Preconditions of Land Sharing and Development of the Principle.

Francesco Montresor

Introduction, Factors and Facts

May 23th 2007 will always be remembered as the day the when urban population overcame the rural population. Studies show that this urban population will double in the next 30 years, and most of them will live in developing countries. An interesting fact is that 40% to 70% of this population today actually lives in illegal conditions (Durand-Lasserve and Clerc 1996).

Payne defines the city as *"a place of cooperation where people work together to create collectively a dynamic economy from a diversity of skills, resources, knowledge, leadership, and political will"*. The strength of this definition lies in the use of the term "diversity". Every resident of a city should be incorporated into the city life. The social and economical wealth of a city is built up from every house, cardboard and plastic sheet walls with corrugated iron roof included.

The topic of this paper is to explore ways of giving the city back to its residents. It is believed that security of tenure and stable economic situation are two factors that help securing a place

in the city. Therefore, the main issue lies in the fragile existence of the so called illegal settlements. The expression "so called" is used because an even more important issue comes from a problem of definition. The paper will in this introduction try to define the terminologies that will be used in the rest of the discussion.

UN-Habitat defines a slum as a group of individuals living under the same roof in an urban area which lacks one or more of the following:

• Durable housing of a permanent nature that protects against extreme climate conditions.

• Sufficient living space which means not more than three people sharing the same room.

• Easy access to safe water in sufficient amounts at an affordable price.

• Access to adequate sanitation in the form of a private or public toilet shared by a reasonable number of people.

• Security of tenure that prevents forced evictions.

As it is defined by the Government Housing Bank of Thailand (1997), slums are *"a group of buildings with a housing density of not less than 15 houses/rai (0,16 Ha) in an area characterised by overcrowding, deterioration, un-sanitation, moisture and hygienic accommodation which might be harmful to health, security or the source of illegal action or immorality."*

As it is defined by the National Census Office of the Philippines, illegal settlements are settlements on public or private land of which the occupants do not have the titles or do not have the approval from the legal owners (Fernandes, Varley, 1995).

While the Philippines government clearly draws a legal line between formal and informal, the Government Housing Bank of Thailand focuses on a more human problem, raising questions concerning social structures, access to infrastructures and consequences of life conditions. The notion of "illegality" is much more of a sociopolitical than a legal matter.

In the introduction of <u>Land, Rights & Innovation</u>, Payne was asking; "What forms of land tenure are most likely to achieve the objectives of improved efficiency and equity in different contexts?" (Payne, 2002). The World Bank lists tenure security and property rights among the most important factors influencing housing demand. It is believed in fact that insecure tenure

leads to underinvestment in housing and therefore reduced housing quality. The paper will analyse and develop the concept of land sharing as one of various ways to increase security of tenure. Other alternatives are done in the Philippines, and those alternatives do not exclude the possibility of working together with a land sharing agreement, such as the usufruct, which is the right to enjoy property of another, with the obligation of preserving its form and substance, unless the tittle containing it or the law provides otherwise. (art 562 - Philippines Online Law Library).

Land sharing is a negotiated agreement between landowners, developers, and land occupants to partition and share a plot of land. In Cambodia, it implies that the most commercially viable portion goes to the land owner and the remaining partition is leased, sold, or given to land occupants for legal occupation (Paul E. Rabé, 2005).

As for Yap Kioe-Sheng land sharing could be "the only way in which the urban poor can gain access to land and security of tenure within a city without a substantial subsidy" (Yap Kioe-Sheng, 1992).

To understand the issue, people first have to understand the origin of this situation. Why do people live in those conditions? Where do they come from? Why are they where they are? Secondly, the paper will focus on the various roles of the architect as an entity in the different stages of land sharing development. Whether this entity acts as the Government, a NGO or another party will influence its role. Finally, after comparing cases studies of successful and less successful land sharing agreements across Asian countries, the paper will try to provide a summarised conclusion, providing answers and alternatives for the future.

A Human Perspective on the Slum Situation

The settlers are informal often because they have no other choice; the land is more expensive as soon as it gets closer to more urban areas and employment centres. Moreover, the globalization has resulted in an acceleration of the commercialization of the land market in developing countries. As an example, in the mid 90s, Mumbai was the city with the most expensive land in the world (Payne, 2002). Most of the laws concerning land and property ownership in developing countries were in fact introduced during the colonial period

(McAuslan, 2002). In the Philippines, during the 16th century, Spanish rules changed the indigenous idea of communal use and land ownership by replacing it with the concept of private ownership, conferring titles to members of the principalia; the educated upper class in the towns of colonial Philippines; the chiefs of barangays, and the town judges called gobernacillos. (Dolan, 1991-1997). However, Communal ownership is nowadays proposed as a way of giving land back to informal settlers in the Philippines. A community or group owns a piece of land (the group has to be larger than a family). An example is the African tribes, where the tribe usually controls the land and its chief is endowed with the power to distribute it between the mass.

Sometimes households do not even consider themselves as "illegal", or are not aware of the legal requirements to comply with the law (Fernandes, Varley, 1995). Actually, a quite interesting fact is that the Ottoman Land Law of 1858 enabled any citizen to legally occupy unused state land as long as needed (Payne, 2002). They occupy unused public land, or purchase private land (often agricultural) to build on it without permission. When the land is occupied by only a few families, the private land owner thinks he can still regain his property when needed. But then the number keeps growing until it becomes too big and reaches the point where it is much more difficult to make eviction possible.

Coming back to the definition issue; the urban poor is too often generalized as a whole. It is in fact a very heterogeneous lot, with citizens having different incomes, different educational levels and therefore job opportunities, different social and cultural backgrounds and different needs in terms of housing (size, length of stay, location). Urban land tenure is not a subject that can be defined with notions such as legal/illegal or formal/informal. Therefore there is the need to consider cultural and historical traditions in evaluating different tenure options (McAuslan, 2002). It is difficult to imagine that governments can find one general solution applicable to every context in order to improve the actual housing situation.

Our mind is framed by stereotypes, or - as Payne calls them - "intellectual blockages". Tolerating the "illegal" is against every precept of "good" government. And it goes back again to a problem of definition. The words "illegal", "unauthorized", "slum" lead those who use

such terms to take for granted that the inhabitants of those areas are criminals, poor, living in a lawless kind of existence which needs to be contained, forbidden or even eradicated like a disease. The french word "bidonville", literally "plastic-can-city" is even more symptomatic of this psychological problem. However it can actually be shown that "illegality" is not linked to poverty, and that the illegal form of housing is often observed in the most privileged parts of the cities. (Fernandes, Varley, 1995).

Quote:

The law is framed by and for the interests of the political elite and against the majority of the poor, thereby driving them into the very illegality that the law is supposed to prevent.

McAuslan, 2002.

There is then the need to interrogate the purpose of this law, and its role in the process of urban evolution. This role can only be understood if put in relation with the other processes that influence every city's transformation. The social, cultural, economical, political and legal processes are all linked, overlapping, and creating the framework for the city.

Land Titles and Relocation, why it does not work

Every government has a strategy towards housing. Housing is a right, and rights are defined by political decisions. Nowadays, the international policy and legal context regarding housing is based on the Habitat Agenda and Global Plan of Action written in the Istanbul Declaration (1996). However, at the speed of how things are going on, the decision making entity does not find the time to understand the complexity of the problem. Residents are removed through eviction, often relocated, even if such response does not resolve the issue: enabling the access to secure land.

Relocation often implies drastic changes for the communities. Adequate land at affordable prices cannot be found at suitable locations for the low income group. In many cases, different communities are relocated into the same site. The social and cultural networks built year after year are destroyed. People lose their employments because they suddenly live too far and have a hard time finding a new job. The access to public infrastructures such as health centres or

schools gets difficult. The economical compensation sometimes offered is barely enough for them to pay their new rent. Governments should give priority to livelihood (activities and job generation). Instead, they only provide social housing units (as the law demands) and therefore feel like they have the right to force eviction and still comply with the "law" (Fernandes, Varley, 1995).

It has been thought that providing land titles would improve security of tenure. It is true that they enable households to use their property titles in obtaining loans, include them in the tax system, and increase proportion of planned urban land in cities (Payne, 2002). Therefore some governments started giving out land titles, withdrawing their role in management, maintenance and servicing of common areas; an additional cost that new owners cannot assume, driving the housing units in un-sanitation and deterioration. A similar situation had happen at the end of the soviet union era with mass privatization of housing, when the government sold apartments to the renters at a very low price in order to drop off its responsibility towards the housing situation.

One thing history had showed us is that we do not learn from it. Maybe that is the role of the architect; Learning from history and reminding us. He/She stands there, looking at the world, and reminds. But whom exactly?

The Role of the Architect

We could not summarize the role of the "architect-urban planner" in all this, he takes different roles. In the context of land tenure arrangements, he can step in during an early phase in raising awareness through the communities. In this case, he often takes the form of a Non Governmental Organization (NGO). As an example, TAO-Pilipinas in the Philippines has worked essentially with community initiative housing. The work is done with communities that already show a high level of organization, and therefore are able to develop a project. The community can take care of land research, budget management, designing of common areas, with the help of the "NGO-Architect". A considerable amount of money can be saved on labour costs by involving the community and/or work with alternative materials that the people can produce themselves in situ. Community involvement is important because the

community knows the area and its problems. Its participation in the design process is a requirement, and it will help the development of a sense of ownership, making possible an actual chance for success.

In the more precise example of land sharing agreements, the architect's role can only be of information. A land sharing initiative has to come from the community, cannot be imposed by a government or a NGO. A typical NGO staff would say that land sharing is done by the community, for the community; unlike Rabé's definition of land sharing where the priority is given to the developers and the community is in the situation where it gets what is left (Rabé, 2005).

Once the community makes the decision to use land sharing as an alternative, the "NGO-Architect" works as an intermediary during the process of negotiation with the landowner and developer. The developer has his own architect, responsible for the re-design of the plot. At this point, "NGO-Architect" and "Developer-Architect" are used as weapons, tools of the discussion. Ideally, they sit together at the table and come to an agreement that satisfies everybody. In most land sharing agreements in Thailand, negotiations have been helped by the Asian Coalition for Housing Rights (ACHR); a network of NGOs, community organizations, and professionals.

Land sharing has often been denoted as a "triple-win" solution. The land occupants improve their housing, living conditions and rights. The developers access to new land. The government or public authority improves the slum situation.

The Principles of Land Sharing, a Case Study

According to Yap Kioe-Sheng, the four basic principles of land sharing are:

• Densification: By resettling the community on a smaller part of the plot, if a sufficient percentage of households remain, the density will be increased (See *Table 1*).

• Reconstruction: The plot can be upgraded, but usually the existing structures are demolished in order to rebuild with a higher density and better infrastructure.

• Participation: More than participation, the principle should be "community driven". The community proposes the agreement, negotiates, allocates the new plots, and should have a voice in the design.

• Cross-subsidy: By redistributing the land, the project tries to ensure the rise of land price for the commercial portion. This extra money should cover the deficits from the community's inability to pay for the full price of land, housing, and infrastructure.

Land sharing also results from a series of parameters, preconditions, that make the project possible;

• The level of organization of the settlers has already been mentioned. Communities that have been more successful were larger, longer established on the site, better organized, and better connected to existing facilities. The pioneer example of Rama IV (Bangkok, Thailand) will be discussed later, a very well established community which had sprung after World War II (UNHCS, 1987).

• Earlier, the paper discussed the boom in the land market in developing countries as a factor creating unaffordable land for settlers. On the other hand, developers are looking for an access to this land close to city centres. By paying for the new housing on site, the developer gets the right to build on the remaining portion.

• That leads us to the third precondition; capital investment and financial support. While in Thailand, most occupied land is property of the Royal Family and therefore funded by the crown, in other countries the project is financed by private investors or the government, with a small portion that can be paid by the community. This implies a long term investment for both the government and private investor since it takes time to see positive results. The area needs to develop and economic activity needs to be implemented, before we can consider positive economic results. That implies a considerable portion of risk that few developers are willing to take.

In the Philippines, the only found example of a form of land sharing was financed by the Community Mortgage Program. The Community Mortgage Program appeared in 1988 as the Socialized Housing Program of Philippines Government. It is a financing program that

provides possibility for land acquisition by the occupying community association based on the concept of communal ownership. (Republic Act 7279 - Philippines Online Law Library). This financing program is not linked to land sharing, and can be used in various land tenure arrangements more common in The Philippines, such as land usufructs or land swaps.

One way of convincing developers is to show them that land sharing can be done, and how. The following case studies will try to reveal the different "criteria of success" for land sharing. We will analyze and compare land sharing projects in Thailand and Cambodia.

Table 1: A comparison of Asian Land Sharing agreements

		Before Land Sharing agreement			After Land Sharing agreement					
Country	Projects	Slum area	House holds	Density (hh/Ha)	Area after sharing	House holds remaining	New density (hh/Ha)	Land for community	Increase of density	Form of tenure
Thailand	Wat Ladbukaw	1.60Ha	300	187.50	0.32Ha	22%	206.25	20%	110%	Freehold title of the land
Thailand	Manangka sila	1.75Ha	500	287.71	0.67Ha	40%	298.51	38.29	105%	Year to year lease
Thailand	Rama IV	8.50Ha	1000	117.65	2.40Ha	85%	357.17	28.24	300%	20 years lease
Thailand	Sam Yod	0.95Ha	210	221.05	0.65Ha	91%	294.00	68.42	135%	20 years lease
Cambodia	Borei Keila	14.00Ha	2000	142.86	4.60Ha	70%	304.35	32.86	215%	Unknown

What makes a successful land sharing agreement? How to measure success? Is it by a considerable increase in density? What is "considerable"? Is it by the number of households remaining? Is it by the proportion of land given to the community?

We could say that a successful land sharing agreement is when both the community and the developer are satisfied. This satisfaction is reflected in different aspects; The increase in tenure security for the community, its better integration in the city, the creation of mixed use of land, the success of new economic activity on the site.

Figure 1: Before and after Land Sharing, two examples (scale 1:5000)
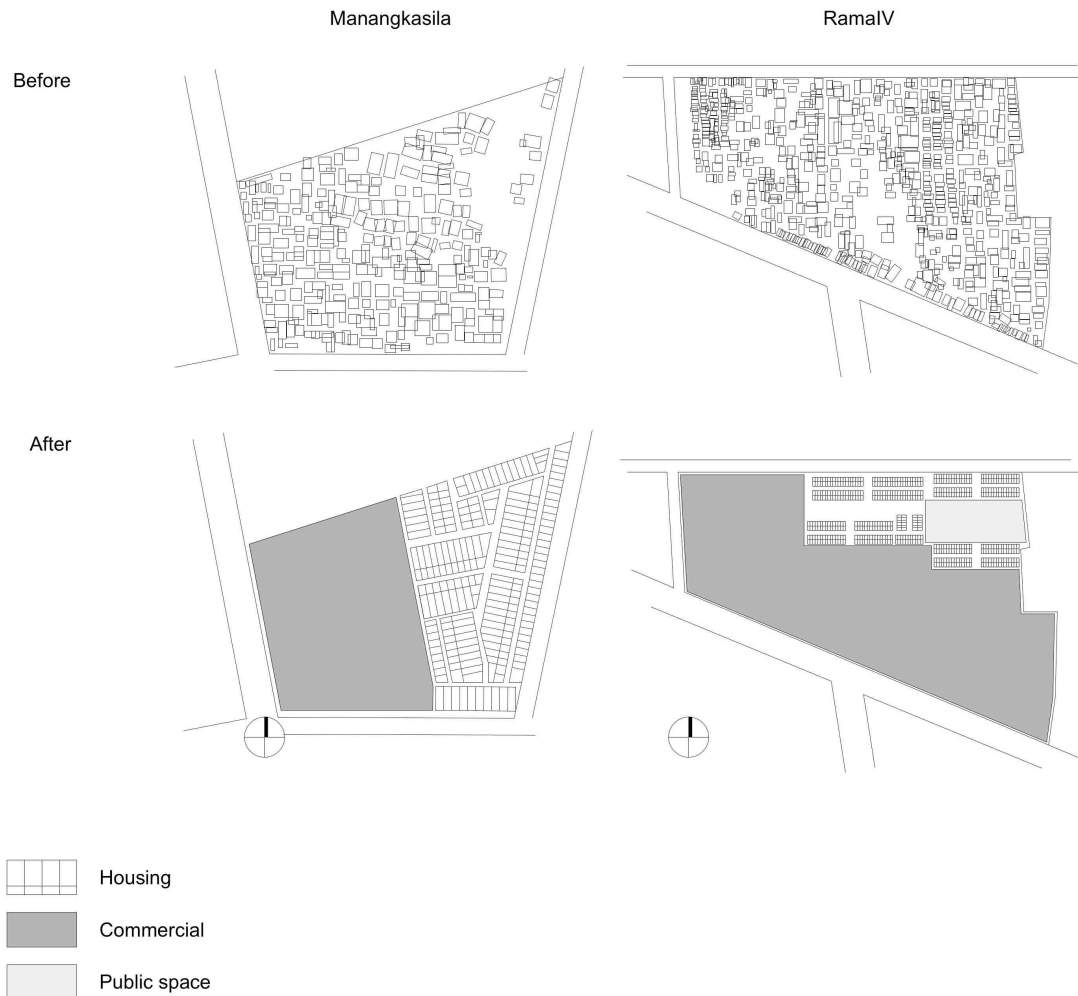
source: Land Sharing as an alternative to Eviction: The Bangkok Experience (Angel, Boonyabancha,1988)

Dey Krahorm is another site in Phnom Penh (Cambodia) offered for relocation. Unfortunately the land sharing agreement was suddenly changed by the developer and the government, giving the integrality of the site for commercial development, in return for building apartments for residents at a relocation site 20 km away, without consulting the community. A process of violence and intimidation occurred and eventually led to forced eviction (UNHCR, 2009). Once again, this example shows that land sharing has to be a community driven proposal.

More than a "land sharing" agreement it should be considered as a "interest sharing" agreement. The developer has to understand the benefits he gets from the generation of a mixed plot of land.

One has to understand that there will never be one solution applicable to the current housing situation. Land sharing has its positive and negatives aspects. Thailand has shown us that it can work, but land sharing is an alternative that excludes new comers or any future densification of the site. A lot of residents have complained of the raising costs of living associated with regularization, and land sharing is a process difficult to replicate on a broader scale, it remains local and has a low impact on an entire country. The Rama IV (Bangkok, Thailand) is actually more complicated than shown, and the community submitted three land sharing proposals before the government finally accepted the fourth one.

Cambodia has shown us that negotiation can go bad. Land sharing is not necessarily in the interest of either party. Neither the developer who wants 100% of a piece of well-located land; and neither the community who may be able to access bigger housing units in a less dense environment if they are prepared to move to another location. Land sharing is one alternative among others.

In the Philippines, land is seen as a good, an investment one can pass on to children. Communities in the Philippines want to own, have absolute control on how to dispose of their land. A change in everyone's mind has to be made. Ownership is not the only, nor the best way to improve one's security of tenure; Switzerland is the country with the lowest rate of ownership (Payne, 2002).

Beyond Land Sharing

What is the purpose of land sharing? Land sharing is a part of the solution of a bigger problem. It's a step forward access to housing for everyone, and an opportunity to remodel the city. To work more efficiently it has to be accompanied by reforms of the regulations by which land market is managed, higher building standards, restriction in the regulations of land uses, implementation of incremental development in the projects. Land sharing as it is nowadays is not perfect, but it may be too idealistic to wait to find a perfect solution.

Let's conclude by the following figure which tries to express what the next step in land sharing could be, in order to create more diversity and architectural quality.

| Initial situation | Actual scheme for Land Sharing | Proposed scheme for Land Sharing |

Housing

Commercial

Public space

Figure 2: Beyond Land Sharing, a proposition

References

P. D. Adusumilli

1987 *Land Sharing in Hyderabad, New Delhi: Human Settlement Management Institute Working Paper.*

2001 *Regulatory Guidelines for Urban upgrading: Hyderabad Experience, India.*

S. Angel, S. Boonyabancha

1988 *Land Sharing as an Alternative to Eviction: The Bangkok Experience.*

A. Durand-Lasserve and V. Clerk

1996 Article in *Land, Rights & Innovation*, 2002 (ed. G. Payne).

E. Fernandes, A. Varley

1995 *Ciudades Ilegales.*

Y. Kioe-Sheng

1992 Article in *Making Common Ground,* 1999 (ed. G. Payne).

G. Payne

1999 *Making Common Ground.*

2002 *Land, Rights & Innovation.*

G. Payne, M. Majale

2004 *The Urban Housing Manual, Making regulatory Frameworks for the poor.*

P. E. Rabé

2005 *Land Sharing in Phnom Penh: An Innovative but Insufficient Instrument of Secure Tenure for the Poor.*

J. F.C. Turner

1976 *Housing by People.*

UNHCR, International Federation for Human Rights

2009 *Eviction of Dey Krahorm: Cambodia loses the battle to uphold the rule of law!*

UNHCS

1987 *The Role of Community Participation in Human Settlements Work.*

Other References

2013 Interviews of TAO-Pilipinas staff.

web *ACHR, Asian Coalition for Human Rights.*

web *Philippines Online Law Library.*

web *Upgrading Urban Communities - A Resource for Practitioners, World Bank Group.*

J.-N. Orhon, N. Reeves

2011 *Bidonville* (Video Documentary).