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Designing a Pro Poor Land Recordation System

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GLOBAL LAND TOOL NETWORK

The Problem

- No land records for 70% of country in developing world
- Existing recordation/registration systems serving elite
- Poor have no access a/o cannot afford to use
- Poor's tenure often insecure:
 - Informal, customary, illegal
 - Not documented (formally or at all)
- Expansion of existing systems
 - Very slow (at this pace often centuries for full coverage)
 - Updating of included part very limited
 - Poor are left out or even damaged by formalization




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What to do ?

- Rethink development of current systems
- Don't go for the "ultimate" solution (to start with)
- Build on 'continuum of rights' notion
- Capitalize on the local knowledge
- Enter into co-management between community and state organs
- Keep it simple !
- Start with function(s) most needed by poor
- Don't answer all (even unasked) questions top-down, but balance bottom-up and top-down information flows

- Allow first step(s) onto the 'property ladder'



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Revisiting History

- Land tenure is a person-person-land relationship
- Emerges according to scarcity
- Land rights to protect interests of the powerful
- Leaders of larger territories start to harmonize/codify (e.g. Napoleon 1804)
- Rules are imposed on minorities, occupied areas, colonies
- Land users with their own tenure find themselves 'statutory' tenants at suffrage; others (e.g. Crown) hold the allodial title and can take the land for 'higher' interests; 'tribal reserves' redrawn when necessary
- Poor migrating to cities have no 'formal' access to land: squat, invade, develop without permission → informal settlements/slums



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Land records' history

- Sales transactions giving attention, even in writing for centuries
 - Not for other transfers (inheritance)
 - Sometimes simple records kept; often weak spatial index
 - Refinement of records: better indexing, mapping, legal status, ..
- In colonies one central land records office to manage allocations to settlers and subsequent transactions; sometimes well maintained (e.g. Torrens)
 - No intention to cover whole country of population
- When national elite took over from colonial power often no real change
- Processes complex, capacity limited, only elite has access to services



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Land records' history

- Possession as a 'de facto' right ('9/10 of the law')
- Prescription to harmonize legal and de facto realities
 - After long, uncontested possession, owner loses his/her claim
 - Terms differ, evidence of start date not easy
 - Violent occupation often excluded; Torrens blocks or limits a lot
 - Allow use in crises → later start to claim it ?
- Transactions to strangers in writing
- More and more transactions in writing (petits papiers)
 - → diversity in land documents; often no/limited legal status
- State takes efforts to control and thus record land data



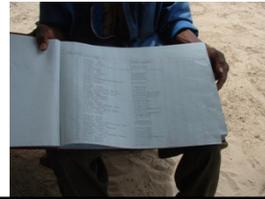
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First design Pro Poor Land Recordation System

- Built on community tenure practices
 - local tenure system is applied (unwritten, flexible, adaptive, ..)
- Formalization and a land officer
 - community leadership verifies seller, the right, buyer, etc.
 - land officer helps to put it in paper (form), advices and 'warns'
- Recording of this paper (by land officer)
- Land records, index and the record keeper
 - recorded paper is kept; indexes are updated (on name, land ID, ..)
 - record keeper has a look and discusses with land officer



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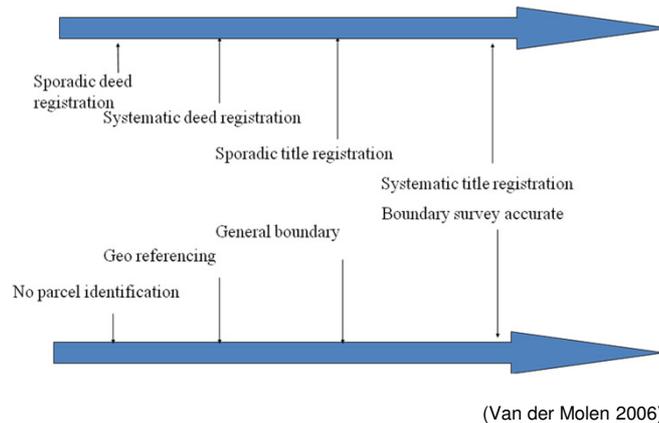
First design Pro Poor Land Recordation System

- Checks & Balances
 - Co-inspection by state & community
 - Relationship between land officer & record keeper
- Important land information, but not sole source of evidence
- Dispute resolution
 - use existing variety of dispute resolvers (ADR, customary, court)
 - have them look into the records; record decisions
- Broader governance issues
 - e.g. political will, corruption level, role of civil society, systems capacity
- Continuum of land recording
 - setting the very first step; open for further steps



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Further steps for land registration & cadastre systems



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Design Elements

- Overcoming limited funding for land documents by the poor
 - keep very cheap, simple and local
- Overcoming limited funding for land documents by government
 - don't overdesign what can not be rolled out
- Dealing with complex, layered rights
 - one recorded right does not prevent another overlaying right being still used or even recorded itself
- Delivering preventive justice
 - documenting transaction with help of land officer
 - creating trust and clarity to prevent later conflicts (compare notaire latin)
 - also making evidence for when parties cannot be asked or disagree



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Design Elements

- Sporadic versus Systematic Approach ?
 - start simple; enumeration, participatory mapping
- Potential role of spatial index map
 - spatial index; identify land; boundaries ?
- Co-management (..)
- Benefits of recording
 - do not aim to all at once
 - collateral not big issue for poor
 - protection against outside pressure is
- Mainstreaming core principles:
 - Transparent, inclusive and equitable



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Co Management

- How can co-management work in a balanced way ?
 - Use all the local community activities already happening
 - Avoid top-down overkill, but start to work towards standardized approach
 - Create bi-directional information flow
 - Train barefoot land officers and record keepers (in many locations)
 - Supply them with minimal equipment
 - Raise awareness in community on land issues and recordation
 - Enhance trust by inspection by state and community
 - Encourage state organs to use the land record information
 - Let communities volunteer for next step in continuum of land recording a/o on the property ladder



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Final Remarks

- Idea received well at EGM in March 2011
- Need further study on institutional side of community
- Needs to be piloted and improved
- Starts people on the property ladder at a step they can afford



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