Pro-poor land administration: Principles for recording the land rights of the underrepresented

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ARTICLE INFO

ABSTRACT

The global land community has accepted that individual land titling on its own cannot deliver security of tenure in a complete or timely fashion, and that a continuum of land rights approach needs to be used. This approach needs to be accompanied by new and innovative pro-poor forms of land recordation to cater for these new forms of tenure. The proposed design draws on conventional land administration systems and the experiences of professionals, civil society and researchers regarding the land tenure systems of the poor and how they work in customary, informal, and post crisis areas. It is based on eight general design requirements, including delivery of preventive justice and co-management arrangements. The design is made up of ten interlinked elements, with an emphasis on a continuum of land recording. The design is only a first step toward a coherent robust framework. Some first experiences are reported, however, further suggested work includes: dissemination and awareness raising; further piloting; incorporation of institutional and political economy analysis; tailoring methods of implementation; and investigating approaches for funding, training, and material resources. Ultimately the pro-poor land recordation system should bring tenure security to the poor at faster rates and lower costs, and should thus enable a foothold on the lower rungs of the property ladder.

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Introduction

A paradigm shift has taken place within the wider global land administration community: individual land titling, on its own, cannot deliver security of tenure to the majority of people in the developing world and is slower than required (Wehrmann and Antonio, 2011; Undeland et al., 2010; Payne et al., 2009; Shipton, 2009; Jacoby and Minten, 2007; Deininger, 2003; Payne, 2002). Less than thirty percent of land is covered by some form of land registration system (Roberge, 2012; GLTN, 2012; Antonio, 2011). The amount only increased marginally since the mid 1990s (c.f. De Soto, 1993). At current rates it would take centuries to get full coverage in many countries. While there is a positive decline of global poverty rate particularly due to developments made in Eastern Asia and China, the number of people living in extreme poverty (people living on less than $1.25 USD a day) is still estimated at about 900 million and about 62 percent of the urban population in sub-Saharan Africa live in slums (United Nations, 2011). The global land administration community has accepted that the way forward to deliver security of tenure is through a continuum of land rights, which allows people to get onto the property ladder. The continuum argues that less conventional forms of land tenure should be recognized and afforded better forms of security and protection (Payne, 2001, 2002; UN-Habitat, 2008a; GLTN, 2012).

The innovative continuum of land rights approach, if implemented at scale, will require the introduction of new forms of land registration (Van der Molen, 2006). Land registration is the aggregated processes of land adjudication, demarcation, surveying, and recording (Henssen, 2010). Here, the focus is on recording. These new forms of registration have been variously described as 'progressive cadastres', 'halfway', 'grass root', 'flexible', and 'pro-poor' (Henssen, 2010). Here, the terms are considered synonymous.

The aim is to differentiate these new approaches from conventional land recording systems – those that were developed in Western European countries over many centuries and proliferated during global colonization (c.f. Simpson, 1976; Dale and McLaughlin, 1988, 1999; Larsson, 1991; Zevenbergen, 2003; Henssen, 2010; Williamson et al., 2010). The contemporary outcomes of these developments are highly centralized, highly accurate, and highly accessible digital land records – but only in the most developed countries. These modern systems come with their own best practices and assessment schemas (Williamson, 2001; Steudler et al., 2004a,b). Many attempts to mimic these systems in less developed, customary, or communal areas have met with mixed results (De Soto, 2000): the required institutional underpinnings are missing. Institutional economists argue these can take

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decades or even centuries to establish (c.f. North and Thomas, 1973; Williamson, 1979). Consequently, recording tools that work within the confines of existing norms and approaches to land are required.

At any rate, the fundamental reasons for undertaking the land recordation process remain. As defined by Zevenbergen and Augustinus (2011), the most important ones include:

- Evidence or proof of land rights including of the transaction, of the parties involved, of the land involved, and of the acceptance by the community.
- Notice to the world, including the state.
- The creation of ranks or priorities between different recorded documents.
- An index linked to the names of the parties, which will facilitate ease of access to information.
- A geometrical index, which facilitates linking the land documents to the ground.
- Easier operations for (local) government for services and to organize other land management activities.
- An increased level of status in the eyes of the state.
- An increased level of status in the eyes of the community, depending on the acceptance by the community of the system, its presence on the ground, the land documents and other services.

In addition to these benefits, a pro-poor land recordation system would also be the first step on the property ladder, and would also be a foundation for capital formation. These benefits are not automatic – certainly not for the poor. Only when the design and implementation is done in a systematic and fit-for-context manner, does land registration or recordation lead to these benefits for landholders. Increased benefits generally lead to additional design requirements in the system. These should be added step by step for a pro-poor land administration or land recordation system to keep down costs. It is not possible to deliver the equivalent benefits found in many Western systems for pro-poor land recordation systems right from the outset. We are arguing that some benefits are better than none at all, and the design proposed is both a first step toward greater benefits over time, as well as a foundation for next steps.

To this end, this paper focuses on the lowest end of the design of a recordation system that targets the urban and rural poor, who are generally the majority of the population in developing countries. The key question, which this paper seeks to address, is 'What does a pro-poor land recordation system need to look like?' The paper aims to develop a new cut-down affordable form of a land recordation system that would make it possible for different types of land rights to be recorded, and operate within a co-management framework with the community. The paper gives an overview of the background, conceptualization process, design methodology, and the pro-poor land recordation system design itself.

Materials and methods

The pro-poor land recordation system outlined in this paper is a result of work championed by the Global Land Tool Network (GLTN). The pro-poor land recordation design is built on completed and on-going work on other GLTN tools such as the continuum of land rights approach (GLTN, 2008a, 2012); co-management (UN-Habitat, 2008b, 2009); the development of pro-poor land information system 'Social Tenure Domain Model' (STDM) (Lemmen et al., 2007; Lemmen, 2010; Antonio, 2011); participatory enumeration (GLTN, 2010); post crisis land tools (Stanfield et al., 2007; UN-Habitat, 2007, 2010); gender evaluation (GLTN, 2009); scaling up grassroots approaches (GLTN, 2008b); and land governance (Palmer et al., 2010; Deininger et al., 2010, 2011).

The process for developing the pro-poor land recordation archetype system involved six phases (Fig. 1): conceptualization, evidence gathering, requirements, design, refinement, and dissemination.

The evidence gathering phase included: an extensive literature review – including the early developments of land administration in Western countries – and documenting experiences with the design and improvement of national registry and cadastral systems in a number of countries from Eastern Europe to Africa; attendance and participation at GLTN organized workshops focused on a range of land issues; and drawing on GLTN and UN-Habitat experiences and anthropological knowledge.

Following the evidence gathering process, key requirements for a pro-poor land recordation system were extracted and used to start the design. This involved articulating the key functions, processes, people, and technical tools required by the recordation system. The first cut design was sufficiently coherent for the basis of an Expert Group Meeting (EGM) on the Development of a Pro-poor Land Recordation Systems with relevant professionals, particularly the legal, notary and registry professionals, held in March 2011, in Paris. Discussions and feedback at this meeting were used to refine the model. Subsequently, a plan for dissemination, including piloting, and further system development was developed. The key results from each phase subsequent to conceptualization are now discussed.

Evidence gathering and requirements

The core requirements of the pro-poor land recordation system, as determined in the evidence-gathering phase, are provided in Table 1. Each is discussed individually in the sections that follow.

Citizens affordability

The need for alternative approaches to land tenure security provision was recognized in the 2000s. Influential works by Payne (2001), Payne et al. (2009) and Deininger (2003), among others, highlighted the limitations of existing approaches: system affordability at the grassroots level was a key issue. In response, exemplar projects emerged in developing countries. These utilized simplified processes and community involvement to achieve far cheaper recordation results (c.f. Deininger et al., 2008; Lemmen and Zevenbergen, 2010). A first set of generic requirements and potential solutions or approaches also emerged (GLTN, 2009; Toulmin, 2009; Benjaminsen et al., 2009; Augustinus and Benschop, 2007; Cook, 2007; and others). These example projects and early models provided starting points for a pro-poor recordation system design.

Another important starting point was that the system had to be accessible to the poor, that is, it should be 'pro-poor' in nature. While poverty has many dimensions, Osiris Blanco (2002), among others, defines what is meant by the term 'poor' in the contemporary context. It can be seen as existence on one dollar a day (1985 levels), or $1.25USD to $2.00USD a day in more recent times. The term 'pro-poor' gained popularity in the early 2000s, particularly in development studies and economics. It was used to illustrate a departure from 'trickle down' theories on economic growth: 'pro-poor' growth favored, or at least better recognized, measuring growth in terms of the 'poor' within an economy (Kakwani and Pernia, 2000; Ravallion and Chen, 2003). The term then gained more widespread use in other study areas including tourism, health, agriculture, and land tenure management. With respect to land, the key message from existing literature, definitions, and metrics was that the poor cannot afford land documents delivered by the conventional systems, which cost between $27USD and $603USD (even $2,800USD) a parcel during adjudication in Latin America (Barnes,