information. There are many models of specialized programs that provide incen-

### **Box 8 Example of Singapore: public housing as economic stimulant**

Singapore's experience has shown that public housing construction expenditure can have a multiplier effect that stimulates the economy and contributes employment growth in the building and construction industry. The ratio of construction to the country's GDP has increased both absolutely and relatively over the past three decades, about 40 percent of GDP. The construction industry has a labour absorption capacity for skilled and unskilled workers. Estimates indicate that the construction of one unit of public housing at the time of the Housing and Development Board's (HDB) first building programme (1960-65) would generate employment for a person for nine months directly at the construction site, while a HDB building programme of 10,000 units per year would create 15,000 jobs. In addition with the policy of reserving about 10 percent of new town land for industrial development public housing investment has generated a significant number of new jobs near the homes of new town residents, especially for women who otherwise might not have entered the labour force. Over the 10-year period 1970-80 female participation rates increased from 29.5 percent to 44.3 percent. Thus, housing should not be viewed simply as a means of resolving shelter problems but also as a potentially leading sector of growth in national economy. *Source: Yuen 2002.*

tives to financial institutions to lend to the poor as well as to those who serve them. The government can play a catalytic role in bringing together the private sector and other institutions.<sup>190</sup>

Despite the obvious importance of housing production and its reliance on finance, the existing financing instruments to address the shelter needs of the poor are at a nascent stage. Existing instruments do not fully respond to the reality of poverty or the need.<sup>191</sup> To meet the need, many countries adopt housing policies, known as 'filtering' strate-

### **Box 9 Singapore: importance of workers' Central Provident Fund**

Under the scheme first instituted in 1955, employees in Singapore are required by law to save a proportion of their monthly income in a central provident fund (CPF) account. Employers also make monthly contributions to their employees' CPF account. Much of these savings are invested in government securities, providing a cheap and ready source of finance to the government for public housing construction and national capital formation. They also provide a source of mortgage financing at the individual level to help home buyers meet their mortgage payments without the need to dip into their cash reserves. For the average worker the monthly repayment for the flat is less than half of the CPF savings deposit.

*Sources: Yuen 2002, 2005.*

gies.<sup>192</sup> However, a key limitation of a mortgage-based filtering strategy is that it has a long time horizon at best; and, a market-based filtering strategy that is not matched with housing policies targeted to the poor, will result in inequalities and leave the poor behind.

Some countries have been extensively involved in setting housing goals and directly financing housing. Singapore, once characterised by vast squatter settlements, established a Housing and Development Board (HDB) to finance and subsidise housing developed by the state but constructed by the private sector and then sold to homebuyers. Over 85 percent of Singaporeans live in government-built housing. Singapore has emphasised a homeownership strategy that has played a key part in raising residents' sense of belonging to the new living environment.

There are also many examples of developing nations committed to meet their housing challenges and testing and developing a broad variety of

housing policies. South Africa quickly started off with an impressive array of housing policy responses, such as housing plans, fixed interest loan products, micro-loan financing, a securitisation conduit, and partnerships with financial institutions. The country is still in the process of experimentation and evaluation, but the commitment to its housing sector is clear.<sup>193</sup>

### **Public Private Partnerships**

Several forms of public private partnerships (PPPs) were developed in the last two decades with built-in provisions of housing for the poor. This period saw the economies of several developing countries booming and globalising, with a direct impact on cities like Sao Paulo, Mumbai, Delhi, Seoul, Kuala Lumpur, Manila and Jakarta. Economic opportunities created a huge demand for space for businesses and housing, in turn creating business opportunities for the real estate sector, for which it needed land in prime locations and land with trunk services in peripheral areas, both of which were scarce. The same economic opportunities meant a growing population of the poor who could afford only informal access to space in the city, with all its legal and environmental insecurities. Pressures placed upon city development institutions, therefore, gave birth to public-private partnerships as one approach to solving problems affecting both the real estate sector and the poor.

Successful PPPs from which the poor have benefited have tended to rely on instruments of the state for trunk infrastructure that would ensure adequate timing of project development, and for enforcement of new regulations and laws. There are several examples where a combination of these instruments has been used to ensure legal/formal access to land and housing for the poor. Guided Land Development has been implemented in the

### **Box 10 Slum upgrading initiative in Dalifort, Senegal**

Upgrading of slums in Dalifort has provided dwellers there with new opportunities and better living environment. A formal land title has been granted to more than 500 head of households including women and their houses have been connected to the basic services. Because of its proximity to the city centre, rent and land price have steadily risen, and the settlement has seen rapid development of high-rise housing of good quality. Noticeable growth of new economic activities favoured by land security and microcredit facilities that have helped slum dwellers access start-up funding to initiate income generating activities that contributed to their economic empowerment.

*Source: Diop 2007.*

periphery of cities like Seoul, Jakarta, Chennai, and Delhi, under conditions obliging private landowners to provide a certain percentage of small plots which poor families can afford.<sup>194</sup>

*Transfer of Development Rights* (TDR) is an effective instrument applied in such projects to generate low income housing on high value city land through the participation of private landowners and developers. Private landowners, or developers willing to build houses for existing informal dwellers, are given the right to build more than the permissible floor space index or floor area ratio specified in zoning regulations for the plot. If possible, they can build additional space on the same plot or be allowed to transfer the development right to other plots in specified zones.<sup>195</sup> TDR works where there is a high premium on land and where the permissible density is high enough to leave surplus land after building low-income housing.

*Government as intermediary and facilitator between owners and low-income occupiers.* In the

case of Land Sharing as used extensively in the Indian city of Hyderabad and to some extent in Bangkok, Thailand, the Municipal Corporation of Hyderabad and the national Housing Authority of Thailand largely play the role of intermediaries. Government authorities in those places help to negotiate deals between owners of the land and its low-income occupiers. Once agreement is reached to share the land, the governments then help the occupants to gain access to finance for rebuilding housing in the portion of land they are to occupy under the shared arrangement. The fee for registering the new ownership and transfer of property is exempted by the government.<sup>196</sup> The arrangement works in situations where the original landowners have little hope of recovering their occupied property without prolonged litigation, and where getting even a part of the land back has major advantages.

### **Fostering Citizenship and Legal Empowerment through Consultation, Information and Participatory Property Reform**

Offering public education and legal aid regarding market structures to the poor is of critical importance, otherwise the effectiveness for the poor of the above mentioned measures of legal reform, governance reform and market development can be nullified. Multiple consultations, involvement of social organisations in the contacting of property holders, well-publicised displays and provision of materials to communities all contribute to satisfaction and improved efficiency of property reform. In particular, active communication toward and participation by civil society are important to ensure the quality of systemic change in the property rights regime.

These mechanisms allow beneficiaries to have information about the reform's framework, strategies, implementation and targets as well as to

### **Box 11 Peru regularises the process of titling property within settlements**

To initiate the regularisation process of property in each settlement, an informational assembly was held to explain details of the procedure, obtain approval of the assembly. Each assembly was required to designate its own representatives. At this stage, problems such as multiple or questionable leadership groups were resolved. These problems generally arose when there was evidence of lack of representation or when those having developed clientelistic links with municipal authorities assumed questionable leadership. The strategy employed by Peru's Commission for the Formalisation of Informal Property (COFOPRI) in breaking this pattern was to establish a direct link with the settler assemblies themselves. The assembly made it possible for the majority of the settlers to link directly with COFOPRI and to decide the best way to initiate the titling process and exercise their representation. To this end, 3,500 informative assemblies were held in 3,500 settlements between 1996 and 2000.

Between 1996 and 2001, some 2,274 settlements were regularised in all of Peru, which represented one million

titled families. The 6,000 informative and preparatory assemblies held in this period are the clearest proof of the high level of citizen participation in the process. The meetings informed settlers of the kind of documentation needed by officials charged with creating the list of legal occupants. The officials would visit the homes of settlers to explain how conflicts and the lack of evidentiary documents might be resolved.

To promote responsibility among officials in charge of titling services, the parties responsible for delivering services to each settlement were clearly identified, so residents knew which officials were in charge. Unlike the previous titling process, when only certain directors had access to information such as changes in titling procedures and the identity of the officials responsible, COFOPRI guaranteed the right of any person to receive information about the titling process and to know the officials in charge. Studies developed in 2000 to evaluate the performance of the Peruvian project confirmed that these participatory mechanisms raised the community support and satisfaction with the project.

*Source: Mosquera, 2007.*

participate in specific stages of the planning and implementation of reform. They expand the beneficiaries' capacity to participate, negotiate, influence, control and hold accountable the public institutions in charge of property rights reform and administration. On a broader scale, such measures integrate the positive elements of property rules, such as allocation of responsibility and liability with the fostering of citizenship and social cohesion.<sup>197</sup>

### **Recommendations for Policy Design and Sequencing**

It is advisable to integrate action projects regarding the four building blocks of the property

system into a design that pays attention to additional elements:

1. *Build-in Research and Policy Analysis as well as Piloting and Evaluation Schemes ahead of Full-scale Implementation.* A policy project with little policy analysis and research to compare methodologies, prioritise areas and special measures, pilot innovations or evaluate itself will suffer from a slow institutional learning process and will risk to detect dysfunctions late. The long-term sustainability of property reforms must be addressed early, alongside with potential for conflicts caused by reform processes.



2. *Pay Attention to Sequencing.* The content and sequence of a set of reform actions and the setting of priorities will have to be left to context-based analysis in national and local settings. Formally however, it is important to point to the fact that success of the reforms in each of the four building blocks of the property system will depend not only on the quality of the individual measures taken but on the sequence in which they are taken. Getting the phasing right is as important as the content of the individual measures.<sup>198</sup>
3. *Issues of Sovereignty and Territorial Autonomy,* e.g. regarding indigenous people, must be assessed and tackled prior to reform of property rights regimes, or restitution or privatisation in sensitive areas. Otherwise the envisioned process will be affected negatively, delayed or even nullified.<sup>199</sup>
4. *On-the-Ground Assessments.* Even if reform measures are carried out diligently they may be perceived as interventionist and top-down oriented by the poor. Property rights reform programmes have often been successful where also based on the ground assessment of ownership and family relations. Differences in family and community structures and spatial organisation have to be identified at the field level (informal marriages, de-facto headships, spontaneous organisation of public spaces, etc). In most contexts this planning measure facilitates the collection of reliable data about possessions and functioning customs, it gives the poor a sense of being taken seriously during the reform process, produces transparency in the property rights' definition processes, makes officials more accountable to the process, contributes to the reduction of conflicts among beneficiaries, and might even create bottom-up pressure for more legal and regulatory reforms.
5. *The Art of the Long Breath.* A full scale reform, including legal reform and parallel interventions in all four building blocks of the property rights system, cannot be carried out within the normal cycle of democratic elections and has to be sustained over several legislatures. Some individual reform benefits might be visible rapidly, but sustained beneficial effects only take hold if property rights reform is sustained and carried out over a long period of time. On the macro level, beneficial effects of property rights reform will take hold over 10-15 years. Given this need for long breath, enlightened authoritarian regimes seem to have an easier task in property reform than emerging or deficient democracies. However, there are several ways in which property rights reform can be sustained over the normal life cycle of a democratic government. One possibility is to promote reforms with broad support from several parties and to make property reform a general interest grounded in the constitution. In order to overcome formidable opposition from powerful social actors against property reform, broad popular demand for reform from civil society and the private sector and strong coalitions of change are needed. Need assessment, awareness and information campaigns among civil society and grass-roots movements need to be fostered to marginalize the powerful gatekeepers of the status quo of vast extra-legality. This ought to be conceived as a multi-stakeholder effort including media, business groups and associations of the poor, academia, and government agencies favourable to change.

## What can Donor Countries and Multilateralism do for the Promotion of Property Rights of the Global Poor?

The establishment of fully functional property systems and pro-poor reform is first and foremost a national and local issue. It demands the renegotiation of institutional, legal and social relations at national and local levels. Assisting countries and multilateral organisations are obligated not to disrupt ongoing processes of renegotiation. Further efforts of donor countries are required to design their own laws so that they do not aggravate the problems of the world's poorest. Donor countries, for example, need to deny giving safe haven to bank deposits by elites having looted resources from the world's poorest societies, and they should actively work to prevent payment of domestic company bribes to public officials of developing countries.<sup>200</sup> Some advocate for an active role of international organisations in domestic governance, circumventing domestic elites and institutionalising the necessary governance reforms.<sup>201</sup> To date, there is little evidence to suggest that it can make a noticeable difference. A better option is to make reforms more sustainable by coordinating and supporting broad reform measures multilaterally. Concern for longer-term endurance of reforms is an important consideration, given that the concerns of individual governments may be short-lived due to the fact that they are limited to short cycles of legislation. This should help to ensure that the reforms will endure over the long term, something that individual governments, limited to short cycles of legislation, may not normally be able to accomplish.

*A System of Multilateral Charters.* One of the most important development economists has proposed a system of charters to legally empower the world's poor. The charters would set minimum standards for natural resource revenues to states,

for checks and balances in governance, budget transparency, post conflict management, and for investment.<sup>202</sup> Property rights are present and deserve central attention in all these charters, since they could be decisive in making systemic property reform sustainable.

The charter for natural resource revenue, for example, would set minimum standards of transparency and fair competition for the auctioning of extraction rights, diminish the price risk for government of poor countries, honestly broker information about money flows to government by extraction companies, and set standards for public expenditure of natural resource revenue — channelling it to domestic market development and citizen-owned equity funds. The charter for checks and balances would set limits to government and/or private monopolies in the ownership and control of media companies and regulate financing and spending in election campaigns. The charter for budget transparency would commit governments to the monthly publication of allocation of assets to government institutions in order to allow scrutiny from below and install intergovernmental peer review mechanisms. The charter for post-conflict situations would commit external security and legal enforcement forces for the long haul, set up transparent budgetary processes and participatory government, regulate property restitution and the work reconciliation commissions. The investment charter would establish credibility by precluding governments from strategies of confiscation and limit extreme manipulation of exchange rates, prices, and public utility charges. Instead of pushing reform processes individually, like minded countries might also agree on some essential points of a property systems reform listed in this report and commit to such reform in a charter, complementing the other charters needed to link the world's most poor to the chains of value addition.

*Foster Coalitions of Change in Favour of Equitable Property Systems.* Donors and international organisations can engage with domestic groups — such as businesses, NGOs and grassroots movements of peasants and small-business owners — and enlist their support for property rights reforms in contact with governments. Depending on the circumstances, fostering coalitions of change by such practices may potentially bear fruit. Success requires long-term commitment by the parties, a strong local ownership, wide stakeholder participation and good local management capacity. Donor countries and multilateral institutions have an important subsidiary role to play in areas of transnational information gathering and distribution, education, and technical assistance. Multilateral organisations have an important role to play in making the engagements of donor countries more coherent and coordinated and in providing standards for intergovernmental peer review. Although there is now considerable awareness of the importance of property rights for the poor, failure to appreciate the historical roots, complexity, and political nature of the underlying issues can give rise to recommendations that may not only fail to do justice to the topic but could also prove to be unsustainable.

*Capacity Building and Technical Assistance.* Given the context-specificity and politically sensitive nature of property issues and to make services in this area accessible to a majority of the population, there is a significant need for building capacity on both the technical and analytical levels within the public sector as well as among other agents who can be mobilised. In this domain, the international community and donor countries can provide trans-governmental or multilaterally coordinated assistance in capacity building leading to greater sustainability of reform programmes.

*Seed-financing of Property Reform.* Functional property systems are self-sustainable. Long standing injection of aid from abroad would be seen as harmful to this goal or a symptom of systemic inadequacy. However, in the early stages, and depending on the context, many of the above mentioned reforms might be triggered by a combination of technical assistance and seed-financing from abroad. Such projects should be accompanied by clear terms of reference as to the timetable and phases on the path to self-sustainability.

*Cross-country Land Policy Indicators.* Although the importance is widely recognised, it is often difficult to integrate land rights into policy dialogue or to demonstrate the seriousness of an issue due to the lack of comparable indicators. Experience in other sectors has shown that defining a simple set of indicators, some of which could be generated by the land administration system on a routine basis, could make it much easier to steer the policy dialogue towards critical issues and at the same time to measure progress over time. Such indicators should include: (1) coverage and accessibility of the system, potential and actual; (2) cost-effectiveness of service provision; (3) extent to which government holds or acquires land rights and the way in which they are exercised, and (4) ways to access property through market and non-market channels.

*Ranking Systems of Property Rights Afforded to Women.* In the multilateral sphere, one possible approach to addressing the problem of discrimination of women in property matters would be to formulate a rigorous ranking system of property rights protection afforded to women. Such an index/ranking may focus attention on how different countries score in terms of enforcement, protection, scope and depth of rights. Ranking

efforts have proved useful in the 'doing business' environment. Property rights are a component of World Bank rankings, but the property rights' components are not gender-specific. A separate ranking may draw more attention to the issue and prompt improvement in the property-rights environment for women.

## 6. Concluding Message

The relevance of fair access to property rights goes way beyond their role as economic assets. Secure and accessible property rights provide a sense of identity, dignity, and belonging to people of very different economic means. They create reliable ties of rights and obligations among community members as well as a system of mutual recognition of rights and responsibilities beyond the local community. For many poor individuals and the communities in which they live, the relationship with property is more than just an aggregate of occupied and used plots. It is the very expression of a way of life, and one that they should have the opportunity to improve by virtue of their own efforts.

## Chapter 2 Endnotes

- Universal Declaration of Human Rights, Article 17, Provisions (1) and (2). Securing agreement on this formulation required omitting the word private before property. See Glendon 2001: 182-3.
- 2 See Cheneval 2006.
  - 3 See Locke 1988; Wheeler 1980.
  - 4 See Cavallar 2002. This report understands private property rights as a spectrum of ownership and usufruct rights that are not held by the state and allocated to an individual bearer or a corporate group of bearers. In customary as well as advanced capitalist systems, private property rights can be owned individually and in common by individual and corporate legal persons. The working group for this Chapter is aware that this understanding runs contrary to a notion restricting the use of the term 'private property' to individual freehold.
  - 5 Sachs (2006: 18) estimates that 2.5 billion people currently live in poverty in developing countries.
  - 6 These countries were Dominica, Grenada, Samoa, St. Lucia and St. Vincent and the Grenadines, all tiny island states in which issues of property rights are significantly smaller in scale than those in much larger countries. Of the 76 countries measured within the CPIA, only Samoa scored an aggregate 4 out of 6 over the total 16 governance indicators. *2005 IDA Resource Allocation Index*, Available at [www.worldbank.org](http://www.worldbank.org).
  - 7 World Bank, CPIA 2005 Assessment Questionnaire: 33, available at [www.worldbank.org](http://www.worldbank.org).
  - 8 United Nations 1980.
  - 9 Woolf 1938.
  - 10 IFAD 2001: 86.
  - 11 Nielsen 2006: 204-219.
  - 12 Ravna 2006: 77.
  - 13 Estimates by the UN Human Settlements Program indicate that over the next 25 years this figure will increase by more than 2 billion people.
  - 14 Sachs 2006: 27.
  - 15 Building on a body of recent literature, the 2005 IFAD report on rural development defines an asset (also called 'capital', 'stock', or 'endowment') as 'anything that can be used, without being used up, to increase regular returns above receipts from labour, whether hired or self-employed, and thus enhance producers' income of consumers' welfare. Typical assets are land, wells, cattle, tools, houses, shares, skills, health and roads.'
  - 16 de Soto 2000.
  - 17 Detailed in Alden Wily and Mbaya 2001.
  - 18 Alden Wily and Mbaya 2001.
  - 19 Even in countries where government may be relied upon to stay within the boundaries of the law, overly flexible terminology leads to opportunity for public purpose to turn into private purpose as recent cases in the US Supreme Court illustrate. This is even more important for the global poor who often live where there is limited residual faith in governments keeping to the spirit of the law.
  - 20 Hart 1961.
  - 21 European Commission 2007: 4.
  - 22 Mosqueira 2007: 7.
  - 23 IFAD 2001: 88.
  - 24 IFAD 2001: 88.
  - 25 UN-HABITAT 2005a: 107.
  - 26 CLEP Informal Businesses India: 10.
  - 27 See Collier 2007: 140-146.
  - 28 See Garcia-Bolivar 2007.
  - 29 See Prahaldia 2005: 87-88.
  - 30 See Mendoza 2006: 17.
  - 31 South African Institute of International Affairs 2005.
  - 32 USAID 2007 terms it the 'substantive dimensions of legal empowerment'.
  - 33 Terminology is never unified. Definitional guidance, also beyond Africa, is given in: Land Tenure Lexicon 2000.
  - 34 See Cotula 2007.
  - 35 See World Development Report 2002: 9.
  - 36 Population Reference Bureau 2005.
  - 37 UN-HABITAT 2005b: Chapter 1.
  - 38 Alden Wily 2006c: 17
  - 39 FAO 2007.
  - 40 This has been largely the case for the thirty or so wars of the last several decades from Cambodia to Chile, Bosnia to Zimbabwe, Afghanistan to Peru. It has been uniformly the case in the region where civil wars have been most numerous over the last two decades, Sub-Saharan Africa. (Richards 2005; Currey 2004)
  - 41 Sudan Comprehensive Peace Agreement, January 2005 and Interim National Constitution, Sudan, 2005. Alden Wily 2007.
  - 42 Hurwitz et al. 2005
  - 43 The land and product values of forest resources is immense, mildly indicative in only the recorded global timber trading values of US\$354 billion in 2000, the US\$5.56 trillion import value of non-timber forest products in 2002 (from brazil nuts to gum arabica) and the already millions of dollars being expended that year in trading carbon credits from forest stocks. FAO 2005.
  - 44 Their share of income capture from commercial logging and paper production for example has been minimal to non-existent to date (e.g. Liberia, Papua New Guinea, Nepal, Brazil). FAO 2005; Colchester et al. 2001.
  - 45 Conditions are particularly severe in Africa, the Middle East and South Asia. See World Bank 2004a: 1.
  - 46 See Hodgson 2004.
  - 47 United Nations 1980: 8. This old figure is not based on rigorous measurement. In some more recent studies even lower percentages are indicated. See FAO 1999. *Women's right to land and natural resources: some implications for a human-rights based approach*. SD Dimensions

(on file at FAO: <http://www.fao.org/sd/LTdirect/LTan0025.htm>).

48 Nielsen 2006: 206; CLEP Uganda: 21, CLEP Indonesia, CLEP Philippines, CLEP Sri Lanka: 13.

49 Ann Whitehead and Dzodzi Tsikata 2003: 77.

50 Izumi 2007.

51 Agarwal 1994.

52 ICRW 2005: 3.

53 Quisumbing and Maluccio 2000.

54 Not always, for example, Inuit are 85 percent of the semi-autonomous Greenland region of Denmark. Indigenous people represent half or more citizens of Guatemala, Peru and especially Bolivia.

55 In 1972 the UN Working Group on Indigenous Populations accepted a definition, amended in 1983 and 1986. The ILO Convention No. 169 in 1989 accepted a broader definition, embodied in the UN Declaration on the Rights of Indigenous Peoples.

56 There are people in other regions regulating their land relations through indigenous norms. They are mainly members of indigenous minorities, such as Native Americans in North America, Sami in the northern polar areas of Europe and Russia and native peoples of Australia and New Zealand. They are excluded here mainly because comparatively extremely few of their number are definitively 'poor'.

57 Kaelin 2006: 175.

58 An estimated 25 million persons have been displaced by armed conflict in more than 40 countries. In Africa, the number of IDPs reaches 13.2 million, in Central and South America 3.7 million, in Asia 3.3 million, in Europe 3 million, and in the Middle East 2.1 million. In 2004, the largest internal displacement situations were Sudan (5-6 million IDPs), Colombia (2 - 3 million), DRC (2.3 million), Uganda (up to 2 million), and Iraq (over 1 million). Sudan, Uganda, Colombia, Iraq, Somalia, and Nepal were the scene of major new displacement during the same year, whereas DRC, Angola, Southern Sudan, Liberia, Burundi, and Central African Republic saw major return movements. (Norwegian Refugee Council, Global IDP Project, Internal Displacement — Global Overview of Trends and Developments in 2004, Geneva March 2005: 5-6, 10.)

59 Drawn from Kaelin 2006.

60 See Handbook on Housing and Property Restitution for Refugees and Displaced Persons 2007.

61 Acemoglu et al. 2004; Acemoglu and Johnson 2005; de Soto 1989, 2000; Roll and Talbott 2001.

62 The proportion of owners resisting expropriation against market value compensation is high. In a case reported by Galiani and Scharrodsky (2004: 5) the proportion is 5 resisting to 8 agreeing.

63 See Chapter 1, Section 2; de Soto 1989: 201-230.

64 See de Soto 2000: 200-202.

65 See USAID 2007: 21-23.

66 Gradstein 2006.

67 Chong and Gradstein 2007b show that inequality subverts egalitarian property rights systems.

68 '...the initial conditions had lingering effects, not only because certain fundamental characteristics of New World economies were dif-

ficult to change, but also because government policies and institutions tended to reproduce them. Specifically, in those societies that began with extreme inequality, elites were better able to establish a legal framework that insured them disproportionate shares of political power, and to use that greater influence to establish rules, laws, and other government policies that advantaged members of the elites relative to non-members — contributing to persistence over time of the high degree of inequality.' (Sokoloff and Engerman 2000).

69 Coudouel et al. 2007: 6.

70 Chong and Gradstein 2007a; Dabla-Norris et al. 2007.

71 Acemoglu and Robinson 2005.

72 Gradstein 2006; Deininger and Squire 1998.

73 Chong and Gradstein 2007.

74 USAID 2007.

75 Jacoby and Minten 2005.

76 Major comparative reviews of evidence of impacts on investment and access to credit suggest that titling and registration of land is most likely to be effective where robust formal financial markets already exist and where there are incentives for investment created by factors such as proximity to urban markets and good quality land (Bruce and Migot-Adholla 1994; Feder and Nishio (1996). Studies that particularly focus on the poor suggest that credit and other benefits may be heavily skewed toward large landholders (Carter and Olinto 2003).

77 Almost never occurs outside developed countries: Okoth Ogendo 1999; Alden Wily and Mbaya 2001; Hunt 2004.

78 For example, in India, the amount of bribes paid every year by users of land administration services is estimated at US\$700 million (Transparency International India 2005), three-quarters of the public spending on science, technology, and environment.

79 China was the first centrally planned economy to link the collective system to household size farms. Households were allowed to contract their share of the collective land and cultivate it individually, in return paying to the collective a fixed amount of produce, taxes and fees (Household Responsibility System). In a first stage, results were impressive as China's grain production increased from 321.2 million tons in 1979 to 407.1 million tons in 1984 (a five-year increase of 27 percent, or 5.4 percent a year). The increase slowed down afterwards to 469.5 million tons in 2004. Further gains seem more difficult to achieve. More investment and access to credit is required in order to improve irrigation, drainage, land terracing, soil upgrades, etc. Today, the Chinese farmers' use rights suffer from land grabbing by officials or by frequent and unpredictable readjustments of land rights. The number of sticks in farmer's property rights bundle is still insufficient; the practice of land readjustment has been the main source of land tenure insecurity in China since the decollectivisation of agriculture. Farmers are therefore unwilling to make productivity-enhancing investments that would require several years to recover, such as irrigation, drainage, or land terracing. See Prosterman 2006: 113. In 1998 the Government of Tajikistan, with the support of the World Bank, began the implementation of the Farm Privatization Support Project (FPSP). Ten farms covering an area of 17,000 hectares were privatised to individual families. First, farms were divided into their constituent brigades and per capita land was divided among farmers. Inheritable but not tradable land use certificates were provided by the state land committee to individual farm-

ers, reflecting the allocation of lands. Second, water user associations were formed and a community-managed water provision system, a water charge collection mechanism, and maintenance of the intra-farm water distribution system were established. Third, a grant of US\$300 per hectare was provided to farmers to obtain crop inputs or any farm needs to start farming as an independent family farmer. Fourth, technical assistance was provided to farmers by using demonstration plots. In Tajikistan the government owns the land, but its use right is vested with the Tajik citizen, family, individual, or group of individuals. The land use right is inheritable but this right cannot be rented, leased, transferred to non-family members, mortgaged, or sold. The land use right is registered and is backed by the government. In the case of the FPSP, land tenure rights are now vested with the farmer; in case of former privatisation programmes, land use rights are collective, with the farm manager making decisions on behalf of the members. This difference results in different incentive structures and differential impacts of individual land tenure and collective land tenure on the incentives for and incomes of farmers. Sattar and Mohib 2007: 463-465.

80 Alden Wily 2006.

81 See Mendoza 2006.

82 Izumi 2007: 14.

83 Bruce et al. 2006: 47-51.

84 Alden Wily and Mbaya 2001; Alden Wily 2003; Alden Wily 2006 *passim*.

85 Hardin 1968.

86 Bruce and Migot-Adholla 1994; Migot-Adholla et al. 1994a; Collier and Gunning 1999.

87 Alden Wily 2006.

88 Alden Wily 2002.

89 Bruce and Migot-Adholla 1994; Deininger 2003; Augustinus 2003.

90 Alden Wily 2002, 2006b, 2006c.

91 Deininger et al. 2007.

92 See Bruce et al. 2006: 107-142.

93 CLEP Kenya; CLEP Pakistan; CLEP Philippines; CLEP Uganda.

94 Field 2004.

95 Deininger and Chamorro 2004; Bruce and Migot-Adholla 1994; Jacoby and Minten 2005.

96 Bruce and Migot-Adholla 1994; Feder and Nishio 1996.

97 Feder, Onchan and Raparia 1988; Galiani and Scharrogradsky 2004

98 In Cambodia, people pay US\$200 to \$300 and more in informal fees for title to land in urban areas. See World Bank 2002: 7.

99 Augustinus 2003: 25.

100 Palmer 1998: 87.

101 Burns 2006: 3.

102 In Mexico, 'some *ejidos* prefer not to regularize the land for human settlements to evade paying the land tax, which obviously promotes informality in land markets' (UN-Habitat 2005a: 107). A similar outcome is reported from Pakistan, reinforcing the need for taxes to be set at affordable levels and for the revenue to finance services people want

and are willing to pay for (Payne 1997: 8).

103 In Indonesia, property tax reform increased revenues under reduced administrative and compliance costs. Careful introduction of the changes minimized resistance. Political will was a paramount requirement. Although there were pre-existing property taxes, dramatic adjustments were required to deliver the changes. These were carefully piloted to test and improve procedures, to train staff and identify taxpayer responses to the changes. Indonesia's tertiary educational institutions now train about 600 property tax administrators a year. Colombia's use of the self-assessment method has resulted in an increased tax base and revenues and has allowed the cadastre to be updated. In Kenya, the primary obstacles to property tax reform have been lack of political will and weak administration. Taxpayers need to perceive the linkage with improved local services and also need to be confident of fair administration. For an overview see Bird and Slack 2002

104 *Condominium* is another form of housing tenure. It is the legal term used in the United States and in most provinces of Canada for a type of joint ownership of real property in which portions of the property are commonly owned and other portions are individually owned. In Australia and the Canadian province of British Columbia, the legal term for this is 'strata title'. In Quebec, it is known as syndicates of co-ownership. In the United Kingdom, the equivalent is commonhold, but this form of ownership was only introduced in 2004.

105 See Deininger et al. 2007.

106 See e.g. Payne 2002; Durand-Lasserve 2003.

107 See Galiani and Scharrogradsky 2004. The authors study a natural experiment whereby land titling was ex post granted to a large group of individual squatters. The analysis reveals marked changes in economic responses of this group relatively to the controlled group of squatters. The study shows only modest positive effect of land titling on access to mortgage credit, and no impact on access to other forms of credit. It shows no effect on the labour income of the households holding new titles. However, it is shown that moving a poor household from uncertain usufructuary rights to a more complete bundle of property rights substantially increased investment in the family houses. Land titling reduced the size of families. These smaller families invested more in the education of their children. In sum, entitling the poor increases their investment both in the house and in the human capital of their children. This is a very concrete example of legal empowerment with positive long term effects. Property rights contribute to human development under an intergenerational and behavioural perspective.

108 On Africa see a series of reports by IIED at: <http://www.iied.org/NR/drylands/projects/landregistration.html>

109 *Ejido* land in Mexico, which can be transformed into fully alienable freehold land based on a qualified vote by the assembly, is a good example. The fact that only about a tenth of *ejidos* chose to go this route illustrates that, even at high levels of per capita income, many users see benefits from maintaining communal relations to be greater than those from full individualisation of rights.

110 Cotula 2007

111 'Land Tenure Reform and Gender Equality,' UNRISD *Research and Policy Brief 4* (January, 2006) 1. In most Indian states the *patta*, or leasehold right over government land occupied by the poor is given jointly in the name of the husband and wife. In Andhra Pradesh, the *patta* is in the name of women only. There have not been any studies on

the outcomes or impacts of this practice. Banerjee 1999..

112 UN-HABITAT 2006; Strickland 2004.

113 Deere and Leon 2003.

114 UN-HABITAT 2006.

115 Agarwal 1994: 272.

116 Drawn from Baechtold 2006.

117 Convention on Biological Diversity (CBD) of June 5, 1992, <http://www.biodiv.org/convention/articles.asp>

118 [http://www.wipo.int/freepublications/en/tk/920/wipo\\_pub\\_920.pdf](http://www.wipo.int/freepublications/en/tk/920/wipo_pub_920.pdf)

119 [http://www.wipo.int/tk/en/laws/pdf/suigenaris\\_folklore.pdf](http://www.wipo.int/tk/en/laws/pdf/suigenaris_folklore.pdf)

120 [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_9/wipo\\_grtkf\\_ic\\_9\\_inf\\_4.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_9/wipo_grtkf_ic_9_inf_4.pdf)

121 For related aspects of bureaucratic justice for the poor see Chapter 1, Section 3.

122 Ibid.

123 CLEP Indonesia; CLEP Sri Lanka: 27; CLEP Philippines.

124 In Peru, reforms, particularly those that required congressional approval of laws, were promoted with the active participation of beneficiaries. The proposal to modify the Civil Code to permit the administrative, rather than judicial, declaration of adverse possession was met with a political debate based on different academic positions. To the extent to which the definition depended on a legislative option and required political support, COFOPRI disseminated the reform proposal among the leaders of the settlements who would benefit from it and facilitated the organisation of the leadership to defend the reform proposals before Congress. A group of leaders lobbied members of Congress of diverse political sectors in order to demonstrate that the reforms would benefit more than 100,000 families only in Lima, which was incentive enough to obtain congressional approval.

125 Through the intervention of COFOPRI it was determined that the leaders would work with the technical staff of the institution to obtain the technical and legal information needed to carry out the required actions. In this stage legal obstacles to the regularisation of property in favour of its occupants would be identified, such as cases of private property, archaeological land, or in a risk zone. The participation of leaders enabled the settlers to appreciate the difficulties that COFOPRI confronted in regularising properties, made their expectations more realistic regarding the time required to conclude the delivery of titling services, and made them aware about the need for reforms and complementary actions.

126 In Peru, COFOPRI developed the capacity to continuously improve reforms through a series of incremental changes based on a learning-by-doing approach. The drafting of new laws was linked to formalisation processes (0, 1 and 2) which ensured that experiences and lessons learned at the field level were incorporated into the normative framework. For example, as the formalisation process advanced, COFOPRI, through inputs from field staff and community representatives, uncovered new forms of informality that were not identified in the pilot project, like '*pueblos tradicionales*' (ancient informal settlements in Arequipa). COFOPRI and RPU worked together to develop legally sound and efficient solutions to these problems. New procedures were developed and tested

at the organisational level and once validated, incorporated into the legal framework.

127 See FAO 2007. For general issues of public administration reform see Chapter 1, Section 3.

128 Also recommended in CLEP Philippines, Ethiopia, Kenya, Uganda, Indonesia, Tanzania, Sri Lanka.

129 See Chapter 1, *passim*.

130 Center of Advanced Study 2007: 122.

131 World Bank, World Development Report 2002: 14.

132 Computerising records in the Indian state of Karnataka under a PPP model is estimated to have saved users US\$16 million in bribes (Lobo and Balakrishnan 2002). Automating registration and the associated land valuation allowed outsourcing to the private sector which significantly improved access and resulted in cuts in stamp duty from 14 percent to 8 percent while quadrupling tax revenue from US\$120 to US\$480 million.

133 See Prahalad 2005: 87-88.

134 See FAO 2007: 25. See e.g. CLEP Uganda, Grassroots Academy, Property Section; CLEP Ethiopia (p.11 ss.) analyses how the current land system with state ownership gives the state (i.e. the individuals controlling the state) immense power over peasants.

135 Fernandes 2006.

136 FAO 2007: 50.

137 The Singapore urban planning experience demonstrates that given the will and efficiency of implementation, it is possible to plan ahead and promote organised growth. The unauthorized settlements of Delhi, India, that are regularised in the late 1970s offer another example. These settlements have seen significant improvement following regularisation due to implementation of layout plans and extension of civic services by government agencies. Residents there have come to acquire full tenurial security, resulting in their making further investments at individual and community levels and improving the quality of the micro-environment. In Malaysia, the government sets a ceiling price for low cost housing, at RM25,000 per unit for people with household income of less than RM750 per month and requires the private sector to construct low cost housing (30 percent quota provision) in every residential development. These urban planning efforts need to be made more widely replicated at the community and city level. Yuen 2002, 2004, 2005.

138 Jacobs 1961; Newman 1972.

139 Barzel 1997; Alexander 2001.

140 Steuteville 2005; Congress for the New Urbanism 1999.

141 CLEP Report from South America (Brazil).

142 Santiago 2004.

143 Banerjee 2005.

144 Government of India 1998.

145 Government of India 1998.

146 An external evaluation of the scheme showed that the 2,800 families have improved their housing situation considerably and have organised themselves to procure infrastructure incrementally. 600 families have been gainfully employed in the home-based carpet weav-



- ing industry through the scheme. (Siddiqui and Khan 1994; UN-HABITAT 1991).
- 147 Govt. of India 2004.
- 148 See Chapter 4, which covers this topic.
- 149 For instance, in the city of Uttaradit, the initiative started with survey mapping of all the slums and small pockets of squatters, identifying landowners and those slums that could stay and that needed to be relocated. This helped link community organisations and began building a community network supported by young architects, a group of monks and the mayor. Together, they sought to find housing solutions for 1000 families within the existing city fabric through different techniques such as land sharing, re-blocking, in-situ upgrading and relocation. Their city-wide housing plan became the basis for the city upgrading programme under Baan Mankong and now includes infrastructure improvements, urban regeneration, canal cleaning, wasteland reclamation and park development. Boonyabantha 2005.
- 150 For a broader discussion of this issue see Chapter 1, section 4.
- 151 Brustinow 2006.
- 152 Handbook on Housing and Property Restitution for Refugees and Displaced Persons 2007.
- 153 Kranton and Swamy 1999; World Bank 2003.
- 154 Although their initial level of income and assets was not significantly different from the average, their level of assets and income in 1999 was more than 50 percent above the mean while their level of consumption was about 20 percent above the average.
- 155 Deininger et al. 2007b.
- 156 Rolfes 2006: 127-128.
- 157 Bledsoe 2006.
- 158 See Prahald 2005; Kasturi Rangan et al. 2007.
- 159 *Apasco*, a Mexican subsidiary of *Holcim*, realised that selling cement through a chain of middlemen dramatically raises prices. By opening new distribution centres in remote areas where cement could be purchased bag-by-bag and providing technical and safety advice to builders, *Apasco* was able to sell responsibly to the poor. The benefits to the local communities included a facilitated access to building materials at affordable prices. *Apasco* staff also offered consulting services on do-it-yourself building techniques. Lessons learned in Mexico are being studied at headquarters to see if this model can be replicated elsewhere. (Source: WBCSD 2005: 47)
- 160 WBCSD 2005.
- 161 *Delta Café* buys raw materials from poor communities in East Timor, creating sustainable livelihoods and gaining market rewards for producing a socially responsible product. *Delta Café* is part of the Nabeiro Group of food companies, and is the market leader for coffee in Portugal, with a market share of 38 percent. The company developed the Delta Timor brand and marketed it as socially responsible coffee after getting involved with the growing communities in the remote hills of East Timor, a former Portuguese colony. This project is already turning a profit, thanks to the popularity of the new Delta Timor brand among Portuguese consumers, promoted strongly by its partner *Sonae*, the country's biggest retailer. *Delta* welcomes competition in the region from other coffee-producing companies, as this will improve the coffee producing techniques of all farmers. (Source: WBCSD 2005: 50.)
- 162 Through its Solar Rural Operations, *Shell Solar* is bringing solar electricity and equipment directly to remote households in six developing countries (India, Sri Lanka, Philippines, South Africa, China, and Morocco). In Sri Lanka a typical solar electricity system powers seven lights and sells for around \$550-600. With 10,000 units sold by *Shell Solar*, benefits have included: 300 new jobs, mostly in rural areas; significant reduction in undesirable emissions by replacing kerosene lamps and diesel generators; bright light, making reading, cooking, and education easier; and convenient power to connect with the world via television and radio. This distribution model works, reaching break-even in 2001. Two barriers were overcome: availability of systems and the ability of householders to pay. (Source: WBCSD 2005: 58.)
- 163 *BP*: Focusing on the macroeconomic impact of its operations, *BP* is working with the government in Trinidad and Tobago to encourage wider business ownership. The aim is both to promote good governance and to create a pool of businesses that can not only supply *BP's* operations there but also compete on a world scale, beyond the present gas boom. Trinidad and Tobago is the largest liquefied natural gas (LNG) exporter to the United States, and *BP* aims to double its share of global LNG business by 2010. Helping locally-owned contractors develop global scale capabilities and become significant part of *BP's* current supply chain contributes to the government's aim of achieving a dynamic and sustainable economy through the building of knowledge-based skills. This will in turn allow the overall economy to continually evolve and recreate itself beyond oil and gas. Success will also allow the government and people to see themselves, perhaps for the first time, not merely as exporters of gas, but exporters of intellectual capital. This could become reality as a result of local learning institutions, workforce and companies becoming global experts in the industry. Source: WBCSD 2005: 53.
- 164 CLEP Informal Businesses India: 10.
- 165 See also CLEP Uganda: 22; Guyers 2005; Chanell 2006.
- 166 USAID 2006. In Nigeria, for instance, only 10 percent of what can be used as collateral in the US can legally be used as collateral. This means that Nigerians have a thinner and less valuable bundle of property rights in moveable and intangible property. A poor woman in Cambodia may well have a crop in the field or a pig or cow in a pasture. If she is able to use these to obtain a lawful loan she has one additional credit option. If she can use the moveable property she owns as collateral she is likely to be offered a lower interest rate and better terms from the lender than if the loan was unsecured. If lenders are legally able to accept such property as collateral she is also less likely to have to resort to an informal moneylender when she needs credit.
- 167 Savafian, Fleisig and Steinbuks 2006. For example, in Bolivia, Bancosol offers borrowers who use collateral larger loans, longer loan terms, and lower interest rates than they do borrowers without collateral. In Romania, after a new collateral law was enacted in 2000 the interest rate dropped by 6 percent and the interest rate on lending dropped by 20 percent.
- 168 IADB 2005, Unlocking Credit.
- 169 USAID 2006: 4.
- 170 USAID 2006: 5.
- 171 Source: Grameen Bank.
- 172 Critics are sceptical about the repayment figure and charge that

the system leads to the borrower becoming dependent on the loans. The bank has also been criticised for the level of interest rates that climb as high as 20 percent for loans to businesses that generate income. (International Herald Tribune, Asia-Pacific, Oct 13, 2006). Current amount of outstanding loans stands at Tk 33.42 billion (US\$484.29 million). During the past 12 months (April 06 to March 07) Grameen Bank disbursed Tk. 50.42 billion (US\$727.85 million). Projected disbursement for 2007 is Tk 65.00 billion (US\$930 million), i.e. monthly disbursement of Tk 5.42 billion (US\$77.50 million). End of the year outstanding loan is projected to be at Tk. 40.00 billion (US\$572 million).

173 These companies have the following loan liability to Grameen Bank :Grameen Fund : Tk 373.2 million (US\$6.38 million); Grameen Krishi Foundation : Tk 19 million (US\$.33 million); Grameen Motsho (Fisheries) Foundation : Tk 15 million (US\$.26 million); Grameen Bank provided guarantees in favour of the following organisations while they were receiving loans from the government and the financial organisations. These guarantees are still in effect. Grameen Shakti : Tk 9 million (US\$0.12 million); Grameen Motsho (Fisheries) Foundation : Tk 8 million (US\$0.11 million); Grameen Kalyan; Grameen Kalyan (well-being) is a spin off company created by Grameen Bank.

174 Source: Grameen Bank.

175 Drawn from Garcia-Bolivar 2007.

176 Studies in the Dominican Republic, Nicaragua, and Vietnam show that insecure land ownership reduced the propensity to rent and limited transactions to pre-existing social networks, despite the associated inefficiency. See Macours/de Janvry and Sadoulet 2005; Deininger and Chamorro 2004; Deininger and Jin 2003. Fear of losing the land, together with explicit rental restrictions, was the main reason for suboptimal performance of rental markets in Ethiopia (Deininger, Ayalew and Alemu 2006).

177 The case of China illustrates that, in the context of broad-based land access, guaranteed long term rent can provide greatly enhance efficiency while at the same time providing a basic social safety net at a cost that is much below alternative government programs, thereby allowing government to spend scarce resources on provision of productive infrastructure instead of safety nets. Also, having their basic subsistence ensured allows Chinese households to take on greater risks in non-agricultural businesses and, with policies to foster lease markets for land, contributes significantly to the emergence of a vibrant non-farm economy.

178 See also CLEP Sri Lanka: 27-28; CLEP Tanzania.

179 Banerjee and Iyer 2005; Nugent and Robinson 2002.

180 Bruce 2006: 47-51.

181 Bird and Slack 2006.

182 CLEP Kenya, CLEP Uganda, CLEP Indonesia, CLEP Philippines; Deininger et al. 2006.

183 For a more detailed analysis and recommendations see Chapter 1, Section 2 of this report. Evidence from Uganda suggests that greater knowledge of laws providing tenure security to customary tenure leads to higher land-related investment but that, with less than a third of households — normally the better off — being well-informed, efforts to disseminate information could significantly impact productivity and equity (Deininger et al. 2006.)

184 Eighty-nine neighbourhoods were upgraded or created under the

program in Ceara, Brazil, to the benefit of 25,300 families (more than 100,000 people) using an intergovernmental/community partnership of self-help housing, whereby the state financed infrastructure and housing materials, the municipality furnished the land and the beneficiaries constructed their own housing, with technical assistance. 100,000 people got access to housing and property rights. Importantly, these investments were achieved with a per-family investment of US\$2,100, including project, works, land and social mobilisation. The main lessons from this programme are that Government programmes for housing can become a mechanism for property rights creation or regularization, raising strong incentives for communities' contribution to the upgrade of living conditions through investments in services and houses construction. (Ceara, Brazil: Urban Development and Water Resources Management Project).

185 In the 1960s, Singapore faced a serious problem of housing shortage. In response, the government set clear targets for housing provision and reorganised the housing industry. It passed the Housing and Development ordinance in 1960 which created the Housing and Development Board (HDB) with a strong mandate and resources to deliver housing units. The first priority of the agency was to build as many low-cost housing units as quickly as possible. The housing that was initially built was largely for rental by low-income groups. Forty years on, approximately 85 percent of Singapore's 3.4m resident population is currently living in HDB housing. The majority of these people own their homes. In 1964 the government introduced the Home Ownership for the People scheme to help all citizens to buy homes up to their capability as consumers. The aim is to give citizens including the poor an asset in the country. The lowest income citizens are not excluded from the housing system. This has encouraged the formulation of policies aimed at reducing the cost of housing and easing access to owner occupation in public housing for all including the lower income residents. The consequence of formal housing titles is increased housing investment, a greater sense of stakeholding and interest in the maintenance, quality and design of the public housing. After more than 4 decades of public housing development, an increasing number of people have personally chosen high-rise living and 82.5 percent of households in public housing have expressed contentment at the idea of always living in public housing flats.

186 World Bank 2003a.

187 For the most part of the following passages see Martinez 2007.

188 Satterthwaite 2005.

189 McKeon 1962; Harris 2004; Krieger and Higgins 2002; Von Hoffman 1998.

190 Since 1984, Grameen Bank is giving housing loans, the maximum being fixed at Tk 15,000 (US\$217) at an interest rate of 8 percent. It is to be repaid over a period of 5 years in weekly installments. 644,965 houses have been constructed with the housing loans averaging Tk 13,194 (US\$191). A total amount of Tk 8.51 billion (US\$203.98 million) has been disbursed for housing loans. During the past 12 months (from April'06 to March'07) 13,590 houses have been built with housing loans amounting to Tk 143.86 million (US\$2.07 million) (Grameen Bank).

191 Buckley and Kalarichal 2006.

192 For Eastern European countries see Palacin and Shelbourne, 2005: 7. Struyk and Turner, 1986, the study of South Korea and the Philippines, noted that occupants with formal sector titles, across all income categories, enjoyed better quality housing in both countries.

193 See Tomlinson 2007.

194 UN-ESCAP 1994; Banerjee, 1995. Haryana Urban Development Authority (HUDA) in India enters into partnership with private developers to develop townships in the highly sought-after periphery of Delhi. This land is under agricultural land ceiling and not available for urban use, except with the permission of HUDA with the condition that 20 percent of the housing should go to the poor.

195 TDR is included as part of the national urban policy in Brazil. Implementation started with 10,000 houses for 120 co-operatives of the poor between 1989 and 1992 in Sao Paolo. (Fernandes, 2002.) NGOs like *Instituto Polis* continue to provide advocacy and technical and legal assistance to slum communities and land owners to implement the approach in several cities of Brazil. In Mumbai TDR is linked with the government's policy of 1999 of providing houses free of cost to 4 million slum dwellers in five years. (Burra, 2005.)

196 UN-ESCAP, 1994.

197 See Panaritis, 2007.

198 Guidance can be found in Alden Wily 2002. See also Deininger et al. 2007; see ILD 1994, 2002, 2004.

199 Mosqueira, 2007.

200 See Collier 2007: 135-140.

201 Rajan, 2005.

202 Collier 2007: 140-156.

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