



Can the Commons Pave the Way to Greater Land Security?

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Regularization and Land-Ownership Policies in Low-Income Neighbourhoods

Experiences of collective forms of ownership, based on the concept of the commons, have flourished throughout the world. Irène Salenson and Claire Simonneau ask what opportunities they offer for reducing the precarity of the most disadvantaged city dwellers in the Global South.

A large proportion of urbanites in the Global South live in informal neighbourhoods – around a third of all city-dwellers in Latin America, half of those in Asia, and up to three quarters of the population in sub-Saharan Africa (UN-Habitat 2013). The precarity these inhabitants face is socioeconomic, but also – indeed, above all – related to land tenure, as they are essentially squatters on publicly or privately owned land. First and foremost among their grievances is often the desire simply to remain where they are, against a backdrop of a potential risk of eviction, notably as a result of new real-estate projects (Deboulet 2016).

However, land tenure is not just a determining factor enabling the construction of a dwelling, but also the guarantee of a location that can offer access to economic opportunities and community networks of solidarity; furthermore, the peace of mind that comes from land security encourages investment in a sustainable and sanitary dwelling, forms of economic activity, or, in the long term, even education (Moser 1998).

The debate on how to provide this land security remains animated, particularly between those who are in favour of universal, individual land-titling schemes and those who would prefer to see *de facto* land arrangements officially recognized. Building on this second position, we shall address the question from a specific angle, that of *urban land commons*. A selection of situations, studied as part of a wider programme of research currently under way,¹ enable us to explore the effects and the potential of land commons to improve the living conditions of urban populations in the Global South.

Urban land commons

A number of experiences to improve land security in the past proposed the creation of collective forms of tenure, which we shall qualify here as *urban land commons*, in reference to the concept of the commons as defined in particular by the works of Elinor Ostrom and Edella Schlager (1992), and subsequently taken on board in other works focusing on forms of collective action. This

¹ See, for example (in French): www.afd.fr/fr/conference-communs-et-developpement.

research envisages the commons as institutional arrangements, most of the time initiated at grassroots level (by residents or communities) and intended to organize the governance of the use of resources based on the principle of sharing. These arrangements are situated either partially or wholly outside the scope of public institutions and market mechanisms.

The expression that we put forward here – urban land commons – therefore designates a range of situations where possession of a piece of land has a collective dimension and where land-use rights are organized, at least partially, by the community. These measures, which represent alternatives to individual private property, are championed by human-rights groups, most vocally on occasions such as the World Social Forums (Van der Wusten 2016), as a means of realizing the social function of land, namely a distribution of, and access to, land that corresponds to the needs of populations – which, in the case of urban environments, means being able to access land for purposes of habitation. In 2013, a report on the “collective and communal” forms of land tenure was drafted along these lines for the UN Special Rapporteur on Adequate Housing (Cabannes 2013).

Community land trusts: philanthropy and sharing

The community land trust (CLT), a type of land-sharing foundation, is a mechanism developed in the south of the United States in the late 1960s with the aim of facilitating access to housing for disadvantaged social classes, in particular among African-American populations. Its creators – activists within the anti-segregation movement – took inspiration from models of housing communities such as British garden cities, Israeli *moshavim*, and the Ghandian Bhoodan-Gramdan movement in India. CLTs have been replicated across the US with the support of the Catholic Worker Movement, and in 2013 there were 240 such trusts.² The model has since been exported to Canada and Europe,³ as well as to Kenya, Bolivia, and Puerto Rico on a more limited basis.

The fundamental principle of CLTs is that the cost of land should not be passed on to inhabitants: instead, the trust – a non-profit foundation – acquires the land and makes it available to trust members by means of land-use rights or leases. Inhabitants pay only for their home, not for the land. If they sell this dwelling, the CLT has a right of first refusal; if it chooses not to exercise this right, most of the added value of the transaction comes back to the CLT.

The CLT in Voi, Kenya, was created in 1991 with the support of German development agency GTZ⁴ as part of a project to rehabilitate an informal neighbourhood of 3,000 inhabitants (Bassett 2007). The decision to use this collective form of tenure was made with a view to offering greater land security for shanty-town dwellers by preventing the resale of land parcels. Reselling of this kind is all too common following neighbourhood rehabilitation projects, to such an extent that the target populations – those with the fewest resources – do not actually benefit in the long term from the projects, and simply reproduce the same precarious living situations further out on the urban fringes.

This experiment faltered in the face of the inadequacy of the Kenyan regulatory framework, leading to delays in its implementation. However, it has managed to limit the speculative transactions that habitually go hand in hand with the rehabilitation of neighbourhoods, and to offer parcels or dwellings at prices far below market rates. The same kind of success can be seen in

² Source: National Community Land Trust Network, Annual Report 2013; see: <http://cltnetwork.org/wp-content/uploads/2014/10/2013-Network-Annual-report.pdf>.

³ In France, the Law for Access to Housing and Renewed Urban-Planning Measures (*Loi pour un Accès au Logement et un Urbanisme Rénové*, known as the ALUR Law) of 2014 recognizes state-accredited, non-profit-making “solidary land agencies”.

⁴ GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit, literally “German Corporation for Technical Cooperation”) is now known as GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit, literally “German Corporation for International Cooperation”) following a merger in 2011 with two other German international-development organizations, namely DED (Deutscher Entwicklungsdienst, literally “German Development Service”) and InWEnt (Internationale Weiterbildung und Entwicklung – Capacity Building International).

similar CLT projects in Cochabamba in Bolivia (initiated in 1999) and in San Juan in Puerto Rico (2004). In Voi, the price of dwellings in the CLT is three times lower than in neighbouring districts (Midheme and Moulaert 2013); in Cochabamba, the price of parcels is five times lower (Lipman and Rajack 2011). Furthermore, in Voi, tenants are also members of the CLT and are protected by the trust's internal rules against evictions and rent increases.

Figure 1. Comunidad María Auxiliadora (CLT), Cochabamba, Bolivia



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Housing cooperatives in Latin America as an expression of social movements

The system of housing cooperatives is another form of urban land commons implemented in Latin America. In a context of trade-union struggles in the 1960s, the Centro Cooperativista Uruguayo (Uruguayan Cooperative Centre) launched three pilot projects with funding from the Inter-American Development Bank (IDB). The success of these experiments led to the institutionalization of cooperatives in Uruguay by law in 1968.

In this model, land ownership is also collective. Residents hold user rights, which are time-unlimited and transferable (either by inheritance, or via sale under certain conditions), in the form of members' shares in the cooperative. Technical assistance services have been put in place to support self-building, and all open spaces, collective facilities and public subsidies are managed collectively.

The state facilitates the funding of these cooperatives through low-interest collective loans offered by the Banco Hipotecario del Uruguay (a state-owned bank). In 2015, around 40% of the Uruguayan housing ministry's budget was earmarked for cooperatives, which numbered more than 200 nationally (Arnold and Lemarié 2015).

Housing cooperatives based on the same model have also been trialled in Bolivia, Paraguay and Argentina, but have remained isolated experiments owing to a lack of institutional support in these countries.

Figure 2. Nuevo Amanecer neighbourhood (housing cooperative), Montevideo, Uruguay



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Collective positive prescription in Brazil: recognizing occupants' rights

Positive or acquisitive prescription (also known as usucapion) refers to the possibility of becoming the owner of a property following a long period of (often illegal) occupancy on a continuous and non-conflictual basis. In Brazil, the City Statute (Law 10.257) of 2001 enables the lowest-income households to obtain the right to collective ownership in occupied areas where it is difficult to identify individual land parcels. At the conclusion of a positive-prescription procedure, all the members of the group are considered to be co-owners of a single, indivisible property. An equal portion of land is allocated to each household, regardless of the amount of land they actually occupy, unless there exists a written agreement among the co-owners establishing a different configuration (Rolnik 2002).

The notion of positive prescription is a manifestation of the social function of property ownership: on the one hand, it enables occupants to transform a *de facto* situation into a *de jure* one; and, on the other, it penalizes legal owners who have not improved or developed their land in any way during the preceding decades, as these owners are not compensated if they lose their land. In Brazil, the short prescription period (five years)⁵ and the ability to initiate the positive-prescription process at a group level reflects a public desire to recognize *favela* residents' right to remain *in situ*.

In practice, however, this measure is seldom used, as it is not very well known, and is not a sufficiently useful or relevant tool for the populations concerned. Of the procedures initiated, many do not come to fruition, owing in particular to the fact the judiciary is still unfamiliar with its procedures and has even shown some reluctance to use them. The principles of the City Statute do

⁵ For purposes of comparison, the equivalent period in France is 30 years.

not yet seem to enjoy full legitimacy within Brazilian society (Alves da Silva *et al.*, 2013; Saule Junior *et al.*, 2015).

What are the effects of these alternative models on land security and urban inclusion?

Although the legal and institutional requirements have impeded the progress of CLT and cooperative projects in Kenya and Latin America, it has been shown that these mechanisms do bring land security to vulnerable inhabitants: land-use rights are issued in the long term, and these rights are transferable. Meanwhile, anti-speculation clauses seek to avoid gentrification and maintain access to this type of housing for underprivileged classes.

In terms of combating poverty, the results are paradoxical, however: collective forms of land tenure prevent the capitalization of households that normally occurs through access to private ownership. And, at the same time, in countries where banking and savings systems are inadequate or failing, land ownership is frequently used to hoard assets, which could potentially encourage a greater individualization of property rather than collective forms of ownership, especially if individual ownership is the primary form of tenure promoted by land regulations.

To conclude, what can we hope to obtain from these alternative forms of land tenure in the face of an urban population explosion? Collective regularization through the positive-prescription procedure in Brazil could bring about improvements in land security for many city dwellers. The model of Latin-American housing cooperatives has considerable potential for replication in emerging countries, in particular thanks to the experience-sharing encouraged by federations of cooperatives and disseminated by international NGOs. Moreover, the cooperative movement has been enjoying a resurgence in popularity in Europe since the 2000s.

However, the small number of CLT, cooperative and land-sharing operations undertaken in the Global South to date and the delays involved in their implementation might raise doubts about the ability of these alternative solutions to meet the massive demand for housing in countries experiencing rapid demographic growth, particularly in sub-Saharan Africa. Whether or not land commons is a concept that can be exported more widely remains an open question.

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Irène Salenson holds the *agrégation* teaching qualification in geography and a PhD in urban planning. A consolidated version of her doctoral thesis was published in 2014, titled *Jérusalem, bâtir deux villes en une*, by Éditions de l’Aube. Today, she is a research coordinator within the Innovation, Research and Knowledge Department of the French Development Agency (Agence Française de Développement), where she is responsible for a research programme focused on urban transitions, which includes a component on “urban land commons” (see, in French: www.afd.fr/fr/page-programme-de-recherche/territoires-et-ecologie?prevId=3004).

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