



ACCESS TO LAND IN INDONESIA REFLECTIONS ON SOME CASES

**National Workshop:
Capacity Building to Sustain Peace and
Integration**

**Kemal Taruc and Nora Clichevsky
Jakarta - January 15, 2014**

Content

- Project background: Uprooted People
- A framework of land issues
- Some findings from Kupang and Belu
- Policy implication
- Examples from Latin American countries
- Conclusion

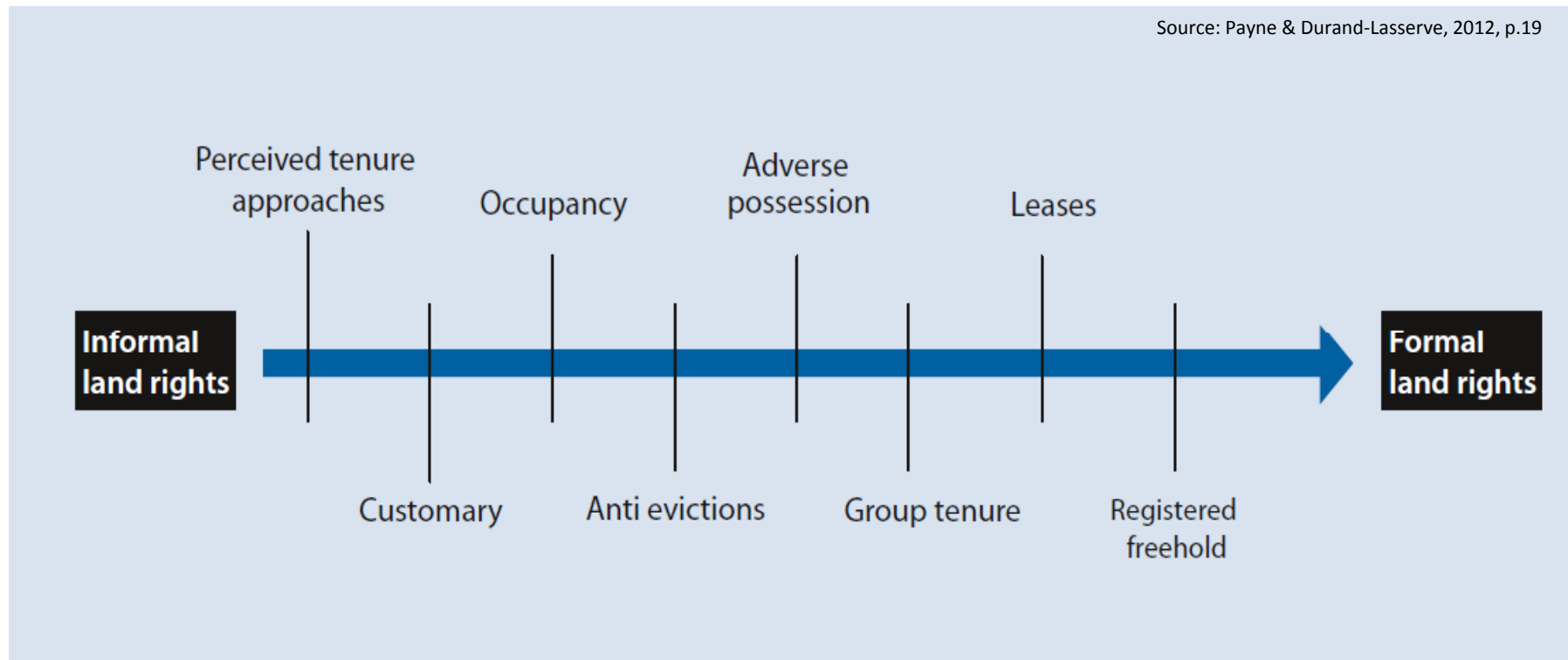
Warga Baru in Kupang & Belu

- The situation of the *Warga Baru* after fourteen years of their displacement, remains unsolved, especially as regards access to and tenure of the land. (In Kab. Kupang 2013, the number are 3,982 households, and 1,690 of them are still in the camps).
- Women and children are the most vulnerable groups.
- EU's Aid to Uprooted People is addressing these issues with UN Habitat to support local government on handling them.
- Yet, local governments need stronger and more effective national policies to get it done comprehensively and coherently – while also solving local disadvantaged areas and poverty, – once and forever.

A framework of land issues

A continuum of tenure types

Source: Payne & Durand-Lasserve, 2012, p.19



A continuum of land development



Forest

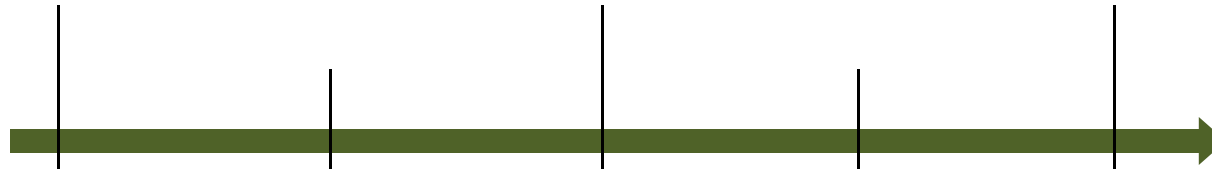


Village



City

Nature
Land



Urban
Land

Farmland



Rural Town

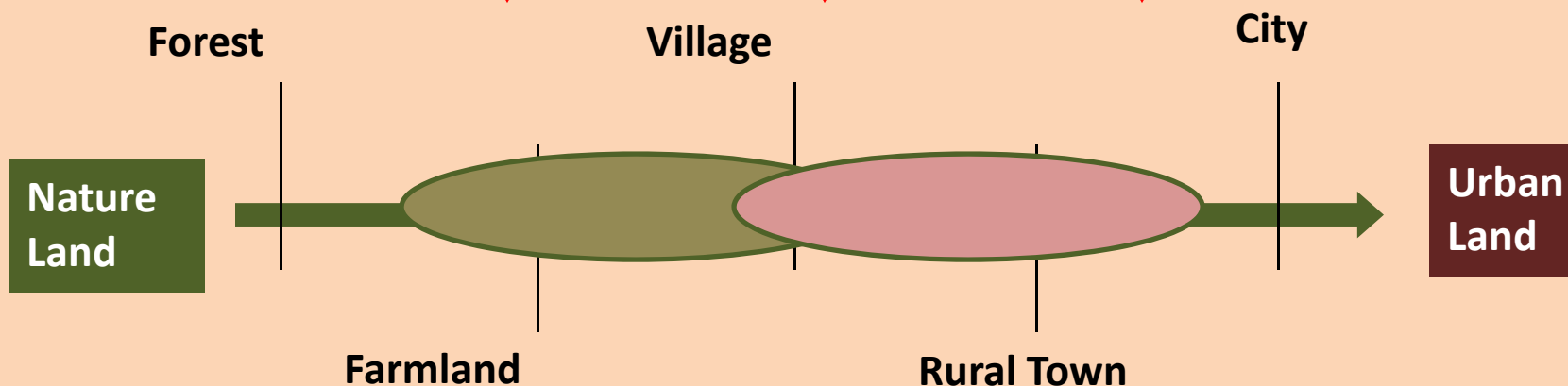
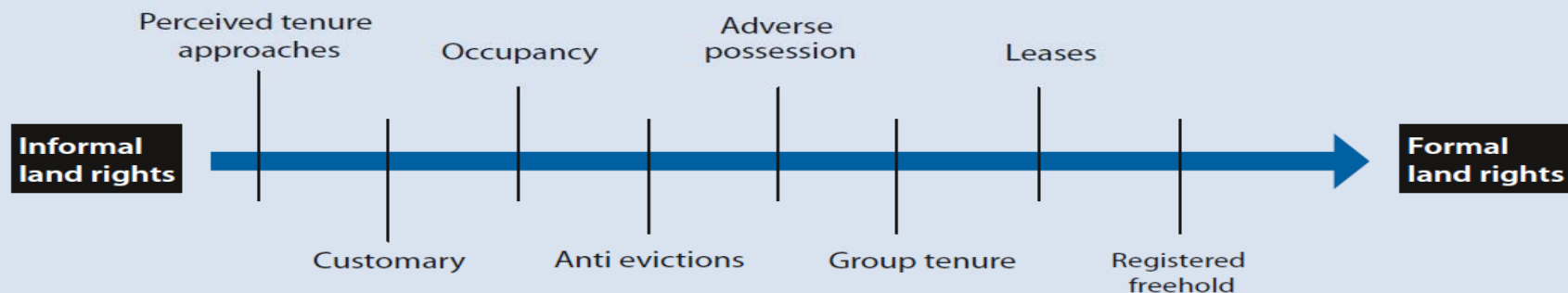


Mertopolis



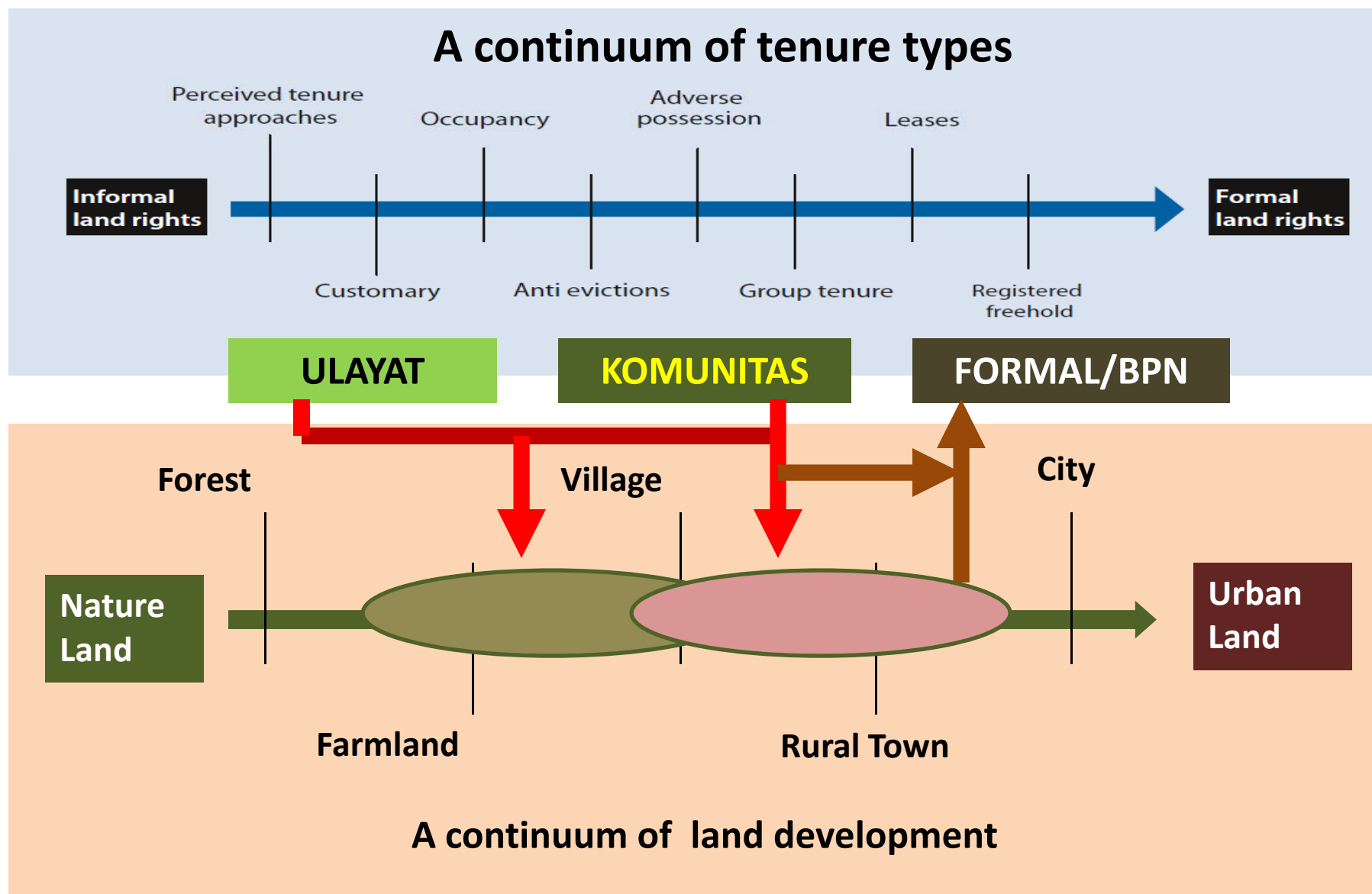
A framework of land issues

A continuum of tenure types



A continuum of land development

A framework of land issues

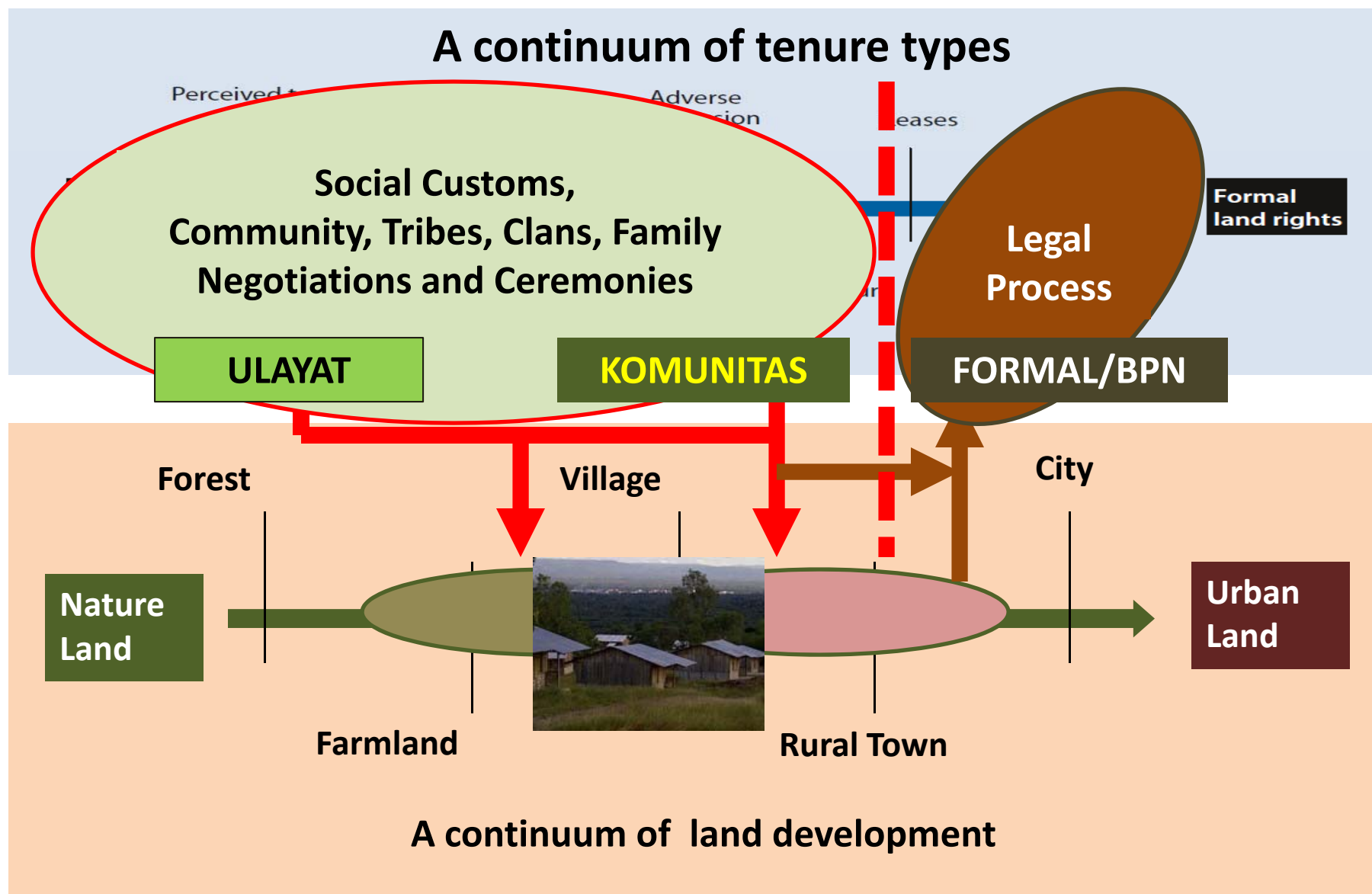


Range of tenure categories found in many cities by degree of tenure security

<i>Tenure Category</i>	<i>Degree of Security</i>	
	HIGH	LOW
Pavement dwellers		
Squatter tenant		
Squatter `owner' – un-regularized		
Tenant in unauthorized subdivision		
Squatter `owner' – regularized		
Owner -- unauthorized subdivision		
Legal owner -- unauthorized construction		
Tenant with contract		
Lease-holder		
Free-holder		

Source: Payne & Durand-Lasserve, 2012, p.20

The Case of Kabupaten Kupang and Belu



Refugee Camps Land Tenures

The camps are located on:

- State or Province land
- TNI land
- Private company's HGU
- Private land or Hak Milik
- *Clans or community land*
- *Disputed land (state forest vs community)*

Policy implication

- No land “available” for housing and infrastructure development → unresolved resettlement programs for *Warga Baru*.
- Insecure land tenure for *Warga Baru* – insecure future life, no incentive for self improvement of the houses.
- Non-uniform land tenure and land agreement with the ‘owner’ (e.g., farm’s sharing agreement).
- There is a constant tension between land to be used not only for housing but also for subsistence resources, among *Warga Baru* also with *Warga Local*.

Examples from Latin American countries

- **USUCAPIO**

Is applied in various countries as treintanial prescription. In **Brazil**, the number of years of prescription has been reduced, as established in the Constitution of 1988 (land is granted to families occupying private lots not exceeding 250 m² for a period of 5 years, in a peaceful way, through the Special Urban Usucaption Action). For same cases, in **Argentine** is 10 years.

- **LAND BANK**

In Mexico, it took 10 years (1983–1994), 19,000 hectares of ejido land to be expropriated land reserves. In 5 years (1995-2000), 100,758 hectares were incorporated urban development.

In others countries, there are local policies of constitution Land Bank. Problem: budget for expropriation

Examples from Latin American countries

- **CONCESSION FOR THE REAL RIGHT TO USE - CDRU**

In Brazil is implemented for occupations in fiscal properties; the concession is usually granted for 99 years. The CDRU has been applied since the nineties in several municipalities of Recife, Porto Alegre, Sao Paulo, Diadema, Natal, Campinas, among others, and has been institutionalized at the national level by the aforesaid Statute of the City

- **BOX 4. SECURE LAND TENURE AND REGULARIZATION IN BRAZIL. THE CASE OF DIADEMA**

Diadema Municipality has introduced a concept about the social function of property, also questioning the inviolability of property rights. Thus, the “favelas” were integrated into the urban structure through works of sanitation and basic infrastructure. At the same time, the process of land legalization consolidated as a municipal law that changed the category of municipal public areas from "public properties of common use by the people" to "available patrimonial properties of the municipality.”

Examples from Latin American countries

- **THE POLICY OF LEGALIZATION**

In Mexico, in a period of two decades over 2.5 million lots have been legalized, but there are still one million families waiting for their titles (Azuela, 2001). The agency responsible for the regulation of human settlements on communal land is the “Comisión para la Regularización de la Tenencia de la Tierra” – CORETT - (Commission for the Regularization of Land Tenure)

- **BOX 2. THE CASE OF TRINIDAD-TOBAGO**

In 1986, a general elections year, the State enacted the regularization of settlements in public lands. To finance housing programs, the new government successfully negotiated a loan with the IDB, a part of which would be used to regularize 2,500 settled plots.

Examples from Latin American countries

- **BOX 3: POLICIES ON DEBTORS OF VACANT (AND ABANDONED) URBAN LAND.**

In 1997, the Municipality of Moreno, in Argentina, implemented the project called “Improvement of the Management Capacity of the Municipality of Moreno in Relation to Urban Land”, with the purpose:

- To implement procedures for mass regularization of ownerships and the transparent functioning of the market of land lots for low-income people,
- To organize forms of public intervention to expand the supply of urbanized land;
- To update cadastral information.

Examples from Latin American countries

- **TERRITORIAL URBAN PROPERTY TAX PROGRESSIVE IN TIME - IPTU.**
- In Brazil, is applied from the nineties in Municipalities as Recife, Porto Alegre since 1991
- Since the approval of the City Statute (national law) in 2001, can be applied throughout the country
- In Porto Alegre, it could have been 301, according to expectations of 1999. Until 2004, he had applied to 52 properties
- Is used to dynamization of abandoned land
- To implement is necessary policy that land institutions and taxation work together

Examples from Latin American countries

- **BOX 6. COLOMBIA: COORDINATION OF TERRITORIAL PLANNING, URBAN AND LAND-TITLE REGULARIZATION.**

This is a program that enhances the social component and the coordination of the participants, as well as the relationship between land-title and urban regularizations. Essentially, the three main principles of the law are:

- The social function of property.
- The prevalence of general interest over private interest.
- Equitable distribution of obligations and benefits.

Examples from Latin American countries

- **BOX 8. THE PERUVIAN CASE**

The Government of Peru has promoted an ambitious decentralization program that has returned or transferred significant responsibilities to regional governments and to provincial and district municipalities. In terms of the rights of property and tenure of the land, the outstanding points are:

- the right of provincial municipalities to formalize all the urban land within their jurisdiction, with or without the technical support of COFOPRI (Commission for the Formalization of Informal Property),
- the obligation of the district municipalities to issue the Single Cadastral Code, requiring all real-estate properties to be registered in the Register Public.

There has also been vacant land titling in unconsolidated settlements. A percentage of 30 to 40% is estimated to be “abandoned land”, that is, delimited plots with “phantom” owners that hinder the achievement of collective facilities.

Examples from Latin American countries

- **BOX 9. “COMITÉS DE TIERRA URBANA” –CTU- (COMMITTEES OF URBAN LAND) IN VENEZUELA**

The National Government created the National Technical Office for the Regularization of Land Tenure, an agency **attached to the Vice-Presidency** of the Republic, responsible for preparing the guidelines and policies required to achieve the objectives set for land legalization. The executive units for that process were the Committees of Urban Land, which have responsibilities: to promote, together with the competent authorities, the creation of the registry of low-income urban settlements; to implement the process of public consultation and the necessary procedures and mechanisms of organization and coordination to regularize land tenure in low-income neighborhoods and residential areas; to study the situation of neighborhoods and offer advice and technical assistance to state and municipal governments in matters of its competence.

Conclusion

- **There are many innovative policies beyond the conventional land rights.**
- **The role of the State at national high-level is crucial to launch new land policies and land tools to solve the land problems by municipalities.**
- **Enactment for the regularization of settlements in public lands or abandoned lands for social functions are made possible by the State.**

Recommendations

In relation to Security of tenure:

Deeds; Supplementary title; Certificate of Comfort;
Concession of Real Right of Use

Improve accessibility to land by the population with higher needs:

Regularization (legalization) of possession; Titling costs; Land reserves (or land banks); Progressive Real estate tax and compulsory building; AIES & ZEIZ; Production of urban land in public-private partnership; Taxation and access to land; transfer of building rights; Recovery of capital gains

Recommendations

In relation to the institutions:

- BPN needs a "restructuring" and "rethinking" of its role and function; must coordinate its policies with BAPPENAS and other national agencies.
- Land policies may have a nationwide scope, implementation must be made by the local governments.
- Participation of the population in the definition of policies.

Further discussion can be
mailed to:

kemal.taruc@unhabitat.org
nora.clichevsky@gmail.com