

Workshop on security of tenure: a comparative analysis between Brazil, India and South Africa

Report on the Indian panel, Thursday 27 Th of July 1999 by
Pascal Maire-Amiot (University of Paris 1 - Sorbonne)

Prof. Neelima RISBUD (School of Planning and Architecture, New Delhi) made an overview of the Indian land regularisation circumstances and went on to an account of 3 case studies: Bombay, Hyderabad and Delhi which is her own case study. She represented Banashree Banerjee, supposed to present a paper at this workshop and because Minar Pimple (Director of Youth for Voluntary Action) was ill at that date, she presented his case study as well.

Yarissa Richmond Lyngdoh (Urban Planning Consultant) explored the relationships between the traditional and the formal systems of land rights in NorthEast India.

1. Neelima Risbud presented an overall context of land regularisation in India and 3 case studies, each of which represents different types of intervention at a city level.

a/ case of Delhi: this is an example where the government as a process of urban planning did a major intervention on the land. Land banking was primarily done to make the urban poor have access to land and land tenure. It was done in the 1960's. Over the last 35 years, she looked at what happened concerning the major intervention in Delhi. This city is also unique because it is the city of Local Government i.e. Delhi does have a State government, which has total monopoly of land, and a city government. Neelima looked at how the state government has changed the policy, what kind of shifts has taken place and what kind of challenges the government has faced.

b/ case of Bombay (Mumbai): this mega and industrial city has a major problem with land because it is located on the coast and it is constrained physically by availability of land. Population is more than 10,2 million. There are state government responsive programmes of improvement of land tenure. What is most interesting in this case is that there are 2 important differences from the other case study:

- the involvement of the private sector in the redevelopment of slums or giving help on security of tenure for the squatters;

- the involvement of NGO's which have been quite active in Bombay in preventing evictions and in organising communities of payment dwellers. Further, the NGO's have been instrumental in the dialogue between people and the government. They have been able to find a kind of advocacy for the slum community to succeed in a sort of awareness amongst payment dwellers and slum dwellers of Bombay.

c/ case study of Banashree Banerjee: tenure security and slums improvements are provided as a part of a state government programme. It is a very interesting example case where it did not started with shelter programmes but with community development programmes and later it was enlarged. It is also an example where the original programme started in the State capital of Hyderabad and then it was transferred to other cities of Andhra Pradesh. It is a successful example where security of tenure was provided with import of social and physical infrastructures. Participation of the community was the major highlight; it is a sustainable programme that has been there for the last two decades. There is a very high rate of population and the city has to take into account expecting migrants from rural areas. There are some problems of shelter for poor people and according to government reports, more than 25 million live in cities throughout India.

About the legislation that have been supportive for tenure issues, the Land Acquisition Act is a powerful legislation. Land can be acquired compulsorily by the government with compensation. This Act was firstly applied for public projects but it has also been applied to urban development in the case of Delhi and the government for the city that needs land acquired the land. There are the Town Planning Act which is governed by the preparation of development planning for various cities and the Slum Improvement and Clearance Act. All these Acts basically states that India have 3 sub-structures which are the central government of India, the State government and the local government. The entire issue of housing and town planning relies on the state government level. The state has the power to enact piece of legislation. The central government gives policy guidelines and the state governments have in many cases, adopted the laws emanated from the central government. The central guidelines offer a sure departure for most of the legislation.

In 1992 a major amendment of the Constitution took place, by which the powers of the state governments were released for the local governments. The power of implementation lies with the local government. In 1992, the development plan preparation, the slum improvements and the infrastructure provisions lay in the local government level. By 1992 land was also administered by the new department of the state government which is the district: the location or giving a title or the administration of land is coming from the district and municipal corporations were so far only looking after the infrastructure issue. From this constitutional amendment more responsibilities have been given to the local governments. The development authorities, in largest cities, acquire land and develop government projects, according to the master plan. Further, there is a development organisation that also plans the infrastructures, providing organisation of the municipal corporations and at the district level collects administered land which is basically government land.

National land policy: until 1972 the informal sector was not recognised but from 1972, after the first Habitat, the policy was influencing with some kind of minimum support necessary for the informal sector. Between the 1970's and 1980's, there was an involvement of the government in many cities about the existence of informal settlements, especially squatter settlements. Delhi was rehoused of about 1,5 million households in a very short period, in 18 months in fact and that was during the national emergency period. This kind of relocation/resettlement programme was basically picking up because it was not a kind of growth properly rehoused and some kind of tenure was given to people facing hardship on the periphery of the town. Initially they started to give leasehold tenure but later on they gave license tenure as in the case of Delhi. Nevertheless, because of the change of government after the emergency period, there was a major resistance against forced relocation. After 1977 there were no major relocation programmes any more. The policy shift has been at a national housing level, a policy that was enacted in 1994. There is a clear mention that the government should resist any kind of forced relocation of people and try to give them confirmed tenure rights to people wherever they are. This is a recognition that people have to be integrated into the cities and those tenure rights are important. With the implementation of Economic Fines Plans, a kind of shift has been substantiated through the idea that all support should be given to the unregularised squatter settlements wherever they are.

There was a major shift from government providing land to government facilitating land. From 1982 to 1990 there was a national slum policy which is very interesting because it said that basic services should be provided in respect of tenure whether they have legal tenure or only occupancy but basic services should be available to everybody. This is the major achievement because rights to basic services are considered as more important. The factor that have influenced this policy was firstly the various NGO's which have been opposing in different cities and they organised themselves against forced evictions that were taken place in the late 1970's-1980's. Further, one has to take into account the international thinking which promoted regularisation rather than forced clearance and also a more liberal view that stucked up because of political reasons that are linked up with a situation where 30% of the population in Delhi are living under squatting conditions and the rate is about 50% in the case of Bombay. There is also the involvement of the World Bank: in Bombay the World Bank programmes have taken up with a major emphasis on tenure regularisation, improvements and also recovery. That also influenced the thinking of policy makers and this has become dissociated to such an extent that many political parties have made it on their political agenda

and they have mentioned that they would regularise if you vote for them at the next elections. This is the reason why it becomes a major issue for almost all the political parties.

What are the instruments that have been used for these programmes: there is two kinds of security of tenure:

i/the legal security of tenure that can be divided in two types: first when tenure is granted in the same location (a) and secondly, when people are relocated at a given security of tenure (b). Both have been tried in a substantial manner.

(a) Institute regularization has occurred in many cities in Central Provinces. In 1984, 26% were squatter population and considering the fact that people were agitated because of demolitions, the chief minister passed legislation in the assembly to enact a law to regularize all the squatters. This legislation was implemented within 4 months and it was a political priority: as a result more than 50% of people managed to get security of tenure through this legislation. Giving 1 million electricity connections and also some economic improvement programmes followed this. The implementation was given to the Revenue Department. These people were familiar with managing rural life, so land subdivisions were done and regularisation certificates of leasehold tenure were given without looking at the layout, without looking at the basis of urban planning. What is most interesting is that this legislation was so powerful that all the master plans, all irregularisations would be superseded by this. Therefore, land uses, master plans and city sites as well as these people, were given security of tenure. This created a major precedence and people realised that land management gets security.

(b) In the case of Bombay, there were others that could not be given security of tenure because they were located in lands probably unfitted. Nevertheless, they were given temporary security of one year. They were supposed to be relocated to another place but what happened in the last 10 years is that the authorities were not able to relocate everybody. In 1998, during the general elections, the same party in power modified the same Act and again gave tenure to everybody. It has become a kind of regularization. Some of the modifications they have done are that they required people of the settlement to form a cooperative, to form a kind of neighborhood groups. Therefore, all the developments and inputs of services and others social and economic inputs could come through that particular neighbours groups. It emphasised participation and dialogue between government departments, government offices and the communities. This has been done in 1998 but shelter and security were not the basic objectives; basic objectives were political ones of reelection. Nevertheless, it has helped the poor to a great extent and shelter consolidation can be seen on the ground.

The second example is of Hyderabad (Andhra Pradesh) where international agencies have helped through government programmes, the government adopting land tenure programmes as a routine measure where people have access to land. The programme has been extended to cover other cities in the State. It has been successful in Hyderabad but it is a part of a government programme of tenure regularisation and not a part of a piece of legislation. Similar tenure regularisation has taken place in cities like Madras and Bombay under the World Bank Programme and in Rajasthan that is basically the desert dominated State where more than 100 cities have benefited of this programme because the State government is running a regular programme. This is another way by which people are getting regular legal tenure through government support programmes, not through legislation.

ii/ Security without legal tenure: this is a kind of guarantee against eviction and one of the major programmes which is held by the government of India (subsidized improvement programmes). Originally, it was aiming at providing basic minimum services. The conditions were that the settlement would not be cleared for the next 10 years. So there was a kind of perceived security. Everything is totally subsidized, from the common taps to the street electrification. This is a programme that has been running continuously from 1972 until today. The subsidy has increased because the cost has gone up. It is funded by the central government and the local government implements it. This is an important programme, which has given security of tenure. This programme has been enlarged because there are other programmes of poverty alleviation and there are also programmes of urban basis services for the poor. This has enlarged the scope of improvements to include social improvements, which means education, health, maternal help, awareness

programmes etc... that are also financed by the central government (UBSP programme). It is based on a participatory approach where the neighbourhood communities/groups are integrated with these physical improvements.

Another programme deserves to be mentioned: the urban alleviation programme that is currently going on. This is a programme under which government gives credits and training for setting up economic enterprises. They have also taken up a formation of NEMESCO operatives like credit society whereby women of neighbourhood save together and they borrow from that pool of money and this bring them together because women are more concerned about consolidating and improvements than men in most of the slums in India. This credit society has also integrated the UBPM that is dealing with improvement programmes. Therefore, there is sometimes an overlap but somehow this gives them a kind of a perception of security and that is enough to increase investments. Considering the housing situation and structures conditions in urban India, there has been a substantial improvement and the proportions of temporary structures are getting reduced; there is more and more semi-permanent and permanent structures because of this kind of perceived security of tenure and this is the reason why it has taken place. There is also another legislative support which help people get security of tenure or at least a perception of security and this is in the slum legislation. Most of the States have Improvement Slums and Clearance Acts, according to which the local government has to notify a settlement as slum. This definition of slum is very loosing because it does not address the tenure issue. It was a legislation which was enacted in the late 1950's, early 1960's in most of the States; at that time, in most cities, inner cities and slum areas, the squatters appeared on the scene later and therefore the Act continues to be the same but nevertheless it provides protection against eviction. If a settlement is notified as a slum under the Act, it cannot be evicted unless some alternative is provided.

There are small other things that help: ration cards is a public distribution system whereby basic essential food items are distributed by government outlets at a very subsidized rate. Everybody is supposed to have a ration card and you can get food every month. The ration card is considered as a kind of occupancy because it has the name and address of the family members.

There is also political patronage: what is happening is that most of the politicians give people favours in terms of infrastructures connections, even outside the infrastructure programmes, from the municipal budget. This appears to be a kind of nurturing process by politicians to pay till the day of the elections. There is a great resistance to shift people from his constituents to another place because they would be losing a large number of votes. It is helpful that the politicians come to the rescue of these people for any kind of evictions.

Courts are important actors that have emerged on the scene: there is an important case in 1984, in Mombay, to clear the road payment issue. The municipal corporation was trying to evict these payment dwellers and many of the NGO's have helped to go to the High Court. The High Court granted an interpretation by which the right to life is fundamental and the right to livelihood is linked with it; and the right to life and the one of livelihood are also linked because if one does not have a place where to stay one cannot live. That was the major landmark decision and interpretation given by the Court in 1984 that let people recognise their rights. In the 1980's there was a major movement of the leftist NGO's who tried to influence the policy by considering to force the government into including the right to shelter as a fundamental right in the Constitution. And there was a major resistance from the government lobby because they felt they would not be able to fulfill this obligation. Nevertheless the resistance has allowed to make the government give up evictions as a major approach.

To conclude this overview, there have been a major shift from eviction and disintegrated recognition on the part of the government, policy makers considering security of tenure as a major issue, whether it is legal or it is through some informal parameters or permissions. Concerning the role of the NGO's, there is recognition in government policies about the role played by communities and CBO's are recognised as one of a viable unit with which the government should dialog to implement any further programme.

QUESTIONS/DISCUSSION

- Lauren Royston: to Neelima: she said that she heard about integrated nationally programmes where

Neelima spoke about confirmation of security of tenure or protection against eviction, the provision of services, poverty alleviation programmes. Lauren wants to get a sense of what kind of preconditions pave the way for that kind of integration because it is a problem she has identified in the south african context, i.e. there are programmes which are not integrated or not properly coordinated.

- Nora Walker (from the Development Action Group in Cape Town - NGO): she said that Neelima was talking about formalisation, giving people security of tenure, legal tenure. She asked what have been experienced once people have got the legal tenure in terms of how the impacts exert on the poor to housing and do those properties continue to circulate in the legal market or do they go back to circulate in the informal market.

- Geoffrey Payne (from UK): to Neelima, he asked if it is correct to say that the provision of formal rights in certificate in India has facilitated the allocation or the implementation of projects because it reduces litigation which is making problem with some of the formal statutory systems.

Neelima answered the first question: about the integration of various programmes, an excellent example is the one of Vizag and the case study presented in the paper. The beginning started in the 1970's through a community development programme that the local government was responsible. This community development programme was initially dealing with people on the ground. The programme organised them with some educational and inputs, it tried to identify their needs; therefore it was not a shelter programme, it was basically a community development programme. But this has continued since 1979 until today. Therefore there is a continuity of this programme and the trust between the government agency and the people has been built. Very surprisingly, because of this trust, the municipal corporation and the community development have managed to emerge as a nodal agency, whether they have been able to do 3 axes:

- convergence of various programmes between the different departments in the communities;
- they have been able to coordinate the various departments in implementing these programmes;
- they have been able to achieve these two participatory methods;

Participation is particularly very essential and 95% of slums in Visakhapatnam has some form of security. This is very remarkable: not only that various evaluation studies which have been conducted, have found that there is a great investment in shelter but there is a greater improvement in health, a greater participation of the people and a greater social and economic upliftments of this area. This integration that has been possible in this case, has not been successful in others cities. Community development programmes started in Delhi in the early 1960's as a pilot project, and in 7 cities which Hyderabad and Delhi were some of them. In Delhi it has not worked but somehow in Visakhapatnam and Hyderabad, various parties came into supporting this programme. Therefore, the interaction between the people under the community development and the department of municipal corporations is very strong and the politicians are out. The exploitation by politicians of these poor communities about their basic needs has been completely cut off. This programme has sustained and it started with people and not with shelters neither with tenure.

There is the other example of Bombay: it has started as a shelter programme: basically as an infrastructure programme, improvement of slums and then as a shelter programme. Now, the NGO's are providing these social inputs and because of that the case of Bombay is very different of the one of Visakhapatnam.

About the second question on resale of property, Neelima said that the resale of property, the commodification of the tenure is taking place where the coverage is small. In the cities where the coverage has been pretty large, the resale is not so significant. Therefore, the coverage is very important, - it has been based in Delhi - and it depends on the size of the city and on the land market in that particular city. In Delhi, the land value is very high, so one will find the greater resales of property that are taking place. Why this kind of resales? Initially, the land policy of Delhi was to give land only on household rights. But later on, everybody was starting selling and letting those leasehold properties and there was a restriction on transferred properties once the government did realise this reality. The government therefore had not recognised these properties as ownership of land. As far as slum regularisation is concerned and because there was a greater move to convert the leasehold property into freehold, the government tried two policies to stop that practice:

- to give a cooperative tenure;

- to give license tenure which means that there is a right to occupy but one cannot sell it.

There are few case studies that show that people do not care whether there is a license or a lease and actually the market goes on, the position being ownership. People would sell or buy it and because there is a price there is a market which is a very good one. This has led to a major intervention by the Court in Delhi. There are two aspects where the Courts have intervened

- the timing issue, because there are 33 million population who live in squatter areas. The courts have come up because every year, during monsoon, there are some epidemics (cholera, gastro-enterite, and typhoid) and despite the fact that some kind of basic services are provided, these are less than required in such circumstances. This problem has taken such proportions that the Supreme Court intervened in 1986 and it took over and started ordering that the government must clean up the entire cities and the main parts of the slums where the major problems occurred. When an epidemic starts, it is not restricted to only slum areas but it spreads everywhere. Because of this situation, the Supreme Court ordered that all those who are beyond the cut-off date should not be given any kind of support. Five million people should be resettled: this is a kind of order taken by the Court and the government does not know how to resettle such a large number of people. The Court wants an overall comprehensive planning action allowing these people to continue and they are selling land and they are making money on the government land, so one should put on the restrictions and direct that no land should be given on lease and no ownership should be provided. The Court has been active and since the matter is before the Court, the government cannot do anything about it. They have to follow Court's directives.

- the high-income residents of joining localities have gone to Court. They said that they refuse this low-income population because they create problems like stealing of electricity and water. Many of these welfare resident associations have gone to Court and the Courts have brought all these things together. NGO's have gone to Court to ask for stopping evictions but the Courts seem to be not very sympathetic. The Courts refused these piecemeal solution and they want a comprehensive planner action, even if the government does not have the machinery to absolutely implement it for several reasons: first, 3 million population is a too large number to handle; second, there is not enough land available to relocate these people; third, because of the political structures: at the central government there is one political party and at the State government there is another political party. Therefore, they are not supporting issues and they refused the development authorities, the central government, the municipal corporations and the State government. So when they want land, authorities will not give them because there are opposition parties in the State government. As a result the political structure is also influencing a kind of integrated approach.

About the question of illegal sub-divisions, there is one NGO that has gone to Court in the case of regularisation of unauthorised illegal land subdivision. This NGO has gone against the government arguing that every time there have been illegal land subdivisions earlier, 600 available colonies have been regularised. But regularisation focuses only on illegal structures, this does not mean that areas have been upgraded but that does mean that they have been provided with services. Because of these kind of regularisation practices which are subsidized, there is another allegation by the planned project that most of the politicians that are interested in providing infrastructures to illegal settlements get more funds and the planned projects where people pay for everything are not getting more water supply and electricity. This is therefore the major conflict between the planned settlements and unplanned settlements because they get everything subsidized and people who pay for it do not get it. There is also a major problem of recovering from the people, not that they are too poor to pay but they think that as long as the government is providing them, they can manage together with it. There is a more major problem of financing infrastructures in these areas at a city level. There is a major breakdown of infrastructures. This is probably answering the litigation part and also the landholding issue. As a consequence, formal tenure is becoming more difficult in Delhi because of this complicated Court intervention.

There is also a Bombay example where the private sector has been involved in redevelopment of slums where they tried to use the market mechanism and the land price benefits because the land price is very high in that city. In this case, what is most interesting is that all the legislation has been modified to suit this policy. Everything has been modified to allow all these slums to be redeveloped so that people can be given almost free of cost tenements. This example is quite different of the one of Andhra Pradesh where all the

laws have been superseded, where most of the laws have been modified to do that. This is the major difference between the 3 case studies.

2. Yarissa Richmond Lyndgdoh talked about tribal land tenure systems and tried to relate it to security of tenure. Her paper has both relevance for the workshop and the IRGLUS meeting. The difference is because of few reasons: first being that she covered the northeast India that is next to Puntan and Goma. The reason why it is her topic is because there are two States and they are predominantly tribal and nature populated by indigenous people. There are also indigenous people in Bihar, in Kerala and in Madhra Pradesh. However, these communities do not fully follow their traditional system because of the fact that most government policies have superseded their system whereas in the north east there are more than 100 tribes which are further divided into sub-tribes, each following their own tenure systems along with the government imposes policies, regulation on land and therefore that creates duality in that area. Therefore, the population of the northeast basically still follows their traditional system despite the fact that there is the Christian influence there. All or the majority of the population are Christians thanks to the missionary machinery which came to this land centuries ago. Despite the fact that there are government interventions, both when the British came with their policies and then by the Indian government which simply inherited those land policies and applied them to the north-east area, the indigenous people there are confused about what is legal and what is illegal because of the fact that they perceive that their system is legal whereas the government looks at it differently and says that what they follow is illegal.

The relevance of her paper covers 3 aspects:

- the emergence of a parallel multi level control system on development issues associated with land. Yarissa concentrated on land in urban spaces between the formal system that is the government system and the traditional tenure system. By the traditional tenure system, the customary rights generally revolve around the community, the clan and the individual. She did not go on the development on clan land, clan ownership and community clan ownership. With the existence of traditional tribal system and the existence of a traditional institution we have a confusion of who hold the rights on land and exactly what kind of rights - use rights, transfer rights, exchange rights - whether the government or is it a traditional institution. Therefore, we have a parallel multi-level because both the government and the traditional system are as important and they function in parallel to each other. The question that arises is whether the local inhabitants perceive the customary system as being more secure.
- the issue of community initiative development project which is about perceived tenure security in the area of the north-east;
- the matrilineal society India has in the State of Makalia and in the urban city of Shillong which has this duality happening.

Her argument is basically that the traditional system that is still followed but not legally endorsed is as insecure tenure situation as one in which the ownership of land is ambiguous. In most national conferences talking about India, the main focus is on the slums, unauthorised constructions or unauthorised colonies. However the indigenous people of India can also contribute to adding to solutions that we could come up in terms of security of tenure. The issue that she identified from her case study and which she highlighted are:

- firstly through those legally recognised in the Constitution of India. In the NorthEast of India there are different indigenous people who were given special States because of the Constitution of the country under the Sheik Chadin. People were given special States because the land rights or the customary rights have been legally recognised. Nevertheless, because it is not a statutory law it creates insecurity in terms of when one try to develop as an urban planner, if urban planning institutions like the municipality or the urban affairs (development authorities) want to develop the towns, there is the issue of the land ownership to face. Is the land belonging to the clan, the community or the individual ? No codification has happened, therefore there are no records of exactly who owns the land, and there is no map that specially allocates or tries to identify these parcels of land.

- secondly, there is no inventory of land holdings and the different tenure categories and this result in basic land disputes and long litigation processes. Land disputes occur at two levels: with the government first: India has past policies such as the Land Acquisition Act and the Town and Country Planning Act. However these policies should or do apply to the States of the NorthEast, they are

not effective because strong are they may be in Delhi, Mombay or others cities, they are simply not used in the northeast because of the social and economic fall-out. Therefore those policies have no relevance to the people living in these States and there are simply imposed on them and considering the fact there are different tenure systems we need to come up with policies that probably would integrate the indigenous population with the formal system.

- Finally, the presence of two conflicting systems creates the possibility of insecurity both in the administrative level and the ownership of land. Administratively, there is a traditional and a formal system.

Coming to her case-study area she gave a brief description of what kind of land ownership is there. There are 3 kinds of main categories: government land; community land; private land that is further divided in clan land and individual land. There has been a little change in the traditional system itself. Learning from the traditional system, there is a major individualisation of land that is taken place in the NorthEast. Therefore the issue of registration has really gained importance because in the traditional system there is no written law, there is no concept of lease, there is no lease document, and there are no contracts. What happens is more of an oral tenure. There is an example of a kind of confusion and conflicts that take place: there was this woman who gave out her house to a tenant, both from the same tribal community. The tenant realised the importance of the formal system and used it for her own means. What she did was she registered that land in the Revenue Department, which is the formal system, legally endorsed and gained title over that land. Thereby the owner lost that land, even when she argued in Court that according to customary law that land belongs to her. Then there is a problem because people prefer not to register their land with the government because of fears of losing it. That is not totally wrong in their side because the government has a lot of times registered their land, surveyed it without exactly knowing how much land belongs to these people and finally acquired it through their legal or formal system. What the people fear is that they will not register their land with the government but they would rather have a lease from the chief. The chief is the custodian of land in this community and he does not own the land. The chief has given out lease rights, he has given patas to these people, however these lease documents are not legally recognised. Therefore, if one has to argue before a Court of Law, the formal system is superseded.

A city is segregated into pockets and there is a normal area where all laws and acts of the government apply, these areas to be part of the city territory that is areas acquired by the British and formerly transferred to the Indian Union. There are also some administrative areas which are within the municipal limits but the laws of the government do not apply, that means the customary laws apply. The non-applicability of government rules and regulations on those parcels of land are by choice and not by legal backing of the administration. Therefore any confusion of title the government supersedes. Then this northeast region has a contournment area that has selected laws and an access which apply on the fence land. There are also town areas, municipal boundaries and urban agglomerations. The rest of the town run by the municipality still follows the traditional system. Finally, there is an institutional apparatus where the formal institutions take place, which is the district council. In the Constitution of India, there has been an instrument to set up district councils. District councils are particular to the region of the northeast because they generally administer the land with the traditional system in mind. The municipal board follows the government policies of land acquisition, formerly master plans and the other land policies that have been passed like the Slums Clearance Act.

Concerning the slums, the northeast area knows an aligned permit that was issued by the British. A long time ago, people from other communities and even British officers at that point could not enter the northeast. Therefore these people were totally cut-off and even till today lot of them look at Indians as different. Because of these unaligned permits, there is no influx of the poor people in this area. The issue of slums as such is not so much of a problem in the northeast as is the issue of codification of their tenure systems and the state of recognition that one should give.

There is an urban development authority that prepares the master plan that is simply not implemented. The government cannot acquire land for anything, whether it is to develop commercial areas, to widen the roads, or to have drains and layout infrastructures. Land cannot be acquired because one has to go through the clan and the community systems. The government does not know exactly how this system works and no

study has been carried out. Actually there is the traditional institution where there is the chief and the headman. India has the municipal ward, the ward commissioner and the headman. When talking about use rights, people prefer to go to the headman instead of the ward commissioner but the headman has no legal backing for his decision, in terms of settling land disputes, giving permission to some kind of development that can come in the colony, whether it is for commercial reasons or for residential purposes. He does not have legal backing in terms of evicting people but he has the customary law behind him.

There are community development initiatives: people feel more secure within their own system. Therefore they give land to the community which is located in different localities (200 localities within the urban agglomeration), they give land to the headman and to the community or to the community council as they call it, for them to develop the site. Outside the municipalities, most of the roads, the street lighting, and the drainage, all the other infrastructure services are provided/initiated by the community implemented by the people themselves. Funds raising have happened within the communities themselves. In fact they ostracize from the locality, from that particular community if they do not contribute in terms of financial help or in terms of implement a development initiative. The difference is that the government appeared in 12 years to carry out just 12 projects as compared to 261 projects that were carried out by the communities themselves. Therefore the question here is should these people follow the formal system or should we integrate the traditional system and make it more formal in terms of registration of land. People prefer not to register the land with the government, so therefore one should think to make the traditional chief system formalise it so that people feel more safe. Indeed, they can register the land with them, there is a land records system, maps and special allocation areas which indicate what land is under what ownership and this would definitely help urban planners and urban planning authorities to carry out development in a more conflict resolving manner.

QUESTIONS/DISCUSSION

Eddy Nsamba-Gayiiya, from Uganda: he said that the traditional system should be integrated into the formal system. He thinks it causes some problems in sort of integration. His question is when you formalise informal systems don't you lose a lot? Why the government gets out of it? And leave these indigenous people just organise themselves and give them legal backing to manage the system because his view is when one try to regularise or formalise the traditional system one lose many positive elements.

Geoffrey Payne asked whether the problems in Shillong are the results of a lack of competition for land because of low levels of the migration to urban areas or whether the customary system has been able to cope with increasing commercialisation of land.

Jens Kulin (Cape Metro Council) asked if the tribal tenure system she talked about is predominantly in rural areas or urban and in what extent is it relevant to a free market economy ?

Yarissa answered the question about should we integrate the system, the formal and the traditional? Why does not the government get out basically and let the tradition system function? The reason why we need to integrate the formal and the traditional system is because the level of awareness among the tribal community or the indigenous people is very low in terms of urban development. So we have to build awareness before we could totally give up the formal system. That would be a monumental task. So instead of doing that we could formalize the traditional system and probably slowly shift out or the government system could slowly move out as long as they feel that the traditional system cannot take care of developing land and securing tenure for people there. Another issue that has been raised is whether the positive aspects of the traditional system would be lost if a process of formalisation or codification takes place. Reform commissions have been set up to deal with this matter and this study shows that it is necessary to codify the system not only because these people are trying to differentiate it from the formal system but because there are some 100 tribes and each of these tribe have different system. There are 3 major tribes, each tribe again has sub-tribes and their tenure systems are very different and hence one has to acquire land for development one would

need to know each tribe and details and their customary rights. Because carrying out development without hurting their feelings is important, a codification could be a good solution.

About the second question i.e. the lack of communication, it is not really due to the lack of influx of people, they do have that after 1971, outsiders that are non-tribal could buy land in the north-east. Certain parts of the towns are own by non-tribal; however after 1971, the Land Transfer Act (most of the States have passed Land Transfer Act) prevents the sale or transfer of land to a non-tribal. This has had a major impact on commercialisation on land there. Land as such is not a remarkable commodity if you look at investments from outside and the only commercialisation level that has taken place is the transfer of land from one tribe to another. Their income is less than \$100, therefore they are not equipped to invest on development projects or any project will be profitable for the region. So what happened to supersede this law is that illegal leases have been given to individuals to develop the land commercially. That is the first way they have gone about it. The second way is this one: property rights or the land goes to women, the youngest daughter of the tribe or the only daughter of the family. So what happened is a lot of non-tribal and outsiders have married into the community and acquired that land through marriage, not in terms of title, and then developed the land for what kind of commercial reasons. Thirdly, there is no public or private participation that can take place there due to the fact that there are 2-3 projects that were initiated but then had to be stopped by the Japanese government, the Americans and the British because of the problem of ownership. Also the government bodies like the urban development authority could not carry out: for example there is a new township that was designed for Shillong but it could not be implemented because private investments stay clear of land that cannot be leased to them. They do not get profit out of it, so the problem is that there is no market, a commercialisation has not taken place; to a very small extent individualisation of land has taken place, community land has become individualised because of certain tribes who are more aware of the security of having an individual parcel of land or private ownership; whereas the rest of the community which is still unaware of such things follows the community ownership of land. So in terms of commercialisation, the situation is very difficult in that area.