



Holding Land in Common within Cities, Commoning for Land Rights

What Can We Learn from Collective Tenure in Urban Context?

Claire SIMONNEAU

Postdoctoral Researcher
Faculty of Architecture, Architectural Engineering, Urban Planning
University of Louvain, Belgium
claire.simonneau@uclouvain.be

Irène SALENSON

Research Officer
French Development Agency, France
salensoni@afd.fr

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Responsible Land Governance: Towards an Evidence Based Approach

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Abstract

In cities of the Global South, access to decent housing and secure land tenure remains a great challenge for most of urban dwellers; yet secure land tenure is a key component of urban resilience. The aim of this paper is to present and synthesize an exploratory and desk-based study on collective tenure in developing countries' cities that was conducted in 2016. This study is part of a wider reflection on the possible contribution of the analytical framework of the commons to renewing the approach of development aid, conducted by the AFD, and seeks to explore to what extent collective tenure in urban context can contribute to inclusive and sustainable cities.

First, we demonstrate how the debate on securing land rights for the urban poor can be enriched by the analytical framework of the commons. Second, we draw lessons from three of the six case studies developed in the study, namely: housing cooperatives, collective land titling and Community Land Trust.

Key Words:

collective tenure, commons, Community Land Trust, housing cooperatives, urban land



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What Can We Learn from Collective Tenure in Urban Context?

In many cities of the Global South, access to decent housing and secure land tenure remains a great challenge for most of urban dwellers. Formal markets and public housing programs have proven inadequate to face the rapid urban growth experienced in the Global South, and a majority of urban dwellers access to land through unofficial channels. They build their house where land is available and at a price they can afford. As a consequence, one can observe a diversity of land tenure status in cities of developing countries, ranging from registered freeholds to squats (Payne, 2002a).

Land tenure security has been recognized a key component of urban resilience mechanisms (Moser, 1998; Payne, 2002b). While massive legalization campaigns have had limited results and have faced implementation problems, securing *de facto* land rights is nowadays an option favored by international institutions such as UN-Habitat (2008) and the former United Nations Special Rapporteur on adequate housing Raquel Rolnik (2013). Surprisingly, little attention has been devoted to collective forms of tenure¹, such as group tenure, collective land title and common property.

This paper exposes the results of an exploratory study examining collective forms of tenure that we refer as “collective tenure in urban context”², conducted between March and December 2016 for the French Development Agency (AFD). The main purpose of the study was to explore the topics of “commons” and land issues in the Global South, through a review of existing research and projects, and to examine the potential of collective tenure in urban contexts in providing secure and affordable land, and their contribution to a sustainable and inclusive urban development.

This study is part of a larger research program: “Commons and Development” supported by the French Development Agency (AFD), which seeks to investigate to what extent the analytical

¹ With a report of Cabannes (2013) as a notable exception.

² Referred to as “*communs fonciers urbains*” in French.



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framework of the commons can renew development aid approaches. Similarly, the overarching question of the study was: to what extent collective tenure in urban context could help to grasp and act on land issues in the Global South for a more inclusive city?

This study constitutes the first phase of a long-term research on collective tenure in urban context lead by the AFD. It has been conducted between March and December 2016 by Claire Simonneau (first author of this paper) and supervised by Irène Salenson (second author of this paper). This study was meant to be exploratory: it was mainly desk-based, and its final purpose was to establish priorities for further research. In 2017, a second phase will be developed with field surveys in several developing countries.

This article is divided in five parts. In a first part, we detail the context, the purpose, and the methodology of the study. In a second part, through a literature review, we demonstrate how the debate on securing land rights for the urban poor can be enriched by the analytical framework of the commons. We then expose three case studies, namely: Community Land Trust (the model and its implementation in Kenya), Mutual Aid Housing Cooperatives in Uruguay, and collective land titling in Namibia. In the fourth part, we discuss the specificities and effects of collective tenure in urban context. Lastly, we highlight the main lines for further research.

1. Framework and Methodology

Commons and Development

Commons are made of three imbricated realms: a resource, a user community, and rules for managing the resource (Helfrich, Kulhen, Sachs, & Siefkes, 2009). The seminal work of Ostrom (1990) has foregrounded the idea that the free market and the State are not the only ways of structuring economic relationships. Ostrom has demonstrated that communities are able to develop sustainable arrangements to manage common pool resources by themselves.

The French Development Agency AFD is interested in understanding how social practices are integrated into institutions and rules. As a conceptual and an operational approach, the commons appear to be inspiring regarding issues of equity and conflict mitigation that are of the highest importance for the AFD. Yet, the topic of commons and development has not been fully explored. This is the purpose of the recent research program that has been launched by the AFD³.

³ <http://www.afd.fr/home/recherche/programmes-recherche-afd/communs>



Collective Tenure in Urban Context

The commons are understood as an institutional arrangement for governing the use and disposition of resources, following the work of Schlager and Ostrom (1992) and Bollier (2014), among other authors. The expression “collective tenure in urban context” refers here to a set of situations in which land is held in common, and rights to access, use and transfer land are granted to the community. We also include practices of “commoning” concerning land rights, such as collective struggles for securing land occupation.

Three categories of collective tenure in urban context were defined at the beginning of the study: (i) collective tenure referring to traditions and customs; (ii) new forms of collective tenure; and (iii) practices of commoning regarding land rights.

Methodology

In line with the exploratory nature of the study, the methodology was based on secondary data. On the one hand, we have examined the theoretical debates around commons, land tenure, and common property, through an interdisciplinary literature review. The latter has included research in economics, law, philosophy, urban planning, and sociology, but also publications from advocacy organizations. On the other hand, we have investigated six significant case studies in developing countries, namely: (i) a Community Land Trust in Kenya (ii) housing cooperatives in Latin America, (iii) land sharing agreements in South-East Asia, (iv) neo-customary land tenure in West Africa, (v) collective titling in Africa and Asia, and (vi) collective adverse possession in Brazil.

The case studies were selected on the following criteria: the sample should be representative of the three continents where the AFD finances most of its development projects (Africa, Asia, and Latin America); information, should be available in English or in French; cases should illustrate one of the three categories determined above.

The six cases were documented on the basis of the information available in the literature, and analyzed through a comparative approach. They were scrutinized through a multidimensional analysis, considering their contribution to: (i) land conflicts resolution, (ii) urban planning design and service provision (iii) inclusiveness, and (iv) land security.

Lastly, we have interviewed key stakeholders of the case studied and experts, to fill the information gaps, and update data whenever possible.



Consequently, this study was dependent on the information made available in the literature, and which could be accessed from Europe. Such a limit justifies the implementation of fieldwork in the following phase of the research.

2. Commons and Urban Land Issues: A Literature Review

There is an extensive literature on commons on the one side, and on urban land issues on the other side. Yet, these topics have apparently rarely been tackled together⁴. The following literature review is then structured around three lines. First, we will expose the link between urban vulnerability and land tenure. Second, the contribution of the literature on the commons to understanding and to tackling urban land issues will be determined. Lastly, we will propose an enriched framework to tackle urban issues.

The Debate on Land Tenure and Urban Poverty

From private ownership to land tenure security

Access to decent housing remains a great challenge in rapidly urbanizing countries such as in the Global South, as illustrated by the proliferation of informal settlements (Huchzermeyer & Karam, 2006; UN-Habitat, 2012). Access to land on the one hand and secure land tenure on the other hand represent key elements of decent housing since land is the basis of shelter. Land plays also a crucial role in vulnerability processes. On the one side, it provides access to livelihoods opportunities, such as informal economic activities, subsistence agriculture, etc. and serves as savings (Moser, 1998). On the other side, land tenure security can be a lever for development, since it encourages investment in shelter, means of economic activities, and facilitates work and education for women and children (Payne, 2002b).

Yet, the ability of the poor to access and retain urban land remains quite low. For many authors, the predominance of private ownership is key to this excluding process. Property can be defined as a social relationship that organizes the access and use of a resource and that is defined through property rights (Comité Technique "Foncier et Développement", 2009a; Le Bris, Le Roy, & Leimdorfer, 1982). Individual ownership has been the favored form of land property in many countries, including in the Global South. Individual ownership confers to the owner the full gamut of land rights, including *usus* (the right to use), *fructus* (the right to withdraw the "product" of a property), *abusus* (the right to alienate), through individual legal land titles. It has been imposed in many countries of the Global South by colonial rules, and served as a powerful means to conquer territories, and has been supported

⁴ We have identified two publications that are exceptions in this regard: (Cabannes, 2013; Midheme & Moulaert, 2013)



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by international agencies more recently (Massiah & Tribillon, 1988). Nevertheless, the issuance of land titles has also proven grossly inadequate in coping with rapid urbanization.

The massive land titling programs, implemented in Latin America and Africa, under the influence of De Soto (2000) among other authors, have also globally failed. Since they often involve complex and costly procedures that are beyond the reach of most of inhabitants, they have been a vector of exclusion. Moreover, they have also precipitated market-driven displacements, due to distress sales by poor inhabitants and land speculation (Durand-Lasserve, 2006; Durand-Lasserve & Selod, 2007; Payne, Durand-Lasserve, & Rakodi, 2009). In brief, they have failed to provide land security and provoked exclusion.

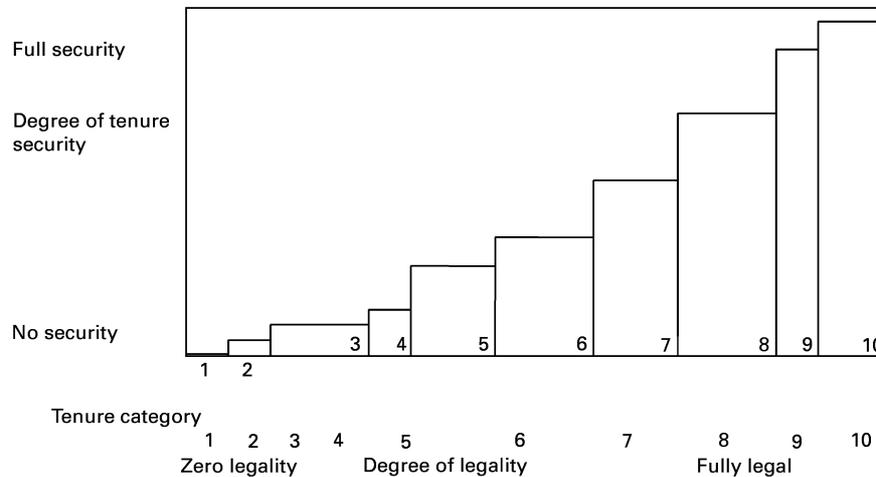
Legitimate land rights and the diversity of land tenure forms

As an alternative to this standard approach, academics and international organizations such as UN-Habitat (UN-Habitat, 2008) promote the notion of continuum of land rights and the diversity of land tenure forms (Payne, 2001), as illustrated in the following diagram:



Figure 1. Urban Tenure Categories

source : (Payne, 2001)



Tenure categories found in many cities:

- 1 Pavement dweller
- 2 Squatter tenant
- 3 Squatter 'owner' - un-regularised
- 4 Tenant in unauthorised subdivision
- 5 Squatter 'owner' - regularised
- 6 Owner - unauthorised subdivision
- 7 Legal owner - unauthorised construction
- 8 Tenant with contract
- 9 Lease-holder
- 10 Free-holder

NB: For simplicity, this illustration deletes customary and Islamic tenure categories

They put forward for example occupancy rights, customary rights, group tenure, etc. and consider them as valid forms of land tenure, which should therefore be secured. In other words, they highlight *legitimate* rights, and not only *legal* rights.

According to this alternative vision, private ownership is just one form of land tenure that should not be systematically promoted. It is in this vein that Raquel Rolnik, the former special Rapporteur on adequate housing for the United Nations⁵, writes (Rolnik, 2013, p. 4):

individuals and communities occupying land or property to fulfil their right to adequate housing, and who have no other adequate option, have legitimate tenure rights that should be secured and protected. The concept of legitimate tenure rights extends beyond mainstream notions of private ownership and includes multiple tenure forms deriving from a variety of tenure systems.

⁵ More exactly: special rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.



The Contribution of the “Commons Literature”

The literature on the commons offers a multifaceted contribution to this debate (Midheme & Moulaert, 2013).

A renewed interest in collective tenure

First, the work of Elinor Ostrom⁶ (1990), who won the 2009 Nobel Prize in economic sciences, combined with the idea of diversity of land tenure, has fostered renewed interest in common property regimes.

Commons can be defined as institutional arrangements for governing the use and disposition of resources, in which control regarding access, use and alienation is exerted collectively, but also jointly defined and enforced. Through documented case studies of common pool resources managed by rural communities, Ostrom has demonstrated that common property regimes allow sustainable management and has rejected the “Tragedy of the Commons” theorized by Garrett Hardin (1968). Collective tenure can be considered as one of the forms commons can take.

Collective tenure has an old history in many parts of the world, since any production has depended, throughout human history, upon a pool of commons encompassing land, water, wood, pastures, etc. In many countries of the Global South, one can still find references or practices of traditional collective tenure.

Beyond the work of Ostrom on natural resources and rural communities, the debate on commons has also expanded to subsume urban spaces and practices (Gidwani & Baviskar, 2011; Midheme & Moulaert, 2013; Ramos, 2016). Alongside with traditional collective tenure, new forms of collective tenure have emerged in the Global North as well as in the Global South, such as Community Land Trusts, housing cooperatives, etc. (Denèfle, 2016; Midheme & Moulaert, 2013) as a testimony of a renewed interest and trust in common property regimes. These new forms of collective land tenure do not systematically rely on traditional communities anymore, but far more on ‘contractual communities’ that may even encompass public institutions.

The primacy of the “social function” of land and the need to expand use rights

Second, the notion of social function of land allows to question whether private ownership is an appropriate form of land tenure regarding social needs (Bernard & Thys, 2014).

⁶ Ostrom among other authors, has also put forward the notion of bundle of rights. The latter highlights the fact that different kinds of rights can be superposed on the same piece of land, and be attributed to different individuals or groups.



This notion posits the idea that land ownership cannot be absolute (encompassing the full gamut of property rights) since it is limited by its “social function”. To put it another way, since land is a limited resource, it should be used sparingly especially in rapid urbanizing countries where demand for land is increasing. In urban areas of developing countries, this social function is primarily housing, or more exactly the use of land for a decent housing.

This idea has been developed first by Aristote, and then by St-Thomas, Auguste Comte and Leon Duguit, yet it has more recently been promoted both by the movement of the commons and by the ‘right to the city’ movement. The latter was first put forward by Henri Lefebvre (1968) and essentially represents a pursuit of more inclusive cities through the promotion of anyone’s right to access to the city as well as to change it (Harvey, 2011). In this regard, private and individual ownership is deemed inappropriate, since it triggers social exclusion and spatial segregation. What is promoted then, in line with the social function of land, is to expand use rights, instead of private ownership.

An Enriched Framework to Tackle Urban Land Issues

To sum up, tackling urban land issues through the framework of the commons allows to:

- consider the social function of land above its juridical status;
- focus on collective land tenure;
- consider the final purpose of urban planning and policy, which is access to adequate housing for all.

The framework of the commons encourages to explore alternatives to the dominant model of private ownership, and to put management rules and use rights at the center of the analysis. Finally, it allows to focus on an under-researched topic that is collective tenure in urban context. We now turn our attention to the case studies, with a focus on three of them that are particularly relevant.

3. Three Case Studies

The study has relied on six case studies. As mentioned above, they have been organized in three categories: i) collective tenure referring to traditions and customs; (ii) new forms of collective tenure; and (iii) practices of commoning regarding land rights.



For the purpose of this article, we detail only the cases that belong to the second category, namely: Community Land Trusts, Housing Cooperatives and Collective Land Titling⁷. We have selected these three cases since they seem to be the most innovative ones. They have also yielded the most salient results regarding alternative forms of tenure for the poor. In this regard, they are relevant case studies for an audience encompassing both researchers and practitioners, such as the audience of the present World Bank Conference. It is worth mentioning that the whole study, including the six case studies, is about to be published by the French “Land and Tenure” Technical Committee in French.

We now present the case studies very briefly before turning to the discussion.

Community Land Trusts

A Community Land Trust (CLT) can be defined as “a not-for-profit community-controlled organization that owns, develops and manages local assets for the benefit of the local community. Its objective is to acquire land and property and hold it in trust for the benefit of a defined locality or community in perpetuity” (Diacon, Clarke and al., quoted in Cabannes, 2013). While statutory definitions of CLT differ depending on the country, the defining characteristic of a CLT is the fact that the property is divided into two parts: land on the one side, and improvements on the other side. The first belongs to the Trust, the second belong to the inhabitants⁸ (Davis, 2010).

CLTs were born in the USA, with the main purpose of keeping housing affordable, through the control of land prices, for the disadvantaged communities, especially African-American communities. The first experiments were carried out in the South of the country, parallel to anti-segregationist struggles. The first American CLT, "New Communities Inc.", was established in 1969 in Georgia. The model was then disseminated elsewhere in the country, with the support of the workers' Catholic movement, until it was regulated by a law in 1992. According to Midheme and Moulaert (2013), CLT draws its inspiration from customary tenures in Africa, American philosophy (Henry George) and experiments in the 1970s, and the Garden City movement. Today, there are CLT in USA (especially in Vermont) and Europe (Great Britain, France, Belgium), but also in Kenya, Puerto Rico and Bolivia through pilot projects and local initiatives.

In CLT projects, the impact of land value appreciation is “locked” into the community through several arrangements. First, land is held in perpetuity by the CLT so that land is “taken out” of the market. Second, gains on resale are limited to a fraction of the increased value provided by the sale. Third, the

⁷ Collective Land Titling was considered to belong both to the second and third category.

⁸ Or to the Trust also in some cases.



lease of every parcel includes a preemption right that gives the CLT the priority to buy the property when an owner leaves the CLT. Due to these principles, prices are kept quite low for several generations of inhabitants (Davis, 2010). Midheme and Moulaert (2013) consider it a “type of modern commons”.

In Kenya, at the end of the 1990s, a CLT was put in place as a component of a slum upgrading and land regularization project in the informal neighborhood of Tanzania-Bondeni in Voi city, with help of the German Cooperation Agency (GIZ). Legal owners of the land agreed to donate their portion of squatted land as a contribution to the project, and the option to constitute a CLT has been chosen by the community. The use of this collective form of tenure aimed at providing land tenure security for slum dwellers, seeking to avoid land resale. Indeed, many slums upgrading projects lead to the resale of parcels by the inhabitants after the regularization process, so that the targeted communities, the most deprived, do not finally benefit from the project. The implementation of the CLT remains a challenge since the legal context in Kenya is not adequate to create a Trust. It took years to effectively put in place the CLT. Nevertheless, the most recent land laws appear to be more favorable to this kind of land arrangement. Despite the institutional and legal obstacles, the Tanzania-Bondeni CLT has allowed access to urban land to poor households and prevented them from market-induced displacements (Bassett, 2005, 2007; Bassett & Jacobs, 1997; Midheme & Moulaert, 2013).

Mutual Aid Housing Cooperatives, Uruguay

Mutual Aid Housing Cooperatives were born in Uruguay at the end of the 1960 decade, following the strong mobilization of social movements, trade unions and political parties, claiming affordable housing programs.

Based on the long experience of cooperatives in the country, housing cooperatives were first local experiments. Nevertheless a national law was passed in 1968 that defined mutual aid housing cooperatives and their three pillars (Folléas, 2012):

- collective and indivisible ownership: land and improvements (buildings) are collectively owned by the members of the cooperative, and the shareholders have use rights;
- mutual aid for building through the joint effort of every beneficiary family (21 hours of work per week per family);
- self-management: the cooperative allocates resources (including a public subsidy) and manages all aspects of the project, without intermediaries.

In 2008 there were about 500 housing cooperatives in Uruguay. The number of houses built through them equals the number of houses built by the formal private sector subsidized by the national



government (Arnold & Lemarié, 2015). The Uruguayan model of housing cooperatives has been copied in many places including Paraguay and Bolivia, yet with less results until now.

Collective Land Titling Systems and Programs

Collective land titling can be defined as the issuance of a land title at the scale of a community; the bundle of rights is conferred to a group of people (Buhot, 2013). The rationale behind collective land titling may be financial: collective titling might be cheaper than individual titling for both governments and inhabitants. Sometimes, it is also coherent with the local spatial organization, when, for example, the boundaries of each individual plots are not precisely delimited. In some places, it is also in line with customary practices. Finally, it has been considered as a means to avoid the gentrification subsequent to a land tenure regularization program based on individual titles (Rigon, 2015).

Collective land titling has been implemented through development projects in developing countries, as for instance in Kenya (Rigon, 2015). However, we present here a more comprehensive approach to collective land titling through the case of the Namibian Flexible Land Tenure System.

The Flexible Land Tenure System stems from a series of local and national projects and policies aiming at producing housing for poor households and especially black people who had been excluded from private ownership during the apartheid regime⁹. The 2012 Flexible Land Tenure Act is the last step of the Namibian land reform. In addition to the existing freehold title, the reform establishes two new types of land tenure: the Starter Title and the Land Hold Title. They are individual yet group-based titles: the outside boundary of a block of land is professionally surveyed and registered under the freehold tenure system at the Deeds Registry in Windhoek, while individual rights or plots within the block are registered locally at the Land Rights Offices. These titles can be upgraded (from starter title to land hold title, and then to freehold title). The block of land can be owned by the Municipality, a private developer or a community-based organization (Matthaei & Mandimika, 2014; Mitlin & Muller, 2004). A comparison between the three types of tenure can be found in annex. According to the literature, in 2014, a few pilot projects have been implemented, but the main decrees have not been enacted.

⁹ Among other projects: the ones of the Namibian Housing Action Group (NHAG), Slum Dwellers Federation of Namibia (SDFN); but also the “Build Together” national program and Windhoek’s municipal land policy.



4. Discussion

The discussion is organized around two lines. First, we discuss the specificities of collective tenure as compared to other commons. Second, we reflect on the effects of collective tenure regarding key issues such as social and economic inclusiveness and land security.

The Defining Characteristics of Collective Tenure as Commons

Innovative forms within existing legal contexts

First, what is interesting in the three cases is that they are implemented within their existing legal context. This is particularly the cases regarding land tenure forms (see below). The innovation lies solely in the creation of new organizations: housing cooperatives, community land trusts or some of community-based organizations in Namibia.

Moreover, and contrary to a widespread idea about commons, the State is never missing in the cases studied here. The State can play multiple roles:

- a regulating role, for instance in the case of collective land titling;
- a role of land owner, in the case of some housing cooperatives;
- a role of housing subsidy provider, in the case of CLT and housing cooperatives.

Collective and individual tenure

Second, and in line with the first point, the analysis shows that the case studies combine collective and individual rights: on the one hand, a block of land belongs to a group or a collective institution; on the other hand, individuals or households possess use rights. The following table displays such a double tenure for each case:

Figure 2. Collective and individual tenure

	Holder of the block of land	Collective tenure (tenure of the block of land)	Individual tenure (inhabitants)
CLT	Trust	lease or land title	sublease
Cooperatives	cooperative	land title	cooperative share
Collective Land Titling	municipality, private developer or community-based organization	collective title (Starter title or Landhold title)	use rights in perpetuity

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This table illustrates two points. First, it confirms that collective tenure in urban contexts can rely on conventional forms of legal tenure, such as leases and land titles. This suggests that collective tenure can be implemented even in countries where private land title is the favored form of land tenure. In this latter case, the innovation lies in the combination of collective and individual rights.

Second, it confirms the embedded nature of land rights: use rights depend on the inhabitants' belonging to a group¹⁰ (Comité Technique "Foncier et Développement", 2009b).

Let us now turn our attention to the notion of community.

Urban communities

Discussion on commons in developing countries is often linked to traditional and rural communities. Midheme and Moulaert (2013) remind a useful distinction made by Ostrom between traditional communities and contractual communities. In traditional communities, which can be found in peasant societies, one belongs to a community by birth, marriage or assimilation. Land ownership is then bound to community membership. On the other hand, contractual communities derive from a decision of individuals to cooperate in managing a limited amount of common resources. It means that belonging to a contractual community is not "natural" as in traditional community, but stems from a clear will to enter the group. Furthermore, the group defines rules to enter as well as to exit the group (to come and go). Contractual communities are more common in urban societies today.

Ostrom's work in rural villages is mainly about traditional communities. The case studies here offer a contrasting perspective on community. To begin with, they involve contractual communities. In the case of Uruguayan housing cooperatives, there is indeed an explicit list of rights and duties associated with the membership to the cooperative, which should be accepted and endorsed by members. Moreover, the North-American CLT model offers an enlarged definition of community, since not only inhabitants but also representatives of the neighborhood and public institutions take part in the CLT board.

In addition, the case studies illustrate that exerting rights through contractual communities is very demanding. First, the cohesion of the community should be built and sustained. This challenge is patent in the case of housing cooperatives in Uruguay: whereas the model was born along with the struggles for social rights in the sixties, one can observe nowadays a slight dismantling of communities, as the second generation has inherited from the houses. Second, the capacities of community to build houses, to plan infrastructures and basic services at the scale of the neighborhood,

¹⁰ This notion of embeddedness refers to the work of Karl Polanyi and underlines the fact that in non-capitalist societies, the economy works within social relationships (Polanyi, 1944).



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and to manage the collective goods are far from straightforward. Capacity building remains a great challenge. This challenge is seriously tackled in Uruguay: housing cooperatives are obliged to engage the services of urban planning and design professionals (architects, technicians, etc.); they also organize training sessions for the members of the cooperative, in the field of management for example. To put it simply, this discussion around communities raises the complex issue of empowerment.

Effects of Collective Tenure

Security of tenure

Security of tenure can be defined, according to UN-Habitat as the “right of all individuals and groups to effective protection by the state against forced evictions”, while forced eviction is defined as: “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection” (Augustinus & Benschop, 2003, p. 2).

Evaluating effective land security would require a far more in-depth study than what could have been done within the framework of this study. A thorough examination of legal and institutional context and an extensive fieldwork aiming at analyzing the situation of households would have been necessary (Payne, Durand-Lasserve, & Rakodi, 2008).

Nevertheless, one can suggest a rough assessment of the level of land security relying on an examination of the bundle of rights held by the inhabitants on the one side, and on the conclusions of Yves Cabannes’ report (2013) to the Special Rapporteur on adequate housing on the other side.

First, the following table, which is based on the information found in the literature, shows the inhabitants’ bundle of rights.



Figure 3. Bundle of land rights of the inhabitants

Types of rights (Ostrom):		access and withdrawal		alienation		
Land rights (regarding housing):		Use right	Mortgage right	Right to sell	Right to bequeath	
Cases	CLT (land use right)	Yes	No (depending on the country)	Yes, under conditions	Yes	
	Cooperatives (cooperative share)	Yes	<i>unavailable data</i>	Yes, under conditions	Yes	
	Collective land titling	<i>Starter title</i>	Yes	No	Yes	Yes
		<i>Land hold title</i>	Yes	Yes	Yes	Yes

Author: Claire Simonneau

This table proves in the first place that use rights are granted by official documents (cf. table on use rights above), may they be a shareholding in a cooperative, use rights, or land titles. One can assume, provided a political and institutional stability, that these official documents confer a substantial degree of security. Moreover, in many instances use rights can be inherited within the family, yet under specific conditions sometimes. Last but not least, collective tenure may prevent from eviction and market-induced eviction such as distress sales and, ultimately, from extreme poverty. This is allowed by facilitating measures or solidarity mechanisms that play either a preventing or a helping role. For example, in Uruguayan cooperatives a helping fund is in place, which aims at addressing members' financial difficulties. The contribution to this fund is mandatory. Saving groups are also often organized within these stable communities.

As reported by Cabannes (2013), even when it concerns the Global North, it is worth mentioning the fact that CLTs in the United States of America have globally prevented inhabitants to be evicted during the 2008 sub-prime mortgage and foreclosures crisis. More exactly, citing a study of Thaden and Rosenberg from 2010, Cabannes reports that the number of households in the foreclosure process was by far lower than those who contracted prime or subprime loans. He also reports that many delinquencies were resolved through “a set mechanism offered and/or facilitated by CLTs, which included financial counselling or referrals to foreclosure prevention programs, providing direct grants or loans to homeowners, or working with homeowners and lenders on permanent loan modifications » (Cabannes, 2013, p. 11).



Social and economic inclusiveness

To begin with, the topic of social inclusion requires some clarifications. The very definition of the commons implies a form of exclusion, since commons are based and organized for a user community (see the definition above).

This study aims at tackling a more specific issue that can be formulated as the following: to what extent collective forms of tenure provide the opportunity to access land to poor households that are excluded from formal land market and private ownership? In particular, to what extent collective tenure contributes to affordable housing? Again, given the limited scope of the data available in the literature, we can only make a partial answer to this question.

First, the three cases testify an attention to the issue of social and economic inclusion through alternative ways of financing land access and housing. The model of the CLT is the most comprehensive example regarding this issue: firstly, a subsidy is used to purchase the plot, and secondly the plot is bought by the trust and belongs to the community. In doing so, the expense for the land is not borne by the inhabitants, so that the cost of housing for them is considerably lowered.

The system of housing cooperatives allows to lower the cost of housing too, through mutual aid for building houses. Lastly, the collective land titles within the Flexible Land Tenure System in Namibia (in particular Starter Titles) are cheaper options for land titling, since they require less documents and procedures.

Second, this issue remains crucial over the long term. In a CLT, thanks to the specific conditions regarding the sale of assets, housing remains affordable in the long run. In housing cooperatives in Uruguay, Cabannes (2013) highlights a risk of gentrification, as a second generation is currently entering the cooperative. This is due to the fact that the cost of a house encompasses the social capital value. The latter equals (mainly): the value of the number of hours worked during the construction, the social charges that should have been paid if the work would have been done by a contracted worker, and the repaid amount of the loan, if any. Then, “the new comer (...) needs to bring upfront over quite a short period of time what the one who left accumulated through a long period of time. He or she will need income and savings much higher than the one who leaves”. As a result, according to Cabannes, sociological changes are observed, since the second generation of inhabitants is globally more affluent than the first generation. Moreover, over the long run, the households that decide to leave CLT or cooperatives do not have the resource to find another housing solution in the conventional market. Indeed, for example In Uruguay, a member who leaves a cooperative receives only 50 % of its capital



during the first year, and the remaining 50 % in the next three years¹¹. This second point draws attention to the ‘time’ variable, and stresses the need to scrutinize the effect of these new forms of collective tenure over the long term.

5. Concluding Remarks and Further Research

The aim of this paper was to present and synthesize an exploratory study on collective tenure in developing countries’ cities that was conducted for the AFD in 2016.

We have proposed a renewed analytical framework to study land issues in developing countries, which is enriched by the framework of the commons. It allows to (i) consider the social function of land above its juridical status; (ii) focus on collective land tenure; (iii) consider the final purpose of urban planning and policy, which is access to decent housing for all.

Three case studies have been presented here. The analysis highlights the fact that collective tenure in urban context is quite specific compared to renowned examples of commons (notably immaterial commons such as knowledge, etc.): collective tenure often relies on conventional forms of legal tenure, but combines collective ownership / possession with individual land rights; it is also based on contractual communities instead of traditional communities. Lastly, the three cases of collective tenure also show contrasting results regarding land tenure security and social and economic inclusiveness.

As a conclusion, it seems that further research should be conducted to scrutinize the effects of collective tenure over the long term, notably regarding social and economic inclusiveness. The question of scaling-up these experiences also emerges, since either the case studies are at a pilot stage, either they concern a limited number of inhabitants.

¹¹ Another example concerns the CLT in Europe: in the Brussels-Capital Region, a member of a CLT who sells his house receives only 25% of its added value. The remaining 75% is for the CLT. Unfortunately, we do not have the same level of details for the case of Kenya at the time of writing this article.



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ANNEX

Excerpt from Matthaei and Mandimika (2014, p. 42)

Table 4: Comparisons of Flexible Land Tenure System and freehold systems

TOPICS/CRITERIA	STARTER TITLE	LANDHOLD TITLE	FREEHOLD TITLE
Registered at Windhoek Deeds Office	A block of land	A block of land	An individual erf
Holder of the plot registered at Windhoek Deeds	Municipality, private developer or CBO	Municipality, private developer or CBO	Individual owner
Type of tenure	Group based derived from the owner of the block	Group based, derived from the owner of the block	Individual ownership
Extent of rights	Right to occupy an undefined site within a block in perpetuity	Right to occupy a defined site within a block in perpetuity	Right to occupy an individual site in perpetuity
Right to	Transfer or otherwise dispose of the occupation right, upgrade as a block	Transfer or otherwise dispose of the occupation right, mortgage, upgrade individually	Transfer or otherwise dispose of the occupation right, mortgage
Restrictions	Conditions on block, group constitutions, no permanent structures	Conditions on block	Conditions on title on individual erf
Individual rights registered at	Land Registration Office	Land Registration Office	Windhoek Deeds
Maps/surveys	Community map (optional)	Cadastral map prepared by land measurer	Diagramme or general plan prepared by land surveyor
Planning	Feasibility study of local authority whether or not the block is suitable	Layout to be approved by local authority	Layout to be approved by local authority

(Source: Republic of Namibia, 2005)



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