

# Consultation on Security of Tenure for the Urban Poor, South Africa, 27 and 28 May 2013

Notes from Jackie Dugard

## DAY 1 Monday 27 May

### Introduction

NN, LO, JD and RR welcomed the participants and introduced both the Mandate and RR's current project.

Focus on security of tenure of the urban poor – this is the critical issue; evictions and proactive security. Rural is being dealt with a lot through right to food and indigenous people's rights mandates. Also FAO/WFP (?) has just issued voluntary guidelines focusing on rural land. Urban poor is not being dealt with internationally. In the context of rapid and escalating urbanisation, it is essential to deal with this issue – most cities are not planning for and dealing with the urban poor from the outset. This means the urban poor have to deal with their own housing and settlement themselves. After decades, governments have not regularised this so poor people are left to settle themselves but always live in insecurity. Evictions continue to occur as urbanisation spreads, cities become interested in the land on which poor people have settled etc.

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### Panel 1: informal settlement upgrading, regularisation and titling

#### Panellists

*Samuel Mabala (Uganda)* Commissioner, Government of Uganda, Ministry of Housing and Land Development [presentation]

Uganda is urbanising very fast. Constitution guarantees right to property. There is a Land Act of 1998 and a Land Amendment Act of 2010 to protect rights of insecure. National Land Policy of 2013 and National Land Slum Upgrading policy.

Article 237(1) of U C vests land in the citizens of Uganda, recognising four kinds of tenure. Article 26 of C prohibits arbitrary deprivation of property.

Tenant-landlord relationships – tenants must pay nominal ground rates to landlord. If tenant defaults then can be evicted (procedure for such).

National Slum Upgrading Strategy (TSUPU) – to empower the poor to understand their rights and obligations; to improve access to basic services; to put in place appropriate policies etc.

Key Design Principles – stakeholder participation in planning, decision making and project identification; urban forums for organisation of slum dwellers – working with slum dwellers

federations; student internship programs in settlements of urban poor. Includes establishment of savings systems.

Importance of the participatory approach – benefits: enhances ownership and sense of belonging, empowers slum-dwellers to deal with realities. Once empowered, communities should be able to access land in shared ownership arrangements.

Scale: TSUPU is being piloted in 5 municipalities.

*Babacar M'baye (Senegal)*

Senegal has experiences and policies around spontaneous resettlement. Urbanisation is growing especially in Dakar. Dakar represents only 0.3% of landmass but 80% of economic activity and 25% of Senegal's population.

Irregular occupation is 25% of urban occupation.

Spontaneous settlement – no schools etc. The state hasn't regularised these spontaneous settlements.

Building a road and necessary resettlement [didn't follow presentation properly].

*Desire Njamwea (Kenya)*

KISIP programme – trying to regularise by removing these tracts of land from market. This form of title now is protected and ring-fenced. Communal titling model has been pursued. Residents form a kind of communal body corporate holding this in perpetuity holding it in trust in respect of the community. The powers include those to issue land use rights to individuals. Must manage community areas in common good of community. Form cooperatives. Individual rights to be recognised through leaseholds. Restrictions on the disposition of community land – disposition would have to be sanctioned by the majority of the members of the community. Body corporates are democratically constituted and gender / ethnic issues have to be built in. Constitution must be drawn up. BC then regularises rents, landlord and tenant relationships, dispute resolution etc.

The idea is that each community will decide on priorities, governance, membership etc with some guidelines. All to be guided by Constitution and the legislation.

Idea is to give communities better control; ensure better land management, protect against evictions, promote sustainable investment in housing and services for the urban poor.

Are hoping for legislation to regularise these arrangements – currently a policy recommendation.

Problems – ended up building too expensively, also issues over planning and environment.

*Kareem Ibrahim (Egypt)*

Egypt: rapidly urbanising – around 44% of population. More than 12 million people live in Egypt's informal areas. Egypt is suffering from a housing crisis – 3.5 million closed housing units.

Pressure to become a world class city.

Legal frameworks – new Constitution – legitimate property ownership is protected along with Islamic endowment. Article 24 speaks of the social function of property. Article 68 talks about adequate housing, access to water etc.

During Nasser's time, Egypt has a rental law that was very pro-tenants; then this was changed during 1980s.

Case Study ADAA urban housing rehabilitation program – out of date planning constraints, complicated regulations, limited access to housing finance etc. There was a 1973 master plan which effectively put an end to any settlement/development and resulted in de-population. New plan attempts to regularise the area.

Case study 2 – Land titling in Izbet Khayrallah. In 1990s a road was built through the area. It's heavily populated. Up until then no land title. People resisted forced evictions. In 1984 the government temporarily put demolitions on hold. In 1999 the court found in favour of the residents, recognising the residents' rights to remain in the area and granting them the right to buy the land from the state based on adverse possession, favouring security of tenure.

Local lawyers pulled together a coalition to oppose the demolition and bring a court case.

What was key was networks, tenacity of residents.

What makes security of tenure: about legitimacy.

*Steve Topham (South Africa)*

In 1994 300 informal settlements; 2700 informal settlements now

1.4 million hh needing adequate shelter; backlog is now 2.3 million despite biggest public housing programme outside China.

So, can't build yourself out of a housing crisis – part of the problem is that we've commodified housing. Focused on individuals rather than communities and focused on low density houses rather than community development and security.

People reduced to being names and numbers on a list and government to being a house-building service.

Poor are becoming the enemy.

RESPONSE from 2010: there is a shelter and poverty crisis (rates of health, HIV etc much higher in informal settlements). Service delivery protests 4 per week – a lot to do with people's frustration. Lack of voice and choice.

Government decided to set targets but to broaden approach: 400,000 well-located households = in situ upgrading. 45 informal settlements in programme. National Development Plan Vision 2030 – expand upgrading programme.

NB one size doesn't fit all – yet bureaucracy prefers simplicity.

National Housing Code speaks of informal settlements – illegal, inappropriate locations etc. Yet there is a wide range eg informal settlements attached to townships or RDP settlements. Further problems in former homeland areas and traditional/customary areas, mining towns etc.

Lots of forms of subsidies. But dominated by top-structures (fully serviced freehold stands on 300m). Do rentals through housing associations.

Where there's an informal settlement on private land – state can't invest in infrastructure – or can it??

State relies on municipalities to deal with settlements. It's been encouraging municipalities to develop sensitive by-laws. But usually are about control and deterrence.

Investigations around new instruments and policies – Urban Landmark – new planning instruments, new billing options. UN habitat guidelines etc.

But not enough examples of positive examples to learn from.

There needs to be more flexibility and creativity.

*Marie Huchzermeyer (South Africa)*

There has been progress, attempts etc.

Endless costs of households having to keep their shack weather-proof, rat-proof etc. Problems of garbage not being collected – healthcare, rodents, shack-fires.

Poor quality municipal infrastructure investment eg taps without drainage.

Insecurity of tenure – municipality argues it can't invest; occupiers can't invest (no finance etc). Therefore no improved access to water and sanitation or electricity or refuse collection. So no consolidation and household improvements. Equals disease, fires, rats, ill health, insecurity.

NUSP 2004 adopted, amended 2009, and starting to be implemented: a settlement has been existing for 18 years and is still not recognised. If it is recognised, investigating feasibility for upgrading (but with Harry Gwala, this investigation has been ongoing for 6 years and not complete), then can be recognised for interim services/ transit camps etc. At the point of confirmed feasibility, municipality can start investigating upgrading and securing finances. Then township recognition is meant to occur. Then titling (need this for household subsidy) can happen and occupier can start investing or apply for subsidy, which can take many years. And only if approved, then top structure can be built.

Harry Gwala informal settlement – sits adjacent to wetland area and Wattville township. 2004 plan to move them – rejected plan to move them. 2006 feasibility of upgrading was started. 2008-2009 community went to CC to get interim services – nothing came out of the CC. CC ordered a feasibility study should be done and a decision to upgrade must be taken.

Harry Gwala civic committee came up with its own upgrading plan. Since January, government hasn't been able to even show the plan to the city/province.

Discussion (combined as below due to time constraints)

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## **Panel 2: Land reforms and land management**

### Panellists

*Andrianirina Ratsialonana (Madagascar)*

Land Observatory in Madagascar – public structure within

Land reform in Madagascar – linked to political history of Madagascar. During colonialism (1896-1960) all the land belongs to the French administration – only private title (colonial companies) recognised.

1960 independence – state maintained principle of control – all land belongs to state apart from that privately held.

2005: land reform – extinction of the domaniality principle – all non-titled but customarily held land recognised.

A shift – decentralisation of competence to municipalities. Each gets an occupation map and a local recognition system to get ‘on request’ land certificate. Local recognition committee composed of chief of village, elders, neighbours. Opposition is possible. This certificate has the same value as private land title. But it costs 10-20 times less and is issued 6 times faster.

These were mainly rural – Madagascar is mainly rural.

But need to begin to focus on urban land. Urban development and land tenure security is missing in the donors agenda and portfolio. The urban LLOs are rare – out of nearly 500 LLOs only 10 are in urban municipalities.

There is also the problem of outdated information etc. Also a lack of synergy between urban planning and land certificates. Problem of people trying to access land on swamps, issue of services etc.

Now they’re trying to bring urban areas into the picture – researching, liaising with civil society, NGOs etc. They are designing a restructuring plan for informal settlements.

*Esther Obaikol (Uganda)*

Prior to ?? there was a land reform decree – nationalisation of land and private title only for huge estates, but this was reversed in ??

Now public land replaced by 4 tenure types – restriction of eminent domain to exclude physical planning. Recognition of customary tenure and legalising tenancies at sufferance (feudal tenure), decentralisation of land administration, introduction of land dispute resolution structures other than courts, vesting of natural resources in government.

1998 Land Act and several amendments – clarifying the rights of spouses (must give consent for any transactions), clarifying tenant-landlord relations, expounding the governance of customary tenure.

Challenges of urban land reform – multiplicity of tenure types, eminent domain does not extend to physical planning as was prior to 1995. Urban poor have been excluded from planning and decision making. Services delivered through slum upgrading programmes in areas with high tenure security.

Uganda has a Torrens system of registration recording tenancies by occupancy on registered land. There are problems re forgeries of spouses permission etc. Issues around customary land,

*Muhammad Abdalla Swazuri (Kenya)*

3 months in his job. Chairperson, National Land Commission, Kenya. Colonial past. Lots of commissions, policies etc but nothing has been dealt with. So people have invaded land – both rural and urban.

Landowners evict via court or simply by notice or razing the shacks (courts take a long time).

Since January 2013, the government has appointed a task force to formulate legislation, regulations and guidelines to streamline evictions. And to look at compensation and/or alternative land etc.

*Davinder Lamba and Steve Akoth (Kenya)*

Kenya Informal Settlements Improvement project (KISIP)

New and good developments - Land Commission, good public interest litigation, activist judiciary, task force on evictions, new Constitution

Much of land reform in Kenya was rural. Not urban – very little international experience of urban land reform.

Only exception - sites and services project 1973 in Kenya, but consolidated under World Bank project of individual titling

We have to fight forces that wish to individualise private title. Would like to pursue collective title.

KISIP has four components – land reform, managing urban growth, services, strengthening institutions, tenure security

Nairobi – about as much land occupied by golf courses and members clubs as by informal settlements (UN-habitat). About 10% of the slums are located on uncontested public land; 40% on utility and riparian reserves; 50% sits on private land that was initially public land.

2001 UN habitat found that 57% of structures in slums were owned by ministers, civil servants, government officials etc so if you give title – will be benefiting rich.

Paradox – how do you ensure security of tenure = a bundle of rights.

*Peter Ahmad (South Africa)*

Issues of equity, land use, services, expectations – *Dainfern v Diepsloot* etc.

## Discussion

*Questions:*

Megan: communal land tenure – what has the experience been? And what was the political process leading up to land reform?

RR: rural land reforms have been emphasised. But what about urban?

Lauren: re Madagascar discussion of petit papiers – is there any effort to regularise these transactions? Also, in response to Kenyan community title – is there any issue of penetration of markets, informal sales, how to do improvements and recover value etc?

Yahia: role of compulsory purchase orders in Uganda – purchasing land for public benefit; and re Kenya, how land is revoked from public realm and allocated to private individuals – is this constitutional etc; how have communities responded?

Irene: makes the point that the way that informal people acquire land/housing is the opposite to the way rich/formal people do. Rich people get titles first then occupation. For the poor, it's the other way around. In many cases, government has provided the access to land and finance to the rich/private developers.

Esther: there is a challenge around market-led land development.

David: physical planning has been excluded from eminent domain in Uganda – what were the political processes that brought this into effect, as it's unusual.

*Answers:*

Davinder: in Kenya have come through a system in which public land was illegally and irrevocably allocated to private land. There is now a Commission etc. But what's done is done. Re collective ownership – not possible to provide individual title, too dense. But obviously there are problems of tensions, conflicts etc. Now the situation is about the state securing land for public benefit – but this hasn't happened yet.

Muhammad: due to rapid expansion of Nairobi, it's now full of peripheral informal settlements, reducing coffee farm areas. People are now also moving into the National Park areas. The government is attempting to link infrastructure etc. Report of post-2008 violence has just been released shows how much land was illegally transferred through corruption etc. 50% of the report deals with land-related issues.

Kareem: in Egypt, re urban areas, it's not so much about the ownership of land that's the problem, but more what has been built on top of it, without planning permission etc.

Samuel: Uganda customary tenure – people wanted this to be equated to freehold, but this is still in process. Many people didn't want certificates of customary tenure – there's still a belief that customary tenure is lesser than private freehold despite the fact that the policy attempts to create an equality between the systems.

Esther: Re eminent domain in Uganda, post-1995, how to please the majority of people; how to have a pro-people constitution. The first thing is to privatise all land and take away planning. So eminent domain was limited to public purpose, public use etc. Physical planning has become a challenge – totally uncoordinated. Nothing can be planned. It was political and populist and doesn't make sense.

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### **Panel 3: Urban policies and urban markets**

#### Panellists

*Peter Ngau (Kenya)*

Kenya is moving towards rights-based land management. However, despite these reforms, insecure tenure persists for the majority of the urban poor.

Land in Kenya classified as private, public or communal. Formally all have the same status.

Kibera – extremely high density etc. Most informal settlement houses are owned by non-residents ie they are high level government officials etc who rent out the houses.

Access to services is obviously compromised. High child mortality, low health etc.

Visible and invisible evictions. Invisible evictions are through market. Also, there's double land allocation of land by the chiefs and other levels of government. Corruption etc. Also, land grabbing and invasion is often organised by politicians and land brokers, using the poor as a shield.

Cost of formal land titling is way too high. 339,000 kenyan shillings whereas average hh income is around 7,000 shillings.

Three recommendations –

1. Need to go beyond policy to implementation – need political will and advocacy, as well as transforming professionals (planners etc)
2. We need to be alive to the issue of invisible evictions
3. We need to identify and recognise minimum standards

*Yahia Shawkat (Egypt)*

Crowding and shared sanitation – 4.6 million people live in over-crowded conditions that are precarious structurally – at least one building collapses per week. They have precarious tenure – only 10% of property is registered, and this exposes them to risks of being evicted/relocated. No access to safe drinking water – about 10 million people don't have access to a tap in their home.

Not enough supply of low-cost rental housing. Housing has been commodified by private market. Around 160% inflation on housing each year.

Housing is extremely unaffordable – almost double as unaffordable as in eg USA.

Subsidised housing programme is also very problematic and only supplies about 10% of housing stock. Part of the problem is foreigners crowding out locals (= tax free high-yielding investment), and also rich Egyptians crowding out poor Egyptians.

*Lauren Royston (South Africa)*

Urban LandMark = pro-poor market think-tank. Without understanding how markets work, we're lost.



Starting point is the dominance of individual title – so this means that usually there really is only one way into recognition, regularisation, security and benefits. But in practice, alternative tenure arrangements exist – there's often a dualism of local arrangements.

South Africa (Oct 2007), Maputo, Luanda, Lilongwe.

There are often organised local arrangements in operation, and there are local land markets and transactions.

These work in some ways, but are limited in other ways. For example, they can't compete with formal financial institutions or capital, which can easily push them out.

We need to increase the ways into official recognition beyond individual title – official recognition matters. Need to secure tenure in alternative ways.

SO, recognise local practices that already exist and recognise these.

Gradual and less-individualised basis.

What is the emerging practice – need to look at local practices and registration processes.

Focus on local arrangements.

### Discussion

#### *Questions:*

Leticia and Jackie: to Lauren; how to take local practices and arrangements and formalise or recognise these?

RR and Desire: how to prevent private sector from dominating?

Steve: regarding professional planners etc, we need to think about who the cities belong to, who are the citizens – how can planners accord citizenship to those who are excluded? To Lauren; isn't it a continuum rather than a duality to get rid of hierarchical concept – maybe to do what Uganda is trying to do?

#### *Answers:*

Lauren: yes, it is more of a continuum, and GLTN engages this continuum methodology – most practice sits in middle. An example: in Mozambique, there is a land practice called Duat, which can be converted to title whether collectively or not by enumeration, local records, construction and maintenance of community register – this can be recognised in by-laws etc.

Peter: NB need to understand that the poor / communities aren't homogeneous, so do need to be targeted and locally/ contextually specific. Planners/architects etc can indeed secure urban citizenship by inclusion even if purely from a paradigm shift.

Steve Topham: To pick up on Peter's point – he doesn't see progressive professionals. Only commercially-driven. So in South Africa, the state tries to use the power of the state's contracting capacity – force engagement by private sector – eg to do community consultation etc. Also, building on the Asian experience, state is trying to build up para-planners – how to use a tape measure etc.

Irene: in Kenya, Professor Peter Ngau gets planning students to intern with NGOs so to provide exposure to informal planning. Poor people have been challenging conventional planning discourse.

RR: as a professional planner and professor, she makes the point about land allocation disparities between rich and poor. Planning creates density and the problem. Part of the problem is the very low density of rich areas. This is POLICY, not absence of policy.

Yahia: yes in Egypt, the architecture schools are dominated by paradigm to create wealthy buildings and industry etc.

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#### **Panel 4: Civil society initiatives – litigation, advocacy and organisation**

##### Panellists

*S’bu Zikode (South Africa)*

Need to listen to the poor and to let them speak for themselves. Laws and policies, and government and professionals exclude the poor.

Victories in court don’t always translate into reality. Conversely, there are situations where they haven’t won in court but have won.

There is a serious need for the dignity of the poor is put ahead of technicalities. It should be the starting point of all politics and action.

Talk with us and not for us; think with us and not for us.

Many poor people have lost faith in the state – when the state is the landowner, the state often acts as any other landowner. And acts with violence and repression.

There is no democracy in the state – we need to build it from below.

The problems of landlessness, evictions and tenure security must start with organisation by the poor. Organising and mobilising demands standing together even when difficult. We have to stand together against cooption and repression. We must be principled. We must understand the forces that maintain and replicate landlessness and poverty.

The social value of land must come before the commercial value.

Abahlali occupies and will continue to occupy unused land and to defend existing occupations.

AbM has brought hope to its membership – but the issue of landlessness will not be resolved technically – it will only happen politically and this will only happen after mobilisation etc. This demands a focus on dignity even before service delivery.

*Celestine Akpobari (Nigeria)*

Social Action works on housing rights. Community based and led advocacy. Solidarity building and linking community-based activities with national, regional and international efforts. Power in unity.

Mobilised 5000 people on the streets in a peaceful process. The government shot people but the people didn't move.

They have been successful in preventing mass-scale evictions on the Waterfront area of Port Harcourt. SERAC has assisted them. But often laws or judgments don't translate into practice.

Realities: people living in abandoned buses; rivers destroyed, environment destroyed.

Generally-speaking the judiciary doesn't offer much hope. Hope is in organisation and mobilisation. Communities now speak with one voice in their opposition. They are resisting and mobilising against injustice whether by government or companies.

*Joseph Schechla (Egypt)*

Raises the issue of freehold fetishism. Security of tenure has been contentious since the times of the Pharos.

Shares experience of Muthalath Maspero on the banks of the Nile in Cairo. This area is foreseen to be renewed in a new scheme that favours private sector investment. Seeks to plan over the people. There are very old buildings there and part of the master plan is that currently, it is forbidden to repair there. This is part of the plan to ensure that the whole area decays and topples over and then 'development' can move in. The residents themselves don't know who are the masters of this plan, but just know that their houses are crumbling and their grip there is increasingly tenuous.

Pre-eviction violations: insufficient access to basic services, prohibition against repairs, forced eviction and threatened eviction, demolition and threatened demolition.

Civic action: mapping of services, laws, demolitions and threatened demolitions and evictions; people doing research and planning for themselves and will then contest the secret Cairo 2050 plans. Will approach government and make them listen.

*Sheldon Magardie (South Africa)*

Section 25 and 26 of the Constitution. Litigation from *Grootboom* to *Changing Tides*.

Under apartheid, summary demolition and eviction of 'squatters'. No protection. Approximately 18 million people went to jail for having attempted to escape homeland and rural poverty.

From 1990 systemic repeal of apartheid laws and legal reform to create protections. Then Constitution, which entrenches

Section 25(6) – a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws ... CLARA stillborn struck down (*Tongoane* case). ESTA, IPILRA etc.

*Blue Moonlight* – established that the state has obligations regarding people facing homelessness due to eviction as a result of private evictions (same obligations as when state evictions would otherwise lead to homelessness). Brief overview of the LRC’s litigation over backyard dwellers.

So in South Africa, there is a sufficient jurisprudence regarding evictions to work with. But there are some gaps/problems. For example, the issue of private actors and also the failure of the government to implement judgments.

*Kate Tissington (South Africa)*

Need to move beyond defensive action and litigation. How to ensure upgrading – you need the state on board. Is a different kind of animal to defensive litigation. You need planners etc on board. You need innovative plans and a range of practitioners. It is also essential to be aware of and try to navigate vested interests. But litigation is important to sharpen issues and unlock momentum.

### Discussion

*Questions/comments:*

Jean: participation is critical not just in and of itself but because it ensures efficacy and sustainability.

Jackie: has the ‘revolution’ changed plans for demolition etc?

Megan: came to Nigeria expecting to do litigation work but in fact this is the least important aspect of the work – advocacy etc is the key.

Steve: question to S’bu – to what extent does Abahlali see the cases that Sheldon presented as key to advancing the situation of informal settlements.

*Answers:*

S’bu: We all need one another. Lawyers need clients and clients need lawyers. And lawyers need organised clients, and the poor need to be organised.

Joseph: re question about the ‘revolution’ – in Egypt (Kareem has published an interesting paper on why the revolution stopped at municipal level) there’s a great ambiguity at the local level. Certainly the new constitution doesn’t resolve the issue of the lack of governance at the local level. The social function of property remains in the constitution but has never been adjudicated (it was left out in Tunisia after the revolution).

Celestine: It’s not that litigation is bad, but we shouldn’t undermine the value of community organising.

Sheldon: in Cape Town it’s been difficult to engage meaningfully – in *Olivia Road*, the court said that no party should assume a position of non-engagement. But the City of Cape Town is doing just that – saying no land and nothing to be done.

**Participatory dynamics session: Everyone to list two greatest challenges to tenure security**

- Political will (but RR's point: political will doesn't pay the bill; Jean's point that, even if will is there, political cycle is very short whereas tenure security for the poor is long-term project; Marie mentions the dark side of this – S'bu's point about the repression of the poor, which is beyond lack of political will).
- Impunity / greed of government
- Private markets / commodification / unregulated elite interests / economic policy / political economy of land
- Inflexible planning
- Voicelessness/ lack of organisation of the poor
- Failure to frontload dignity of poor
- Non-participatory approaches
- Gender issues including inheritance issues

Emerging issues to be discussed tomorrow

1. How to deal with the financial role of land/ what can state do about this? Political economy of land and Regulation
2. How to deal with different systems of tenure eg customary v individual title?
3. Political will v corruption v implementation
4. Legal systems and legal processes – access to title/ justice etc; power of communities and voice in these processes
5. Participation
6. Principles and justification

Later distilled into four groups:

### **Day 2: Tuesday 28 May**

Working group discussions and presentations.

Further discussions prompted by presentations

- Recall that States do not equal Governments – they are people, land and institutions. State land belongs to the people and should serve as a public good. However, governments often treat state land as a private good that they can sell/transfer/use as they wish. Guidelines should reinforce the social value of land and the importance of state land as a public good.
- People living in an area being developed should be beneficiaries of new development in the area (this wasn't clearly stated on the slide).
- Effective mechanisms to regulate speculation and avoid adverse social impacts of development/gentrification:
  - Creation of special zones/use of zoning regulations to maintain residential characteristics of the area/restrict radical conversion
  - Taxation especially on empty buildings/vacant land

- Allocation of percentage of social housing in new developments through regulation
- Transition camps should not be permanent! Must have clear principles/duration/minimum standards (this point wasn't clear on slide)
- Adverse possession, which may be an important principle, needs to have safeguards for legitimate owners to claim their rights too. Amount of time matters. Formulation should recognize occupancy rights through a considerable amount of time providing certain conditions are met.
- Maximum plot size – recognizes scarce resource of urban land/addresses density and inequality issues
- RR: wary of bankability of tenure forms. Contributes to insecurity.
- We should have one system of multiple forms of arrangements and each should have a basic degree of security and legal protection. Refraining from forced evictions is part of this; as is provision of basic services along non-discrimination lines.
- But harmonisation isn't necessarily the goal – diversity might be important.
- Issue of continuum – still seems to be privileging of ownership – but this, itself, is insecure.
- But mobility is important – at certain points or places, different forms might be relevant and appropriate.
- Need to recognise that in certain circumstances security of tenure isn't possible – need to clarify what the state's obligations are in these situations. Along the lines of the Guidelines on evictions and displacement.
- 60% of urban dwellers in sub-Saharan Africa live in informal settlements – an enormous opportunity for state to recognise what is here ie what's real. Through recognition need to unlock opportunities for improvement etc. But question: if you're on the outskirts, you're on the outskirts...
- Need to facilitate creativity, energy etc of residents.

#### **RR re missing points/ further points**

- One thing is to recognise and mobilise energy of the poor towards progressive realisation. But, how do we move away from informal settlements?
- What about recommendation regarding ensuring implementation of policies. Need to organise and mobilise poor to make it politically relevant.
- Critical issues: opportunity/ access to participate fully.
- Need provision of fair, impartial rule bound land dispute resolution mechanisms
- Security of tenure is important so as not to be in a worse situation ie not as important whether formal or informal.
- Issue is of location.

- Densification is the answer.
- Security of tenure shouldn't be something on its own, divorced from other human rights approaches. Also, right to the city.
- Informal settlements not a good entry point because it doesn't represent diversity of situations/contexts – the core issue is access to adequate housing and the city without being blocked.
- Definition of what is urban poor.

**Exercise to prioritise most important recommendations for the Guidelines, taking into account RR is addressing states**

- The state to respect and implement the law regarding habitable areas for the urban poor.
- After recognising informal settlements, states should progressively improve and secure their tenure within a period of no more than 10 years from today.
- Community organising is key – and there should be a discussion of who is the urban poor.
- No eviction without compensation/ alternative.
- The state must ensure effective regulation of the land market taking into consideration the issue of the poor not being crowded out of the housing market.
- Government must conduct participatory mapping of all tenure forms and arrangements and confer legal recognition / protection to various forms of tenure, including use, ownership, sale.
- Human Rights-compliant resettlement policy (applied when conferral of security of tenure not possible)
- Prioritisation of meeting basic needs and protecting current occupation (tenure rights of the most vulnerable).
- Defining the reciprocal responsibilities of various stakeholders – where community comes in.
- Work closely with the urban poor and facilitate inclusion.
- Displacement in any form should engage reparations framework.
- Social function of property needs to be recognised.

- Need to prevent downward-raiding – where you enclose protected spaces for urban poor, often not-so-poor people move in.
- Need to have an audit of wants/needs of urban poor.
- Make finance available to urban poor.
- Identify land use mechanisms – planning etc – to secure tenure to realise rights of urban poor.
- Proactive and participatory planning to ensure access to well-located land.
- Regulation of exceptional circumstances in which evictions can be allowed.
- Security of tenure is a component of access to housing. This must entail access to energy, water and transport. And access to planning.

**So:**

- **Protection of tenure forms and practices**
- **Prohibition on forced eviction and compensation/resettlement etc where there are evictions**
- **Regulation of land markets**
- **Access to housing stock, services, improvements etc**
- **Participation/ inclusion of poor**

**Controversies:**

- **Finance/market: De Soto idea, access to credit and loans; but a lot of research showing that recognition of title without dealing with spatial and service-related issues doesn't create a market eg houses in South African townships don't have much value. Also, most occupiers of informal areas never will go to a bank anyway. Also, often sub-standard housing on periphery that doesn't improve their lives. Housing isn't always an asset. Having said that, the issue isn't so much about access to credit or loans or finances, but rather an issue of investment (by whom?). And of course it's important to recognise that many donors push the commodification model.**