Assessment of Strategies for Secure Tenure, Tenure Policy and Housing:

As Means of Advocating Sustainable Development in Developing Nations

Mladen Krajisnik
Assessment of Strategies for Secure Tenure, Tenure Policy & Housing

As means of advocating Sustainable Development in developing nations

Mladen Krajisnik
Master of Science Thesis in Sustainable Development
Supervisor; Zeinab Nour-Eddine Tag-Eldeen, KTH
Faculty of Science and Technology, Uppsala University, 2010
Presented in March, 2011, Uppsala
Table of Contents

ABSTRACT ................................................................................................................................. 4

1 INTRODUCTION ....................................................................................................................... 5
  1.1 Background .......................................................................................................................... 5
      1.1.1 Failure of the modernist model .................................................................................. 6
      1.1.2 Sustainable Human Settlements .............................................................................. 6
      1.1.3 Slum incidence .......................................................................................................... 7
  1.2 Problem formulation ........................................................................................................... 8
  1.3 Objective ............................................................................................................................ 8
      1.3.1 Researchable questions ............................................................................................. 9
  1.4 Scope of the Thesis ............................................................................................................. 9
  1.5 Methodology ..................................................................................................................... 10
  1.6 Selection of the case .......................................................................................................... 10

2 STRATEGIES FOR SECURE TENURE .................................................................................... 12
  2.1 Theoretical framework ....................................................................................................... 12
  2.2 Definitions ......................................................................................................................... 13
  2.3 What is Secure Tenure? ...................................................................................................... 14
  2.4 Types of Tenure identified by the UN-Habitat ................................................................. 15
  2.5 The global campaign for Secure Tenure .......................................................................... 16
  2.6 Value of Secure Tenure ..................................................................................................... 17
  2.7 Strategies for Secure Tenure ............................................................................................. 18
      2.7.1 Strategies for secure tenure – UN-Habitat perspective ............................................. 18
      2.7.2 Local dimensions .................................................................................................... 21
      2.7.3 Implementation ......................................................................................................... 24

3 TENURE POLICY .................................................................................................................... 27
  3.1 Background ......................................................................................................................... 27
  3.2 Stabilization, foundation and long-term options ............................................................... 27
  3.3 Land Management Policy Options ................................................................................... 28
  3.4 Engagement with Settlements and Communities ............................................................. 29

4 A CASE STUDY OF MALAWI ................................................................................................. 31
  4.1 Introduction to Malawi’s National Land Policy ................................................................... 31
      4.1.1 Guiding Principles ................................................................................................... 31
      4.1.2 Land Policy Objectives ............................................................................................ 32
  4.2 Implementation strategy ..................................................................................................... 36
ABSTRACT

The study is shortly presenting the urbanization-saga and the human settlement progression. It then proceeds to identify different types of tenure and the pertained definitions as such. The thesis will review and assess the strategies for Secure Tenure provided by UN-Habitat on an international and national level, as well as analyze the implementation tools brought forward. Diverse tenure policies and tools will be evaluated with an anchoring in the case study of Malawi and its National Land Policy and the implementation of the same.

Keywords: Informal settlement, Low-income, Housing, Urban Upgrading, Slum-upgrading, Security of Tenure, Policies, Strategies, Malawi, Slums, Tenure Policy, Implementation.
INTRODUCTION

1.1 Background

The close of the last millennium saw the enlargement of cities in the developing world being radically shaped by the inherently related processes of urbanization and globalization. Neither of these phenomena is new – what is unparalleled is their rapidity and coverage. Urbanization processes in most developing countries are escalating. This poses immense challenges for governments at all levels. These are rapid urban population growth and the urbanization of poverty (UN-Habitat, 2006). The latter is manifested most noticeably in the proliferation and extension of slums and informal settlements, which are habitat to a growing quantity of urban dwellers in developing countries. It presents a major brave to the international community.

For the first time in history, swift population enlargement and its concentration in cities around the world constitute a decisive ingredient distressing the long-term outlook for civilization. Despite the position as centers of civilization and economic commotion for eight millennia, cities never engrossed more than ten per cent of the global population until the second half of the 19\textsuperscript{th} century (UN-Habitat, 2003). Now, systems of cities have been converted into the world’s social, economical, cultural and political matrix (UN-Habitat, 2001). In 1970, 37 per cent of all people lived in urban areas. About 2007, that percentage is envisaged to reach 50 per cent. Virtually all the population intensification expected at the world level during 2000-2030 would concentrate in urban areas. Ninety-five per cent of the population boost expected during 2000-2030 will be engrossed by the urban areas of the less developed regions whose population will likely rise from approximately 2 billion in 2000 to just under just under 3.5 billion in 2030 (UN-Habitat, 2003 & UN, World Urbanization Prospects, 2002).

While the worldwide population is predicted to increase at an annual rate of less than 1 per cent per annum (0.97 %) over the next thirty years, the urbanized population of the less developed region will increase by almost 3 per cent per annum (2.67 %). That dissimilarity represents an intensification rate in the developing world that is 174 % superior to the growth in the total global population (Millennium Project, 2003). At the same time that the urban population is escalating, the growth rate of the rural populations is decreasing. It is expected that between now and 2030 the rural population of the less developed regions will grow at only about 0.1 per cent per annum (UN-Habitat, 2003). As the majority of these urban dwellers will be poor, it should be obvious that successful urban policies could go a long way in contributing to global reductions in urban poverty, slums and unsustainable cities.

Since the 1950, the global urban population has escalated from 750 million to more than 2.5 billion people. Eighty per cent of the world’s population intensification in the 1990s had occurred in urban areas. “The world is facing nothing less than an urban crisis of staggering proportions in the next twenty to thirty years” – one that will call for an inclusive reorientation of urban strategies by governments (UN-Habitat, 2004, p.13). As mentioned formerly, the urban areas of the world’s less developed regions will attract nearly everyone of the global population increase. “However, this urban development is generally informal and
unplanned, often resulting in people settling on unwanted, dangerous locations in search of affordable, unsustainable shelter.

Most of these new urban dwellers will be poor, translating into the urbanization of poverty and highlighting the crucially and important need for effective – and sustainable – urban policies capable of dynamically addressing the bulk of the world’s slum problems”, (UN-Habitat, 2004, p.14).

1.1.1 Failure of the modernist model

“The urbanization process, which gained momentum during the 20th Century, brought about the extension of the cities beyond their traditional boundaries. Planning was mainly based on the open Modern Urban Model and the creation of “satellite” cities. This model, which attempted to solve the massive housing problem based on industrialized construction in tall buildings, also tried to develop more hygienic and healthy urban conditions by using less land”, (González, 1995, p.2).

This urban model, counting “zoning” and satellite cities, were only achievable due to the all-embracing exploit of the vehicle and the highways, which produced new harms. Nevertheless, this indefensible solution,enthused by the “productivity model”, was exported to the rest of the world, as well as to developing countries. When it came to solving the immense accommodation dilemma, the modernist model did not work. In the developed countries people “discarded the open urbanism of the new peripheral areas, its monotony and lack of identity, so, these neighborhoods were abandoned and occupied by the lower income sectors”, (González, 1995, p.2). Further she writes, “The Modern Model also failed in the developing countries but the reasons were different. The new neighborhoods, developed for low-income people- were ultimately not accessible to them, nor to the middle class. The lack of housing for the poorest was increasing and a new urban phenomenon appeared: spontaneous and illegal settlements”, (González, 1995, p.2).

1.1.2 Sustainable Human Settlements

The built surroundings play a vital function for achieving sustainability. This is predominantly accurate for urban settlements, because their scale and concentration of population make them a load for their hinterland. The unalterable nature of the urbanization progression has been acknowledged as advantageous because its rewards for people. That is why developing more sustainable settlements in an urbanizing world is a major goal in the Habitat Agenda of the UN (González, 1995, UNCHS, 1996).

The so called “informal city”, prepared by inhabitants themselves in an impulsive, unprompted way, or based on a site-and-service plan, “promotes low density because of the managing process and the land tenure, that stimulate the individual, isolated, to build one story housing. This type of housing is usually recognized by its lack of infrastructural services such as piped water, rain water drainage and solid waste collection”, Gonzalez, 1995, p.3. These immeasurable, spontaneous areas are nearly always in use by the recently urbanized and extremely poor, in search of a better life in the urbanized areas. The foremost outcome of these practices is the spreading out of the city in an unsustainable way,
where the density usage of land is very low, killing impending landmass for a more sustainable and optimal use (González, 1995).

“Such development is not only hazardous to human health and highly unsustainable; it creates a negative downwards spiral where this type of urban incidence also requires more infrastructural facilities and produce longer distances and thereby long transportation demands. Many factors contribute to this result in developing countries; the lack of urban plans for the informal city, strategies and implementations of new and dynamic ways of planning, the weak urban and housing management process, the land tenure system and the lack of awareness”, (González, 1995, p.3).

The majority of authors refer to ecological, economical and social dimensions of sustainability, and in this order of advancement. Additional proportions discussed by various authors are, for example, cultural or technological. However, it is commonly accepted that sustainable development should signify environmental security, economical feasibility and social richness (González, 1995). There are different approaches to sustainable development. The developed countries – which have solved their indispensable troubles, such as food, energy, housing, healthcare, clothes and education – “approach sustainable development as a ‘cult’, a way in which ecology is a worry. In the developing countries, on the other hand, basic problems, as mentioned above, are imperative. Therefore sustainable development is a way to survive”, (González, 1995, p.5). In order to have improved housing, healthier food, renewable energy, suitable technology or environmental-friendly transportation, you first require to have a residence or clothing or education or food or energy or technology or transportation at all, and above all, the health and to be alive (González. 1995).

1.1.3 Slum incidence

The contemporary pace of urbanization in the developing world, and the fact that this constitutes the massive urbanization of slums and hence the lack of urban sustainability, is compounded by weak local government structures (UN-Habitat, 2004). There is a divergence among actual profits and obligatory expenditure, frail organizational capability, inequitable and obsolete planning techniques and deficient concepts and practices of urban governance. The need of guidelines, strategies as well as the implementation of the same is nothing but a letdown. “Depending on the individual countries and cities, between 25 per cent and 80 per cent of the urban dwellers in the world is living in slum situations, with very little or absolutely no access to shelter, basic urban services and social amenities” (UN-Habitat, 2004, p.14). Slum in these cities is characterized by the following (Extraction from Dinesh, 2005, p.10);

- Large and growing backlogs in delivery of basic services to urban residents as demand outstrips institutional capacity, financial resources and environmental carrying capacity.
- Worsening state of access to shelter and security of tenure, resulting in severe overcrowding, homelessness, health problems and environmental degradation.
- Lack of participation of communities in decision-making processes and implementing activities
In cities in Sub-Saharan Africa, people living in settlements of this kind encompass upwards of 60 percent of the entire population of the city. Prominently, these informal settlements and slums are confined to a significantly miniature portion of the city, in some cases, less than 5 per cent of the total residential area (UN-Habitat, 2004). The dilemma of informality and illegality is therefore mutual with the trouble of density, poverty and hence, unavoidably, lack of a sustainable living. Unofficial settlements do not only require formal connection to municipal services, water, toilets, sanitation, infrastructure, they also contain extremely large populations. “A single sanitation facility, for example, must serve over 500 people. Crowding in dilapidated structures with no possibility for upgrading, connections or infrastructure is a common phenomenon, as is the irregular allocation of public land to structure owners that profit from the high demand for affordable shelter”, (UN-Habitat, 2004, p.16).

Empirical verification suggests that the quantity of urban poor will enlarge more rapidly than the urban population growth, aggravating a significant increase in the slum incidence and hence becoming a major blow to urban sustainability. In a somewhat restrained projection, it is estimated that by the year 2020, the current 30 per cent level of urban poverty in the world could reach 45 to 50 per cent of the total population living in cities, that is 381 to 455 million households, as compared to 128 million households in 2000, a increase that represents 297 to 355 per cent increase in absolute numbers (Population Reports, 2002).

1.2 Problem formulation

The contemporary situation, as described above, with a soaring rate of urbanization, slum regularity and unsustainable urban space is a matter of great magnitude. The unsustainable expansion of slums in developing nations – in and around the urban area – is one of the vital factors in today’s environmental abasement. In order for the international and national community to be able to foster and implement enhanced ways of planning and building cities, as well as indulge themselves in slum upgrading, distinct strategies and implementation tools are desirable.

1.3 Objective

The objective of this thesis is to progress the conditions of people living and often functioning in slum areas and informal settlements in major urban centers of the world. The thesis will outline and identify the different tenure options that are existent. The aspiration of the author is to map existing strategies and discuss their applicability, which then will be harmonized with the required implementation tools and mechanisms specified for an international and local level.
1.3.1 Researchable questions

- Which strategies at an international and governmental level for tenure policy are accessible?
- Which different types of tenure can be identified?
- Which tools and strategies for secure tenure are available?
- Which tools and methods can be used for implementing secure tenure at a local level?

1.4 Scope of the Thesis

The thesis is an advocacy instrument designed to promote security of tenure for the poorest populations, especially living in informal settlements and slum, with the goal of making a significant impact on the living and working conditions of the world’s urban poor.

Furthermore, this thesis will acknowledge the slum dwellers and their organizations as indisputable and legitimate partners and seeks to promote their partnerships with government at all levels – as essential tools for the upgrading, planning and management of cities. This study will build upon existing local initiatives such as land tenure in slum upgrading areas, the right to a legal and affordable shelter, as well as being a strategic entry point for upgrading slums, providing frameworks for informal settlements and promoting affordable shelter policies.

The security of having your own tenure cannot be stressed enough, hence as UN-Habitat states, “... this is a rights-based approach to urban development, it assists governments to adopt and promote innovative systems of land tenure and land management that ensure the security of many urban poor populations living often in un-registered and quasi-legal residential circumstances” (UN-Habitat, 2004, foreword). The security of your own tenure is unswervingly associated to urban citizenship, as assurance of tenure can solidify the right of slum dwellers to live and be present in the city, manage, systematize, make claims on public resources and co-manage settlement improvements with NGOs and public authorities.

In this study, the theoretical framework will be designed around the aspiration to promote secure forms of tenure for the urban populations, targeting especially the poor and those living in informal settlements and slums. My hope is that this thesis will contribute to the principle that “the urban poor should not be seen as passive, but should be considered as an active force that can and will actively contribute to the solution of their housing problems” (UN-Habitat, 2004, p.9).
1.5 Methodology

The applied methodology in this study consists of four different stages;

1) The first stage of the thesis consists of identifying the problem of slums, their incidence and background. No presentation of current intervention from the international community, national governments nor local NGOs will be presented. Instead this study will provide the multi-complex, dynamic and always inter-changing concept of slums and the inherent definitions that comes with the territory. This thesis is based on a data-collection approach where data is collected from books, magazines and articles. No interviews or traveling will be made.

2) The second stage is the presentation of strategies for secure tenure and tenure policy. The strategies for secure tenure will be aimed at three different levels, international, national and the implementation of such. By all means, it should be acknowledged that the scope will be in general terms since the time restriction prohibits any further evaluation and tailored strategies. Tenure policy strategies will be provided – as well – in a general matter. Further provided in the second stage is an evaluation of the tenure policies with advantages and limitations.

3) The third stage of the thesis will be carrying out a case study of the country of Mozambique. The aspiration is to connect the previous two stages – mentioned above – as to see how they are connected, implemented, and evaluated in a real-life scenario.

4) The last stage is compiled of three different levels, the findings, in-depth analysis and evaluation and recommendation for future studies. This part will connect the three preceding stages. The in-depth analysis will be carried out according to the stated objectives, aspirations and achievements in the third stage. Theories from the theoretical framework will be connected and a review will be conducted based on the case study of Mozambique. Recommendations will be concluding the outcome and presenting recommendations related to the matter at hand.

Seeming this study has a grass-root, bottom-up loom to it, it would seem quite suitable to assert that the four stages have been carried out locally in the cities of Stockholm and Uppsala, Sweden. The data, documents, books, and scientific journals were all collected by the author in Sweden. The composing of the study – literature review, compilation and analyzing of data, discussions with my supervisor at KTH and drafting and developing the overall thesis – took place in Stockholm and Uppsala, Sweden. No field study was carried out. The focus was on reviewing existing literature.

1.6 Selection of the case

The availability of information and accessibility to applicable documents were not the foremost reason for the selection of Malawi. Seemingly, the UN-Habitats program for slum upgrading and vulnerability reduction in Malawi made it a grand choice. Furthermore, UN-Habitats agenda for security of tenure, policy preparation and housing policy in Mozambique grants me the opportunity of evaluating current and forecasting future strategies in collaboration to the ones I provide in a real-life case setting in the country of Malawi.
Even more, acknowledging the current situation with the necessity of strategies in terms of secure tenure and tenure policy, this study might be relevant to decision makers and actors alike. No field work was carried out – the study is solely based on literature review.
2 STRATEGIES FOR SECURE TENURE

2.1 Theoretical framework

In today’s intensive and interchangeable evolution of cities, one feature could be highlighted as ever vibrant and prominent – that the low income majority in these new cities is not being aided well by the planning elite and their schemes of utopian cities rooted at the highest peak in the hierarchy. The fact of the matter is that the architects and planners of today have immense difficulties in delivering the supposed benefits through the hierarchy down to the poor and disadvantaged. As Hamdi & Goethert, 1997, write, “Its data hungry methods of study and analysis, its desire to maximize information, co-ordination, integration, participation, rather than optimize resources in relation to prevailing realities, its attempts at coherence, its desire to predict and control, its inflexibility to respond to change and uncertainty, its reliance on outsiders in the form of a planning elite, and its dependence on development aid, set it apart from the pluralistic, spontaneous, market driven, entrepreneurial and serendipitous dynamics which shape cities in practice. The result is that few of the acclaimed benefits of planning reach the poor. And even when they do, it is at a cost in management, administration and other scarce resources which cannot be long sustained” (Hamdi & Goethert, 1997, preface).

Today’s planning processes show no advancement in terms of being able to plan and act simultaneously. Little consideration is given to the vital aspect of studies and surveys of the actual grassroots. In numerous examples, planning in developing countries is inevitably interrelated to development aid and it’s exceedingly dependent on the interests of powerful individuals, “development experts” and substantial commercial interests (Hamdi & Goethert, 1997, et. al). The master-, structure-, and sectorial investment plans that define the old school of planning, are neither time-efficient nor optimal, require considerable amounts of vast resources and disparate with the factual realities and culture of city life – “They transfer little or no immediate benefit to the poor majority of urban populations. To the contrary, these systems, fuelled as they are by the transfer of aid in the form of money, technology and know-how, cause considerable environmental damage and social injury and, all in all, further the development of underdevelopment” (Hamdi & Goethert, 1997, p. 3)

External and foreign involvement in domestic planning activities, such as slum upgrading, housing and land tenure in developing nations, correlate with different theories, expert systems and frameworks which will state how to go about it best and where, when and why. This tied help and aid “results in developing countries paying prices above the market rate. Estimates vary between 10 % and 20 % and recent research suggests an average 15 %. This excess price is a direct subsidy to exporters in OECD countries amounting to more than $2 Billion a year – nearly 4 % of DAC aid. Not only does this represent a huge cost for developing countries and bad value for the OECD tax payer, tied aid also results in the purchase of inappropriate goods based on availability in the donor country rather than what is needed for sustainable development” (Randel & German, 1994, p. 25).
There’s a great need for a fundamental change in the way of thinking when it comes to aid, intervention and planning. A reorganization of the old norms and paradigms is vital – “adopting longer term, process oriented approaches... strengthening indigenous institutions... increasing local participation... minimizing aid dependency... improving donor policy coherence and... reducing transaction costs of assistance delivery” (Hewitt, 1994, p. 94). The major concern today with planning issues – such as slum upgrading, housing and security of tenure – is the failed task of alleviating poverty, directly promoting dependency and not self-sufficiency. The welfare and aid gets lost within the hierarchy and does not reach the poor and those in need (Hamdi & Goethert, 1997). The foreign consultants and their theories and technology transfers – much of what is directly involved in slum upgrading and planning aspects – “Feeds the world with false paradigms. Inappropriate transfers of technology... misdirected assistance lead to the continued existence of underdevelopment. Aid only strengthens dependency relationships” (Dube, 1988, p. 43-44).

In all essence, endogenous progress needs to be stimulated and encouraged, arguing for non-hierarchical human associations, for people driven progressions, for the empowerment of communities, for self-reliance and self-fulfillment. People are not the objects but the subjects of development. As Hamdi & Goethert writes, “Good practice derives from good practice. It derives from the experience of those who do it and think about it, monitored, evaluated and then passed down from generation to generation, passed across from one project or community to another, and passed up to government and government institutions so that they can devise what we have come accustomed to call support policies” (Hamdi & Goethert, 1997, p. 20).

2.2 Definitions

The word slum first appeared in the London terminology at the opening of the 19th century, designating initially a “room of low repute” or “low, unfrequented parts of the town” (UN-Habitat, 2003, p.7). During the major part of the 19th century, the word appeared in the written language in quotation marks mostly as “back-slum(s)”. At the end of the 19th century, the word is sued as defined in the Oxford English Dictionary as; “A street, alley, court, etc., situated in a crowded district of a town or city and inhabited by people of a low class or by the very poor; a number of these streets or courts forming a thickly populated neighborhood or district where the houses and conditions of life are of a squalid and wretched character”.

The word came to be changed several times during the Housing Reform Movement in England. During this era, it came to take a legal and technical acceptance to designate “a house materially unfit for human habitation” (UN-Habitat, 2003, p.7). The 20th century made the word obsolete in many contexts requiring more precise and rigorous terms, such as “tenement-house”, “tenement-district” and “deteriorated neighborhood”. Ever since the hastily process of urbanization, the word slum has come to be defined as limited and generalizing term for unsuitable, unsuitable living conditions for humans. Other concepts used in this study, that are defined by the Millennium Development Goals and UN-Habitat, are;
• Slum dweller – A group of individuals living under the same roof lacking one or more of the following conditions: access to improved water, access to improved sanitation facilities, sufficient-living area, not overcrowded, structural quality/durability of dwellings, security of tenure.

• Security of tenure – Secure tenure is the right of all individuals and groups to effective protection by the State against arbitrary unlawful evictions, in this matter this constitutes: evidence of documentation that can be used as proof of secure tenure statues or either de facto or perceived/protection from forced evictions.

• Forced eviction – Under international law, forced eviction is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

• Land tenure – “Land tenure can be defined as the mode by which land is held or owned, or the set of relationships among people concerning the use of land and its product” (Payne, G, 1997, p.).

• Property rights – “Property rights can be defined as a recognized interest in land or property vested in an individual or group and can apply separately to land or development on it. Rights may cover, inter alia, access, use, development or transfer and, as such, exist in parallel with ownership” (Payne, G, 1997, p.).

2.3 What is Secure Tenure?

“Land tenure refers to the rights of individuals or groups in relation to land. The exact nature and content of these rights, the extent to which people have confidence that they will be honored and their various degrees of recognition by the public authorities and community concerned will have a direct impact on how land is used” (Fourie, C, “Best Practices Analysis on Access to Land and Secure Tenure”, UNCHS Land Management Series No. 8, p.30, 2000).

Tenure frequently involves intricate set of regulations, repeatedly referred as “bundle of rights”. A prearranged resource may have numerous users, each of whom has exacting privileges to the resource. Some users may have admission to the complete bundle of rights, with full use and transfer rights. Others may be restricted in their utilization of the resource (UN-Habitat, 2004).

One of the most prominent definitions of secure tenure, as set down by the global community, is that secure tenure is an agreement between individuals or groups to land and inhabited property, which is governed and regulated by a official, authorized and managerial structure and framework. Hence, the sanctuary derives from the fact that the rights of admittance to and use of the land and property is underwritten by a known set of rules and that this right is justiciable (UN-Habitat, 2004). Needless to say, the tenure can always be affected in a multiplicity of ways, all depending on constitutional and legal frameworks that are being implemented, not to mention individual preference, social norms, and cultural values.
As UN-Habitat puts it, “...in other words, a person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. Such exceptional circumstances might include situations where the very physical safety of life and property is threatened, or where the persons to be evicted have themselves taken occupation of the property by force or intimidation” (UN-Habitat, “Global Campaign For Secure Tenure”, p.31, 2004).

### 2.4 Types of Tenure identified by the UN-Habitat

Tenure of security for residential occupation ranges from formal to informal types and with variations in between. This study does not encourage any explicit nature of tenure in partiality to others, yet still it will rather focus on the indispensable settings that have to be met to guarantee security of tenure. Land tenure and property rights are more problematical and complex than the conventional categories of legal-illegal, or formal/informal put forward. The majorities of urban areas include a range of semi-legal categories and may be even more than one legal system, as in countries where constitutional, customary or religious tenure systems co-exist. Presented below is a range of tenure types and some of their characteristics (Extraction from UN-Habitat, “Global Campaign for Secure Tenure”, p. 34-40, 2004);

a) Freehold and registered leasehold (including co-ownership)

*Freehold* is the form of tenure that confers on the title-holder the maximum control and discretion over the land, normally only circumscribed by law and/or planning and zoning restrictions. It provides for the land (and improvements) to be used as collateral and mortgaged, it may be transferred or bequeathed in the discretion of the title-holder, and is free from any time restrictions – it is title in perpetuity. It is the form of tenure most associated with investment and speculation.

*Leasehold* conveys the right of beneficial occupation to land or property, but such occupation is circumscribed both by a finite period of time, as well as the specific conditions of the lease. The lessor retains ultimate control over the property, through the stipulated time limit and conditions. Upon expiry of the lease, the lessor may automatically reassume occupation, reallocate the lease to another person or body, or extend the lease of the occupant. For the period of the lease, which may be very long and subject to compliance with the terms of the lease, the occupant des enjoy secure tenure.

b) Tenure types from documented, unregistered rights (unregistered lease, leaseholds, rental, occupancy right, use right, sub-lease, sub-rental, co-tenancy and co-occupancy right)

Rental is a form of lease, in terms of which access to a property and the use of thereof is governed by a legal agreement of fixed duration. Agreements are normally governed by law.
Rental agreements operate either in the private domain, as contract between private citizens and bodies corporate or companies, or in the public domain, wherein the rental is provided by a public body, such as local authority, as part of a social housing policy. It is common, in formal rental agreements, for the lessor to assume some responsibility for the maintenance of the property. In general, the ownership on the basis of which the lease is issued cannot be transferred, but all and any other right that is part of the lease can be transferred. Land leases that include only a few rights are often administered by local authorities, using nonprofessionals to create the land parcels and administer them. Leases for housing are usually administered by local authorities and their agencies, for government-owned housing, and through private contracts for privately owned housing.

c) Group tenure

The principle of group tenure relates to the sharing of access to a property on the basis of an agreement, which specifies the terms and conditions of such access. This may take the form of the creation of a body corporate, such as a condominium or a private, land-buying company, or a housing association or co-operative. What all of these forms of tenure share is the need for a relatively high level of common interest, and the skills and capacity to administer the arrangement, which generally requires quite high level of organizational ability and commitment.

d) Formal, undocumented tenure types

Adverse possession, legal protection against forced eviction and use/occupancy rights without certificate are some examples of tenure types in the land rights continuum that provide a certain degree of security of tenure. For each of these types, however, improvements can still be made (e.g., regarding adverse possession: simplified and affordable procedures for claimants of adverse possession; regarding “anti-eviction laws”: conditions before, during and after forced evictions must be in compliance with international law requirements etc.).

e) Informal tenure types

De facto recognition of occupation (e.g., political patronage, proof of payment of utility bills, oral evidence, informally recognized customary rights, perceived secure tenure etc.) form a major part of the tenure types found in slums and informal settlements. The level of security of tenure that they provide depends on various local circumstances and whether any other protections against forced evictions are accompanying them. They are the basis from which an incremental approach to tenure improvements can be developed.

2.5 The global campaign for Secure Tenure

The main vein and structure of the global campaign for secure tenure is the strive for adequate shelter for all. Secure tenure aims at promoting global guidelines, norms and standard rules for the accomplishment of secure tenure, establishing a framework to provide a voice and support to the urban poor and the organizations that sustain them.
As UN-Habitat has noted, the most valuable task at hand is to “providing affordable and implementable policy options to national and city governments; establishing mechanism for information and experience exchange and ensuring compliance with the international legal instruments related to secure tenure” (UN-Habitat, 2004, p.26).

The main task of the movement for secure tenure is to improve the conditions of people living and often working in slum areas and informal settlements in major urban centers of the world by promoting security of their residential home. The strategy for achieving this is to advocate and operationalise agreed-upon action plans through inclusive strategic planning and decision-making processes. Unfourtently, in most case-scenarios secure tenure as a human right is not perceived as legitimate reason enough (Payne, G, 1997) hence, as UN-Habitat amongst others have noted, “Excluding a significant proportion of urban populations from legal shelter reduces the prospects for economic development. People who fear eviction are not likely to operate to their maximum potential, or invest in improving their homes and neighborhoods. At the same time, local and central governments are denied the revenue from property taxes (income taxes, VAT. My own addition) and service charges which could help improve urban living environments and stimulate local and external investment” (UN-Habitat, 2004, p.27).

2.6 Value of Secure Tenure

It should here be stated that the progression and aspiration of secure tenure is not that of a messiah-savior, but should rather be perceived as a premeditated entry point. In realistic terms, secure tenure – for the individual slum dweller – translates into a extent of assurance that can stimulate investment of own resources for the purpose of improving shelter and services. Even better still, in some cases, a documentation of right or transitory occupancy can serve as an instrument for making claims on community resources or negotiating with the state authorities for admission to basic services. Furthermore, secure tenure may also legitimize land or structures on that land as forms of guarantee for credit, and therefore investment.

As it is noted by the UN-Habitat, “…further strategic value of secure tenure is that, by providing occupancy rights, state authorities render to slum dwellers a degree of urban citizenship – “a right to the city”. While seemingly meaningless, a simple occupancy right goes a long way for slum dwellers. It can not only generate a sense of self-worth and respect, but also sensitize slum dwellers to their rights and responsibilities as urban citizens. And it can serve as a tool for social mobilization and awareness raising, enabling slum dwellers to establish forms of organization that transcend ethnic, religious, gender, age and geographical boundaries” (UN-Habitat, 2004, p.28).

Secure tenure can be considered as the first component of the progressive realization of the right to housing as elaborated in Paragraph 61 of the Habitat Agenda. Although, it’s vital to bear in mind that “the granting of secure tenure will not, in and of itself, solve the problem of homelessness, poverty, unsafe living environments and inadequate housing” (UN-Habitat, 2004, p.28). Nonetheless, we need to recognize the fundamental and imperative importance of secure tenure as one of the most indispensable fundamentals of a thriving shelter strategy.
Some would state that a triumphant shelter strategy cannot prosper without the security of tenure: it is of the outmost necessity, but inadequate condition for sustainable shelter deliverance and upgrading which, will in turn, have social and economic benefits.

Secure tenure is a precondition for local investment. Investing capital, time and effort requires a certain degree of safety and security, though international understanding shows that even the poor will invest what they can if they have reasonable security (UN-Habitat, 2004). In particular, the following consequences arise, if there is a lack of secure tenure (UN-Habitat, 2004, p.29);

- *Limits good governance and promotes instable and unsustainable communities and households.*
- *Inhibits investment in housing and infrastructure (including schools, clinics, etc).*
- *Undermines long-term planning.*
- *Distorts prices of land and services.*
- *Reinforces poverty and social exclusion.*

### 2.7 Strategies for Secure Tenure

The scopes of the strategies are both global and local. They can be used by intergovernmental bodies and transnational organizations as well as serve as a transportation body in which transnational organizations and networks can better utilize these instruments and affect unanimously acknowledged norms of secure tenure and support mechanisms required to secure tenure and stop evictions. The existing strategies (extracted) are provided by the UN-Habitat, whilst they have been reviewed by the author.

#### 2.7.1 Strategies for secure tenure – UN-Habitat perspective

a) The Rights To Adequate Housing

Experience shows that the free market by itself cannot provide shelter for the poorest, nor can the government – by the lacking of funds – supply shelter for all low-income households. Hence, the answer lies within a variety of community-based and self-help approaches. Arguable, the globalization has yielded both positive and negative socio-economic results for the concerned groups throughout the world.

Negative costs tend to be higher housing costs, forced evictions, reduction in social housing construction and *the exclusion of the urban poor from policy considerations*. Yet still, however, great efforts have been made throughout the globalization era as in terms of recognizing the urban poor, their circumstances and the need to enforce them as well as admitting the seriousness of the issue at hand – accorded to housing rights – and the stagnation of new housing. Even though the right to adequate housing is widely recognized as a human right in international law, there is further a great need for enabling and recognizing of the right to satisfactory housing and adequate standard of living. The changes we have seen in these terms are not more than two decades old, and, hence, there is still plenty to be done.
The rights mentioned above are a part of the economic, social and cultural rights that have not featured as prominently as perhaps the political and civil rights at the global forum and discourse. Housing rights, to this day, remain under-addressed and significant violations of housing rights persist. Preferred actions at this stage could be advanced and extended demands on the Committee of the Office of the High Commissioner on Human Rights, so as in order for further and extensive recognition, attention, monitoring capacity and higher prioritization.

b) Forced Evictions

The most prominent violation of housing rights facing the urban poor today is the practice of eviction without due legal process. Under international law, “forced eviction” is defined as; “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection” (General Comment No. 7, adopted by the Committee on Economic, Social and Cultural Rights, p.94, 1997). According to the Centre on Housing Rights and Evictions (COHRE), in 2004, some 14 million people are currently threatened by planned forced evictions (UN-Habitat, 2004). Wrongfully, amongst the global community today is the perceived notion that poverty is the greatest promoter of slums. Hence, it needs to be recognized that the perceived or real threat of forced eviction does the most to enclose an area in slum conditions and a cycle of poverty, as any scheme and speculation is inhibited by the threat. There’s a major call for the acknowledgment of the actuality that effect of compulsory evictions is to criminalize the attempts by the underprivileged in society to assure one of the most fundamental and indispensable needs for human life.

The necessity of, and absence and silence of, the fact that forced evictions are sometimes undertaken under the masquerade of development, in which it is argued that the eviction is a necessary evil to affect a greater social good, is nothing but discreditable and a stigma to the global community and its efforts to support, promote and improve the life of those without secure tenure. There needs to be a greater transparency of improvement of the – today – insufficient check and balances on power of public officials.

c) International Negotiation Support Mechanisms

The indispensability of the international and legal instruments that are today used to secure tenure, would be seemingly marginalized without certain international support mechanisms that can promote negotiated resettlement and other alternatives to forced evictions. These international support mechanisms could present a remarkable vehicle in order to facilitate the establishment of growing networks, urban poor movements, local authorities, professionals and policy makers from governments and international agencies.

As the UN-Habitat puts it, “International support mechanisms are essentially efforts to blend the human rights approach to monitoring forced evictions with an approach that facilitates negotiation processes among slum dweller organizations, support NGOs and governments at all levels”, UN-Habitat, 2005, p.52.
It is vital that these groups – the support mechanisms – identifies cities and/or countries where evictions are taking place and facilitate actions groups of personnel knowledgeable in structure and construction consensus and administrating into place negotiated relocations.

d) Urban Governance

The aim for the international community here is to augment the capability of local governments and other stakeholders to perform enhanced urban governance through attentiveness and responsiveness raising and advocacy, as through promoting institutional frameworks that are comprehensive, participatory and efficient.

UN-Habitat writes, “By working closely with institutions within Member States at both national and local levels, and also maintaining the closer collaboration with international partners, the campaign will continue to advocate and promote systemic reforms that will reduce the constraints faced by the urban poor in improving their lives. A primary advocacy goal for the campaign will remain the fostering of increased inclusiveness in cities, particularly in the decision-making processes, in accessing means of livelihoods and sustainability, and in harnessing the opportunities offered by cities”, UN-Habitat, 2004, p.15. The vital key factor is to endorse consultative processes, where development of national and local ownership is inevitable. Furthermore, the progress of implementation of strategies should be included in national reports that ought to be readable and accessible by each and every one. Public participatory in monitoring and evaluating the progress is immensely valuable, not to mention the utilization of measurement tools for progress in the respective aspects of governance and the state. The urban governance entails the apparition not only of institutional practices and adaptations of technical options and solutions, but as well the absorption and integration of the needs, demands and interests of the poor in all facets of their lives. As UN-Habitat concludes, “...will continue to undertake analytic studies as well as workshops and consultations with experts and stakeholders with a view to coming up with shared norms and principles relating to decision-making and implementation that take into account the voice of the poor and provides them with the means of empowerment”, UN-Habitat, 2004, p.17.

e) Media and Communication Strategy

First off, one needs to distinguish the need for diverse types of messages depending on in which forum one wishes to be heard in. All the dissimilar types of forums require slightly different types of messaging. In general, politicians, bureaucrats, NGOs, donors, aid agencies, local authorities and the very poor have all one thing in common – they all need to be persuaded about the urgency of the problem at hand (secure tenure) and informed about the possibilities. Different types of target audiences are best reached by diverse kinds of press, media or other informal channels of communication.

Politicians, parliamentarians and policymakers tend to prefer newspapers and daily press releases, whilst slum communities are best served by the TV, radio or local meetings organized by the neighborhood “chiefs”.
The guidelines that will follow below are imperative for the success of secure tenure, but in order to be triumphant, the guidelines need to be integrated into the very structure and framework of all programs and projects concerned with urbanization and slum upgrading.

- Governments in developed countries, International Aid Agencies and Donors – Regular persuasion and frequent reminder of the significance of meeting the targets set by the international community concerning secure tenure. Furthermore, new and available information on the best operational urban strategies need to be provided to these actors at a regular basis.

- Governments in developing countries, regional and national political bodies and associations – Yet once more, the actors need to be convinced that urbanization is a decisive challenge and administrating the process is one of the greatest ways to meet the goals of securing tenure for the world’s poor. The actors need to be frequently up to date and reminded about why urbanization is becoming a vital dilemma in order to create the indispensable political determination. Here, the key is to lobby the actors in order for them to generate the suitable legal and policy framework for secure tenure. It is essential to provide success stories from others parts of the world to the actors.

- Local authorities – Local authorities have to take notion to why efficacy of running inclusive cities is key and a major factor in combating the slums. They need to be educated in how to persuade involvement from all stakeholders and actors within a city, since, after all, it is one of their duties (although too often forgotten). Practices from other parts of the world should be brought in, and city-visits and cooperation with other local authorities and cities from other parts of the world should not be underestimated. Furthermore, the local politicians and actors should get a crash course in how to be dealing with and “working” the media and the journalists to ensure better urban governance.

- Civil society actors, NGOs, private sector and journalists – The role of these actors is immensely imperative, hence they need to be resourced with the information on how they can play their part. Regular information about the state of their city and how they can participate and/or encourage further participation is important. Again, best practices and success stories from other parts of the world could here be a great asset.

- Slum communities – The slum communities need to be empowered through social mobilization. Educating, inspiring, and guiding them to learn more about their rights and implement the same is very important. They need to recognize that progress is genuinely possible and through mobilization it can be reached.

2.7.2 Local dimensions

This segment renders a general idea of national policy reforms, institutional preparations and precise improvements in slums and informal settlements – fundamentals of a sustainable system for shelter delivery, slum upgrading and secure tenure. A policy of inclusion is an essential point of exodus for addressing the requirements of the urban poor and in creating safer and sustainable cities. At its best, security of tenure needs to be enclosed in national laws and, where suitable, in national constitutions.
As UN-Habitat writes; “The legal recognition and protection of secure tenure is one of the most significant steps that a national government can take towards giving expression to housing rights and to provide legal protection to the marginalized sections of society”, (UN-Habitat, 2005, p.54).

- Shelter delivery

Previous shelter policies have the tendency to verbalize and confer about the urban poor, yet, still, never acknowledge and recognize them as both a resource and a genuine development partner. The urban poor possess a valuable resource which cannot be replicated by any authority, government or NGO – the energy and ingenuity of the homeless and inadequately housed. The majority of governments does not have the aptitude or the resources to guarantee the stipulation of housing for all, nor is this expected, but what could and needs to be done by the governments is to enable slum dwellers and their organizations to participate directly in decisions about how shelter is delivered. UN-Habitat concludes; “Recognition of the poor as a resource leads invariably to a rethink of the question of housing subsidy. Rather than labeling subsidies as bad or good, national policy frameworks are about examining the means by which subsidies are delivered and instituting systems of local management that build the capacities of the urban poor, as well as leverage their saving and deepen their sense of ownership and responsibility” (UN-Habitat, 2005, p.56).

Another key factor in shelter delivery, as a part of secure tenure, is the revitalization of housing finance institutions. In many of the developing nations these institutions are crumbling down as well as weighted down by massive corruption, structural adjustments, administration and bureaucracy. Sanitation in such key institutions is vital for the survival of shelter delivery.

- Land and tenure

In terms of granting secure tenure, a number of associated policy objectives will arise. One of these is to enable and guarantee a proficient and skillful management of an open land market. Transparency is elementary in these matters, as it is recognized to be imperative in the struggle against corruption and exploitation. This includes suitable scheduling principles, implemented through fundamental measures and supported by a managerial ability proficient to preserve an efficient land information system. UN-Habitat explains; “Specific technical issue include cadastral systems, the recording, registering and updating of property titles, and a capacity to ensure that this happens within acceptable time frames. ... Crucial as well is the establishment of tenure systems that are favorable to the urban poor and that are relatively simple to administer by local authorities. These include interim or incremental approaches to title – such as permission, a right of use, or block titling – that can provide a means to stabilize land markets that is equitable and realistic”, UN-Habitat, 2005, p.57.

- Urban Services and Infrastructure

Urban infrastructure is essential to any society and city. Research shows that it is the very poorest members of cities that pay the highest per unit price for services such as water and energy, reinforcing the cycle of poverty (UN-Habitat, 2004).
Strategies for housing rights, secure tenure and sustainable cities is ever so interlinked with a decisive advance to the provision of essential services. The provision of clean water and the treatment of waste water is without a doubt the single most important urban service, hence radical measures are needed in order to improve today’s obsolete standards. Transportation is related to the problems of forced eviction and relocation, hence it’s of the outmost significance that large-scale infrastructural and housing projects are based on participation and partnership, where all involved actors have a say. Negotiation mechanisms and effective policy frameworks should therefore not be underestimated nor overlooked.

- Housing Finance and Micro-Credit

In urban situations like the ones described through this study, one can easily conclude that long term mortgage loans are not only unsuitable, but destructive and demoralizing to the poor. A new way of thinking is needed in this area, and as UN-Habitat observes, “Access to secure tenure may in some cases make a positive contribution in improving access to credit. Access to small amount of credit, with short-term maturities is pivotal in supporting a sustainable and vibrant shelter strategy. Some of the most successful poverty-reduction and housing credit models have been based on the poor organizing themselves into savings and collectives and accessing micro-loans from a locally managed, rotating fund”, UN-Habitat, 2005, p.58. Unusual approaches to housing finance are indispensable at this point.

- Institutional Arrangements

National policy is to be perceived as possibly the single most vital instrument for the endorsement of secure tenure, shelter frameworks and slum upgrading. In order to convert national policy into implementation, its prerequisite is a general intensification of the capability of local governments as well as the institutional preparations essential to aiding partnerships. The way to go, may it be rehabilitation authorities assigned to implement shelter delivery, or other counterparts, its key to have in mind that “the objective of such institutions is to provide a forum for diverse interests to mediate contested views of development, and potentially to mobilize resources (international and domestic) and implement large-scale slum upgrading and urban poverty reduction initiatives”, UN-Habitat, 2005, p.59.

Looking back at the past, one can only recognize the fact that slum upgrading was marginalized to specific projects in precise parts of a city, and hence when a project was deemed to be “completed” or ran out of funding, the institutions accountable for the project seldom outlived the timescale of the project. The calling of this study is for institutions and structures that are permanent. Slum dwellers and their organizations must have the capability to participate effectively. As discussed in the previous part, Housing Finance and Micro-Credit, savings build capital but also trust. Capital and trust is needed for the slum dwellers in order to be able to reinforce, advance and progress the bargaining position versus local authorities and improving and enhancing their own organizations. Furthermore, there’s a call for the enhancement of competence of civil servants and raising the consciousness of local civic leaders, as well as stimulating local governments and community development schooling institutions (UN-Habitat, 2004).

- Settlement Improvements
As beforehand mentioned, experience is an imperative component in intensifying institutional arrangements, constructing capacities and formulating and implementing national policy frameworks. No matters the precise slum-case or nation at hand, with all its variability’s, there are some common elements. One is the practical negotiation process by which tenure is secured. It is up to the local governments, the slum dwellers and national authorities to supply secure tenure and specific agreements where contracts are arranged in order not to evict any residents of the exacting settlement without due legal process.

As the UN-Habitat puts it, “The engagement of slum dwellers and local authorities in join enumeration exercises can build trust and facilitate the basis for more comprehensive, community-based planning. It is here that capacity can be build all around while at the same time slum dwellers can begin to articulate a vision for settlements improvement. This process may lead to physical mapping and strategic efforts to link the service requirements of the particular settlement to the bulk infrastructure systems of the municipality. Other activities include the valuation of land and improvements, community-generated house modeling, the establishment of community-based mortgage systems”, UN-Habitat, 2005, p.62.

2.7.3 Implementation

In order to succeed with previous stated strategies and aspirations, miscellaneous methods of approach of implementing the same is required. Hence, what follow will is not do’s and don’ts, but rather guidelines and inspiration towards success in improving the situation of people living and often functioning in slums and in informal settlements.

- Normative Debate

The norms and values of informal settlements and slums form the foundation of the strategies and, hence, the normative dialogue will condition the normative groundwork for the endorsement of secure tenure, based on practical and functional research and the recognition of norms, policies and rights based approach to shelter provision.

The endorsement of the normative dialogue ought to be undertaken consecutively at a global, national, regional and local stage. Such commitments will be carried out through certain activities, such as the stipulation of procedures for the recognition of secure tenure, drafting new models of legislation and the encouragement of examples of high-quality policy and unsurpassed practices, provision of guidelines for the formulation and implementation of inexpensive, sustainable and practicable shelter strategies that will attend to the promotion of security of tenure as a fundamental norm. Furthermore, the global community needs to co-operate for the pursuit of enabling and identifying global norms of secure tenure and the preparations of policy papers on essential topics, such as forced eviction and the de-facto responsibilities of tenants and landlords.

- Advocacy
Being able to advocate secure tenure, higher awareness and inspire political will requires diverse channels. The unlike messages can be carried out through a diversity of outputs, such as campaign launches, documenting and providing best practices and examples, establishing new and broader networks, advisory groups and developing a information and media strategy.

Nevertheless, the foundation of the advocacy campaign and aspiration should consist of the targets of shielding and promoting housing rights for all, full urban citizenship for the poor, secure tenure and human dignity, co-operation between governments-local authorities-“ordinary” people and extensive and rejuvenated negotiations instead of the resettlement of the poor.

- Capacity-Building and Operational Activities

This factor is aimed at the realization of the strategies on the ground. Capacity building is of the out most importance for the efficient implementation of long-lasting shelter strategies and security of tenure. Institutional strengthening, training and operational partnerships are key in this matter. Procedures at this stage could vary from legislative reviews and policy assistance to norm-building and implementation of previous tools declared for.

Furthermore, one should not discharge the magnitude and significance of support and facilitation of preparation of local authorities, improving the potential and competence of the informal sector in land and shelter development, land regularization and squatter upgrading – not to mention recognizing and prolonging innovative housing finance mechanisms.

- Empowerment of Communities

In general regarding the empowerment of Communities, UN-Habitat (2005) writes in their document “Global Campaign for Secure Tenure”, p.67, “While capacity building is fundamental for institutions to function better, empowerment of communities and households through participatory approaches is equally important to promote security of tenure and to accomplish adequate shelter for all”. As previously mentioned, broad and frequent community participation and decision-making in the planning and management is wished-for, not to overlook the various processes involving land, housing and infrastructure. Formulation of community policy documents and frameworks that relate to micro-credit loans and community-based housing is something to strive for. To initiate, sustain and finance such activities is most welcome and will contribute to the accomplishment of aspired goals.

- Monitoring and Evaluating Progress

Instigating a monitoring and evaluating mechanism to keep track of development made towards secure tenure forms a vital element of the secure tenure campaign. There is an immense need for the development of various indicators at each level – global, national and regional – that will assist in the assessment of advancement and improvement in quantifiable terms and make possible for the necessary comparisons among regions and countries (UN-Habitat, 2005).
3 TENURE POLICY

3.1 Background

Improving security of tenure and the property rights for millions of the urban poor is an immense task to be tackled, and there is no option but to acknowledge and confront the situation at hand. It needs to be said that there is no magical fix to all the tenure problems; no single tenure option can solve all the troubles. The best solution – accordingly to UN-Habitat – is to encourage a diverse set of solutions in which social, economical and cultural aspects are enlightened yet even more. Hence, this study will also provide some tenure policies, which are based of UN-Habitat’s previous work, as a complement to the previous strategies for secure tenure. It is not enough to secure the existing tenure for poor people, we also need to take measures in order to reduce the need for new slums and informal settlements – and as mentioned above, this requires a parallel approach in order to increase the supply of planned, legal and affordable land.

3.2 Stabilization, foundation and long-term options

In order to stabilize the current situation and provide foundation for further long-term options, there are a few things to consider (Extraction from UN-Habitat, 2005, p.4);

1) The provision of fundamental, short-term sanctuary for all households in slums and unauthorized settlements is at this stage nothing but critical and elementary for a solid foundation. This can be accomplished through land proclamations or moratoriums, and basic and practical statement by the appropriate Minister is often adequate enough to lessen insecurity and provide stabilization.

2) An inspection of all the extra-legal settlements needs to be carried out, in order to conclude which areas are subject to environmental hazards. These targeted areas, secondly, should be subjected to a sovereign evaluation in order to affirm and establish the proper public, strategic purposes.

3) Finalizing step 2, all residents of the affected settlements should gain the precedence for relocation to sites that are capable to offer a way in to accessible and existing livelihood opportunities and services, for example, not moving them out of the city. Provisional licenses and permits can, and should, be enabled for the occupants, depending on the continuous dialogue with affected local communities in terms of moving the residents to alternative sites.

4) Designate all other extra-legal settlements as entitled to medium term forms of tenure with increased rights, but not necessarily full titles. Where possible, the precise form of such tenure and rights should be based on tenure systems already known to local communities. Customary or communal tenure options, such as communal leases, may be acceptable to residents and can reduce the administrative burden on land management agencies. This will allow such areas to receive services and environmental improvements through a participatory process of physical and socio-economic development.
It will also increase security without stimulating rapid increases in land prices which could attract downward raiding by higher income groups and the displacement of very poor tenants. For unauthorized settlements on private land, options can include land sharing, under which settlers may be provided long-term tenure on part of their site and the landowner develops the remainder. Local authorities can assist this approach if they permit relaxation on planning or buildings restrictions so the landowner can recoup any lost profit or income. Temporary land rental is another way of reconciling conflicting interests.

As mentioned before, to only focus on the improvement of tenure for the existing urban population would not only undermine the task of providing secure, sustainable, practical and socially progressive tenure, but would be critical in terms of preventing new slums and informal settlements. Hence, as stated previously, this requires an approach also focusing on the supply of planned, legal and affordable land on an extent equivalent to present and potential demand (Extraction from UN-Habitat, 2005);

- Rewrite planning policy, principles and managerial procedures to decrease entry expenses and hasten the supply of new legal development. In these terms, options discussed could be decreasing the appropriated quantity of land allocated to roads and public open space, loosening boundaries and limitations on plot use and development and simplifying organizational procedures.
- Present and collect property taxes on the entire urban land, whether developed or not.
- Allowing incremental improvement and expansion of land construction and services stipulation.
- Allowing all households, irrespective of their tenure position and status, to acquire basic services, such as water, sanitation, electricity and make sure of the availability of proper infrastructure.
- Decentralizing resources, capital and responsibilities to the lowest administrative level.
- Intensifying the administrative capability of land administration and land record agencies.
- Modify and strengthen transportation relations between residential, commercial and industrial areas.

3.3 Land Management Policy Options

As UN-Habitat (2005, p.10) writes, “The role of the government housing policy should be to encourage a pluralistic land and housing market, in which a diverse range of suppliers compete on equal terms to meet the needs of different sections of the population. Whilst the state will always need to provide a safety net, its main function within increasingly market driven economies, should be to create a regulatory framework and ‘level playing field’ within which a range of suppliers can operate”.
Housing policy is, and should, be perceived as a part of urban governance, spatial planning and infrastructure. Its main task is to insure security and rights along with access to livelihoods and services. Listed below are five different approaches for achieving these ambitions;

a) There is a greater need for master plans and regulations dealing with the concern of eviction and relocation of unauthorized settlements. With, or without, compensation for the relocated households, such concerns must be addressed within the framework of urban planning, secure tenure and housing policy. The first step is to acknowledge the current situation and, in due time, progress into asserting and dealing with the task itself.

b) In order for the poor to obtain credit and, in the long run, lift themselves out of poverty, not to mention contributing with property taxes to help others, they need to be granted full individual property ownership. One vital necessity to keep in mind is that the further away from the employment-centers one relocates the poor households, the higher the costs will be on the poor, in terms of transport and infrastructural expenses. Hence, the closer to the employment-opportunities the better.

c) The third option aims at providing the low-income groups with the opportunity to live in areas otherwise perceived as unimaginable. Through transitional and midway forms of households, perhaps such as community land trusts, temporary occupation licenses, shares in land-buying companies and different leases, the low-income households can obtain intermediate residence security at prices inferior than official titles would charge.

d) As mentioned before in this study, tenure policy needs to be integrated – and hence not kept apart – with urban planning, infrastructure and such frameworks and policies alike. Different types of tenure (which in their own right provide security and access to credit) should be joint with proficient, resourceful and dynamic land utilization planning based on the priorities and aspirations of the residents and not just the politicians and professionals.

3.4 Engagement with Settlements and Communities

The universal approval and recognition of community participation is not only essential to development and housing policy, but vital and imperative as such. The last two decades has shown that implementation of decentralization, at both a national and local levels, have not only spawned enhanced engagements between local communities and public authorities, but also proven to be a source for aspiration and hope (Cities Alliance, 2006). The transfer from a seemingly obsolete, confrontational approach to the establishment of an engagement advance where strategies and partnerships are key within various level of government, private sector and public and local communities is imminent if not already a fact.

In much of the recent literature it is stated that defining community participation as such is a complex task, hence one cannot start implementing something that is vaguely defined.
This study focuses on community participation as activities and actions shaped to facilitate and enable for the local community an opportunity to contribute to decision-making on such matters interrelated to the upgrading of surroundings in the slums in which they live in. ‘Engagement’ can be interpreted as a consultation, in which the local community provides understanding, awareness and information about the area at hand, or the involvement of the community in creating a vision of its own and actively participating in workings towards it realization. Identified benefits from community engagement and participation include (Effective Interventions Unite, 2002b, p.9-10).

- Involves those who might not normally be included through traditional routes, ensuring that everyone has a voice.
- Identifies the needs of the community, sets priorities for the future and shares control of the local agenda.
- Encourages greater acceptance of the responsibility that communities have towards identifying important issues in their communities and formulating effective solutions.
- Builds community spirit and co-operative working.
- Empowers individuals, ensuring they do not have to accept situations passively.
4 A CASE STUDY OF MALAWI

The following chapter will address the security of tenure – the national policies, implementation and problems – in Malawi. As regards Malawi’s historical progression, demography, economy, development and advancement as such, this thesis will not treat these issues at hand.

4.1 Introduction to Malawi’s National Land Policy

The new land policy process in Malawi started in 1995, whilst the cabinet approval was finally granted for the policy on the 17th of January, 2002. The affected ministry, Ministry of Lands, Physical Planning and Surveys, implemented a consultative approach which mainly aimed at “Building consensus among key stakeholders and thus establish public confidence in the formulation process to enhance chances of implementation” (Munyuki-Hungwe, 2004, p. 88). Presently, the Malawi National Land Policy 2002 is awaiting the formulation of an enabling legislation which is to be finalized before the implementation of the same.

The Malawi National Land Policy 2002 aims to (after Munyuki-Hungwe, 2004, p.88);

- Ensure secure tenure and equitable access to land without discrimination to all citizens of Malawi and encourage land-based investments.
- Ensure accountability and transparency in the administration of land matters and ensure that existing rights of the smallholder are recognized, clarified and ultimately secured by appropriate legislation.
- Establish enabling mechanisms to ensure equitable access to land for all Malawians that will be translated into statutory mandate to prevent extreme land concentration in a few hands, individuals and organizations.
- Instill order and discipline into land allocation and land market transactions to curb land encroachment, unapproved development, land speculation and racketeering.
- Facilitate efficient use of land under market conditions, to ensure optimum benefits from land development.
- Promote community participation and public awareness at all levels to ensure the infusion of environmentally sustainable land use practices and good stewardship.
- Promote research and continuous education of the public on all aspects of the duties and obligations of land tenure, land stewardship and operations of land market.

4.1.1 Guiding Principles

“Land is the most basic of all resources available for social and economic development in Malawi. The existing land tenure system and pattern of land use is the result of antecedent customs, human settlements and demographic processes, modified by legal and economic influences of the colonial era and previous policies on land utilization” (Malawi Government, 2002, p. 3). Following principles are from the Government of Malawi’s 2002 draft for the National Land Policy, by the Ministry of Lands, Housing and Surveys, p. 4;
1) **Land Policy** – Land Policy consists of a whole complex of socio-economic and legal prescriptions that include system of land tenure and influence how land resources and the benefits from the land are to be distributed. Therefore, national land management should entail decision-making and the implementation of decisions about land.

2) **Secure Land Tenure** – Malawi’s macroeconomic performance in 2000 shows the economy has remained quite unsatisfactory in the past five years. There was a 46% decline in the performance of the small-scale agricultural sector and an overall decline in real GDO growth from 3.6% in 1999 to 2.1% in 2000. Failure to reform and secure the tenure rights of smallholders has long been established as the primary cause of under investment, reliance on primitive technology and a fundamental reason for low wages in most rural areas. Because of the continuing deterioration of real incomes at the household level coupled with the heavy dependence of rural communities on the land, it is the Government’s imperative to place land policy at the centre of the nation’s poverty reduction strategy.

3) **Productive and Efficient Land Use** – The thrust to streamline land policy is to encourage citizens with the ability and resources to make productive and sustainable investments in land to have access and security of tenure. However, the desire to improve access also heightens the risk that, if legal security and other assurances of tenure are not provided, especially to customary landholders, land market uncertainty and population pressure may deprive some holders of the right to land. Therefore, the challenge for Malawi is to find the policy framework that will respond to market signals and people’s aspirations about how to use land within the regulatory environment set by the basic laws of the country.

4) **Land Administration** – The administration of land is primarily concerned with controlling land use. Land use is a combination of human activities that occur on land and are specifically tied to parcels of land. Conserving virgin forest, subdividing land to accommodate housing development and zoning an area for commercial and industrial purposes are all forms of land use. There the physical planning perspective provides a framework to reconcile social and economic objectives through the preparation of land use plans that optimize the distribution of private benefits without compromising the welfare of the nation as a whole.

4.1.2 **Land Policy Objectives**

The goal of the National Land Policy in Malawi, as stated by the Government, is to ensure tenure security and equitable access to land, as well as practice an ecologically balanced use of land and land based resources. Building on these aspirations, in order to succeed, several factors are illuminated so as to reach the Land Policy Objectives (From the Government of Malawi, 2002, p. 5);

a) *Promote tenure reforms that guarantee security and instill confidence and fairness in all land transactions;* Guarantee secure tenure and equitable access to land without any gender bias and/or discrimination to all citizens of Malawi as stipulated under
Article 28 of the Constitution. Further, instill order and discipline into land allocation and land market transactions to curb land encroachment, unapproved development, land speculation and racketeering.

b) *Promote decentralized and transparent land administration;* Ensure accountability and transparency in the administration of land matters, and guarantee that existing rights in land, especially customary rights of the smallholders, are recognized, clarified and ultimately protected in law. Furthermore, to set guidelines for establishing economically viable ceilings on land ownership that will be translated into a statutory mandate to prevent extreme land concentration in a few hands or individuals and/or organizations and extreme fragmentation.

c) *Extend land use planning strategies to all urban and rural areas;* Extend land use planning and strategies for disseminating land information to ensure effective utilization of land in urban and rural areas, and facilitate efficient use of land under market conditions to ensure optimum benefits from land development.

d) *Establish a modern land registration system for delivering land services to all;* Provide formal and orderly arrangements for granting titles and delivering land services in modern and decentralized registration system that support local governments throughout Malawi.

### 4.1.3 Summary of main policy recommendations from the National Land Policy

What follows will be a extracted summary of some of the key recommendations made by the Government of Malawi, the Ministry of Lands, Housing and Surveys, in their Malawi National Land Policy from 2002 (p. vii).

a) **Distinction between Government Land and Public Land**

*Government Land* will henceforth refer exclusively to land acquired and privately owned by the government to be used for dedicated purposes such as government buildings, schools, hospitals, public infrastructure or made available for private use by individuals and organizations.

*The Public Land* categorization will be reserved strictly for land managed by agencies of the government and in some cases by Traditional Authorities in trust for the people and openly used or accessible to the public at large. This will include land gazette for National Parks, Conservation, Historical, Military, etc.

In the case of *Customary Land*, managed by Traditional Authorities, common access land reserved as *dambos*, community woodlots, etc, will be classified as public land exclusive to member of the Traditional Authority.

Except in the exercise of the state’s police powers, all acquisitions by the government will require negotiation and the payment of compensation at fair market prices for the land as well as improvements on the land.
b) **Land Access and Tenure Reforms**

The Government will allow all customary land to be registered and protected by law against arbitrary conversion to public land. The traditional supervisory role of chiefs, clan leaders, headpersons and family heads in land matters will be formalized and streamlined to allow uniform administrative procedures and transparency in all customary land transactions.

All customary landholders, defined to include entire communities, families or individuals will be encouraged to register their holdings as private customary estates with land tenure rights that preserve the advantages of customary ownership but also ensures security of tenure.

Private leasehold estates shall be created as subsidiary interests out of any private land, including registered customary estates without relinquishing the ownership of the customary landholder. This provision will allow traditional leaders, family heads and individual holders of registered customary land to grant leases.

c) **Land Access for Non-Citizens**

The amount of freehold land in Malawi owned by non-citizens will be frozen and limited to freehold land already registered to non-citizens as of 17th of January, 2002. Non-citizens will no longer be allowed to acquire title to any new freehold estate.

Non-citizens and foreign companies will be permitted to lease land from the Government or directly from private landowners for investment purposes in accordance with their residential, investment and profit objectives.

From the coming into force of this policy, freehold ownership will be a privilege reserved for citizens of Malawi. Foreign investors interested in freehold land for investment purposes will be encouraged to form partnerships and/or joint ventures with Malawians.

In accordance with current Malawi immigration laws, non-citizens currently in possession of freehold estates in Malawi will be encouraged to obtain Malawian citizenship in order to retain their free ownership. The citizenship right of eligible non-citizens will be protected by law and will not be politicized or left to individual discretion.

Subject to existing transfer laws, non-citizens already in possession of registered freehold assets of publicly traded corporations shall be permitted to transfer such assets to other non-citizens only when deemed necessary to preserve the investment value of these companies.

With the exception of a few very special types of investments, such as mining, forestry
and some perennial tree crops such as tea, most leasehold terms for industrial and commercial investment purposes throughout the world generally are for less than 50 years, with renewal clauses allowed. For that purpose, the standard leasehold term for land leased for investment purposes in Malawi will also be for a renewable term of 50 years or less.

The standard leasehold term for owner occupied residential development will remain 99 years with renewable clauses allowed.

d) Land Use Planning and Registration
Land use planning will be extended to all rural and urban land, including freehold, leasehold and customary estates. However, the declaration of a planning area will not automatically require the conversion of all customary land to public land, as has been the practice prior to this Land Policy. Instead, all landowners in such planning areas will be required to comply with approved planning and development regulations.

Urban physical planning and development controls will be enforced to discourage speculation, and guidelines for rural land use planning, conservation and environmental management will be developed by Local Planning Authorities and Community Development agencies to guide rural and urban land use and development decisions.

To avoid lengthy and costly delays in the granting of land titles and the issuing of leases, land administration responsibilities will be decentralized and District Land Registries established in each district to record all land transfers, conveyance and title registration, and to offer surveying land management services.

e) Land Administration and Dispute Settlement
In the interest of Malawi’s economic and social development, the Land Policy provides guidelines designed to encourage certain cultural attitudes and traditional land institutions to change in line with contemporary cultural norms.

The Government strongly supports gender sensitive access to land and calls for changes in inheritance laws to allow the remaining spouse, children and especially orphans to inherit the property of their parents even when the deceased parent or parents die without a will.

The land administration role and responsibilities of Chiefs, Clan Leaders, Headpersons and Family heads will be formalized and made more democratic and transparent.

The government will install special protections for the land rights of minors and place a legal duty on Chiefs, Headpersons and adult members of the family to protect the land rights of a surviving spouse and children in both matrilineal and patrilineal
Inheritance areas throughout Malawi.

In areas with higher than normal land pressure, the Government will encourage community-based land acquisitions and development strategies to ease land pressure and secure the resources necessary to support the resettlement of land starved households.

4.2 Implementation strategy

In order to be successful in the implementation of the National Land Policy, several factors are illuminated as imperative for the progression of the policy. Following strategies were composed in the “Malawi Land Reform Programme – Implementation Strategy 2003-2007”, by the Ministry of Lands, Housing, Physical Planning and Surveys, 2004.

4.2.1 Tenure Security

Firstly, urban squatter settlements require acknowledgment from all of the concerning parts, such as politicians, ministries, the judiciary system and urban dwellers alike. It’s vital that the land legislation include provisions that preserve tenure security, particularly for the vulnerable groups in society. As is stated in the implementation strategy, p. 8, “Activities under this result area include public awareness of the National Land Policy and the implications of it’s provisions; drafting and adopting a legal framework for implementing the Land Policy as well as including land as property in the Wills and Inheritance Act; surveying, registration and titling of customary land; provision of serviced plots in urban areas; formalizing the rights of urban squatters; reviewing and rationalizing costs of surveying and registration; reviewing surveying and building standards; encouraging people to prepare wills and also educating them on the contents of the Wills and Inheritance Act”.

In order to be triumphant, several key-stakeholders need to be implicated in the procedure, such as the Ministry of Lands, Physical Planning and Surveys, the Ministry of Justice and particularly the Law Commission, the land developers, the district assemblies and the local communities to name a few.

4.2.2 Access to Land

As is stated, equitable access and distribution of land will in particular advantage the less fortunate people and is anticipated to relieve pressure from areas of land scarcity. The strategy is emphasizing on fairness in access to land and its distribution depending on needs and requirements according to the carrying capacity of the land and its use.

It is necessary to regulate access to land by non-citizens but there is need to reconcile this issue with the provision in the Constitution.

The Ministry writes, “It has been noted that there is gender discrimination in access to land ... cultural practices impose unnecessary restrictions to accessing land. Widows/widowers for example have been dispossessed of land holdings after remarrying; and also influential members of clans make unilateral decisions on land, very often without prior knowledge of other members of the groups” (p. 9). Accordingly, a limit should be set on the maximum size
of land an individual or organization may acquire for a particular use. Further, there’s a need for a scheme of land taxation on all land categories (Government of Malawi, 2004).

The ministry concludes, “This result area calls for extensive Information, Education and Communication effort on family planning; putting in place legislation that discourages discrimination on grounds of gender or vulnerability; implementing transparent and accountable land allocation systems; and increasing tax on land to realistic levels that will discourage underutilization and speculation. In addition, non-citizens should only be allowed to lease land after furnishing evidence of investment plans and irrevocable proof regarding availability of capital” (p. 9).

4.2.3 Land Governance and Administration System

It is absolutely vital to set up a mechanism for eradicating multiplicity in land allocation and corruption. Further, a distinction must be made between rural and urban land, since the parameters differ when handling the two categories. There’s a great require for an instrument to deal with encroachment (Government of Malawi, 2004).

The Government further states in the implementation strategy that “The Government intends to use the existing judicial and local government structures for land governance. Land committees and tribunals shall be sub-committees of the existing development committees. In the land administration system Chiefs will have their roles spelt out clearly according to decentralization policies and laws. In addition, there are conflicting provisions in land related Acts. These discrepancies will be sorted out through the special Land Law Commission. The land reform implementation strategy needs to spell out the role of the private sector. Furthermore, there should be a component for economic empowerment, to facilitate the acquisition of land by the landless and land poor communities” (p. 10).

4.2.4 Sustainable Land Use

The National Physical Development Plan needs to be renewed since it’s obsolete and hence – consequently – so are the land use plans. Environmental Impact Assessment conditions need to be stronger regulated since they are not implemented nor enforced. Through these measures the Government of Malawi and the Ministry hopes to reduce unauthorized developments and environmental degradation. The implementation strategy states, “Local authorities shall be encouraged to come up with relevant land use planning and development bye-laws that are enforceable and applicable to particular local areas. Every effort will be made to have land information and records readily available and up-to-date” (p. 10).

4.2.5 Capacity Building and Training

In order to improve the current situation, the Government of Malawi has stated their intentions to make it possible for further training of land administration and management staff, as well as planners, surveyors, architects and valuation officers. It’s stated in the Implementation Strategy document, p. 10, that investments will be made in order to upgrade
and expand the inadequate and outdated equipment of the Ministry of Lands, Physical Planning and Surveys. Further, new vehicles will be bought and the present ones will be upgraded. The Government will strengthen the role of the private sector in supplementing capacity in relevant disciplines. Also, HIV/AIDS will be integrated in the capacity building program.

4.2.6 Information, Education and Communication

The Government of Malawi identifies and proposes strategies in order to progress the issue at hand; “Many people in the country are not conversant with the contents of the National Land Policy and the roles they are required to play in order to contribute to its successful implementation. A properly targeted programme on Information, Education and Communication is therefore essential in order to reduce the awareness gap as well as engender a sense of commitment and ownership for the policy recommendations. The National Land Policy document needs to be condensed into a more user friendly manual and translated into some of the vernacular languages such as Chichewa, Tumbuka, Lomwe, Tonga, Sena and Yao. A mass media campaign should be launched on the radio, through drama, poems, music and sensitization meetings held with area development committees, village development committees as well as other influential groups. In essence, the content of the Information, Education and Communication programmes should be demand driven. District and regional officers shall at the meantime be used to educate the general public while exercising their normal duties. Training materials will then be developed on the basis of input from the target audiences, to underscore ownership and long-term sustainability. In the medium to long term, land issues should be incorporated in school and college curricula” (Government of Malawi, 2004, p. 11).

4.3 The Quandary Issues

In terms of security of tenure, housing and land in Malawi, some difficulties can be defined. These are the primary obstacles for the implementation of the new Land Policy agenda and security of tenure in Malawi. Vital to mention is that the flaming issues related to land and security of tenure in Malawi are numerous, assorted and in numerous of ways symptoms of a much deeper social discontent and economic hardship. What they on the other hand have in common is that they all sum up to thwart the thriving implementation of Malawi’s National Land Policy.

What follows is an overview of the issues at hand in Malawi, separated into two categories with the distinction that one headline regards mainly land issues, whilst the other retails the dilemmas connected to several diverse factors and features. The points were excerpted from the Government of Malawi’s two documents written in 2002 and 2004.

4.3.1 Land Matters

- In common with other Southern African countries Malawi inherited a rural settlement structure in which white farmers held some of the most fertile and well-watered lands. The effect of the concentration of freeholds in districts settled by the white farmers in the Southern Region and subsequent expansion of estate agriculture after
independence is a relatively skewed distribution of freeholds in the country. As a result there is an urgent need for strategies to relieve land pressure in the severely affected parts of the country (Government of Malawi, 2002, p. 10).

- On the basis of estimates made in 1994, 2.6 million hectares of suitable agricultural land remains uncultivated in the rural areas. This means that approximately 28% of the country’s total land area is lying idle. Similarly, speculative holding of urban plots and lack of infrastructure causes artificial shortages of urban development land (Government of Malawi, 2002, p. 10).

- Squatting in gazetted forests, national parks, on private land and other protected areas in land pressure districts has become frequent and sometimes violent (Government of Malawi, 2002, p. 10).

- Land pressure has substantially increased land tenure insecurity and uncertainty despite attempts by communities to consolidate access rights both physically and legally. The difficulties created by land pressure and tenure insecurity manifest themselves through increased land degradation particularly in customary land areas (Government of Malawi, 2002, p. 10).

- There is increasing evidence, as the economy becomes more commercialized and less dependent on subsistence agriculture, access rights defined by customary rules are also becoming more private and restrictive than before. In the absence of clear and transparent policy, it is difficult for most citizens to understand the evolving rules of access and security of existing customary land rights (Government of Malawi, 2002, p. 10).

- The evidence of underutilization of land, obstruction of watercourses, illegal development and unplanned or unregulated buildings in urban settlements indicate a failure of development controls. These are occurring in the context of all land tenure categories and land uses (Government of Malawi, 2002, p. 10).

- The majority of Malawi’s arable land of both leasehold and customary tenure is underutilized, unregistered and/or legally not recognized (Government of Malawi, 2004, p. 3).

- There are three legally recognized types of land tenure in Malawi; customary, private and public. Customary land tenure is the most widespread category. However, other sub-tenures that are commonly practiced by customary land holders (renting and borrowing) are not legally recognized. Registered private land (freehold and leasehold) accounts for less than 8% of the land area (Government of Malawi, 2004, p. 3).

- Urban land development accounts for less than 2% of the total land area in the country, but accommodates a rapid and increasing percentage of the population (Government of Malawi, 2004, p. 3).

- The land sector impacts on poverty three main ways; inequitable access to productive resources and processes, unequal land distribution and land tenure insecurity (Government of Malawi, 2004, p. 3).

### 4.3.2 Miscellaneous Concerns
Secure rights to land underpin the sustainability of livelihoods, particularly among rural farmers, by providing a secure basis on which to plan and invest for the future and even the opportunity to consider broad livelihood options including urban migration (Government of Malawi, 2004, p. 3).

Many of the poorest groups (female-headed households, orphans, HIV/AIDS victims, migrant farm workers, peri-urban slum dwellers, tenants and internally displaced persons) are also the most insecure with regard to land rights (Government of Malawi, 2004, p. 3).

Despite the predominance of matrilineal and matrilocal land access rules, which favors women, women’s decision making power over land use is generally weaker than that of men. This factor is a fundamental determinant of poverty and social disadvantage, particularly in female-headed households (Government of Malawi, 2004, p. 3).

According to the National Statistical Office the country’s population, estimated at 9,8 million in 1998, has been growing at about 1,9 % per annum, with an average population density of approximately 105 persons per square kilometers. However, this population is not evenly distributed throughout the country. The Southern Region (146 persons/sq. km) has some of the highest population densities in the country and is urgently in need of population relief and land redistribution solutions (Government of Malawi, 2002, p. 10).

Evidence of encroachment by nationals from Tanzania, Mozambique and Zambia into Malawi can be attributed to the fact that many border communities share linguistic and blood ties with one another and hence claim reciprocal rights of access to land and their kinsmen. Thus the existence of international boundaries and territoriality is often ignored (Government of Malawi, 2002, p. 10).

The fact that the creation of some National Parks and Protected areas involved the displacement of entire villages, some of which were forced to move into valleys and uncultivable areas remains a source of grievance making some parks and protected areas vulnerable to encroachment (Government of Malawi, 2002, p. 10).

Particularly prone to illegal development is the lakeshore, which has from immemorial been under the jurisdiction of Traditional Authorities. In the recent rush by individuals and corporations to erect private leisure cottages and hotels, planning and development problems have gone unchecked (Government of Malawi, 2002, p. 10).

4.4 Reflecting the policies

This section of the case study will converse on some of the examples from real life in Malawi, after the spawning of the National Land Policy and the implementation strategies.

4.4.1 Malawi Growth Development Strategy

In the annual review of the Malawi Growth Development Strategy, 2006-2007, the targeted number of loans granted – whereas the loans are the output indicator for the number of conductive frameworks for improved access to adequate housing services – were 50 to the number. The actual loans granted during 2006/2007 were merely 30. Additionally, the
enhanced land tenure security, here measured by the indicator of number of districts automated, had a target of 28 districts, while the number that was reached was 0. The aspirations of the number of areas that were supposed to be adjudicated to locals and the poor were 250, whilst the actual number reached was 100. Furthermore, the aim for the number of development applications that should have been processed for land tenure was set to 2480, while 1863 were reached. The number of plot applications processed, for housing and settlement, was targeted to 2550 whereas 2000 was reached (Government of Malawi, 2008).

The segment of the Malawi Growth Development Strategy that treats the Land Management, Housing and Tenure facet, is based on the National Land Policy (portrayed above). Overall, the sector registered poor performance for the 2006/2007 fiscal year. As it’s stated, “On provision of conducive framework for improved access to adequate housing services, performance was on average 10 percent below target. On number of development applications processed, it was about 23 percent below target. On number of plot applications processed, it was about 22 percent below target. Enhanced land tenure security missed their targets by 62 percent” (Government of Malawi, 2008, p. 76).

4.4.2 Community Based Rural Land Development in Malawi

The exceedingly disproportionate land ownership patterns in Malawi, accredited in particular to the 1967 land reforms which, instead of remedying the imbalanced land ownership and allocation patterns, instituted mechanisms for converting customary into leasehold that strengthened the postcolonial agricultural approach that distinguished estate farming from smallholder agriculture, a format in which the latter was marginalized in terms of the crops that could be grown and right of entry to credit and input markets (Chirwa & Chisinga, 2008).

As the authors write, “While 55% of smallholder farmers cultivate less than a hectare, there are about 30,000 estates cultivating between 10 to 500 hectares. In addition, it is estimated that about 28% of the country’s cultivable arable land (about 2.6 million hectares), falling under freehold, lies idle in the rural areas. While the advent of democratization in May 1994 provided a rare opportunity to address the chronic imbalances in the patterns of land ownership and distribution, the major development strategies that the government has since implemented, notably the National Land Policy, the Malawi Poverty Reduction Strategy and the Malawi Growth and Development Strategy, have strikingly shied away from addressing the land question in a decisive manner.

For instance, in the Malawi Poverty Reduction Strategy, land re-location and distribution was ranked seventh in terms of priority pro-poor strategies in the agricultural sector” (Chirwa & Chisinga, 2008, p. 2).

The worsening land situation has precipitated a series of land incursions and occurrences of encroachment transversely over the country. These have been rather prevalent in southern Malawi, predominantly in the districts of Thyolo and Mulanje where land insufficiency is mainly severe. The result of the deterioration of the diverse policies and strategies is that it has prompted the government to spawn new policies, such as the Community Based Rural Land Development Program, in order to deal with the historical unfairness and disproportion in land ownership, land tenure and the security of tenure.
To conclude, the authors state that, “The Community Based Rural Land Development Program is being implemented against the backdrop of protracted efforts to enact a new land legislative framework to facilitate the implementation of a new land policy. The reforms in the tenure system are transitional, in which group titles that offer rights under leasehold title will eventually be converted to family customary estate once the new Land Act is in place. The lack of a legal basis for the implementation of the new institutions embodied in the new Land Policy has created considerable anxiety and has led to attenuation of property rights in the Community Based Rural Land Development Program” (Chirwa & Chisinga, 2008, p. 2).

It needs to be said that the benefactors of the 1967 land reforms – chiefs, politicians, senior civil servants and high ranking officials and industrial employees – have an interest in the existing land tenure blueprint. They are not ready to give up immense proportions of land amassed under the sponsorship and protection of the 1967 land reforms devoid of reimbursement, which has affected the swiftness and thrust of the reforms leading to the enactment of a new land legislative framework.

4.4.3 Customary Land Tenure in Rural Malawi

In his working paper (2002) Sholto Cross defines the National Land Policy in Malawi as “The aim indeed is to promote a land market for customary land, by encouraging communal property regimes to recognize the exclusive property rights of both groups and individuals, with the demarcation of boundaries, defining of ownership, and the formal recording of transactions at open market value” (Cross, 2002, p. 28). Then, what scenarios does the long-term strategy hold out for the smallholder sector? One aspect could be that it advises an unswerving legal structure for the securing of rights. The reforms will be implemented at a decentralized level and incorporated with improvement purposes in mind. Cross continues and writes that “It accords validity to the customary usufructuary basis of entitlement and sets out to protect this, while encouraging further progress along the scale towards individual ownership. It recognizes the value of land as means of transferring wealth between generations, as collateral for credit, as a source of social security, and as an essential entry point into the web of social networks which upholds individuals and families within Malawian society” (Cross, 2002, p. 29).

Although with all the intentions being well, one need to be reminded that there are a few unease’s to take into account. For example, there are several reasons why formal land sales markets are exceedingly unconstructive towards the underprivileged. Do the fresh institutions and authorities for obtaining back the land for the customary sector from leaseholders embody an adequate form of support and backing to counteract the negative tendencies? Cross writes that “Essentially it is not only a land market which is being created, but a political market, where the vested interests of leaseholders controlling large and under-utilized estates will interact supposedly at the local level with administrators and other political interlocutors representing the smallholders of the customary sector. This calls into question the whole nature of the relationship between Members of Parliament and their
constituencies, and the extent to which political parties validly represent the popular interest” (Cross, 2002, p. 30).

Further, the quick-fix and temporary advance may be inquired as well. Cross explains that “It is miniscule in scale, beyond the resources of the state, and depends entirely on donor attitudes, at a time when donors have demonstrated a strong antipathy towards the government’s management of the food economy in general. It is also administratively intensive, when it is already the case that the bureaucracy is severely under-performing. The scheme may also fall within what Lipton has described as the ‘Two Great Evasions’ of land policy, being settlement schemes and the reform of tenurial conditions. These typically fail to achieve their goal because they do not attack the rural power structure, or the fundamental unequal distribution of land (Lipton, 1974). The redistribution proposed would at best meet the needs of 10 per cent of new households, which are annually created, and hardly make an impact on the land hunger of some 1.8m households” (Cross, 2002, p. 30).

In general, the policy sketched out, advises a land reform which depends on a immense amount of greatly vague variables; charitable donor support, the supplementary formulation of land policy mechanisms and tools which can supply the foundation for challenging land use practices on the inadequately managed leasehold estates, the augmentation of the powers and organizational capability of the district attorneys in coincidence with local politicians to follow claims against such estates and the encouraging aid from Members of Parliament and political interests to prop up a practice which will materially affect the land-holding welfare of the renter class.

4.4.4 Registration of Land and Security of Tenure

Accordingly, as mentioned above, it would seem that the Land Act, the National Land Policy, is not only rigid, bureaucratic and in-flexible in its principals, but it also favors the superior and wealthier shareholders. Traditional leaders, such as heads of clans, elders and appointed tribal chiefs, are powerless against ministerial powers since according to the Land Act their powers and authority to administer customary land are delegated by the appointed minister – granting the minister sole power of the land without any – or little – democratic influence from the grassroots.

Paul Kishindo writes, “Insecurity of tenure on customary land emanates from the unfettered exercise of ministerial powers to dispose of customary land enshrined in the Land Act, instability of marriages and the status of the landholder in the community. Under the Land Act, customary land is treated as a subset of public land, the right to which is vested in the president. The minister responsible for land matters has vast discretionary powers over it. It can be taken by the state and converted to public land without compensation being paid for its loss. Leases can also be created out of it. Although ideally only unallocated land can be allocated to lease applicants in practice even land under use has sometimes been allocated, thus depriving families of land they may have used over generations and to which they have a historical claim” (Kishindo, 2006, p. 15).

The land policy necessitates that the complete land under the authority of a chief
be defined and recorded as a “traditional land management area”. Within this area will be defined customary estates. These are the separate and singular family assets. The property privileges enclosed in a customary estate will be usufructuary rights in timelessness and when disclosed, the title of the proprietor will have complete authorized standing and can choose to lease, use or utilize as security for a mortgage loan (Kishindo, 2006). Nevertheless, for the reason that the concern of the landowner of a customary domain is usufructuary, the record-keeping of a sale, lease or mortgage is not with unconditional right and will be of matter to the superseding – and frequently intervening – benefits of the community and autonomous rights of the state (i.e. mineral rights). Even after the ratification and sanctioning of legal status to customary estate, the state cannot persist to treat customary land as if it is not owned by anybody, hence even after the new Land Policy, it’s still failing with intended aspiration of decentralization and democratization with land holding, security of tenure and new housing for the poor.

The National Land Policy does not – by any means – specify who should be the titleholder of a customary estate, consequently an immense ambiguity is left aside which raises latent difficulties. Kishinodo clarifies, “Assuming that title will be in the name of the head of household, who in the Malawian cultural context is assumed to be male, the question that will arise in a matrilineal social system is whether a woman’s matrikin would allow a person they consider a ‘stranger’ to become title-holder to land they consider their heritage. A further question that arises is whether, on the death of a wife, an uxorilocally resident man who is title holder to a family holding will be allowed to remarry and to bring the new wife to the village where he is resident. These scenarios appear unlikely as long as matrilineages regard land as their own and the men who marry into the group as ‘strangers’. The existence of a registered title to the land held by a man in an uxorilocal situation may not guarantee security of tenure as lineage members may resort to behavior that may compel him to leave. Arson and witchcraft are known to have been used to drive some families and individuals out of villages” (Kishindo, 2006, p. 16-17).

4.4.5 Demand for Housing, Incomes and Ability to Pay

The majority of the population in Malawi has an income significantly lower than qualifies them to lend money from the formal sector. In a recent paper, 2010, UN-Habitat confirms that very few of the policies and strategies in Malawi “... address the needs of the lowest 80 per cent. To purchase a house at the upper end of the market (MWK 8 million/ USD 57,000) using housing finance at market rates and a 15-year repayment period, a household head would need to have a minimum monthly income of MWK 102,000 (USD 730) (less than 1 per cent of the population)” (UN-Habitat, 2010, p. 30).

For the households at the lowermost end of the scale – earning less than 5,000 MWK per month – only so called “self-help” housing is obtainable and reasonably priced, where you pay for the material and construct your own housing. UN-Habitat states that “Monetary incomes in Malawi are so low that few households can afford a formal sector
Formal housing is built with materials and energy that are traded on global markets; they can only be reduced in price so far unless massive subsidies are given” (UN-Habitat, 2010, p. 30-31).

Not only do the policies, i.e. the National Land Policy, implemented backfire in terms of taking notion to the unfeasibility for the poor purchase a home, but also that there is a severe shortage in quantity of available housing for the ultra-poor if they manage to gather the capital needed. UN-Habitat concludes, “Homes in Malawi are small, with urban medians of midst four and five individuals. Given that most households have at least one living room and one bedroom, occupancy rates are quite low for urban Africa. This is one of the telltale signs of a lack of shortage in quantity” (UN-Habitat, 2010, p. 32). There is a vast demand for new housing. The extraordinary population development rates in urban areas in Malawi will spawn tremendously great demands for new housing in the subsequent decade. Each year between 2009 and 2020, there will be a requirement for at minimum 21,000 residences in urban areas, about half of which are expected to be required in Lilongwe. Further, there is a problem of the quality of much of the housing stock, especially with respect to servicing, which needs improving in existing housing areas (UN-Habitat, 2010). The policies are failing to take these matters into the equation, and as UN-Habitat writes, “In light of the huge need for new housing, it is vital that the informal system of land allocation and housing development is recruited into the housing supply policy framework and that focus is not turned once again on the very small elite who can afford formal sector housing as it is currently construed” (UN-Habitat, 2010, p. 30-32).

5 ANALYSIS

5.1 Findings

In terms of strategies for secure tenure, it can be concluded that planners, bureaucrats, architects, investors, politicians and experts are at the top of the hierarchy, making them unapproachable to the grassroots – for whom the development of secure tenure, tenure policy and housing is being progressed – and susceptible to influence that is not aligned and affiliated with the advancement and improvement of the poor. The strategies and policies being assembled and implemented in the majority of cases are tied to foreign aid, with all its flaws, shortcomings and limitations (see 2.1).

The international strategies (see 2.7.1) for secure tenure are in many aspects too abstract, intangible and at times non-comprehendible. The aspirations for international
strategies and “package-deals” to be exported to developing nations have become a substitute for community participation, interlinking democracy and bottom-up perspective. The people have become objects – instead of being perceived as subjects – in the search of the perfect development plan. In its own, the local dimensions of the strategies (see 2.7.2) are profoundly contingent on un-domestic envelopment in planning matters, often leading to an overall, crippling, estrangement of the poor and their needs. Theories, statistics, graphs and results are apparent as indications on progress, but are seldom connected to the reality of the city and its slums. Similarly, the implementation approaches being brought about (see 2.7.3) are of the same un-cohesive, un-realistic manners as its frontrunners, being all about aspirations and fancy phrasing instead of tangible frameworks, structures and guidelines. The tenure policies (see 3) discoursed and projected about amongst the international community are worryingly dependent on capital – domestic and foreign. There’s a great dependency on external affiliation, on the state and “experts”, hence little or no dialogue is being proposed with the poor.

In the case study of Malawi (see 4.4), the provision of conducive framework for improved access to adequate housing services, performance was on average 10 percent below target. On number of development applications processed, it was about 23 percent below target. On number of plot applications processed, it was about 22 percent below target. Enhanced land tenure security missed their targets by 62 percent. Furthermore, the 1967 land reform is to a great extent still in play and is still favoring the wealthy, those in power, politicians and local leaders. The same groups have an interest in the existing land tenure blueprint which is based on the land form from 1967. They are not ready to give up immense proportions of land amassed under the sponsorship and protection of the 1967 land reforms devoid of reimbursement, which has affected the swiftness and thrust of the reforms leading to the enactment of a new land legislative framework. The new programs need to be sanctioned by the same groups and are heavily delayed by the same.

The new Land Act, the National Land Policy, is rigid, bureaucratic and in-flexible in its principals and it favors the superior and wealthier shareholders. Traditional leaders, such as heads of clans, elders and appointed tribal chiefs, are powerless against ministerial powers since according to the Land Act their powers and authority to administer customary land are delegated by the appointed minister – granting the minister sole power of the land without any – or little – democratic influence from the grassroots. The policy drawn out, advises a land reform which depends on an immense amount of greatly vague variables; charitable donor support, the supplementary formulation of land policy mechanisms and tools which can supply the foundation for challenging land use practices on the inadequately managed leasehold estates, the augmentation of the powers and organizational capability of the district attorneys in coincidence with local politicians to follow claims against such estates and the encouraging aid from Members of Parliament and political interests to prop up a practice which will materially affect the land-holding welfare of the renter class – not much influences
are being expected from the grassroots. The National Land Policy does not – by any means – specify who should be the titleholder of a customary estate; consequently an immense ambiguity is left aside which raises latent difficulties.

As many of the strategies are based on theories whereas the politicians, planners and investors provide the foundation for new housing and secure tenure, the underprivileged will be able to generate their own shelters and housing by their own capacity and know-how. Yet, the majority of the population in Malawi has an income significantly lower than qualifies them to lend money from the formal sector. Not only do the policies, i.e. the National Land Policy, implemented backfire in terms of taking notion to the unfeasibility for the poor to purchase a home, but also that there is a severe shortage in quantity of available housing for the ultra-poor even if they manage to gather the capital needed. There is a vast demand for new housing. The extraordinary population development rates in urban areas in Malawi will spawn tremendously great demands for new housing in the subsequent decade. Each year between 2009 and 2020, there will be a requirement for a minimum of 21,000 residences in urban areas. Further, there is a problem of the quality of much of the housing stock, especially with respect to servicing, which needs improving in existing housing areas - the policies are failing to take these matters into the equitation.

5.2 Reflections and discussion

In terms of this thesis objective and questions, it’s understandably with ease one can state that diverse tenure types have been previously identified and this study found no motive in order to revise UN-Habitat’s different tenure types. Although, it’s important to keep in mind that the development of the cities – with all its implications – it would be fair to say that these definitions are not static nor should they be. The international policies were informal to locate and identify, while being more problematic to recognize in terms of being implemented in developing nations. As such, the local policies – the Malawian case study – are aligned with the travesty of the governmental/local ones proposed by the UN-Habitat. They seem to fail to directly contribute to the progression of the poor, whilst cementing the already powerful, wealthy and well-off.

The general pattern seems to be that the international community is in one way searching to endorse and encourage strategies and policies that will undeniably make the recipient-country dependent on foreign “expertise”, investments and loans. In Malawi, i.e. this is as ever vivid. The National Land Policy is highly dependent on foreign aid and is in its shaping reliant on foreign consultants and theories of implementation. There appears to be little reliance on the grassroots within the country and often the projected solutions are seemingly farfetched and not in terms with the actual situation of the poor. The charade and mockery of the underprivileged gets even more vibrant when the past and highly disproportionate land ownership of the land reform in 1967 gets updated into a modern paper – with the help of the international community and its participants - with the same unjust policies without any notion whatsoever to the poor, and call it the National Land Policy.

In essence, the policies provided by UN-Habitat and developed and implemented in Malawi is nothing but rhetoric’s, which has in the past and will in the future
face severe implications. As seen throughout the case study, the implications can be due to lack of capacity, conflict of interest, lack of resources, corruption and it can be too simple because it doesn’t reflect the actual, physical and social problem in the country. The result of this – all in all – is more and more poor living in the slums and without any proper shelter nor ownership of land. The rights to land, secure tenure and appropriate housing, as stated in the national policies in Malawi, are far from reaching the target, nor are the policies in themselves appropriately developed in terms of directly affecting the poor and their ownership – or so the lack of it. The international and national strategies brought forward by the reviewed UN-Habitat are in-coherent with the dilemmas facing Malawi. General blueprints cannot be exported and implemented globally deprived of any consensus with the affected people and the grassroots.

“In discussions about Third World cities, too little attention is given to the potential contributions of free people and democratic institutions. The improvement of human habitats requires the involvement of the ‘users’ of those habitats” (Hardoy & Satterthwaite in The Urbanization of the Third World, Gugler, 1997, p. 276).

6 RECOMMENDATIONS

Throughout this study several problems occurred that were expected and somehow manageable and could be sorted out, yet it seems that one major difficulty is antagonizing all professionals and administrators in the urban progress sector – which is the deficiency or sometimes the absence of dependable and steadfast information on the behavior of land markets and the role of tenure and property rights within them. Furthermore, in coherence with this study, additional quandaries could be researched, namely;

• The informal structure of land quantity and the practices of developers.
• The usage of land by low-income clusters.
• Steadier means of quantifying the grade and frequency of commercialization and monopolization of land markets.
The consequence of authorizing dissimilar types of tenure on supposed stages of security and access to credit.

Even more, how could we in a sound way evaluate the impact of policy changes over time? The variables are frequently immense in quantity as well as the parameters repeatedly being very abstract.

REFERENCES


Chirwa, W. E. (2008). Land Tenure, Farm Investments and Food Production in Malawi. Land Tenure, Farm Investments and Food Production in Malawi


