

ILMI-Brown bag meeting
The new flexible land tenure act: an update
Comments by Åse Christensen
Department of Land and Property Sciences (DLPS)

Thursday, October 29th
12h30-14h00

Background

The Flexible Land Tenure (FLT) system was developed by the Ministry of Lands and Resettlement and the discussions started in the period of 1992-1998. It was conceived as an alternative for land tenure catering for low-income groups. At that time, a pilot was also developed. During these initial phases after independence, the issue of migration to cities was critical, and this scheme emerged in this context.

From the academic perspective, the idea of such system is in line with the theory of a well-functioning cadastral system. However, in the case of Sub-Saharan Africa, this is not always the case. In the case of Namibia, the presupposition was that this could be the case.

The Act was only passed in 2012. The regulations have been submitted to the legal auditor general. The first pilots to be implemented after the act has been passed have not been defined, but it is to be seen how this system works now that a significant portion of Namibia's urban fabric is made up of informal settlements.

With the FLT, only external boundaries of the block are registered by a "paraprofessional". If one already owns land elsewhere, one can't apply for FLT. Only natural persons can apply, and only individuals except in the case of being married in community of property.

The focus of the FLT system is on empowerment. The system allows for formalization of land titling. This is based on ideas of property, which can be registered and then can later be traded.

The registration system is setup in such a way that it can be upgraded to full ownership, and it is also meant to co-exist with such full-titled land registration.

Comment

In principle, it can also be applicable to rural areas, but it would require some modifications. It could've been developed as a unitary system entailing both rural and urban, but this was not the case.

As it stands, the FLT system applies to proclaimed areas, and can't be applied to traditional and communal areas' jurisdiction. With the establishment of the "land rights offices" through the FLT system, communal land should also be able to profit from this. The so-called "starter title" does not provide full property, but such title can be transferred, it enables the right to develop, and gives protection against eviction.

Currently, the Municipalities' main engagement in informal settlements is through "slum upgrading", but land tenure remains leasehold, as ownership remains under the municipality. In some cases, such "rent" becomes open-ended, without necessarily leading to tenure. In some instances, Municipalities don't allow for improvements made to the land, because the ownership stays with them and therefore the possibility of moving/displacing a tenant becomes less if further improvements (e.g. erection of a building) are made to the land by the occupant.

The key difference between the highest form of tenure, i.e. freehold, and the FLT, is the capacity to mortgage the land. However, the "landhold title" can be upgraded to "freehold" eventually.

The Shackdwellers Federation of Namibia (SDFN) and the Namibia Housing Action Group (NHAG) have applied some of the principles of the FLT system in a number of cases. According to Anna Müller, head of the NHAG, many beneficiaries are already capable of upgrading to freehold.

However, full implementation is not there, since the act was only passed recently.

Challenges

Some of the stakeholders need further training with respect of implementing FLT; particularly local authorities.

The NGOs (i.e. NHAG, Legal Assistance Centre) have been supportive, however some local authorities have shown some resistance to full implementation.

Another challenge is the jurisdiction between ministries. The Ministry of Lands and Resettlement (MLR) is the one developing FLT, but the main beneficiary remains the Ministry of Urban and Rural Development (MURD).

The legal frame has been developed in a period of fifteen years, and many socio-spatial conditions have changed since them.

Discussion

It must be clarified that the FLT system starts with an application, it is a voluntary system initiated by an interested party; this can be a current landowner, a local authority, or an organisation.

Capacity should be developed at the local authorities level, but also there's a need to bring more support staff to run this project successfully.

There is a concern that this system is developed as an inferior tenure system for the a lower classes, while keeping freehold as the domain of "upper classes". Isn't this creating a tiered system that might not lead to integration but the opposite?

It's unclear who's championing this initiative; is it the MLR? Is it NHAG/SDFN? Without a champion, resistance and confusion will prevail.

It's also important to keep in mind that FLT is a tool, and that if it's not used it will remain not operational. New proposals need to be developed based on the FLT system: new planning schemes, new architecture, etc.

A comment on the word "parallel" system: it's not parallel, because FLT registries ultimately are submitted to the deeds office, so it's not disconnected from the main tenure system.

Regarding the rule that FLT does not allow for ownership of two plots, how is the issue of enforceability being dealt with? If one has land in the communal areas that is not registered, how can this be monitored?

There is also the concern of the FLT system being a shortcut for speculative developments that want to bypass the full procedure that freehold tenure requires.

The methodology of the so-called "paraprofessionals" is not specified, and the reference in developing their functions was based on full professionals.

There is also a need for digitalisation of the registration system in order to ensure enforceability with regards to avoiding current landowners applying for FLT.

There seems to be an outspoken aim to avoid speculation within FLT, why so? Are lower classes not allowed to profit from land tenure like everybody else does?

From the side of the developers: why would one go for FLT instead of full ownership schemes? The difference is in the costs, which would allow lowering costs of housing developments.

There are already some loopholes present in the current legislation, but the best would be to rather focus on implementation rather than continue delaying this.

There is a concern regarding whether such system is indeed useful for a new kind of planning. The example of the DRC settlement in Swakopmund is a good example: it was developed in an expedite manner, but the planning was so fixed that now it is hard to upgrade and the most likely solution will be to completely redevelop the area. Isn't FLT-based developments encouraging a speedy process whereby planning is disregarded?

FLT does not circumvent planning procedures, so the planning would still follow its current course.

The emphasis on the FLT is on security of permanence, how to ensure that those inhabiting a certain area can be allowed to remain where they are without making this dependent on full ownership, which is expensive and therefore exclusive.

The empowerment component is key, and this needs to be highlighted. Land as a device for poverty eradication is something that has been tried elsewhere, with mixed results. Many titling programs simply encouraged beneficiaries to sell or mortgage their land; many lost their land in this way, ending up worse off than before such “poverty eradication” programmes!

The definition of empowerment needs to be clarified. The World Bank maybe is satisfied with a definition of empowerment equalling property and economic affluence, but this is limited and has proven false in many instances.

Is there a more efficient way to empower people than land titling? Perhaps the delivery of services can be an even better way to do so if one agrees that “empowerment” is the main aim.

One should also keep in mind what these “low income” groups actually want. Many initiatives fail to engage with them, and take for granted their priorities. Perhaps it would be relevant to see if land titling is indeed something relevant to low-income groups today, or whether this has changed.

A useful definition of empowerment is the capacity to make your own decisions.

One should also mention the misuses of FLT, as it can be used to circumvent density requirements and overhaul some regulatory systems in place.

A question is how can FLT be useful to develop new spatial paradigms, which furthermore enable professionals to engage with informality, which at the moment is far from being the case.

Currently the FLT does not make mention on service provision, which is key when talking about land alternatives.

It is important to understand the scale that FLT proponents had in mind when developing the scheme: was it intended for use only at the block scale, or at a township extension scale?

Currently, the most realistic scale to implement FLT is at the block level. This, however, still depends on local authorities.

Architecturally, it would be interesting to start imagining which different housing typologies can be developed by taking the FLT scheme as a basis.

One also needs to keep in mind who is the main beneficiary when having this discussion, which are people living in shacks. Many don't have sanitation options, and desperate situations with regards to labour are mostly the case.

An Act is a frame; it's not a full solution. Innovation must take on from such initiative and provide inventive solutions that are actually useful.

For developers, such scheme could be useful in developing workers' housing, which is often of a temporary nature (e.g. mining, construction). FLT could provide certain security in a limited period of time, and then allow for moving on without compromising security of permanence.

Åse can be contacted at:
achristensen@polytechnic.edu.na

Contact

13 Storch Str, Windhoek
Tel. +264-61-207-9111
ilmi@polytechnic.edu.na
ilmi.polytechnic.edu.na

About ILMI

The Integrated Land Management Institute is a centre of the School of Natural Resources and Spatial Sciences (SNRSS) at the Polytechnic of Namibia (PoN) committed to develop reputable and multidisciplinary research and public outreach activities in the field of land, administration, property, architecture and spatial planning.