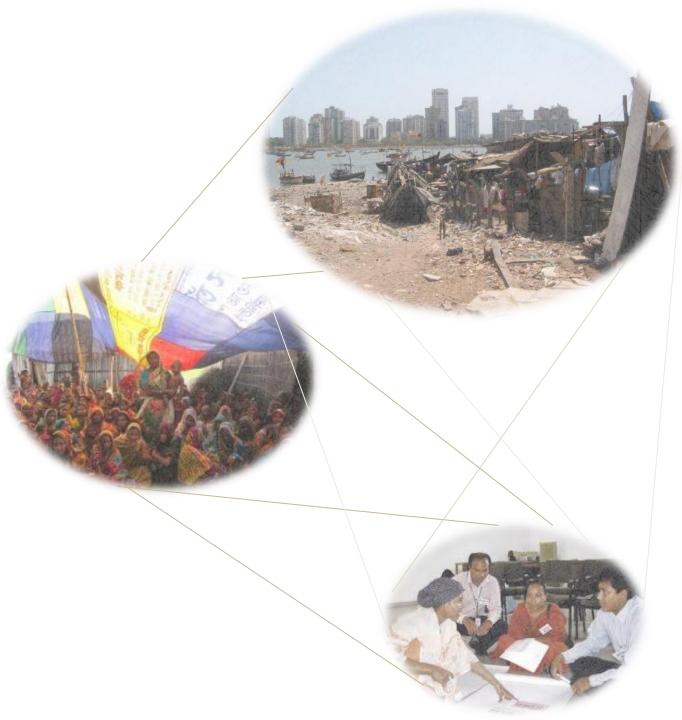# Shelter Forum Report 2014

Land Tenure Insecurity: The Impact on the Global Housing Crisis

About the Annual Shelter Forum

Held on the 11th of April at the Y Hotel in Sydney, the 2014 Shelter Forum aimed to facilitate an exploration of issues surrounding land tenure insecurity through the knowledge of various actors in the development field and the input of many others in discussion. It was convened by the ACFID Shelter Reference Group and supported by the Australian Aid program of the Department of Foreign Affairs and Trade.

Contents

Keynote Speaker

Professor Daniel Fitzpatrick

Professor Fitzpatrick writes on property rights in a development context. In 2007 he won the Hart Article Prize from the UK Socio-Legal Association for an article entitled: *Evolution and Chaos in Property Rights Systems: The Third World Tragedy of Contested Access*. He has published in the Yale Law Journal, Law and Society Review, the Yale Journal of International Law, and Law and Social Inquiry. He has been a Global Visiting Professor at New York University School of Law (2011), a Visiting Professor at the National University of Singapore (2006-09); a Visiting Professor at the University of Muenster (2002); and a Distinguished Visitor at the University of Toronto (2007). Currently he is an Australian Research Council Future Fellow (2012-2016)

Professor Fitzpatrick was the UN's land rights adviser in post-conflict East Timor (2000) and post-tsunami Aceh (2005-6). He is the primary author of the UN's Land and Disasters: Guidance for Practitioners (2010). He has undertaken professional consultancies on law and development with the World Bank; AusAID; the Asian Development Bank; Oxfam International; the OECD; UNDP and UN-Habitat. His work with AusAID includes co-authoring the 2008 Making Land Work report for its Pacific Land Program. In 2011 he established the Masters in Law, Governance and Development at the Australian National University.

Johanna Brugman

Johanna is an urban planner with interests in participatory slum upgrading, land security, pro-poor finance and city planning. In 2012 Johanna completed a Master of Science in Urban Development Planning at University College London. She has worked for State government in Australia in policy development, land use and environmental planning, and housing for remote Aboriginal communities. Since 2012 she has worked in participatory slum upgrading in different countries in Asia including Thailand, Vietnam, Philippines and Cambodia by volunteering with the Asian Coalition for Housing Rights and Engineers Without Borders Australia.

Katie Shozi

Katie works for Engineers Without Borders Australia and recently visited Cambodia to look at the role that engineering and technology plays in development. During her time in Cambodia she visited communities that had been forcibly removed from their land and communities that had been resettled.

Ruth Kestermann

Ruth is a development consultant who since 2009 has focused on consulting in the international development, disaster relief and Australian Indigenous sectors. Ruth has experience in addressing shelter provision in Kiribati, Bangladesh, Brazil, Haiti and the Philippines. Her recent work includes

Asian Cities Climate Change Resilience Network (ACCCRN) projects in Indonesia and Habitat for Humanity's Urban Resilience Project in Bangladesh. Ruth is currently completing a Master's Degree in Development Studies and Culture Change at Macquarie University.

Aruna Paul

Aruna has a background in community development and drug rehabilitation counselling. In 1997 Aruna joined Habitat For Humanity Sri Lanka as Manager for Training/Affiliate Development. In 2004, he joined Habitat for Humanity International as the Regional Program Advisor (RPA) for the South Asian Countries, specialising in the Save and Build methodology and Housing Micro Finance. At present Aruna holds the position of Habitat Country Representative for Nepal.

Iv Bonnakar

Kar has held a number of positions within Habitat for Humanity Cambodia, including Capacity Building/Partnership Development officer, Resource Development/Communication officer, Program Manager, and is presently the Southeast Program Coordinator. In this position Kar is responsible for programmatic oversight of all Habitat Cambodia's South East programs working with program managers and project officers on issues of land rights, shelter provision, and water and sanitation.

Luke Millar

Luke completed a Master of Global Politics from the London School of Economics in 2012. His contributions to the UK's Global Policy journal have been concerned with issues of power, knowledge construction, democracy and development. Luke spent three years in Cambodia working for local and international NGOs, and since August 2013 has been an International Program Coordinator for Habitat for Humanity Australia where he has focussed on disaster risk reduction and land rights programming.

Victoria Stodart

Victoria is currently the Housing, Land and Property Rights Advisor for the International Federation of the Red Cross and Red Crescent where she researches and advises in particular on the IFRC's 'Regulatory Barriers to Emergency and Transitional Shelter after a Natural Disaster' initiative. Recently, Victoria worked for the IFRC's Shelter Cluster in the Philippines after Typhoon Haiyan.

Daniel Fitzpatrick

The challenges of urbanisation are more acute in some areas than others, especially in the context of informal settlements, climate change and natural disasters. Although there are roughly 900 million informal settlers, the data available on land tenure is poor. People migrate from rural to urban areas because of land grabbing, kinship networks and economic opportunities. In places like Indonesia, and Cambodia, there is no assumed state of legal rights to land because the majority of the land is state-owned.

Poverty prevents access to a formal tenure system, meaning that people have no land rights and are subject to higher land prices. Informal land systems are marginalised and it often results in the urban poor becoming "illegal". In conflict and natural disaster contexts, the big issue is attaining documentation of proof that would allow shelter beneficiaries to have land rights. Apart from securing land rights, there is also the issue of increasing human mobility against restricted housing supplies in slums.

The traditional response to these problems is land titling. Land titling, as in the example of the Cambodian Land Management and Administration Project, is not pro-poor, especially as it excludes illegal settlements or settlements where disputes are likely. Even beyond the initial registration, people do not pursue further registrations because it is too expensive, they choose alternative localized systems or they have a general mistrust of the state. Titling is also a gender discriminatory process and even education and awareness is proving difficult because of social and political barriers. Another problem is that there are no checks and balances on decisions regarding state land.

Tenure security or perceived security is significant as it allows people to feel more secure in making investments and engaging with their local community. Various legal mechanisms, with both benefits and disadvantages, exist in different systems and countries. These mechanisms can be identified on a **tenure continuum** stretching from informal land rights to formal land rights:

- **Customary land rights** are used, although restrictively, as a mechanism to deal with the emergence of land markets in places like Honiara.
- In post-conflict contexts like Dili (East Timor), the state has come up with mechanisms such as **recording occupancy** to avoid disputes over land, even though there are no formal rights. Methods like these can, however, be socially divisive.
- In the Philippines, although **anti-eviction laws** are in place, the lack of access to justice and advocacy limits the effectiveness of such legislation.
- **Adverse possession**—whereby long-term possession leads to ownership—is also difficult to pursue in places like Cambodia and East Timor because of manipulation of the rule by political elites. Although restitution is an alternative, someone will always be left out as there are many layers of displacement.
- **Group tenure** can be an effective mechanism where communities are close-knit and there is no manipulation by elites.

- **Formal leases** puts pressure on the state and in places like Malaysia, qualified 5-year titles are issued.

Close scrutiny of a particular context can help determine which of the tenure options might be suitable. In places with good governance, higher tenure status options can be sought whereas in places of poor governance, it is best to go for lower tenure status.

In post-disaster contexts, best practice would require baseline surveys. However, where there needs to be more immediate responses, actions like no-build zones should be incremental and take into account humanitarian crises, sites for relocation and populations at risk.

Discussion Topic One - Mitigating Impact of Disaster on Land Insecurity

HOUSING LAND AND PROPERTY ISSUES IN THE PHILIPPINES (Typhoon Haiyan)

Ms Victoria Stodart

Of the 10 million families living in the Philippines, over 5.1 million families do not have secure land tenure. After Typhoon Haiyan, the urban growth in Tacloban became unregulated because of poverty, lack of land and politics. The expenses of registering legal title and the long judicial processes are barriers in dealing with tenure security in the disaster response context. These difficulties have led to a thriving informal land market where there is no exchange of formal documents. In Tacloban, 70% of houses were damaged or destroyed and many political issues arose between the mayor and the national government. These political dimensions also influence whether people enter the formal or informal land market.

The government response was a 40 metre no build zone (NBZ) along the coastline with the intention of protecting populations from future damage. It was enforced by local government units. Currently, 13,244 households face relocation in Tacloban because of the NBZ. According to the Urban Development Housing Act (1992), relocation needs to follow the principle of proportionality but the lack of resources and alternatives restricts this approach. Thus, the government has resorted to temporary shelter responses such as bunkhouses, which currently house 4,107 people. There are a large number of strict rules for residents whilst living in the bunkhouses but it is not clear where rule-breakers will be moved to.

For those who are currently residing in NBZs, there are 160 transitional shelters being built which will provide shelter for three months before they are moved to a permanent home. There are no lease or rental agreements for short term beneficiaries who are providing 'sweat equity' in return. The permanent relocation site in Tacloban North, initially planned to hold 12,000 houses, is currently being reconsidered because of concerns over a public dumpsite and a lack of access to the coast. One of the current options for tenure is the provision of a 25 year lease with rental payments made through the Community Mortgage Program.

The government has recently downgraded the NBZ to "no dwelling zones" to ensure fishery livelihoods and tourism industries remain functioning. Through advocacy and a unified HCT (Heads of Agencies and Co-cluster leads) approach, the government has now decided to step away from the 40m zone and allow scientific hazard mapping to take the lead. However, the most vulnerable who also live in risky areas are still without tenure in Tacloban.

Continuing the advocacy roles that have taken place so far is one of the actions for the future. The Shelter Cluster will continue to provide papers outlining key principles of consultation, beneficiary selection and a right to adequate housing. The Shelter Cluster will also seek a joint position on tenure security with a focus on the informal sector.

GUIDANCE NOTE ON ADDRESSING LAND ISSUES AFTER NATURAL DISASTERS

Daniel Fitzpatrick

In 2005, land issues were recognised as missing in humanitarian responses. The Humanitarian Cluster system was established to create guidelines on addressing land issues after natural disasters.

The three key variables affecting land issues are the disaster and its impact (destruction, deaths and displacement), the land governance system (affects vulnerability to future risks) and the responses to the disaster (land issues in the recovery period). Land issues can be a time-critical barrier to early recovery. In the immediate aftermath of disasters, there needs to be an assessment of the different types of impacts on different types of land, the mechanisms by which emergency relief land can be accessed and the specific land system and history. The needs assessment also includes how much land has been lost or rendered uninhabitable and how many people have no access to land. Questions also need to be asked about what and how many land documents were lost in the disaster and how the disaster impacted the land administration system. Techniques used for hazards assessment are remote sensing, Geological Information Systems, ground-truthing and historical records.

Cross-cutting issues like land and gender fall through the cracks in post disaster contexts. In Tacloban, the most affected groups were renters and informal settlers, women and female headed households. Although such groups require urgent identification, the cluster system makes such groups more invisible. This is because assessments are made in categorised 'clusters' and thus lack gender disaggregated data and needs assessments.

In planning immediate responses, some key activities to take into account are:

- Select, plan and manage sites for transitional shelter.
- Decommission temporary shelters through land and housing solutions for all disaster victims.
- Support rapid mechanisms to provide security of tenure for durable shelter solutions.

Before building durable forms of shelter, the tenure arrangements need to be identified but acquiring documentation itself is a source of delay. There also needs to be better land use planning as no-build zones often cause more trouble than they are worth. In Aceh, affidavits of ownership

were used during post-disaster and although it was not integrated into the formal system, it got people into durable shelter quickly and was a success. However, mandatory shelter documents often disadvantage women.

Human rights can be better protected through land. This can be achieved by protecting the land left behind by displaced persons and upholding the rights of return and restitution for displaced and disadvantaged groups. In relation to resettlement and rapid mechanisms to protect legal records (especially those of women), due process should be followed and participants should act voluntarily. There needs to be a greater incorporation of access to land and tenure analysis into rural livelihood strategies. Post-disaster land administration can also be strengthened, through basic infrastructure, appointing new staff and supporting regulatory reform as required.

Key longer term activities would involve:

- Identifying land parcels
- Securing and verifying land tenure
- Standardising and—where appropriate—recognising post-disaster tenure and planning documents.

Land use planning and urban planning needs to be incorporated into risk and vulnerability assessments and humanitarian solutions to displacement. Advocating decentralised or market-based alternatives to large-scale resettlement through government land allocations is one way to improve access to land. Minimum standards for international involvement should include voluntariness, participation and consultation, due process and the provision of adequate compensation.

Discussion Topic 2: Strengthening Land Policy and Advocacy

TESTING URBAN LAND LAW IN BATTAMBANG PROVINCE, CAMBODIA

Iv Bonnakar

There has been a general trend of 17% population growth in Cambodian urban areas with 600,000 families in need of adequate housing—whilst 20% of rural families do not own any land. The main challenges are the lack of knowledge about the land law and a resulting apathy for legal registration, increasing land disputes and increasing forced eviction. With challenges, there are also opportunities for land distribution because of the developing land markets.

Habitat for Humanity Cambodia's Battambang Project focuses on strengthening civil society and government partnership to deliver secure land tenure. Through awareness and capacity building of social land concessions, this project aims to test and develop community-based mechanisms and procedures for civil society-government collaborations.

The project implementation spanned across a few main steps:

1. Collecting Household Information
2. Mapping and classification of state and/or public land

3. Identifying and selecting tenure options and developing re-blocking and infrastructure plans
4. Land Allocation
5. Strengthen community development

The source of delay in this project was that the government wanted to lease land but the families wanted to own land. An agreement was reached that families would be given a document that serves as a proof of land occupancy called a Social Land Concession Certificate (SLCC) and stay in the site for 10 years, then the SLCC will be converted to a full land title.

Some significant outputs from this project to date are community leaders have been trained on on-site upgrading and there has been approval for land re-classification from public state land to private land. By 2013, 136 of 256 families received land occupancy certificates and 115 out of 256 received housing kits. Other significant outcomes are that community-based mechanisms and civil procedures for civil society-government collaborations were well tested and developed whilst knowledge of legal processes of SLC has also improved.

The lessons that were learnt include the significance of a capable and well-organised civil society organisation in informing and providing checks and balances on government decisions. Such focused capacity-building is critical to improving access to land. Some challenges are situations where families with bigger plots of land are less willing to allow land re-blocking and form resistance groups. The land distribution process is long and complex and there is not enough political will to improve transparency of such processes. Other delays were the different conceptions of land tenure between the communities and government as well as cultural conceptions that only particular blocks of land will bring luck and fortune.

RURAL AND URBAN CHALLENGES IN LAND SECURITY IN NEPAL

Aruna Paul

In Nepal, 76% of the country's poor are marginal and small landowners whereas 25% do not own any land. Land management, through the Ministry of Land Reform, is centrally controlled and thus, people have to go all the way to Kathmandu to make land claims. The most marginalized groups are bonded labourers (Kamaiyas), the dalits and peasants. Looking at the history of land ownership, it is important to note that the current landless did once own land but were deceived into their current state through land encroachment and excessive mortgaging. Currently, capitalism and pursuit of economic goals has also led to more land owners being abused.

On a human level, having no land drives issues of marginalization, disenfranchisement and exclusion from communities. From an economic standpoint, the incentives for maximising production and no capital for investing are reduced in the absence of land tenure. Land is also more than a simple commodity for Indigenous groups—land is intrinsically linked to their culture and their identity.

One response from the government is the three year interim plan which is aimed at improving living standards, land management and land rights to vulnerable groups such as slum dwellers. However, its implementation is slow because of a lack of political will and a desire by landowners to

maintain the status quo. Challenges are not only shaped by the interests of powerful groups but also by the illiteracy and the lack of rights awareness of the poor. There is a lack of championing for the poor and landless and no political backing for improving land management in part because of Nepal's political instability.

Rural to urban migration patterns are a major factor in the increasing slum settlements and reasons for this type of migration can be traced to job opportunities, a need for facilities and the lack of finance, knowledge and skills in rural areas.

The way forward has to be focused on decentralisation, increasing political will and passion, education, empowerment and enhancement of the capacity of farmers for productivity. Another focus should be on progressive housing through income generation and skills development. Land ownership can be developed through the housing value chain and by forming groups, creating stronger communities with more powerful voices.

Discussion Topic 3: Making participation work through tools and information sharing

COMMUNITY MAPPING AND SURVEYING AS A TOOL FOR ACQUIRING LAND TENURE SECURITY IN URBAN POOR COMMUNITIES IN CAMBODIA

Johanna Brugman

Insecure tenure and forced evictions are one of Cambodia's most urgent problems. Land Law (2001) or Land Management and Administration Programme (LMAP) are frameworks which still do not do enough to improve the tenure situation of those most vulnerable to displacement. Currently, two things are restricting dispute resolution mechanisms and negotiations:

- The poor lack practical skills such as mapping.
- There is a lack of relationships with community leaders and municipal councils.

Community Empowerment and Development Team (CEDT) which works with EWB Australia has approached this issue through community mapping and surveying. It is not just a physical or procedural exercise but also a way to strengthen community relationships and enable more dialogue and partnerships with government. Likewise, it allows governments to better understand what the boundaries and characteristics of community settlements are. In Cambodia, this is important as land titles were destroyed during the Khmer Rouge regime and there is a large information gap that needs to be bridged.

CEDT has worked in Phnom Penh, Battambang and Siem Reap on a dispute-resolution mechanism called the Circular-03. It is focused on providing resolution to informal settlements which the government considers as being 'illegal'. The Circular is a legal based tool to find a negotiated solution to tenure insecurity. CEDT's focus in the implementation of Circular 03 has been to create a way in which this policy can work for the poor. By providing training, knowledge and technical support in mapping and surveying, their focus has been on empowering poor communities, making

them informed and aware of their rights and limitations, and increasing their negotiation and decision-making capacity.

One aspect of the project is Training to Trainers (TOT) which gives map-drawing skills and data collection skills to key activists in communities and also trains them in engaging the entire community. CEDT then converts community drawn maps to Geographic Information Systems (GIS) as they are well recognised by authorities. Circular 03 also focuses on providing technical and legal advice, direction and support for communities to develop housing proposals for the future. In this step CEDT supports communities in developing the future layout of their community and identifying plot sizes and room for future infrastructure and roads. Housing solutions such as re-blocking, re-adjustment, or land-sharing are also explored. Then, legal support is provided in the preparation of documents to submit proposals to Municipal Authorities.

Since CEDT's main aim is onsite upgrading, they work with non-evicted communities. CEDT selects communities whose lands do not have as many interests because the likelihood of on-site upgrading is much greater.

After five years of CEDT in Battambang, the results are that communities are more informed about legal decisions. Nine communities now have GIS maps and surveys, two communities are in the process of negotiating land tenure with the Government, one community succeeded in approval for 'Social Land Concession' land upgrading, four communities are developing housing proposals and the Municipality of Battambang is now open to accept housing proposals.

One main challenge was the lack of systematic information in Cambodia. However, this gives rise to opportunity for CEDT maps to fill in the gaps in the current development of a formal "cadastre" in Cambodia. Another challenge is the absence of a clear time-frame for government response whereby communities have waited as long as five years. This is also problematic for CEDT projects because the data lags behind. The Cambodian city planning is situated around the vision of a high-class Cambodia and this challenges the needs of informal settlers—such as where roads are widened with no consideration of informal dwellings. Administrative functions of management and implementation committees need to also be strengthened whilst collaboration between NGOs has to be improved to prevent duplication or contradicting activities.

BUILDING RESILIENCE IN URBAN SLUM SETTLEMENTS—DHAKA, BANGLADESH

Ruth Kestermann

Dhaka's population is growing at 4% per year and approximately four million people live in slums. Slums are located on a mix of public and private land and slum dwellers pay their rents to local criminals or 'Mastaans'. Dwellers are also under a constant threat of eviction.

A pilot project was conducted in Talab Camp in partnership with Habitat for Humanity (HFH), RMIT and Arup. The objectives of the project were to:

1. Increase the capacity of HFH and its local partners in designing and implementing urban slum settlement projects which will build resilience in the community.

2. Increase the ability of slum dwellers to identify local vulnerabilities.
3. Reduce vulnerabilities of slum dwellers and improve living conditions.
4. Capture and share 'lessons learnt'.

HFH and its partners were given a three day training course covering two frameworks—the framework in current focus is the Community Based Resilience Framework. This framework focuses on building community resilience to unpredictable events as a way to prevent, respond to and recover from shocks (singular events) and stresses (ongoing hardships). Land tenure is currently one of the main challenges that place considerable shocks and stresses on communities.

A resilient community is knowledgeable and healthy, organised, connected, has infrastructure and services, economic opportunities and can manage its natural assets. In a land tenure insecurity context, this would entail a community that is:

1. Knowledgeable about its land rights and laws and thus has power to assess risks and plan to mitigate them.
2. Able to collectively identify problems and cooperate to take coordinated action, such as lobbying together or supporting fellow community members who have been evicted.
3. Connected with external groups such as NGOs and other communities who can provide support and resources.
4. The ability to maintain and repair its infrastructure and services, especially when and where there are no formal means available.
5. Equipped with diverse economic opportunities, so that it can respond flexibly to stresses on income sources or financial services.
6. Able to manage its natural assets. By recognising the natural assets within their community and protecting them, they are less reliant on expensive, external and formal resources.

Overview of Working Paper on Land Tenure Insecurity in Asia Pacific

Luke Millar

The approach taken so far towards land has been legalistic and economic. Recently, however, there is growing dialogue on land as a social function. Although land is in many cases a commodity, it is unique from other tradeable goods as it cannot be moved, it has intense psychological and emotional implications for people and is significant for human development. Treating land as a commodity makes these integral elements invisible.

Land tenure insecurity can be a technical/legal issue, an issue of procedure and governance or an issue of spatial organisation and spatial justice. Global economic structures which drive the land tenure crisis in the Asia Pacific have large impacts on the urban poor. Urbanization itself is driven by global capitalism and it has created a rift between rising commodity prices and a growing population of urban poor. The focus on wealth accumulation has overlooked the affordability of land for the working poor—those who are economically disempowered thus have no legal rights to land in their cities. The result is that of fragmented cities where 'micro states' live autonomously. In Asia, 120 000 new residents are absorbed into cities every day.

Land tenure insecurity needs to be considered in light of human development. Taking a 'basic needs' approach, land tenure is a key ingredient for human development. The liberal approach looks at land as a transferrable, exclusive, private and enforceable economic asset whereas a progressive, developmental approach situates land as a social function which is inherent to a good quality of life. It is the difference between the right to private property and the right to having your basic needs fulfilled. Balancing these two approaches is an ongoing debate, even in developed cities like Sydney.

The research paper will attempt to merge the two approaches above to find the right balance in the Asian context. The role of civil society will be determinant of how land is perceived as a social function. The 'Occupy' movement is one example whereby people are attempting to reclaim the streets and public land.

Group Discussion: What was your take-away message from the Forum?

The forum participants were split into groups and asked to discuss what their 'take-away' message from the forum was. Many brought up the importance of raising awareness of land rights and putting it on the agenda. Using the idea of a tenure continuum, many raised the significance of context awareness and sensitivity while designing programs. The difference between disaster response versus long term responses and rural versus urban responses was raised as a contextually significant determinant of programs. The identification of vulnerable groups is also necessary to equitable distribution of land rights. The timing of responses and resilience programmes need to account for those who will be affected by immediate response mechanisms like no build zones.

FORUM FEEDBACK

We thank all the participants for giving their thoughtful evaluation on our feedback sheets.

Many of the participants' expectations were fulfilled, specifically the gaining of new knowledge on the topic, involvement in nuanced discussions of tenure issues with experts, opportunity to network with various actors, and learning how development practitioners can approach the issues and look at potential areas for technical input.

We also received suggestions which we will take on for future events and forums. Suggestions included exploring:

- the topic of slow onset disasters
- the involvement of government/multilateral programs
- in-depth analysis of slum-dwellers and informal settlers
- innovation in programs towards land rights
- Australian indigenous and Papua New Guinea Groups and land rights