

INNOVATIONS IN LAND TENURE, REFORM & ADMINISTRATION IN AFRICA

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INTRODUCTION

The **key focus of this presentation** is firstly on a quick review of the current position in regard to innovations in land reform and land administration in Sub Saharan Africa. The **second focus** is on suggesting some ways of moving forward to strengthen these innovations, to be able to deliver tenure security for the poor, both in rural and urban areas. Land reform will be shown to be an important context for innovative land administration approaches. We will briefly examine some of the better known innovative land administration approaches in Sub Saharan Africa, such as Mozambique and Namibia. Then we will discuss some of the more recent findings concerning affordable and innovative ways of delivering security of tenure in Uganda, Tanzania and Ethiopia, where the World Bank, often partnered by UN-HABITAT, has been recently working. We will also make brief reference to other innovations globally to indicate that unconventional ways of delivering security of tenure is becoming a growing global trend.

Having said this, it is nevertheless clear that we have insufficient innovative land tools to deliver affordable security of tenure at scale to the majority. Rather, we need to develop new land tools to be able to reach the goals set by the Millennium Development Goals and Targets. We will therefore present examples of the type of tools that need to be developed, and from the list it will be clear that these tools are neither simple, nor easy to produce, nor easy to adapt to the diverse needs of various countries.

We are arguing that innovative tools such as these need to be disseminated widely if they already exist. If necessary, they need to be documented for dissemination. Alternatively, if they do not exist, or are not yet ready to be used, they should be developed as soon as possible, then documented and disseminated. Finally, UN-HABITAT is trying to facilitate this tool development through the creation of a Global Network of Pro Poor Land Tool Developers (**Box 1**). This approach has raised the interest of a number of partners to date, including donors, and the some of the planned activities of this Network will be detailed.

THE IMPORTANCE OF LAND ISSUES

A significant body of research demonstrates the importance of secure property rights to land is a precondition for land-related investment in many settings. Farmers whose have only insecure or short-term land rights are unlikely to invest their full effort, to make long-term improvements attached to the land (including services), or to exchange it with others who may be able to make better use of it, thereby reducing productivity and possibly hindering emergence of a vibrant non-farm economy. The same is true for urban residents and it is now increasingly recognized that, as a consequence, land and the institutions governing its ownership and use are of great importance for broader economic growth and poverty reduction from a much broader range of perspectives. Some of these perspectives are outlined below:

Investment climate: Setting up or expanding a business requires physical space, i.e. land. Non-transparent, corrupt, or simply inefficient systems of land administration constitute a major bottleneck that makes it

more costly for small and would-be entrepreneurs to transform good ideas into economically viable enterprises. Investment climate surveys indicate that access to land was the *main* obstacle to conducting and expanding business by 57% of the enterprises interviewed in Ethiopia as well as 35% in Bangladesh and about 25% each in Tanzania and Kenya.

Credit markets access: Well functioning land institutions and markets also improve the investment climate because the ability to use easily transferable land titles as collateral reduces the cost of accessing credit for entrepreneurs, thus contributing to the development of financial systems. Even in developed countries, more than two thirds of small business loans are secured against land and real estate. In Eastern and Central Europe, for example, formal land titling, especially in urban and peri-urban areas, helped to start mortgage markets that now comprise a large part of overall lending.

Revenues for local governments: With economic development, increased demand for land, together with public investment in infrastructure and roads tends to increase land values. In many cases, however, lack of well-functioning mechanisms to tax land implies that the potential for society, especially local governments, to benefit from these increases is limited and that much of the gains instead fuel speculation or end up as bribes. Colombia illustrates the potential for quick increases in land taxes shows this can contribute significantly to local government revenue, thus helping to match decentralization of responsibilities for service delivery with the needed resources.

Social safety net: The importance of land for economic development does not mean that it is irrelevant for poverty reduction; on the contrary, access to even small plots of land to grow crops can greatly improve food security and quality. The case of China illustrates that broad-based land access can provide a basic social safety net at a cost that is much below alternative government programs, thus allowing government to spend scarce resources on provision of productive infrastructure instead of safety nets. Also, having their basic subsistence ensured is likely to have allowed Chinese households to take on greater risks in non-agricultural businesses and, with policies to foster lease markets for land, contributed significantly to the emergence of a vibrant non-farm economy.

Accountability and transparency: In many developing countries, more than half of households' wealth is in land and associated real estate. Therefore, if the system to administer such a significant part of national wealth is perceived to be corrupt, overstuffed and not trustworthy it will be difficult to maintain confidence in the rule of law and the competence of the state. Improving land administration can thus contribute to broader public service reform as in the state of Karnatka (India) where computerization of twenty million land records within a short period of time resulted not only in a reduction of corruption and improved satisfaction with public service delivery but, because it was financially self-sustaining, also provided a basis for reforms beyond the narrow realm of land.

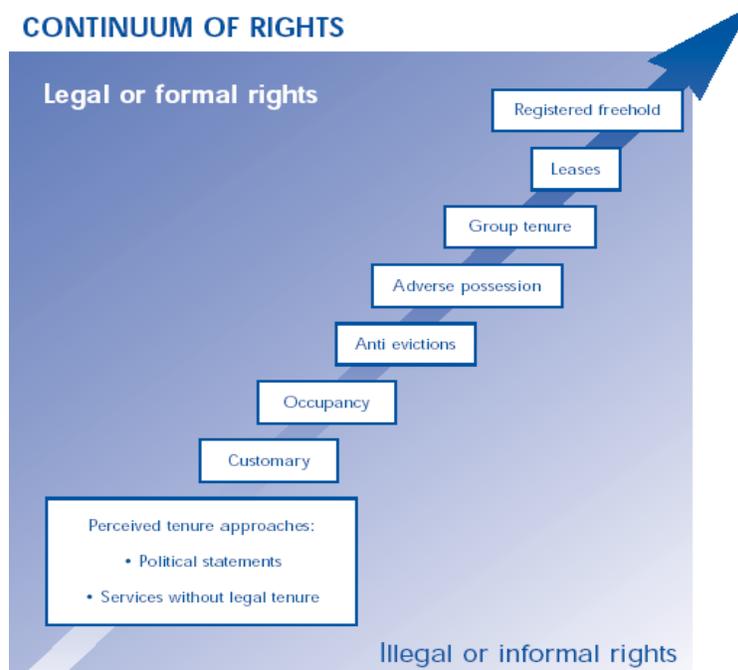
LAND INNOVATIONS IN SUB SAHARAN AFRICA

Improving the security of tenure and the property rights for millions of poor in rural and urban areas of developing countries, and especially in Sub-Saharan Africa, is a massive challenge. Currently conventional systems in Sub Sahara Africa are not functioning adequately. In many countries less than 1% of the country is covered by the land titling and cadastral system. In most of the developing world, including most countries in South America, most countries have less than 30% coverage. Uganda for example, has 15 percent coverage, as does Kenya While Namibia has most of its land surface covered, the majority of its population, who live in the north of the country, are not covered by a land titling system. In 2002 a study undertaken for the World Bank of some of the best practices in African countries. It found that even in the most innovative of countries the land administration systems are not functioning well and are not useful to the majority of the population. For example, the time taken for registration of a title is anything from 6 months to 10 years, records are generally poor, the majority of the population does not have a title deed, and millions of titles would still have to be registered if that is what people want.

It is clear that there are user problems in Africa with conventional land titling systems. The major problems users have is that these systems do not fit the customary systems, or group and family rights. Furthermore, systems are centralised and inaccessible and, above all, they do not solve land conflicts. It is also important to highlight the fact that they do not protect women's land rights sufficiently, a critical issue in the light of the HIV/AIDS crisis. Finally, they are too expensive and not transparent.

The transformation of a land administration system is a large undertaking and normally involves the reform of a number of separate agencies. Furthermore, transformation involves alterations in power and patronage and extensive civil society debate at both national and local levels. Adding complexity is the fact that land is cross-sectoral and, of course, is considered key to poverty alleviation. The study undertaken for the World Bank (covering Ghana, Mozambique, Namibia, South Africa and Uganda) showed that it took at least 8 years, and often 11 or more, for a country to get from discussing land policy to the point of implementing it at scale.

In short, tenure issues are extremely complex. Therefore no single tenure option can solve all these problems. Policy on land tenure and property rights can best reconcile social and economic needs by encouraging a diverse range of options, rather than putting emphasis on a single option, typically land titling. This will involve adapting and expanding existing tenure and land administration systems, where possible, and introducing new ones selectively. Types of useful rights for the poor include anti-eviction rights, occupancy rights or the right of possession, adverse possession rights and family/group rights (**Diagram 1**, below).



In addition to the World Bank study, UN-HABITAT with its partners recently held an Expert Group Meeting on the issue of pro poor affordable systems in Sub Saharan Africa, from which it is clear that many countries are already pioneering new forms and opting for an approach of incremental upgrading.

For example:

- In Tanzania residential licenses in urban areas can be converted to full title at a later date.

- In Rwanda the law, which still has to be implemented, is based on formal registration at national level only where plots are larger than 5 hectares, otherwise local registration methods are to be used.
- In Namibia the flexible land tenure system is under consideration where there will be individual starter titles which are group based and are capable of being upgraded later to individual title.
- In Uganda, for the first time, the law recognizes customary occupation as a legal form of tenure without requiring any documentary evidence and establishes the option of receiving a certificate of occupancy or, with full cost recovery, a full-blown title over the same parcel of land.
- In Lesotho three forms of leases are under consideration with different levels of technicality, primary, demarcated and registrable. Also under consideration is the creation of land records prior to land registration.

Another country that has made considerable progress towards innovative forms of tenure and land administration is Mozambique. In 1997 the Land Law was passed whereby occupancy rights were accepted as full rights equivalent to registered land rights. Furthermore, oral evidence equates title evidence. In Mozambique an investor obtains a land title only after thorough adjudication has been done to check that the rights of occupants have not been over-ridden and/or that they have reached agreement with the investor. This is a very pro poor approach but which has not yet been applied to urban areas as the regulations for urban areas have not yet been passed.

The World Bank study showed that **common characteristics in the new laws being passed in Africa** are based on a number of themes. The **first** are associated with the objectives typically expressed in PRSP's and which have become cross cutting themes also affecting land namely: poverty alleviation, decentralization, governance and transparency, service delivery, protection of women. The 'PRSP objectives' when applied to land administration take the form of:

- Decentralized local land administration offices.
- Cheap and/or free titles or rights and/or tenure protection for the poor.
- Information campaigns at national and/or local levels about people's land rights.
- Adjudication procedures that also protect the occupants of the land not just those being titled or holding registered titles.
- The removal of land professionals from routine operations to management.
- The incremental upgrading of rights using cost effective tools rather than efforts to achieve systematic title immediately, which often end up achieving very little.
- The adaptation of the conventional land registration system to accommodate the poor and other forms of legal evidence used by the poor to protect their assets.
- The protection of women's land rights (e.g. prioritised allocation, co-ownership).
- No rigid boundaries in customary areas.
- The avoidance and/or delay of adjudication of individual rights.
- The development of spatial information systems as a public good for the delivery of economic and social services.

The **second** set of characteristics found in innovations in Africa relate to dispute resolution. This aspect was central to many of the discussions associated with the laws and their designs, even if it is not always explicit in the law. This aspect became a significant cost factor for Uganda, that led to an inability to

implement at scale. Similarly, an earlier draft of one of South Africa's land law was considered too expensive in terms of the institutional structure required to deal with this issue.

The **third** set of characteristics relate to the technical design of the land administration system and these include:

- Accuracy of parcels.
- Type(s) of rights allocated.
- Adaptation of the conventional system to the new law.
- A range of cost minimization characteristics. A number of these can be found in the designs, such as the use of technicians rather than lawyers for routine operations, no full scale upgrading of the conventional system, and no systematic titling.

One of the most critical issues to be addressed in the land administration designs relates to the realization that the design must have national applications, be affordable to the poor, and yet not override customary and informal (local) tenure where it is the tenure of choice. Different countries have taken different approaches:

- Uganda chose systematic demarcation for spatial information and dispute resolution with voluntary titling only.
- Mozambique opted for sporadic titling of investors and to not title the poor, and to carefully adjudicate investor titling to ensure it does not infringe on the rights of the poor.
- Namibia opted for 'starter' titles, leaving unsurveyed those areas outside 'cleaned up' boundaries of informal settlements.

In general African countries found that conventional systematic titling approaches following developing countries were unaffordable and not relevant to local requirements. Therefore, of late, innovative approaches to land administration have been attempted which are adapted to current conditions in Africa.

A **fourth** set of characteristics is found in the new approaches, which seeks to eliminate gender-based discrimination regarding land, housing and property rights. Due to colonial influences, individualization of land tenure, land market pressure and other factors, many customary laws and practices have been eroded over time. As a result, the forms of solidarity that used to exist and protected women from exclusion have now disappeared in many areas. The HIV/AIDS crisis has further worsened this situation; land grabbing combined with discriminatory rules and/or practices have resulted in increases in eviction of women by their in-laws or their husband. In addition we know that HIV/AIDS affects more women than men. Secure tenure would therefore be a mitigating factor for women in dealing with HIV/AIDS, while the lack of secure tenure increases women's vulnerability to HIV/AIDS. Furthermore, in times of conflict and post-conflict, discrimination against women proves to be a major stumbling block to reconstruction and rehabilitation. Many women find themselves as widows after a conflict, unable to access land because of legal or customary discrimination against widows inheriting land.

Innovative approaches that seek to remedy and improve these problems include:

- The adoption of the African Union Protocol on the Rights of Women in Africa in July 2003 in Maputo, and its ratification by countries such as Senegal, Lesotho, and Guinea.
- Explicit recognition of equal rights of men and women, and the explicit prohibition (without exception) of gender-based discrimination laid down in the Constitution (e.g. Rwanda, Senegal, Uganda, Ethiopia, Eritrea, Tanzania), combined with declarations that any law or custom inconsistent with the Constitution is void (e.g. Uganda and Mozambique).

- Explicit recognition of women’s equal right to land, combined with a prohibition in regard to discriminating against women in their access to land, laid down in land legislation (e.g. Tanzania).
- Recognition of a form of co-ownership or co-occupancy of land or a house occupied by a family or household and joint registration of such land or house (e.g. Tanzania and, in a weaker form, Uganda).
- Affirmative action policies, such as land allocation to women headed households (e.g. Zambia, Tanzania, Eritrea) combined with credit assistance to develop land.
- Legislation dealing with property and inheritance rights of HIV/AIDS orphans (Kenya) and equal inheritance rights for widows/widowers country wide.

To make the case for integrating these new approaches into policy formulation on a broader scale, however more evidence on how these innovative approaches can be linked to broader processes as well as in-depth evaluation of their economic and poverty impact will be needed. While such research is still in its infancy, a number of examples, from Africa and beyond, illustrate that low-cost approaches to land administration can have considerable benefits and also provide an opportunity to kick-start a process of policy dialogue that can provide the basis for addressing land policy issues that will be critical for broad-based development.

For example, in Uganda, despite a path-breaking land law which is one of the first in Africa to recognize that occupancy of customary land conveys legal rights without the need to provide documentary evidence - while at the same time providing a “certificate of customary ownership” - deficiencies in the institutional framework seriously affect the potential to make economically optimum use of land. An outdated and inefficient registry implies that even for the parts of the country for which formal property rights exist it is nearly impossible to use these to access credit (it takes about a year to register a mortgage). As design flaws render establishment of the institutional structure for implementing the Land Act too costly and traditional institutions to resolve conflict have been abandoned, the incidence of conflicts increases, with negative consequences especially for widows, the number of which has increased significantly with HIV/AIDS. Productivity on land affected by such conflicts is less than one third of those unaffected by conflict, implying huge economic losses in aggregate.

Recognizing that establishment of new institutions to deal with conflict was impossible, the government re-instated traditional ones. Moreover, analysis of household survey data leads to two immediate insights with implications for policy. First, that less than one third of households has substantive knowledge of the content of the Land Act but having such knowledge leads to significantly increased investment and productivity and higher land values. This implies that increased efforts at disseminating the content of this piece of legislation would be of great importance, can pay for itself, and could help to realize significant gains. Second, that even though the law guarantees security of tenure, more than 90% of land owners indicate that they would like to receive a certificate of customary ownership, with the large majority of those who are interested actually willing to pay for this. Drawing on other countries’ experience, the government has developed a community-based process of systematic demarcation that relies on low-cost GPS receivers (in theory with 1 meter accuracy) which households are free to use as a basis for title (e.g. to provide credit access or allow transfer) with cost recovery. Rolling out systematic demarcation, together with conducting information campaigns and improving the functioning and sustainability of the registry are key elements in a \$25,000,000 land component in a recently approved Private Sector Development Project.

To a considerable extent Uganda can be taken as representing other African countries who, during the last decade, passed land legislation that is very advanced in many respects, but who are struggling to modernize and equip their land institutions to deal with the demands of implementation. In doing so they often try to copy approaches (e.g. high precision surveying) from other parts of the world that are not affordable (and in many cases also inappropriate) to the African context and thus can not be scaled up

quickly. Interestingly, Ethiopia has developed an approach to land rights registration that could provide important lessons here.

The broader context for land administration is illustrated by the case of India, where inordinate delays (e.g. a 12-year backlog in one of the states, Maharashtra) for registering land transfers, together with prohibitively high transfer taxes (often greater than 10% of land values), lead households to under-declare land values. A concomitant lack of even basic checks that have to be performed by officials who register documents greatly decrease tenure security (or at least the value of land-related documents) and renders land administration one of the most corrupt parts of government. Together with numerous restrictions on land use and transfer, including land ceilings and rental restrictions dating back to land reforms enacted shortly after independence, this makes it very difficult for the poor and landless to access land, ties up land in socially and economically inefficient uses, and prevents the emergence of a thriving rural non-farm sector as well as the emergence of small and medium enterprises in rural and urban areas. A recent study estimates that the losses imposed by such restrictions reduce annual GDP growth by 1.3 percentage points.

Computerization of land records, which has been completed in a number of Indian states, has significantly reduced the scope for local officials to extract bribes from farmers who need land records to access crop insurance or credit; estimates in one state put the amount of bribes saved annually at about \$12,000,000). Computerizing the registry process as well has allowed authorities to link formerly disparate institutions, effect some improvements in tenure security and increase officials' accountability (due to the ability to search all deeds automatically and the ability to completely eliminate tampering with records). While information can be accessed for free, a user fee (of about 30 cents) has to be paid for official copies of land records. The fact that farmers are happy to pay this makes the approach highly profitable ("profits" from user fees amount to about \$6,000,000 in one state alone). Furthermore, the village level kiosks through which these services are provided by private entrepreneurs are emerging as a center for local internet access and a focal point for a broader range of e-governance services. This has also helped to ensure that a gradual reduction of transfer taxes has increased revenue collection by the government, implying that a large number of transactions that previously remained in informality are now coming into the system. The central government is now encouraging states to roll out this approach, make information available over the internet, in addition to expanding coverage of and access to the land administration system. This is being done with support from the Bank, which is using land administration as a means to promote a broader policy dialogue on land policies, especially rental market restrictions, which continue to inflict large costs on the economy, and the poor in particular.

WHERE ARE WE TODAY

There is no doubt that we have made progress, both globally and in Sub Saharan Africa, in regard to moving the land agenda forward. However much more innovation and thinking outside of the box needs to be done.

The World Bank has now engaged with a different approach to land policy, symbolised in its policy research report (PRR) 'Land Policies for Growth and Poverty Reduction' published in 2003. This report was a result of a process of engagement with civil society, professional associations and other stakeholders at a global level. As a result of this process there is general agreement on principles in regard to rural land policy. While the 1996 Habitat Agenda gave some broad statements on urban land policy, there has been no other global activity as yet to pull together an equivalent urban land policy. In other words, a general agreement on principles at the global level still needs to be developed for urban land policy.

A useful measure of the importance of the land sector is that currently the World Bank's portfolio for both rural and urban land is over one billion dollars in this sector alone.

To recap now briefly, we have outlined the current position in regard to innovative land administration approaches specifically in Sub Saharan Africa, but also to some extent globally. Often these innovations, especially in Africa, have not been scaled up sufficiently. Also, generally the cost of the innovations is not known. Attempts to cost these innovations have started, as a partnership between the World Bank and UN-HABITAT, but these are not easy exercises.

As indicated earlier in this presentation, it is clear that the majority of people in most countries do not have security of tenure based on the land titling system in that country. For example, as indicated earlier, Kenya has only 15 percent title coverage. This situation is not only true for Africa, but also for other parts of the world. Furthermore, as of 2001, there were nearly 1 billion people living in slums in the world, and it is likely that the majority of these people have no robust security of tenure.

Finally, to date there has been good focus on the development of policy and law in many countries, but there has been insufficient focus on the implementation of this policy, and at scale. That is, we need to move away from project based thinking to systemic approaches that lead to national roll out. Also, while there has been extensive focus on the development of tools in general, most of these are not cost effective and they do not fit the human resource envelope.

Against this background we are therefore arguing that we need new solutions and new pro poor tools to be able to move forward, and in particular vis-à-vis those Millennium Development Goals whose achievement is mediated by security of tenure.

NEW INNOVATIVE TOOLS

As a result of our ongoing work, including with partners, and over many years, we have identified some of the key areas where there are insufficient pro poor land tools. Many of these areas are in the critical path of delivery. Not having these tools means that there is a blockage in the delivery of land tenure, spatial information, revenue recovery, services, housing rights, to name but a few. The absence of these tools will affect delivery of the Millennium Development Goals and of course most importantly economic growth and poverty reduction. More specifically, the affordable pro poor tools that are needed include:

- Turning NGO enumeration information into first adjudication evidence for land rights, both for slum upgrading and post tsunami type housing delivery.
- City wide slum upgrading and city wide planning, or regional land use planning.
- The design of what a gendered tool means.
- Gender friendly affordable adjudication approaches.
- Land administration approaches for post conflict societies.
- Affordable land record management for transactability.
- Affordable and just deceased estates administration, particularly to protect women's land rights and especially for HIV/AIDS areas.
- Pro poor expropriation and compensation for the management of urban growth and improved agricultural production.
- Rigorous land administration and governance tools, for example identification of which land functions can be devolved given capacity constraints.
- Pro poor technical/legal policy development, such as user fees, public-public and public-private partnerships.
- The management of state land, and in Islamic societies in regard to the religious land that is part of state land.

- Land tax for financial and land management at scale.
- A regulatory framework for the private sector that takes into account poverty issues.
- Capacity building programmes for in-country sustainability of land administration systems, in particular for the poor.
- Land access/land reform.
- An affordable geodetic for Africa, possibly using NASA's existing information.
- LIS/GIS spatial units as framework data for both parcel & non parcel based spatial information.
- High accuracy off-the-shelf GPS to be used by non professionals.
- Cost benefit analysis of new satellite imagery for slum upgrading (as opposed to fo national mapping).
- Robust indicators or benchmarks to measure tenure security for the delivery of the Millennium Development Goals. What measurement tools can be used, satellite imagery, household samples, global comparison problems.
- Non titled land rights need to be developed, which can also be upgraded over time along a continuum.

A global assessment would establish which of these tools exist already, what the options are for scaling them up, and how cost effective they are. If they exist, these tools need to be documented and the information widely disseminated to the right forums. If they do not exist, work needs to be undertaken to develop these tools, through piloting for demonstration purposes, working with countries and cities. To deliver into this agenda will take many years, significant funding and a comprehensive framework at global level. The alternate to doing this is firstly doing business as usual, which is not going to deliver at scale or within the framework needed by the poor. Or secondly we might see the promotion of simple solutions and magic bullets being pursued by governments and/or donors. See **Box 1** for a further discussion of this initiative.

Box 1: GLOBAL NETWORK OF PRO POOR LAND TOOL DEVELOPERS

To address this issue UN-HABITAT has been facilitating the creation of a Pro Poor Land Tool Developers Network. The main purpose of this network will be the development, documentation and dissemination of pro poor gendered land tools at implementation level. The World Bank will complement this with a component to evaluate such tools and, by demonstrating their economic impact as well as the distribution of such impact across different groups in the population. This will not only help to make the case for better land policies in policy and strategy documents, but over time also help to propose tested and proven solutions that can be adopted to deal with such issues. The Network is also intended to improve the coordination of key actors within the global land industry, also by strengthening global comprehensiveness. The key reason why this Network is being created is to improve the security of tenure of the poor for the attainment of the Millennium Development Goals and to strengthen UN-HABITAT's Global Campaign for Secure Tenure.

It is important not to underestimate the difficulties associated with producing appropriate tools. Aside from the sheer technical and especially legal complexity of the development of these tools, and the need to design across an enormous number of silos, the general tools designed need to be flexible enough to be made country-specific. Also, national governments obviously are key in this tool development. Working with national governments, and other stakeholders, in altering regulatory frameworks and procedures systemically and at scale is a complex, time and resource-consuming task for all stakeholders. Another set of complexity added to this is the need to ensure that the grassroots and women are involved in a robust fashion in this national tool development.

Potential partners in the Global Network include:- UN bodies such as the World Bank, FAO, UNDP; research institutions such as the Lincoln Institute; Governments and cities where tools are developed; donors; NGOs, such as the Huairou Commission; and professional bodies such as the International Federation of Surveyors.

The thematic focus of the Global Network will include:- the registry/land records, surveying/cadastre, land tax/valuation, planning, spatial information, land law and the associated land governance issues. The focus will not just be on the legal versions of these issues but will also cover the extra legal or informal versions of these themes. Both developing countries and post conflict countries will be covered. UN-HABITAT and the World Bank are already working on a number of these themes, also in terms of the missing tools identified above, and the Network is also an approach to upscaling these activities.

Finally, in regard to the shape and management of the Global Network, the key issue is that this Network should not replace any of the existing networks but rather build on them. Therefore it is envisaged that it will be a network of networks. Also, in regard to the management structure, UN-HABITAT will play the role of facilitator, there will be an International Advisory Board, and an external counterpart to undertake all the routine management.

The Global Network is already in operation and is being scaled up incrementally, also through Expert Group Meetings on innovative land tools. One such meeting was organized for Sub Saharan Africa in