

Usufruct Schemes: Alternative Modes of Securing Tenure for the Poor

Christopher Rayos Co¹

A. The Challenge of Slum Dwelling in the Philippines and the Millennium Development Goal (MDG) No. 7 Target 11.

The unprecedented pace and scale of the proliferation of slums and informal settlements pose a major challenge to cities of developing countries like the Philippines and the international community.² The numbers on slum dwellers are appalling and necessitate a global response. Data reveal that in 2000, there were 924 million urban poor/slum dwellers in the world's cities (more than 20 % of the world population). By the year 2020, an additional 500 million will be added to the figure making it 1.424 billion urban poor/slum dwellers.³ And that by 2030, urban poor or slum population will have reached the 2 billion mark.⁴

The Philippine scene shows that of the 76 million population in the year 2000, 48% are urban dwellers and approximately 20.4% are urban dwellers who are below the poverty threshold.⁵ Data also show that while the annual urban population rate is pegged at 6%, the urban

¹Former legal staff, Sentro ng Alternatibong Lingap Panligal (SALIGAN) Mindanaw Branch; former legal consultant, Presidential Commission for the Urban Poor (PCUP); consultant, Philippine Action for Community-led Shelter Initiatives, Inc. (PACSII).

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²United Nations Human Settlements Programme (UN-HABITAT), "Analytical Perspectives on Pro-poor Slum Upgrading Frameworks", (UN-HABITAT, February 2006), p.1.

³Nfese Bazoglo, "The Need for a More Ambitious Target", Habitat Debate, (UN-HABITAT, September 2005), p.8.

⁴Tibajjuka, Anna, "Message from the Executive Director", Habitat Debate, (UN-HABITAT, September 2005), p.2.

⁵National Statistics Coordination Board, 2000.

poor population rate is double that at 12%.⁶ Further, data from the Presidential Commission for the Urban Poor (PCUP) peg the urban poor population at 60% of a city population.⁷ This is supported by other research estimating that as more of the low income folk flock to the cities, population therein will increase by 95% by 2030.⁸ Hence this movement to the cities becomes a pressing development issue as it gravely impacts on sustainability of resources, health, and environmental conservation/protection. Beyond the sheer numbers are the adverse features of urban poverty characterized by: a) multidimensional poverty and deprivation; b) vulnerability; and c) social exclusion that the poor suffer, yet manage to survive with.⁹

Rising to the challenge, the United Nations declared in 2000 to undertake steps towards the realization of the 8 Millennium Development Goals (MDGs), one of which is Target 11 of Goal 7, "Improving the Lives of at Least 100 Million Slum Dwellers by 2020".¹⁰ MDGs are developmental thrusts that trace their moorings on human rights. These rights attain normative status in the Universal Declaration of Human Rights (UDHR). Article 25 lays down core rights/entitlements of every person to

a standard of living, adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old

⁶Karaos, Anna Marie A, "Urban Governance and Poverty Alleviation in the Philippines", paper presented to National Conference on Urban Governance, (ICSI, May 2003).

⁷PCUP Mindanao data, 2006.

⁸Sclar, E., Interim Report of the MDG Task Force on Target II – Improving the Lives of Slum Dwellers. Washington: World Bank Urban Research Symposium. 5 pp. (2003).

⁹Karaos, Anna Marie A and Dizon, Ana, "Urban Poverty and Governance", power point presented to the National Conference on Urban Governance, (ICSI, May 2003).

¹⁰The Millennium Development Goals are a set of eight goals and 18 targets to which most international agencies and national governments have committed to. The targets include major reductions in poverty, ill-health and premature death by 2015 and large improvements in provision for schools, health care, water and sanitation. Also significant improvements in the lives of at least 100 million 'slum' dwellers by 2020. Note that Target 11 on slum dwelling is a kick-off from the Habitat I and II Agenda, supports the Global Strategy on Shelter, as well as provides the over-all frame for the recently launched Global Campaign for Secure Tenure and Good Urban Governance in 2002.

age, or other lack of livelihood in circumstances beyond his control.¹¹

These entitlements run the gamut from adequate housing, social protection (health, medical care, and other services) to that of security of tenure in livelihood and work, comprise the composite Right to an Adequate Standard of Living. International theory and practice categorize these entitlements into what are called economic, social, and cultural rights which are in turn, codified under the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR mandates State parties like the Philippines, to recognize, respect, and progressively work for the realization of these rights.¹² Moreover, various other covenants, instruments and illustrative comments further define these entitlements and provide broad guidelines for realizing these rights and the monitoring thereof.¹³ Needless to say, however, all the rights, be they covered under the ICESCR or the International Covenant on Civil and Political Rights (ICCPR) are human rights: inalienable, indivisible, and inter-related.

The Right to an Adequate Standard of Living is a right that involves other corollary rights, among which is the Right to Adequate Housing with its accompanying Right Against Forced Evictions. These twin rights are amplified in the UN Committee General Comments, which serve as implementation guides for State parties to the ICESCR.¹⁴

¹¹ Article 25, Universal Declaration on Human Rights (UDHR, December 1948).

¹² Article 11(1), ICESCR: The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

¹³ Covenant on the Rights of the Child (CRC), the Covenant Eliminating Discrimination Against Women (CEDAW), the Vancouver and Vienna Conventions, the United Nations General Assembly Global Strategy on Shelter (GSS), the General Comments on Right to Adequate Housing, to name a few.

¹⁴ General Comment No. 4 - (1) security of tenure – which guarantees legal protection against forced eviction, harassment and other threats; (2) availability of services, materials, facilities and infrastructure; (3) affordability – financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised; (4) habitability – providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors; (5) accessibility – disadvantaged groups must be accorded full and sustainable access to adequate housing resources; (6) location – which allows access to employment options, health-care services, schools, child-care centers and other social facilities; and (7) cultural adequacy

The first step, however, in “incorporating” these rights involves State ratification of the covenant and the institutionalization thereof in State constitutions and statutes.

Crucial to achieving MGD Goal 7, Target 11 is for state signatories to provide and implement comprehensive development policies and programs that first secure tenure for slum dwellers in cities. Once tenure is secured, the appropriate services, shelter and livelihood delivery should follow. Unfortunately, the Philippines’ response to securing tenure for slum dwellers as embodied in its laws, policies, and programs relies heavily on the traditional approach of transferring ownership or titles of urban land. Title transfers, however, suffer from inherent difficulties and implementation problems that lead to further marginalization of the poor. Consequently, there is a pressing need to find innovative ways of securing tenure for this sector. One such avenue is through usufruct arrangements.

This article posits that usufruct schemes constitute viable alternatives to securing tenure, thus contributing to the thrust of improving the lives of slum dwellers. It discusses the following points: the concept of secure tenure, which is not limited to title transfer; usufruct arrangements as alternative schemes to address the problems attendant in title transfers as primary mode of securing tenure; and, usufruct schemes and other less-than-title arrangements situated as part of the mosaic of interventions for obtaining secure tenure.

B. Slum Dwelling and Urban Poverty, Social Production of Housing, Securing Tenure, and Usufruct Schemes

1. Slum dwelling and urban poverty in the Philippines.

Surprisingly, there is yet no internationally accepted definition of a “slum”. An Expert Group Meeting in October of 2002 defined the slum as

– the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

General Comment No. 11 – essentially prohibiting forced evictions as these constitute gross violations of human rights, especially the Right to Adequate Housing and paragraph 15 of which provides the humane protocol for evictions as a last resort: notice, consultation, information, presence of government officials, identification of demolition crew, to be conducted in good weather, and with legal remedies.

a contiguous settlement where the inhabitants are characterized as having inadequate housing and basic services. A slum is often not recognized and addressed by the public authorities as an integral part or equal part of the city. It is an area which combines to various extents, the following characteristics:

- a. insecure residential status;
- b. inadequate access to safe water;
- c. inadequate access to sanitation and other infrastructure;
- d. poor structural quality of housing; and,
- e. overcrowding.¹⁵

The Philippines has several concepts of slums. The Housing and Urban Development Coordinating Council (HUDCC) defines slums as "buildings or areas that are deteriorated, hazardous, unsanitary, or lacking in standard conveniences." Other definitions refer to slums as "squalid, crowded, or unsanitary conditions under which people live, irrespective of the physical building or area. In the vernacular, more descriptive terms are extant: "iskwater", "estero", "iskinita", "looban", or "dagat-dagatan".¹⁶ Philippine slums are caused mainly by the dynamic of the increase in the urban population due to in-migration, low incomes, and restrictive land/housing policies and regulations. Specifically, studies point to the following as key factors that contribute to slum proliferation:¹⁷

- a. push (rural underdevelopment, conflict-based migration) and pull (concentration of basic services and livelihood/employment opportunities) factors of urban areas;
- b. reclassification of lands to commercial and industrial uses due to global market competitiveness and investment development;
- c. skewed urban land market that breeds land speculation and commodification that push prices higher;

¹⁵UN-HABITAT, "Expert Group Meeting Report on Urban Indicators, Secure tenure, Slums and Global Sample of Cities, 28-30 October 2002, Nairobi, Kenya".

¹⁶ United Nations Human Settlements Programme (UN-HABITAT), "Analytical Perspectives on Pro-poor Slum Upgrading Frameworks", Annex 1, (UN-HABITAT, February 2006).

¹⁷As cited in Institute on Church and Social Issues, "The Philippine National Situationer", (ICSI, December 1999 and July 2000), UN Habitat WUF III "Urbanization Facts and Figures", (UN-HABITAT, 2006).

- d. low/inaccessible supply of cheap urban land to meet the growing demands for housing and services, of population growth;
- e. low family incomes; and,
- f. lack of/or inappropriate land and urban development policies and weak urban governance.

Tannerfeldt and Ljung adequately sum up the causes of slums stating that "slums are the products of failed policies, bad governance, inappropriate legal and regulatory frameworks, dysfunctional markets, unresponsive financial systems, corruption, and not least, a lack of political will."¹⁸ Despite the varying concepts of, and the causes of slums in the Philippines, the common strand that permeates is the dynamic of urban poverty on slum dwellers. Urban poverty in the Philippines share the following characteristics: a) suffering from varying concepts and measurements/tools of poverty; b) being multidimensional; c) vulnerability; and d) social exclusion.¹⁹ These characteristics in turn, constitute the (lack of) money, access, and power (M.A.P.) indicators of the nature and extent of poverty as mentioned in the United Nations Economic, Social Commission for Asia and the Pacific (UN- ESCAP) paper on Urban Poverty Alleviation in Asia and the Pacific.²⁰ Figure 1 illustrates this interplay of the lack of money, access, and power in poverty.

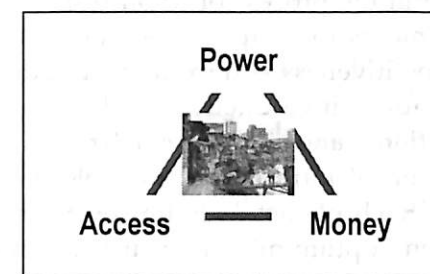


Figure 1. Poverty and the aspects of M.A.P.

The varied concepts of urban poverty and the differing measuring tools make the assessment of its scope difficult. The multifarious measurement tools on income expenditure, minimum basic needs/absolute poverty/subsistence poverty, and the alternatives like social weather station self-rated surveys,

¹⁸Tannerfeldt and Ljung, "More Urban, Less Poor", (SIDA, 2006).

¹⁹ Karaos, and Dizon, op.cit, slides 2-7.

²⁰UN-ESCAP, Urban Poverty Alleviation in Asia and the Pacific, paper presented at the Regional High-level Meeting in preparation for Istanbul+5 for Asia and the Pacific 19 to 23 October 2000, Hangzhou, People's Republic of China.

national wages and productivity commission living wage, the 3 indicators of the minimum basic needs approach, and the 33 indicators of the United Nations Development Programme (UNDP) attest to this.²¹

Regarding the multi-dimensionality of urban poverty, the key aspects of lack of material well-being and employment, psychological trauma (lack of voice, power, independence, social stigma, and rude treatment), and the absence of basic infrastructure, portray how slum dwellers suffer in cities.²² Moreover, the utter defenselessness, insecurity of tenure and exposure to the risks of slum dwellers like demolitions, disasters, violence, sickness that impact on daily incomes, and the pervasive effects of globalization on high urban land values, employment, commodification and family incomes, manifest the vulnerabilities of the poor in the urban setting.²³ Lastly, the slum dwellers' informality or illegality exclude them from meaningful participation not only in the market economy but also in being citizens of local governments which refuse to recognize them as constituents to be accorded rights and basic services.²⁴

Seen on a macro-level, the onset (or onslaught) of globalization in the process of urbanization compels national and local governments to jump on the bandwagon of the pursuit of market competitiveness -- translating to adoption of policies and programs for investment and tourism development, industrialization and commercialization, as well as the implementation of infrastructure development projects to attract investments. Such phenomena, however, create twin tsunamis of market-driven "optimum" use of urban land and insidious land speculation -- resulting in the rapid increase in urban land values. Studies show that on the average, urban land prices increase from 25-50% annually as compared to almost nil increases in urban poor family incomes.²⁵ These in turn, result in massive displacements of urban poor communities as casualties of development projects and a formal urban land market skewed against the urban poor. Ironically, while urbanization is viewed as

²¹Karaos, and Dizon, slide.2.

²² Ibid, slide 5.

²³ Ibid, slide 6.

²⁴ Ibid, slide 7.

²⁵David Yap, Et al, Impact of Land values on the Housing Situation in the Philippines, URC, July 2002.

an economically-positive phenomenon, its effects fall hard against the urban poor which should be the beneficiaries of its economic gains.

2. The contribution of the poor to the urban economy and their response to the hardships of urban poverty: social production of housing

Sclar proffers a fresh perspective on the role of slums in cities in that: "slums must not be viewed in negative terms because they bear testimony to the ingenuity of the urban poor."²⁶ The skewed formal market compels the poor to adapt creatively -- establishing their own informal market, thus addressing their need for immediate security of tenure and access to basic services and livelihood. Prohibited by the market, and doubly burdened by restrictive policies on access, they become subjected to developer-oriented land and site services provision, with undue focus on ownership as the "be-all-end-all" of tenurial arrangements. Due to this stifling condition, the poor are compelled to build their own communities through a slew of initiatives ranging from: a) asset and social capital build-up; b) experimentation of different tenure avenues; c) networking and alliance building with other communities; and, d) linking with local and national authorities. Such initiatives eloquently portray the ingenuity of the urban poor and their capacity to drive the informal urban economy by providing cheap labor, services, housing, and local economic development.²⁷ Hence, policies harnessing and supporting the urban poor's human and social resources become highly pivotal in their upliftment.²⁸

Moreover, the sector has defined itself with an incremental -- yet dynamic -- force for secure tenure and livability. Such concerted efforts constitute social production of housing that always strives to look for responsive, yet informal solutions to homelessness.²⁹ Recently, governments have just started to

²⁶ Sclar, E., Interim Report of the MDG Task Force on Target II (2003).

²⁷ Berner, Dr. E (2000) Poverty Alleviation and the Eviction of the Poorest: Towards Urban Land Reform in the Philippines. International Journal of Urban and Regional Research.

²⁸ Harrison, F. (2003), A Generic Solution for the Slums, Habitat Debate Journal, December 2003.

²⁹ Asian Coalition for Housing Rights (ACHR) paper on Social Production of Housing, September 2005.

recognize the emergent validity and value of the sector's social production process. Consequently, governments must do their best to encourage, support and accelerate this process.³⁰ One means of support is for governments to ensure the provision of secure tenure.

3. Secure tenure

The United Nations Commission on Human Settlements (UN-Habitat) defines secure tenure as

an agreement or a set of agreements involving an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework; the security of which is derived in the fact that the right of access to and use of the land and property is underwritten by a known set of rules that the right is justiciable.³¹

Following the definition, one can glean how secure tenure can be fulfilled in various ways depending on legal frameworks, social and cultural norms, and community or individual preference. Essentially, persons can be considered to have secure tenure when they are protected from involuntary removal from their land or space, except in certain circumstances and in legitimate legal procedures.³² Notably, nowhere in this definition do we see a reference to transfer of titles or ownership as the sole precondition to obtaining secure tenure. Geoffrey Payne, an expert in urban development doing research in informal slum dwelling opines that a step along the continuum from complete illegality to formal tenure is a step in the right direction. Furthermore, governments should be creative in discovering their own range of tenure forms best suited to their socio-economic conditions.³³ Payne further categorizes the various forms illustrated in Figure 2 as follows:

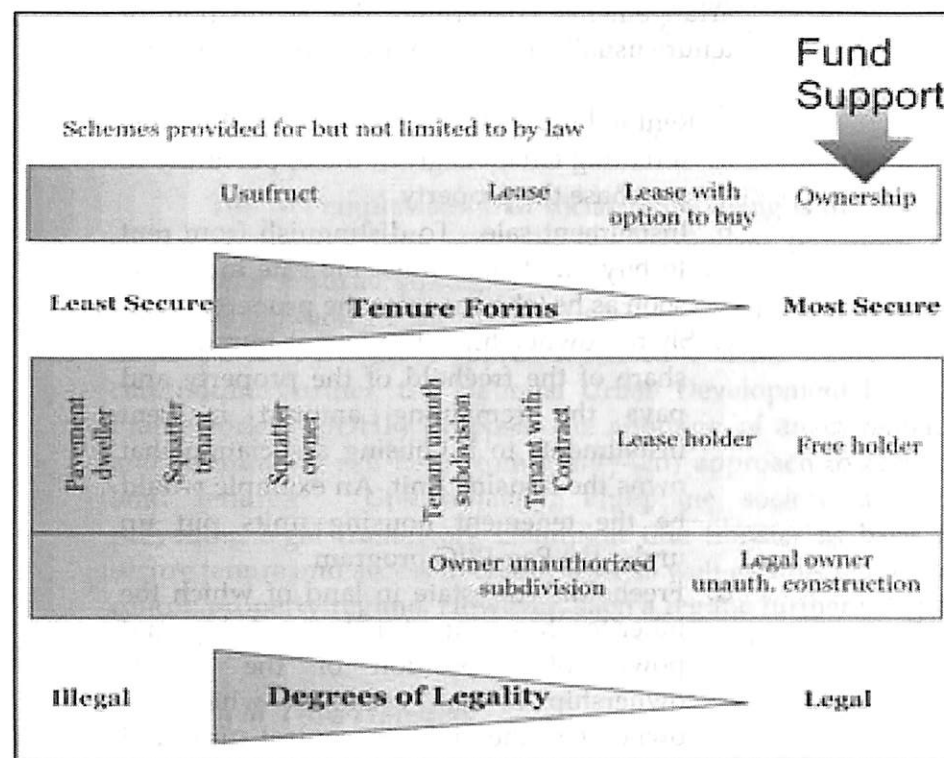


Figure 2. Showing continuum of tenure forms

1. Communal tenure. A right of commons may exist within a community where each member has a right to use independently the holdings of the community.
2. Private tenure. The assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees.
3. Institutional tenure. These exist within organizations created to provide housing for low-income communities. Although housing organizations commonly offer rent, leasehold and freehold tenure, the following

³⁰ Ibid.

³¹ UNCHS, "Secure Tenure: A Normative Framework", (undated).

³² Ibid.

³³ Payne, G. (2000) *Urban Land Tenure Policy Options: Titles or Rights?* World Bank Urban Forum, Virginia, USA.

arrangements concerning the acquisition of tenure usually apply to housing organizations:

- a. Rent to buy. After an agreed period of time a renting tenant is given the opportunity to purchase the property.
- b. Installment sale. To distinguish from rent to buy, the tenant must indicate to buy as soon as he/she occupies the property.
- c. Shared ownership. The tenant purchases a share of the freehold of the property and pays the remaining amount in rent installments to a housing association that owns the housing unit. An example would be the tenement housing units put up under the Pag-IBIG program.
- d. Freehold. An estate in land of which the inheritor has unqualified ownership and power of disposition or the private ownership of real estate in which the owner has the right to control, use, and transfer the property at will.

4. Non-formal tenure. These cover a broad range of alternatives including regularized and unregularized squatting, unauthorized subdivisions on legally owned land and various forms of unofficial rental arrangements.³⁴

The urban poor resort to these tenure forms to meet their primary need of livelihood security and proximity. For them, tenure of a dwelling bears equal importance as tenure in the workplace.³⁵ In fact, research shows that the poor are willing to sacrifice security of title just to have access to and maintain livelihood.³⁶ Philippine Urban Development and Housing Act of 1992 (UDHA, Republic Act 7279) defines secure tenure as

³⁴ Ibid.

³⁵ UN-Habitat (2002).

³⁶ G. Payne in Cities Alliance (2002).

The degree of protection afforded to qualified Program beneficiaries against infringement or unjust, unreasonable and arbitrary eviction or disposition, by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.³⁷

The Act emphasizes that socialized housing is the primary shelter strategy. Significantly, the law recognizes transitory and incremental tenurial strategies like leasehold or usufruct.³⁸ Such patent recognition by the UDHA only bolsters the adoption of a development-by-degrees approach reflective of the secure tenure continuum. Further, the National Urban Development Housing Framework (NUDHF) proposes the adoption of an incremental and community self-help (community-led) approach to securing land tenure.³⁹ Unfortunately, Philippine society and the prevailing legal framework champion title transfer as basis for secure tenure and access to credit, with its well-established owner-centric property regime. However, such a regime further relegates slum dwellers with its inherent implementation problems.

4. The Myth of Title Transfers

Obtaining title is generally perceived as a precondition to obtaining secure tenure and from there, access to the formal market for credit and the provision of basic services. This inordinate bias for title transfer goes against Payne's continuum of incremental steps to secure tenure, also elucidated in the UDHA.⁴⁰ Sadly, such title transfer strategy favors most of those who could

³⁷ Section 3 ("o"), Article 1, Urban Development and Housing Act of 1992 (RA 7279).

³⁸ Socialized housing, as defined in Section 3 hereon, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenurial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned. (Section 15, Article V, RA 7279, UDHA).

³⁹ "Adopt an incremental approach to land tenure which can begin the issuance of occupancy licenses to squatter families leaving the opportunity for upgrading of rights to land or property to a later stage" (Chap IV Major Urban Policies / Policy Thrusts 2. Housing, NUDHF 1993-1998); and c) Favor community-led, self-help approaches to housing, including utilization of the Community Mortgage Program and other community-based or cooperative arrangements as well as non-traditional housing technology (NUDHF, 1999-2004).

⁴⁰ Sections 3 (o) and 15, RA 7279, UDHA.

afford and excludes the countless poor. Studies point out that while title transfer is ideal, the reality check of practical, day-to-day survival for the urban poor compel them to opt for livelihood security and proximity.⁴¹ To this, Gilbert insightfully states that

Governments should not perpetuate the myth of universal home ownership. They should accept that millions of households live in rental housing and that at some time in their lives most people need rental accommodation. The current policy void in so many countries is undesirable and unethical.⁴²

Inherent implementation difficulties justify existing efforts to buck the title myth as the panacea for addressing secure tenure or shelter needs. A recent study points to the following as defects of a titling strategy for securing tenure:

- a. Titling programs tend to be selective, only benefiting a minority. Near city centers the benefit of the relatively high land values of such lots should be shared by the wider community who created that value, not just the lucky squatter;
- b. Titling encourages new illegal settlements to develop, as the poorest hope they will also win the lottery of formal title to land;
- c. Possession of title does not by itself lead to housing investment, as housing finance credit is not available to the poorest for their incremental home improvements;
- d. The record of cost recovery in tenure legalization projects is generally poor;
- e. There is a temptation to convert the newly acquired asset into cash, particularly during a time of family financial crisis;
- f. Official land prices can differ substantially from those on the informal market, leading to speculation. It can intensify distortions in urban land and property markets where residents

⁴¹Payne, G. (2003), "Safe as Houses? Securing Urban Land Tenure and Property Rights." Community Development Research – Highlight (website: id21.org).

⁴²Gilbert, Alan. Land and Shelter in Mega-cities: Some critical Issues, Mega-city Management Policies, pp. 307-330.

"downgrade"/ "downraid" from other sectors in the hope of gaining title (Figure 3);

- g. The process of titling can become the process of the more powerful and influential getting themselves registered as owners to the disadvantage of others (downraiding/ gentrification, refer to Figure 3 below);
- h. Titling programs send a signal to landowners and developers that significant increases in land values can be realized by subdividing land illegally;
- i. Legal tenure raises the value of the property, leading to higher rental values, which will inevitably displace the more vulnerable existing and future poor renters. Beneficiaries tend to raise rental rates beyond reach of existing and future renters; and,
- j. The removal of resettled families to areas of cheap land far from the city center and related jobs and services.⁴³

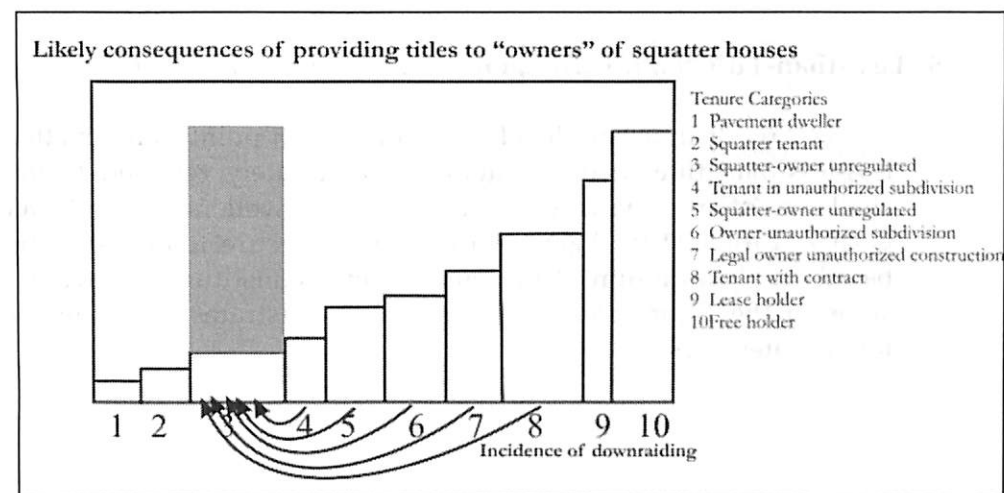


Figure 3. Downraiding or gentrification as consequences of title transfers as a program for the urban poor⁴⁴

⁴³ Davao Colleges and Universities Network (DACUN) and the Philippine Commission on Population and Development (PCPD) in collaboration with the local governments of Santa Cruz, Panabo, Samal, and Davao (SANPASADA) in a research paper entitled, entitled, "Housing in SANPASADA: An Assessment of Factors Affecting Demand and Provision of Shelter for the Lower Income Sector" (2005).

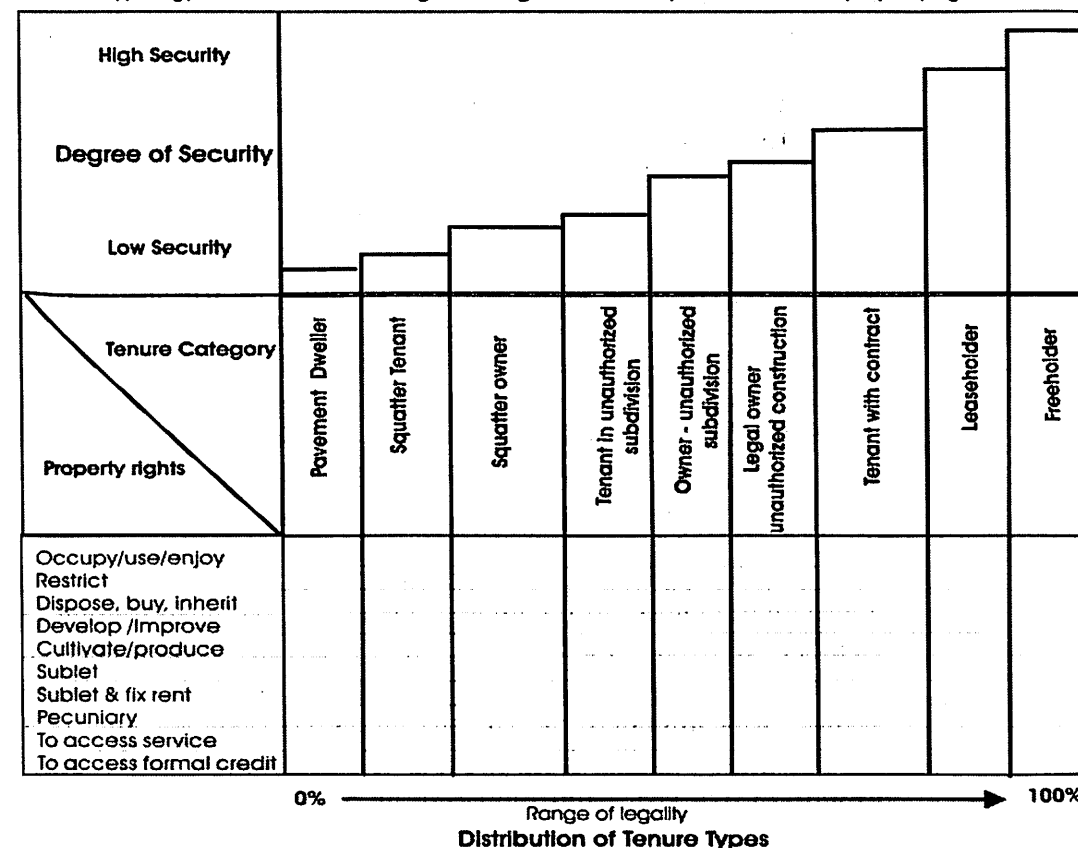
Other studies also show that providing land titles without looking at the prevailing contexts especially of the lowest 30% of the poor lead to further hardships caused by: a) the prohibitive costs of the land; b) inaccurate and weak land registration and enforcement; c) selling or awarded lands and houses at less than face value simply because of the suffocating effect of high interests rates on loans; and, d) despite titles, banks and finance institutions still make lending to the poor difficult.⁴⁵

Further compounding the aforementioned issues are the problems of: a) the need for urban poor communities to put up at least 10-25% financial equity; b) the regular backbreaking monthly amortizations; and, c) the stringent documentary and community governance requirements for entry to a government housing finance facility to acquire title to land. Ill-equipped and ill-prepared, a great number of urban poor communities fail to acquire title due to non-compliance with these strictures. Given the apparent cumbersomeness of title transfer, the challenge now lies in looking at "less-than-title" innovations and initiatives properly responding to homelessness and urban poverty.

5. Less-than-Title tenure arrangements: usufruct arrangements

Trends in urban development research point to innovative less-than title tenure systems to adequately respond to the challenge of improving the lives of slum dwellers under MDG Goal 7, Target 11.⁴⁶ Again, providing for secure tenure systems based on a continuum of various schemes constitute progressive steps in the right direction.⁴⁷ Figure 4 illustrates the different tenure categories.

Notional typology of urban tenure categories, degrees of security and associated property rights



Geoffrey Payne, SECURE TENURE FOR THE URBAN POOR, Round Table seminar organised by Cities Alliance, 23 May 2002

Figure 4. National typology of urban tenure categories, degrees of security and associated property rights.

Philippine law and policies on urban development and housing already provide less-than-title secure tenure arrangements like usufructs, rentals and the like. The UDHA provisions on secure tenure, socialized housing and transition schemes of socialized housing clearly promote the mainstreaming of these tenure arrangements.⁴⁸ Moreover, the National Urban

⁴⁸ "Security of tenure" refers to the degree of protection afforded to qualified Program beneficiaries against infringement or unjust, reasonable and arbitrary eviction or disposition, by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements (Section 3 (o), RA 7279);

"Socialized housing" refers to housing programs and projects covering houses and lots or homelots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of this Act (Section (r), RA 7279);

⁴⁴ Payne, Geoffrey, "Land, Rights and Innovation", ITDG, 2002.

⁴⁵ Payne, Geoffrey, "Introduction" to book on "Land, Rights and Innovation", (ITDG, 2002).

⁴⁶ Payne, Geoffrey, "Land, Rights and Innovation", (ITDG, 2002).

⁴⁷ Ibid.

Development and Housing Framework (NUDHF) proposes the adoption of an incremental approach securing tenure through the issuances of occupancy licenses.⁴⁹ Likewise, the 2004-2010 Medium Term Development Plan for Housing (MTDP Housing 2004-2010) strategies specifically raise the need to adopt and develop innovative tenure arrangements (like public rental, lease/purchase and shared ownership, rent-to-own, usufruct or long-term lease of up to 99 years particularly for prime/semi-prime properties in urban centers to address the affordability factor).⁵⁰ Finally, the recent study in SANPASADA clearly recommends for government to “apply other tenorial instruments in addition to titling like rental and rights of occupancy” and “consider the Regulated Informal Community Housing (RICH), a transitional (incremental) housing concept, in tandem to any socialized housing project”.⁵¹

Incidentally, recent government initiatives on the alternative tenure arrangements prove to be encouraging. In October of 2004 the Urban Land Reform Conference on Accelerating Pro-Poor Housing through Rights-Based Secure Tenure was attended by various housing agencies and other relevant agencies like Department of Environment and Natural Resources (DENR), Land Registration Administration (LRA) and Bangko Sentral ng Pilipinas (BSP). The conference recognized the validity and the need to operationalize interim titling instruments such as the certificate of entitlement to lot acquisition (CELA), contract to sell (CTS) and real contracts like usufruct, long-term lease, and lease with option to buy.

Currently, there are engaging efforts with the BSP and the Home Guaranty Corporation (HGC) on the use of these

instruments for guarantee or as loan collateral, thus increasing the access of the informal sector to government housing finance.⁵² Likewise, the post proclamation aspects relative to disposition of government proclaimed lands for socialized housing encourage CELAs and usufruct arrangements as part of the urban asset reform and informal settlement regulation program.⁵³

6. Usufruct schemes

a. Legal concept and framework ⁵⁴

Philippine Civil law defines usufruct as a real right, temporary in nature, which authorizes the holder to enjoy all the benefits which result from the normal enjoyment and exploitation of another’s property with the obligation to return at the designated time either the same thing or in special cases its equivalent. ⁵⁵ In essence, a usufruct is an agreement that gives to a person called the usufructuary, beneficial use of the land and the fruits within, with the obligation to return the land at a specified period of time. While most would consider usufruct as a kind of lease in terms of the land, it differs from the latter in many ways as illustrated in Figure 5.

Policy. — Socialized housing, as defined in Section 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenorial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned. (Section 15, RA 7279).

⁴⁹ Chapter IV, Major Urban Policies / Policy Thrusts, NUDHF 1993-1998.

⁵⁰ Strategies mentioned in the Medium Term Development Plan for Housing 2004-2010, p. 5 and, cited in the Philippine Implementation Report on the ICESCR 2006, p. 89-90.

⁵¹ DACUN-PCPD-SAMPASADA, “Housing in SAMPASADA” (DACUN, 2005), Chapter 10, synthesis.

⁵² Based on the paper on by Gemma Marin, “Usufruct as an Alternative Instrument for Providing Secure Tenure for Urban Informal Settlers”, Institute on Church and Social Issues (ICSI, 2005).

⁵³ Philippine Implementation Report on the ICESCR 2006, pp 89-91.

⁵⁴ Based on a paper by the Urban Poor unit of the Sentro ng Alternatibong Lingap Panligal (SALIGAN), Usufruct, 2005.

⁵⁵ Article 562, New Civil Code of the Philippines, hereinafter “NCC”.

1. BASIS	2. USUFRUCT	3. LEASE
Extent	Covers all fruits and uses as a rule	Generally covers only a particular or specific use
Nature of the right	Is always a real (enforceable against the whole world) right	Is a real right only if, as in the case of a lease over real property, the lease is registered or is for more than one year, otherwise, it is only a personal right
Creator of the right	Can be created only by the owner or by a duly authorized agent, acting in behalf of the owner	The lessor may or may not be the owner (as when there is a sub-lease or when the lessor is only a usufructuary)
Origin	May be created by law, contract, last will or prescription	May be created as a rule only by contract, and by way of exception, by law (as in the case of an implied new lease or when a builder has built in good faith on the land of another a building, when the land is considerably worth more in value than the building)
Cause	The owner is more or less passive, and allows the usufructuary to enjoy the thing given in usufruct	Owner or lessor is more or less active, and he makes the lessee enjoy
Repairs	Usufructuary has the duty to make ordinary repairs	The lessee generally has no duty to pay for repairs
Taxes	Usufructuary pays for annual charges & taxes on fruits	Owner pays for land taxes
Other aspects	Usufructuary may lease the property itself to another	Lessees can't constitute a usufruct on the property leased

Figure 5. Comparative matrix of lease and usufruct⁵⁶

Evidently, with the exception of the obligations of repairs and the payment of taxes, a usufruct arrangement gives to the usufructuary much flexibility in terms of use and enforceability as against other parties.

⁵⁶ SALIGAN Urban Poor Unit 2005.

As a civil law concept, usufruct is already recognized as an important component in the context of attaining secure tenure. In fact, the UDHA even defines secure tenure as the degree of protection against infringement, or unjust, unreasonable, and arbitrary eviction or disposition, by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.⁵⁷ Moreover, the UDHA further champions the usufruct scheme when it showcases it as one of the alternative modes of disposing government-acquired lands and housing for social housing.⁵⁸ Further, no less than the esteemed Atty. Francisco Dagnalan, En.P, former Commissioner of the Housing and Land Use Regulatory Board (HLURB), cites usufruct arrangements as one of the alternative instruments for securing tenure, together with the horizontal condominium and homeownership association concepts.⁵⁹

b. Present government initiatives on usufructs⁶⁰

Despite the express mandate on usufructs under the UDHA, the measure still has to break into the mainstream of tenure arrangements for the poor. This notwithstanding, a brief discussion of present government initiatives is in order.

1. Proposed Pag-IBIG Homes Direct Financing Program. Since the program's approval in 2003, the Home Development Mortgage Fund (HDMF) or Pag-IBIG Fund aims to have a more direct interaction with its members by directly building housing units on government land assigned to it through usufruct. Two government agencies initiated talks on the measure: the Procurement Services Division of the Department of Budget and Management (DBM) and University of the Philippines (UP) Diliman for its employees. The latter has the following details:

⁵⁷Section 3 (o), Republic Act 7279, Urban Development and Housing Act of 1992 (UDHA).

⁵⁸Section 12, Republic Act 7279, Urban Development and Housing Act of 1992 (UDHA).

⁵⁹As cited in Marin, *Usufruct as an Alternative Instrument for Providing Secure Tenure*, ICSI 2005, pp. 3-4.

⁶⁰Marin, *Usufruct as an Alternative Instrument for Providing Secure Tenure*, (ICSI, 2005).

- a. UP as landowner assigns the usufruct right to HDMF which will, in turn, be responsible for developing the area and constructing the low-cost houses and other site development;
- b. Land area is 7 hectares located at Hardin ng Rosas;
- c. Seven (7) medium-rise residential buildings shall be leased by the usufructuary, HDMF to UP for a maximum term of 25 years which, in turn, sublets the units to its employees;
- d. The beneficiaries acquire units via payment of a monthly "rental fee" for a period of 15-20 years. Funds collected by UP, in turn, are paid out as lease payments to Pag-IBIG;
- e. Once Pag-IBIG has recovered its cost, it shall donate the buildings and return ownership of the land back to UP.

Unfortunately, the project has not gone beyond the planning and conceptualization stage.

2. Presidential Proclamations through the Housing and Urban Development and Coordinating Council (HUDCC) Continued from the Estrada Administration but institutionalized in the HUDCC under the first Arroyo administration in 2000, the thrust for regularization of tenure of informal settlers on certain public/ government lands took to the presidential proclamations route. A task force led by HUDCC was created to initiate and conduct the complete staff work (CSW) requirements for government land proclamations.⁶¹ Below are several cases of socialized housing projects awarded through Presidential Proclamation which utilized the usufruct scheme.
 - a. The Barangay Tiniguiban, Palawan 5.44 hectares parcel of land that is reserved for the Philippine Constabulary (now the Philippine National Police) and declared as open for disposition as socialized housing site under a usufruct scheme. (January 19th, 2004); and

⁶¹This pre-proclamation taskforce was then led by Director Ronald G. Fontanillas of the HUDCC.

- b. The off-base housing for DND-GA/AFP located in the military reservation in Bataan, A portion of the reserved site composed of 30 hectares shall be under a usufruct scheme under the administration of the DND (May 14th, 2004);

Memorandum Order No. 74 Series of 2002 mandates the creation of a Local Inter-Agency Committee (LIAC) for the purpose of expediting the conduct of post-proclamation activities to dispose of the proclaimed site to the intended occupants. The Committee is chaired by the Local Chief Executive or the Mayor, and co-chaired by a HUDCC representative with members from the NHA, PCUP and the beneficiaries. Through the formulation and promulgation of implementing rules and regulations (IRR), plus the appropriate development of the project sites, beneficiary selection and awarding of lots are effected. The Bataan site has a usufruct agreement for fifty (50) years extendible to another 25 years.

3. Land Usufruct and Housing Program of Tagaytay City. Owing to the restrictive land costs in the area, the City Government of Tagaytay through its chief executive, Mayor Francis Tolentino mainstreamed the usufruct scheme over the land and involved the award of housing units to qualified beneficiaries at 50% subsidy of the house value. Each housing unit costs PhP 150,000 and therefore, only PhP 75,000 was to be paid by the beneficiary for a maximum period of 15 years without interest or penalty. This translates to beneficiaries paying around P400.00 every month to the housing office.⁶² Beneficiaries for the above sites already totaled to 700 households, based on the following criteria:
 - a. 5-6 years residency in Tagaytay city;
 - b. no ownership of land as certified by the Assessor's Office;
 - c. capacity to pay the monthly dues;

⁶²Beginning Year 2000, 50 per cent of the total cost of unit increased to PhP 87,500, translating to a monthly payment of PhP 437.50 for 15 years. As of this writing, it further rose to PhP 125,000, requiring a monthly payment of PhP 750.00.

- d. recommendation from the barangay Chair and police clearance attesting residency and moral character of the beneficiary, respectively

The availment procedure consists of the following:

- a. attendance to an orientation on policies of the housing project;
- b. understanding and execution of agreement designated "Kasunduan sa Paninirahan";
- c. award of a Certificate of Housing Award and Occupancy;
- d. issuance of certificate of full payment upon the payment of the subsidized 50% of the house cost; and
- e. issuance of a Tax Declaration on the house by the assessor.

The terms of the Kasunduan revolve around the continued possession to eventual ownership (upon full payment) of the house with restrictions on transfer except to relatives either through succession or donation, but not through sale. Delinquencies are more often than not, restructured for those who care enough to visit the housing office for considerations, while hard core delinquents are issued notices and are eventually subjected to padlocking of houses.

The Tagaytay usufruct and housing arrangement have succeeded in terms of being able to fill the need for in-city, affordable, yet secure tenure for constituents despite the pressures of high land prices. It scores points in various aspects:

- a. Clear beneficiary criteria;
- b. Consistent availment procedures;
- c. Clear terms and conditions of the "kasunduan";
- d. Affordability as shown in the 50% subsidy on the house costs, varied payment schemes up to 15 years on the remainder upon downpayment;
- e. Presence of LGU institutional support to and monitoring of the usufruct and housing projects as seen in related ordinances and the creation of a housing office;

- f. Shuttle services and site development for the projects;
- g. Continued possession / and eventual ownership over the houses as long as payment is made and rules followed;
- h. Awardees' sense of achieving secure tenure despite the absence of title transfer over the land due to the abovementioned.

c. Homeless People's Federation Philippines (HPFP) and its work of evolving tenure alternatives ⁶³

The preceding portions showcase the various usufruct initiatives of government, both with national (PAG-IBIG, HUDCC and other agencies) and local governments (Tagaytay City). This section portrays how the HPFP, as a social movement of urban poor communities, fostered the "usufruct" scheme as a viable option to the mosaic of interventions in securing tenure in a disaster response context.

Composed of registered community associations and homeowners associations federated nationwide under the Security and Exchange Commission (SEC) last 2000, the HPFP's major efforts revolve around its strategy of community savings. Its espousal of this strategy not only became a means of wealth accumulation, but it further solidified as a powerful development framework seeking to transform power relations between the poor and the well-off. Such strategy became the backbone of the HPFP's perennial challenge of finding responsive approaches to securing tenure.

Essentially, HPFP's work shows what communities can achieve as drivers of their own development initiatives for secure tenure and how this impacts on the development of cities as a whole. In its search for responsive community-led secure tenure initiatives, the HPFP has utilized the direct negotiated purchase scheme and the community mortgage program (CMP). However, the HPFP has realized that such schemes still have their shortcomings, given the anti-poor urban land market. Moreover, community displacements caused by natural and man-made disasters necessitate a

⁶³Based on a paper by Bernardo, Joel, C.M., *Usufruct Arrangements* (HPFP-PACSII, 2005)

“thinking-out-of-the-box”. Hence, when the trash slide in Payatas occurred, the Bagong Silangan site in Quezon City was immediately tapped for relocation.

1. Salient Features of the HPFP Bagong Silangan Usufruct Project ⁶⁴

The HPFP Bagong Silangan site consists of a 2-hectare parcel of land located in an adjacent barangay to the Payatas site where the trash slide occurred. The land was donated by the Ona Corporation to the Congregation of the Mission (CM) and Hospicio De San Jose, but with the following restrictions: (a) that the land was not to be further disposed to others; and, (b) that its use be for religious and evangelical purposes of the donees. The Vincentian Missionaries Social Development Foundation, Incorporated (VMSDFI), the long-time support organization of the HPFP, and the socio-development arm of the CM, was authorized to administer relocation undertakings through a Special Power of Attorney issued by the donees. Since the VMSDFI has mandate limitations as to housing development, it then issued an SPA to HPFP for such purposes.

Thus with dogged determination borne out of a burning desire to help communities who are waste pickers from the Payatas site, the HPFP set out to implement the relocation program. In doing so, HPFP clarified that those who wished to avail of relocation would have to participate in its savings program in order to stay in the unit for a period of time, which shall be fixed at a later date. It further clarified that since the land was not for sale, owing to the usufruct agreement, the savings collected from them would not include payment for the land. In adopting said usufruct agreement, one can see how the HPFP, together with the displaced community, has taken concrete initiatives to respond to the need for relocation.⁶⁵

⁶⁴ Homeless Peoples Federation Philippines (HPFP), “Profile and progress report for the Bagong Silangan Project”, HPFP 2005.

⁶⁵ The first undertaking was for the HPFP to conduct a socio-eco survey of the high risk located communities in an around the Payatas dumpsite, well before the trash slide occurred as part of its program to focus on the secure tenure of these communities. Secondly, the conduct of an elaborate relocation process that starts from beneficiary

2. Other Developments in the Project ⁶⁶

As of June 2005, the total number of relocatee-families from Payatas reached 146, with 159 available units. This covered almost 50 per cent of the 20 blocks in the area. The expansion also accommodated vulnerable groups like the elderly and the disabled persons. Some

identification to actual relocation, as seen in the following steps: STEP 1: Conduct of beneficiaries identification, and further disaggregation by the identification committee in vulnerable groups welfare programs like the Community Based Rehab (CBR) for children with disabilities; the elderly and others; STEP 2: Listing of the identified members/beneficiaries is then submitted to the second committee, the Screening and Validation Committee for verification; STEP 3: Conduct of house to house visit and actual interview of the identified members by the second committee and the first committee. STEP 4: Meeting and reporting of the first and second committee for the qualified / disqualified members. STEP 5: Notification of all qualified members for the orientation and site visits. STEP 6: Orientation of the Voluntary Resettlement or Kasunduan including the voluntary dismantling and implementation of savings conducted by the micro-finance committee. STEP 7: Submission of legal documents of qualified beneficiaries (Birth certificate, family picture, marriage contract, community tax cert.) STEP 8: Actual orientation of the qualified members on the Homeowners restrictive covenant and policies. STEP 9: Schedule of relocation. Thirdly, conduct of post relocation community consultation by HPFP which served as venues for the community to feedback and for HPFP to disseminate information and learning to adjust to emerging needs, (i.e. declaration of a 1-year moratorium on the down payment to address the financial and livelihood adjustment of those who relocated). The Memorandum of Agreement on Voluntary Resettlement (*Kasulatan ng Kasunduan*) is in the vernacular and contains the following: a) Savings or payment for the following schemes: (i) Down payment of P 3,000.00 for the unit; (ii) One-time HPFP membership fee of P100.00, (iii) Regular contribution to the Urban Poor Development Fund amounting to P 50.00 every month, (iv) Compulsory Savings of P25.00 - P250.00 per week, (v) After 1 year, implementation of contractual savings for housing of P 250.00 a month for 5 years; b) Voluntary dismantling of their houses in Payatas to prevent new settlers in the said high-risk, danger areas; c) Prohibition of extensions or additions to the awarded unit, such as a second floor. HPFP must be informed of any plans of repair or renovation before the beneficiaries could actually do it; d) Some limitations on relatives and friends to live with the family-beneficiary; e) No sale or transfer of assignment of unit to non-relatives. Any transfer of assignment was allowable only in case of death of the beneficiary and only to children or relatives of 1st degree of consanguinity; f) Maintenance and preservation of the housing unit; g) Option to amortize the house cost for 10-15 years. In the process of project development, a Memorandum of Understanding (MOU) was signed between and among the Quezon City government (then under Mayor Ismael Mathay), the donees, and VMSDFI for the latter institutions to enjoy services and privileges such as exemption from taxes, licenses and permits for their socialized housing project.

⁶⁶HPFP, “Profile and progress report for the Bagong Silangan Project”, HPFP 2005.

blocks were used as transient, multi-purpose facilities and offices.

Together with its support institutions VMSDFI and the Philippine Action for Community-led Shelter Initiatives, Inc. (PACSII), the HPFP and its beneficiary families have begun discussions with national housing authorities to initiate an urban farming scheme complementary to the planned satellite market establishment in order to address the issue of sustaining livelihoods among the families.

3. Lessons Learned from the HPFP Usufruct Initiative ⁶⁷

Dictated by global market forces, urbanization has led to the skyrocketing of land valuation -- leading to massive displacements of slum dwellers all in the name of commercialization and market competitiveness. These factors, compounded with man-made and natural disasters, effectively thwart the urban poor's access to secure tenure. Thus, innovative but responsive alternatives to securing tenure other than title transfers must be sought. In doing so, one must consider the factors of: (a) perceived security of the scheme by the individual and the community as a whole; (b) the willingness of the community and other stakeholders to invest for improvements on the land; (c) ready access to services and credit; and, (d) impacts on improving efficiency and equity of the urban land markets so that the poor can have improved access to it and its fruits.

d. On attainment of secure tenure

Having relocated 146 families from the Payatas trash slide stands as a testament to the viability of the usufruct thrust - more so with ongoing processing for transfers and concrete plans for expansion on the site. What's more, the following converging factors further attest to this viability: the immediate beneficial use over the land; the growing belief in

⁶⁷Based on Marin, "Usufruct as an Alternative Instrument for Providing Secure Tenure", (ICSI, 2005) and Bernardo, Joel, C.M., *Usufruct Arrangements* (HPFP-PACSII, 2005).

the viability of the Kasunduan and its provisions on retaining possession or ownership of the house as long as savings, amortizations, and regulations are fulfilled; the ongoing community feedback and consultation mechanisms in place; plus the genuine support of HPFP, PACSII and its member institutions like VMSDFI and Sentro ng Alternatibong Lingap Panligal (SALIGAN) and the Quezon City government.

Furthermore, the usufruct scheme, aside from retaining the crucial elements of immediate transfer, beneficial use without title transfer, and the obligation to preserve the nature of the land in usufruct, its strength lies in the ongoing consultations with the community, and in its flexibility - either going with the PAG-IBIG-UP long term lease agreement, the Tagaytay model involving a sale of the units and retaining possession over the land indefinitely as long as strictures are followed, or a modification or both.

e. On the community's and stakeholders' willingness of to invest for improvement

The converging stakes of the Congregation of the Mission (CM), Hospicio de San Jose, VMSFDI, PACSII, DM Comsunji (the site developer), the City of Quezon, HPFP, and the community itself has surpassed the development rhetoric in terms of actual land, financial, technical, livelihood and human resources inputs in the undertaking. In fact, even before actual reflows from amortization or "rental" payments are consolidated, concrete plans for initiating urban farming, assistance for water systems, and development of other buildings on the remaining blocks of the site are online.

f. On ready access to services and credit

While water and other services on the site are initially lacking, the HPFP, the local community (SANAREBAS) and the PACSII-VMSDFI support institutions with their donors have started accessing water supply services from the Quezon City government. Eventually, water system assistance from the original donors (pending NAWASA/MWSS permits approval), introduction and implementation of livelihood projects and development of multi-use facilities and offices in the still vacant areas shall be implemented.

g. On the role of community savings as a community development strategy

To attain secure tenure in this "usufruct" and housing scheme, the HPFP community utilizes its savings as their valuable counterpart. A Bagong Silangan relocatee comments, *"Walang binabayaran sa Payatas pero mabaho doon at anumang oras ay maaaring mapaalis. Dito sa Bagong Silangan, may babayaran nga pero higit na ligtas sa paninirahan, walang baho at mas iwas sa sakit."*

Significantly, the savings process contributes to the community's capacity development - from the process of promotions of the savings scheme by the HPFP, where community savings practitioners are the ones giving the orientations and hands on training to the relocates, to the relocatees' imbibing the savings program and using the same as a community development framework; to the actual contributions to the P50 per month per member Urban Poor Development Fund (UPDF) to serve as common fund from which other HPFP communities can access for community needs like site development. Furthermore, capacities to manage funds, community governance and linkage are also being developed.

h. On improving the sector's access to urban land markets and making it more equitable

Via the HPFP's usufruct scheme, in the market-driven urbanization context posits a venue of giving back to urban land its intrinsic social value than just retaining its financial value as a commoditized urban resource. Seen in a deeper light, the initiative serves as a dynamic to enhance the quality of human life through the building of human and social capital with the land serving as a platform for building decent shelter and opportunities to improved urban livability. Restoring the societal value of land likewise implicates the social responsibility particularly of the landed as principles of social justice, stewardship and integrity of creation. It likewise facilitates the maintenance of sound nature-human interface.

i. Other insights

First, proper consultation and orientation complements the evolving nature of the HPFP usufruct scheme which results in more participation among the families and vouchsafes more appropriate responses to emerging needs. Continuous learning and exchanges by the HPFP and the communities with other usufruct practitioners like the City Government of Tagaytay, the Housing and Urban Development Coordinating Council (HUDCC) further enrich the scheme. The consultations likewise provide feedback to the HPFP on the reasons of decreased savings and thus galvanize the stakeholders into clarifying existing policies and forming new more liberal ones that fit the needs. The consultations also ensure the families of continued tenure as long as these evolving policies are being complied with.

Second, the HPFP experience shows the importance of coming up with appropriate and acceptable instruments articulating the terms of the usufruct scheme. While the evolving nature of the Bagong Silangan usufruct scheme constitutes its strength, there is the need to expressly set the general parameters and conditions once all stakeholders have adequately discussed the options. One option is for the donees to formalize a usufruct agreement with the HPFP and the HPFP will either constitute another usufruct or long term lease arrangement over the land with the families while treating the monthly payments and savings as either management/maintenance fees for the units or rents. Of course, there still is the option of treating the payments as monthly amortizations over the housing units and portions thereof as maintenance of the land. Again these options shall be evaluated in terms of their responsiveness to the needs of the stakeholders.

Third, the HPFP experience manifests the advantage of proximity and ready access to and sufficiency of basic institutions and services. The Bagong Silangan site rests right smack in the middle of the Quezon City residential zone where basic services, institutions and access to the main roads are present. Further, site development in the area has sought to provide for the basic amenities.

Fourth, the presence of a strong community association in complementation with strong intermediary institutions' support, help ensure more meaningful secure tenure partnerships. The strong-willed members of the resettled communities to find ways to improve their tenure and livelihoods complement the support roles of the donee/landowners, the HPFP as their mother federation, the VMSDI and PACSII's technical assistance, together with the stakes from both national and local government units.

Fifth, the HPFP usufruct scheme paved the way for government to concretize its investment to the housing project beyond the rhetoric of the UDHA. The HPFP, the communities and VMSDFI put the Quezon city government to its social housing task by leveraging their initial inputs (land, savings and site development) with that of the government's. This has resulted in further technical and human resources support from the city engineer' office; and tax, permits and fees exemptions by virtue of the site being a social housing project under the law.

Finally, the HPFP project has shown that the usufruct scheme paves the way for an emerging community-led mechanism for housing fellow urban poor, that is primarily meant to promote and establish communities' influence and involvement in city development processes particularly in addressing the dilemma of slum-dwelling and securing immediate access to decent shelter beyond finance and land markets constraints

B. Observations and Insights

There are several observations and insights that can be derived in the discussions above, as can be gleaned in this section.

1. The existing legal framework broadly supports usufructs arrangements. While more support and detailing are needed, the present laws already lay the basis for promoting usufruct arrangements. The usufruct scheme realizes the constitutional declaration on the social value of property and provides a counterpoint to the commodification of property that adversely affects the poor.

2. Usufruct arrangements provide immediate secure tenure and access to basic services. Less than land title transfer schemes approximating key elements of usufructs have succeeded in providing immediate secure tenure to poor dwellers who are victims of disasters and those in highly dense urban areas with costly land values;
3. There is substantial social acceptability of the scheme by those directly affected under certain conditions. While title transfer is still the preferred scheme, there is a growing acceptance among the urban poor for less than title secure tenure arrangements like usufructs as long as
 - a. the terms are clear and they are part of the process;
 - b. the site is located near their source of livelihoods and with ready access to basic social services;
 - c. there is community management and other stakeholders' support;
 - d. the scheme is more affordable, as the issuance of title to beneficiaries entails greater expense and effort than the grant of usufructs;
4. Usufruct arrangements appropriately reflect the evolving transitional and incremental modalities of self build and sustainable communities. The usufruct scheme is a "transitional mode of securing tenure" (UDHA provision under Section 15) and needs to have a support mechanism such as
 - a. legislated incentives (tax or otherwise) for private natural and corporate landowners and developers for institutional buy in;
 - b. use of UDHA incentives for social housing like transfer tax exemptions, real property exemptions, fast-tracking of land and housing permits;
 - c. leverage of UDHA and the Balanced Housing alternative compliance with private sector partnerships with the LGU and the affected communities for this;
 - d. responsive community development and livelihood programs to not only increase family incomes, but to prepare them for eventually accessing land and housing under more formal arrangements (in cities with more urban land/ space);

5. The grantee of a usufruct will be encouraged to strive harder to gain title. If s/he truly wants title to the land, then s/he has to improve earnings and purchase the lot to gain title to it.⁶⁸
6. Usufruct schemes are more sustainable. It cannot be denied that some urban poor families later on improve and because of such improvement, they can now buy lots in subdivisions, the lot subject of usufruct can then be awarded again to other qualified beneficiaries.⁶⁹
7. Usufruct arrangements constitute viable tools or schemes for urban land development and management.
 - a. Through usufructs, cities can better obtain management handles over urban land development and management if they retain ownership over residential lands rather than dispose these to UDHA beneficiaries through sale;
 - b. Coupled with restrictive covenants on disposition to non-beneficiaries, the city can better control the phenomenon on "gentrification" or "downraiding" that plague many a local government social housing program that defeat the very purpose of prioritization for those who cannot afford;
 - c. It is a more effective check on violators and opportunists. Awardees will hesitate selling of their rights because they are not owners and buyers cannot claim good faith as the seller has no document whatsoever to show ownership. The government can easily cancel awards and take possession of the property without going to legal processes;⁷⁰
8. Usufructs also emphasize the social aspects of property and serve as counterpoint to the myth of title transfer as the only means of securing tenure. The inordinate locus on obtaining transfer to title has unfortunately nourished a self-defeating culture of commodification of property that subject already scare urban lands to the whims and caprices of a skewed land market. Unregulated land speculation and irrational reclassification of agricultural and residential lands to optimum commercial use exacerbate the problem and result in skyrocketing urban land values that further marginalize the poor. Hence, a telling argument can be made for promoting less than title transfer schemes like long-term leases and usufructs, to prevent even

socialized housing beneficiaries from being tempted to sell/ dispose or transfer their awards to those who can afford the transfer at a premium. This opens up the insidious cycle of gentrification, further commodification, and results in the increase in urban land prices that worsen the problem of slum dwelling.

C. CONCLUSION AND POLICY DIRECTIONS

Providing secure tenure is the pivotal first step in meaningfully impacting on the lives of the growing number of urban slum dwellers, who will eventually constitute more than half of the populace in Philippine cities. Secure tenure provides the bedrock with which to build investment and development not only by the poor themselves, but by governments and other urban stakeholders.

The predominant strategy of ownership or title transfer to the poor in the Philippines is an inherently tedious and costly undertaking that does not guarantee sustained tenure security. Paradoxically, the trend that results from transferring title to urban slum dwellers is a commodification of urban land that drives the land prices high and disenfranchises urban poor dwellers present and those still unborn. There is then a need to evolve alternative modes of securing tenure. A viable alternative secure tenure approach is the usufruct scheme. Experience shows that usufruct schemes have resulted in securing immediate, yet enduring tenure for slum dwellers in disaster response in highly dense urban contexts. The experience points to these policy directions.

1. The government needs to promote the usufruct scheme and institute in depth analysis of its implications in securing immediate and sustainable communities. These can be done in local inter agencies (LIACs) of the Palawan, Bataan and other sites of presidential proclamations⁷¹ that utilize the scheme to formalize the tenure of the settlers in these military and police reservations.
2. There is a need to concretize the promotion or social marketing of usufruct through the provision of tax, fees and other incentives to owners for them to "buy in" to the

⁶⁸ Borja, Pio Martin Gerardo, Atty., "Position paper on Usufruct Arrangements", SALIGAN-Bikol April 2007.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Referring to presidential proclamations reserving parcels of lands for social housing via the usufruct arrangement: Tinguiban in Palawan, reserved for the Philippine Constabulary (now the Philippine National Police); and the Off-Base Housing for DND-GA/AFP military reservation in Bataan.

usufruct arrangement as a counterpoint to the land title-dominated social housing framework.⁷²

3. A further study of the UDHA provisions is required to realize this. This way, the social dimension of the land, i.e., use of land for the good of the majority at the highest productivity, is achieved while the owner gets to retain ownership of the land.
4. The usufruct arrangement reflects the incremental modalities of the poor in obtaining secure tenure. It does not renege against this modality and in fact, as the HPFP experience shows, better lends itself to community-participation. Hence, incentive should likewise be extended to the drivers and main actors of the scheme, the communities themselves.
5. The usufruct scheme preserves ownership of land to government, so that it can better perform urban land market reforms by preventing the land from reaching the market where speculation drives the prices higher.
6. In complementation with the usufruct scheme, promulgate policies and programs that promote the capacities and incomes of the beneficiaries to eventually avail of more formal housing arrangements like negotiated purchase in other lands using hopefully adjusted housing finance schemes of government and private sector ensure that the usufruct sites are available for future generations.
7. Lobby with government, private agencies, and financial institutions to consider and accept the instruments/contracts attendant to the usufruct arrangement as legal documents, say as evidence of collateral or guarantee for financing.
8. Clarify the roles of HUDCC, HLURB, NHA and other government housing agencies in its projects that provide security of tenure, and how these national agencies can complement their work with the LGU, particularly in developing and implementing programs for providing secure tenure to informal settlers.⁷³
9. A general review of existing policies that restrict the dynamism of informal settling as a social movement to

⁷²Recommendation based on the paper on by Gemma Marin, "Usufruct as an Alternative Instrument for Providing Secure Tenure for Urban Informal Settlers", Institute on Church and Social Issues (ICSI, 2005).

⁷³Ibid.

cope with urban maladies, one of which is to liberalize the requirements for basic service provision even if applicants thereto are bereft of title.

10. The challenge is to have more pilot testing and research; resources mobilization from government and private sector buy-in; and formulation and institutionalization of enabling policies to support the scheme.