THE ROLE OF COMMUNITY PARTICIPATION IN ACHIEVING TEMPORARY LAND TENURE SECURITY FOR THE URBAN POOR IN DEVELOPING COUNTRIES

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Declaration
“I declare that this dissertation is my own account of my own research. It contains as its main content work which has not been previously submitted for a degree at any university.”

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ABSTRACT

This thesis focuses on how communities within urban informal settlements in developing countries can achieve temporary land tenure security. I argue that an anthropological theoretical framework ensures that social relations, the power of communities in achieving goals, and non-tangible forms of property, are appropriately considered, with this approach being more reflective of the real context in informal urban settlements. There are a number of land tenure mechanisms that empower communities to various levels to achieve land tenure security, and this research specifically analyses the Community Mortgage Program of the Philippines, the Land Rental Slums Mechanism from Thailand and the concept of usufruct, common in the legislation of a number of developing countries. While all of these mechanisms utilise elements of the anthropological approach to achieve varying levels of land tenure security, I consider that usufruct provides the strongest opportunities to effectively achieve temporary land tenure security for the urban poor. In the context of Cambodia, I demonstrate that the evolution of land law has been chaotic, and it is subject to inconsistent implementation and bureaucratic manipulation. Despite this legislative background I explain that it is possible, in a broad sense, for urban poor communities to participate in the pursuit of temporary land tenure security. However to ensure success, an appropriate framework and process for community participation must be utilised. Using Choguill’s Ladder of Community Participation for Underdeveloped Countries (1996), I propose a logical six-step procedure that guides community participation in the wider land tenure security processes.
INTRODUCTION

This research focuses on how communities living in urban informal settlements in developing countries can achieve land tenure security. In particular, I focus on the role of communities participating in the pursuance of temporary land tenure security. I consider that land tenure security is a fundamental contributor to breaking the cycle of urban poverty in developing countries. Numerous theoretical frameworks, the most prevalent of which is the neoclassical economic perspective, support this viewpoint. The neoclassical economic perspective focuses on market participation and accumulation and investment of capital to achieve economic development. However, there is a significant concentration on the role of individuals in the neoclassical economic perspective, which ignores social relations within communities and between the urban poor and more powerful actors.

A holistic perspective on development is important in ensuring that all aspects of the development context are recognised, and appropriately considered in development work. This includes existing social relations within and outside communities. I argue that holistic development is better achieved through anthropological perspectives that focus on the way people interact within a community to achieve set goals. This focus on the social relations within and surrounding communities, and the capacity for collective action extending from these social relations places great importance in community participation and engagement with development. I argue that this is more reflective of informal settlement contexts as it recognises the power that can exist within a community to collectivise and achieve goals.

THE URBAN CONTEXT

In the framework of this research, an urban location is a fundamental element of land tenure security. Yet, discussion on land tenure security in the urban context is still developing, with a historical emphasis generally
on rural land tenure programs. Urban areas provide strong opportunities for the poor to engage in markets, gain employment and access services that are all in relatively close proximity to settlements. The capacity to engage in social networks is also greater in urban areas, due to their larger population base. Connected to this, the urban areas of developing countries are commonly experiencing a gravitational pull of population from the surrounding countryside, due to these attractive factors. With increasing rural to urban migration widely recognised throughout development discourse, urban areas are facing cumulative land pressures from those who relocate to the growing informal settlements in most large, developing cities where insufficient or ineffective urban planning has commonly guided development (Asian Development Bank 2004, UN-HABITAT 2011). Related to this, the population of informal settlements is commonly comprised of people from widely different backgrounds, which is a key consideration for the success of holistic development.

In a rural context, lower population stresses reduce the likelihood of land conflicts (Mabbett and Chandler 1995). However within urban settlements there are added pressures on land, such as limited land availability and competing interests, as well as typically higher land values compared to rural areas leading to land speculation and investment (Office of the UN High Commissioner for Human Rights 2012). This creates further obstacles to land tenure security for the poor as, although not free (Durand-Lasserve and Royston 2002), accommodation in informal settlements is typically easier to access than that in the formal land market (Friedman, Jimenez, and Mayo 1988). This contributes to the prevalence of informal settlements throughout urban areas, which provide greater access and opportunities to the urban poor.

PERMANENT VS. TEMPORARY

There has been a prevailing emphasis in development projects and funding on formal land titling, leading to permanent land tenure security. Neoclassical economic perspectives have largely driven this emphasis on development, and the focus that this theoretical framework places on
market participation and accumulation and investment of capital. However the permanent allocation of land to individuals through formal land titling does not always guarantee strong development outcomes. In the urban context, the delineation of separate land parcels and their distribution to multiple private owners can limit the future development potential of land, given the permanence of land titles and the fragmentation of land ownership. Additionally, land titling can render the urban poor more susceptible to land grabbing, given the value now attached to the land.

From this perspective I believe that temporary land tenure security presents a strong opportunity to address urban poverty. Temporary land tenure security refers to the acknowledgement of the right of a community to access and use land for an agreed time period. This land may be valuable urban land, where it is common for informal settlements to be located. By way of its location close to employment, services and markets, valuable urban land is arguably attractive for investment and development. However for these reasons it is also attractive to the urban poor. The allowance of temporary access to valuable land, for example through legal provisions or lease agreements, provides the urban poor with land tenure security for a defined time, and maintains the development potential of the land into the future. This ensures the urban poor may benefit from the land in the short term, while allowing redevelopment of the land to occur in the longer term.

CAMBODIAN CONTEXT
The research will have a particular focus on Cambodia, where a number of factors lend themselves to the argument for temporary land tenure security for the urban poor. Cambodia is a developing country with one of the highest rates of urban poverty as a percentage of its urbanisation (Asian Development Bank 2014). Political instability over many decades and systemic corruption and bureaucratic manipulation has limited the land tenure security opportunities that the urban poor have. Coupled with this is a legal framework that consists of haphazardly developed and
contradictory land legislation, which has evolved from a variety of different legal backgrounds. Against this backdrop, significant economic growth in Cambodian cities has resulted in a rapid change in the built environment, which has in turn led to increasing conflicts between investors and developers, and the urban poor (Paling 2012). On this basis I argue that achieving temporary land tenure recognition for the urban poor plays a strong role in the Cambodian context of development. Temporary land tenure security allows informal settlements to be recognised, at least for a defined time period. This affords urban poor communities with the opportunity to access employment and markets, and maximise the social value of land tenure security. The temporary basis also maintains the development potential of valuable urban land, allowing landowners to benefit from their landholding in the future. The research will show that it is possible for the urban poor to participate in land tenure processes, however an appropriate framework for community participation, and the correct process to guide this, must be utilised.

SAMAKY COMMUNITY

Land tenure in the Cambodian context is of particular interest to me through my personal work in an informal settlement in Siem Reap, Cambodia. The Samaky community is located within Zone 2 of the Angkor Archaeological Park, on land that cannot be granted to private citizens and adjacent to a major road leading out of the Angkor complex of temples. However, the Samaky settlement is an attractive and accessible place to live for the urban poor, due to its proximity to employment opportunities and relatively affordable housing. The community exists under ongoing threat of eviction, exacerbated by the construction of permanent structures on neighbouring land, and the intention of government authorities to beautify the areas surrounding the Angkor complex of temples that are most visible to tourists. Despite the informal nature of the community, there are distinct power relations within it, and an effective community committee that currently participates in some construction and sanitation projects. On this basis, my interest lies in
identifying mechanisms that could serve to achieve temporary land tenure recognition for this community on this current site, or one with similar characteristics.

SIGNIFICANCE OF RESEARCH
Predominantly, research into land tenure security in Cambodia has been focussed on formal land registration and titling, driven by a strong emphasis on land titling from international development organisations, such as the World Bank (Deininger and Binswanger 2001, Deininger 2003). Comparatively little work has been conducted on temporary land tenure mechanisms for informal urban communities. There is a further gap in the literature of the role that communities themselves may play in the land tenure process, including the appropriate frameworks for participation. This research will contribute to the growing body of knowledge surrounding temporary land tenure mechanisms, and propose an appropriate framework and process to achieve this in the Cambodian context. In doing so, it will acknowledge the role that community participation has in achieving improved land tenure security for the urban poor.

CHAPTER OVERVIEW
This research is divided into three chapters. Chapter One discusses the role that land tenure plays in poverty reduction, followed by an analysis of the prevailing neoclassical economic perspectives on land tenure security. Following is an analysis and comparison of the anthropological perspectives on land tenure security. Chapter Two extends the discussion on the anthropological perspectives to examine three mechanisms that achieve different levels of security for the urban poor. The Community Mortgage Program from the Philippines is discussed first, followed by the Land Rental Slums mechanism from Thailand. Lastly, the legal concept of usufruct will be considered, which is present in many legislative frameworks across the world, including Cambodia. Chapter Three will focus on the Cambodian context, beginning with a broad overview of the evolution of land law in Cambodia. Subsequent to that will be a discussion
on the capacity of urban poor communities to participate in land tenure processes, followed by an analysis of Choguill's Ladder of Community Participation for Underdeveloped Countries (1996) as an appropriate community participation framework. Lastly, an outline of an indicative process for community participation in achieving land tenure security will be discussed.
1.0 CONCEPTIONS OF LAND TENURE

1.1 INTRODUCTION
The concept of land tenure security being a fundamental solution to poverty reduction has long been accepted throughout development discourse. The argument is that security provided by recognised access to and rights over land leads to economic and social growth and, for the poor, a way out of the cycle of poverty (Doebele 1987, de Soto 2000, Durand-Lasserve and Royston 2002). A number of development organisations, and indeed the governments of some developed countries, direct considerable focus towards land tenure regularisation programs and other efforts to provide land tenure security to the poor. Underlying this are various conceptions surrounding land tenure that have informed research and delivery of programs throughout the developing world.

This chapter will analyse two of the dominant conceptions on land tenure, with particular focus on the assumptions behind each. After setting the broader context for this research, the first section will discuss the neoclassical economic conceptions of land tenure, arguably the theory that has had greatest influence towards land tenure in the development context. By comparison, the second section will focus on the anthropological conceptions of land tenure, which will be the primary approach of this research moving forward. There are fundamental differences between each theoretical approach, the former primarily emphasising formal land ownership and the latter placing greater emphasis on social and political recognition of tenure (Durand-Lasserve and Royston 2002). On this basis I will argue that anthropological conceptions of land tenure represent a more holistic approach to development through their greater focus on community capacity and participation.

A range of perspectives on the link between poverty reduction and land tenure security exist, including those that are the focus of this chapter. It
is generally considered that a right to access and use land, widely recognised by communities, government, landowners, funding organisations and other stakeholders, can increase the poor's entitlements to local services, that citizens are due. This includes access to social services, loans, employment and certainly security from eviction. For example through providing recognition of residency in the local area, the hố khẩu household registration system of Vietnam enables access to social services, which also extends to access to employment under China's similar hu ko household registration system (Arnold 2013, Zhou 2013). More particularly, neoclassical economic theory discusses land tenure (and more specifically permanent access to land through titling) as an asset that can be capitalised. While land titles provide an asset that formal financial institutions are generally prepared to lend against, the poor often have difficulty accessing this aspect of the land market, and financial institutions can be reluctant to lend to the poor in any case (Payne 2001).

1.2 NEOCLASSICAL ECONOMIC CONCEPTIONS

Neoclassical economic thinking towards growth and development has been present for many decades, and certainly gained prominence from the 1970s onwards (Cypher and Dietz 2004, Hayami and Goedo 2005, Hall and Gowdy 2007, Simbizi, Bennett, and Zevenbergen 2014). The neoclassical economic school of thought principally suggests that efficient allocation of resources, labour and capital through free markets is the vehicle that drives development (Deininger 2003). In this sense, the value of capital is theoretically equal, regardless of who owns it (Hall and Gowdy 2007), in other words, $100 has the same value to the wealthy as it does to the poor. The underlying belief within neoclassical economics is that development is contingent on the ability of individuals to maximise the returns on their own capital, and the subsequent ability of the society to organise itself to maximise this aggregated capital (Braga de Macedo, Foy, and Oman 2002). It is therefore largely assumed that the economic participation of individuals arising from accumulation and utilisation of
capital en-masse will grow the national economy, and therefore lead to national development.

Neoclassical economics presumes that people, as rational individuals (Sharp and Hall 2007), will allocate their resources primarily to maximise their comfort and security, at least from a psychological perspective (Hall and Gowdy 2007). Fundamentally, it is presumed that the way to achieve this is through participation in free markets. Through this assumption, the theory further places emphasis on the ability of individuals to reinvest to build productive capacity (de Soto 2000, Cypher and Dietz 2004, Hayami and Godo 2005), by actions such as engaging in markets and creating employment. Essentially therefore, the grounding principle of neoclassical economic development models is profitability (Srinivasan 2006), because it will guide the accumulation and reinvestment of capital and therefore will assure the wellbeing of individuals through the assumptions described above. It is important to note in this sense that society is viewed as an aggregation of individuals, who engage in markets for primarily personal benefit (Deininger 2003).

On this basis the neoclassical economic perspective is that a lack of productive investment is a key factor that inhibits the growth of developing countries. Whilst the poor may possess capital in various ways, they lack the capacity to exploit its value as it is often not in a form where its worth can be completely realised (de Soto 2000, Payne 2002b). For example, capital may be held in the form of improvements upon land (such as a house or a productive agricultural system), however the capital value of these improvements cannot be realised without a recognised right to the land on which they exist as a precondition of sale and of use as collateral, and to incentivise investment through a secure appropriation of returns. From this application, neoclassical economic theory places high importance on wealth accumulation, which will then support improved education, property ownership, capital accumulation, market participation and other aspects of a developed state (Leclerc 2007).
In view of these overarching elements there is a significant focus on the neoclassical economic conceptions surrounding land tenure itself within development discourse, and indeed in the policy directions of development organisations such as the World Bank, which has fundamentally influenced land tenure projects for many years. (Feder and Feeney 1991, Deininger andBinswanger 2001, Payne 2001, Deininger 2003, Obeng-Odoom and Stilwell 2013). This approach identifies land ownership as being virtually inaccessible for the urban poor, despite this being a form of tenure that is generally quite common within urban contexts (Payne 2001). By achieving legal private property rights (therefore ownership), the poor have the opportunity to engage in employment and markets at a higher level than the informal engagement omnipresent in developing countries (Durand-Lasserve and Royston 2002). It is therefore argued that capital accumulation is greatly facilitated by the delineation of land parcels and the issuance of formal land titles under a legal registration and ownership system. This is seen to engender the most powerful benefits in terms of property rights and economic participation, as it establishes a clear possession over a defined (and universally recognised) piece of land (Doebele 1987, Feder and Feeney 1991, de Soto 2000, Deininger 2003, Midheme and Mouláert 2013).

By providing the poor with land ownership, the title is a means to market participation through its use as collateral, its ability to be sold, and the return it may provide by encouraging investment (de Soto 2000). The poor are also able to direct more time and effort into economic participation, which would have previously been spent on ensuring ongoing occupation of their land (Deininger 2003). In this way, the economic participation and entrepreneurialism of the poor is advanced through certainty and security (Obeng-Odoom and Stilwell 2013). De Soto substantiates this theory with evidently comprehensive research undertaken in developing countries with respect to the extent of capital already existing in informal settlements, and the legislative processes and
financial expenditure that leads to formalisation of this capital. Additionally, there is a long-standing emphasis that development is tied to land markets, which is based on the concept that the use of land as an asset to borrow against signifies an advanced land market (Cramb and Wills 1990). Further to increasing the efficiency of land markets, formal land titling also allows for greater urban planning and infrastructure distribution, as well as broadening of the land taxation base for governments (Payne 2002a, Deininger 2003).

I argue that underlying neoclassical economic conceptions of land tenure are five main assumptions that not only influence the theoretical directions discussed previously, but also limit the appropriateness of the framework. Firstly, it is assumed that people are natural entrepreneurs and natural maximisers. This is predicated on the belief that by providing the ability to utilise capital value in land and housing, it is assumed that the recipients of land titles already have the ability to individually maximise their assets and wealth, as opposed to participating in collective action to do so. Essentially, if capital accumulation is made accessible, individuals will already have the capacity to realise it. However, research in Sub Saharan Africa has indicated that the poor must be aware of their rights and responsibilities in order to realise the full security that land tenure provides, highlighting the importance of coordination, capacity building and collective action (Simbizi, Bennett, and Zevenbergen 2014). A second, less significant assumption connected to the theory that individuals are able to participate in the formal economy upon access to capital, is the belief that lending institutions will work with the poor once they own land and can supply a certificate of title as collateral for the loan (Feder and Feeny 1991), which is not always the case (Payne 2002a, Parsa et al. 2011).

Thirdly although social capital and relationships that build trust are recognised, the unequal power relations that themselves generate poverty are not relevant in neoclassical economic theory, and viewed as superfluous (Hutchison 2009). Through the provision of (virtually)
instant wealth and capital, I consider that institution of titles can serve to change both the social relations within communities, and the social relations with more powerful others, and therefore create inequity in a realm where prevailing cultural norms may have established a recognised hierarchy. This would particularly occur in situations where only a proportion of an informal settlement will participate in a land titling process due to effort and expenditure required, compared to the perceived benefit that would result. Those who are comparably poorer in the community are forced to move out.

Similarly, with access to land and markets available to all and an emphasis on individual actions toward economic participation and development, particularly as emphasised by de Soto (2000), neoclassical economic perspectives reduce the reliance upon cooperation, collective action and social networks to achieve goals – considered advantageous as a break from restrictive tradition. The fourth presumption, also tied to the first assumption discussed, is that individuals are able to achieve goals in isolation. Contained within this assumption is the belief that existing social systems are not relevant. In this sense, the imposition of external structures and institutions on traditional social networks has been shown to break down community values and lead to conflicts (Bassett and Jacobs 1997, Mosse 1997, Hutchison 2009, Hall, Hirsch, and Murray Li 2011).

Based around the emphasis on land titling specifically, the fifth (and possibly the most important) assumption is that the legal recognition offered to recipients of land titles provides the greatest level of security attainable (Feder and Feeny 1991). However research has indicated that tenure security can largely depend on residents’ perceptions of security, for example arising from recognition of the community by trusted local officials (even if the settlement remains ‘illegal’), as opposed to any legal status (Payne 2004, Khemro and Payne 2004, Porio and Crisol 2004). This can also extend to the perception that while land itself may be insecure, the improvements upon it including the house are secure
(Archer 2012). If there is a relatively high degree of perceived land tenure security, communities are more inclined to invest and improve their houses, evidenced in a number of informal settlements in Phnom Penh, Cambodia (Khemro and Payne 2004). Reviews of some land titling programs in Africa have illustrated failures based on a poor analysis of the social value of land titling – essentially whether or not a community would view titling as useful in the first place (Barry and Danso 2014).

Further, critics argue that, as an asset, the value differential between formal and informal housing in an urban context can actually decrease as the informal settlements become more established (Friedman, Jimenez, and Mayo 1988). This contradicts the view recognised within neoclassical economic theory that formal land titling provides a capital benefit that is unachievable in informal settlements. Moreover, changes in the social or economic nature of a society can destabilise the property market (Payne 1997), rendering the landowning poor particularly susceptible to shocks. Tenure regularisation can also introduce additional costs and property tax, which is not often paid to government in informal settlements to begin with, so the poor are not necessarily better off (Payne 2001).

The financial investment made towards formal titling programs by individuals can be significant (Archer 2012) which must be considered in terms of the benefits (perceived or real) that it provides. For example, tenure formalisation is considered by some residents of Dar es Salaam, Tanzania, to be a needless, convoluted process that provides commensurate benefits to those achievable informally (Parsa et al. 2011). Importantly, the ability to delineate legal ownership of land parcels through titles also raises their land value, which in turn threatens the security of poorer communities through their increased commercial attractiveness, including their investment appeal, where a landowner can experience more pressure to sell simply through having a title (Payne 2001, Adam 2014). In this way, the focus of neoclassical economic theory on ensuring land tenure security is achieved through permanent, legal land administration mechanisms can be considered misguided, as it
ignores both the psychological aspects of land tenure and the relevance of perceptions and values in providing some form of citizenship legitimacy, as well as the social relations that may influence land tenure security.

Along with others, I argue that the basis for formal land titling professed within neoclassical economic theory may not provide the most appropriate security of tenure for the urban poor (Payne 2004, Savant-Mohit 2004). Unfortunately, this tends to be overemphasised in the policy context (Sadoulet, Murgai, and de Janvry 2001). This analysis demonstrates that whilst the neoclassical economic conception around land tenure accords with the notion that tenure security is fundamental to poverty reduction, the theory behind it ignores some significant social elements. In turn, this creates a disconnect between the aim of neoclassical economic conceptions and their end effects, and it is often recognised that this approach may not be the most appropriate for achieving land tenure security in the developing context. An important alternative approach to land tenure is based on anthropological theory, which is explained in the following section.

1.3 ANTHROPOLOGICAL CONCEPTIONS

In contrast to neoclassical economic conceptions of land tenure, anthropological conceptions largely focus on the social relations that take place within and between communities and groups, and the capacity for collective action extending from these social relations to achieve goals. Land tenure security is a social relation between people which, if accessible to the poor, facilitates wealth creation (Borras and Franco 2010) and therefore contributes towards poverty alleviation. In this sense the participatory nature of development discussed within anthropological conceptions are particularly appealing for this research, given the emphasis on collective action through the mobilisation of a community to achieve set goals (Woost 1997). As discussed, the anthropological perspectives of development recognise that the broader approach to development is generally top-down, where systems are
superimposed on a society and only then can development occur (Nyamwaya 1997, Abram 1998, Phonphakdee, Visal, and Sauter 2009).

In a similar way to neoclassical economic conceptions, anthropologists also see land tenure as enabling greater participation in social and economic networks, however through a different method. The anthropological perspective recognises the opportunities that communities have to improve their economic circumstances, through the provision of access to land as a tangible asset. However the fundamental aspect of land tenure, as viewed from an anthropological perspective, is the behaviour of people with respect to ownership and property (including land) in meeting basic human rights such as shelter, sustenance, income and culture (Adam 2014). In this way, the focus moves away from the actions of people once they have land tenure security as a basis for wealth creation, towards the ways in which people interact with each other as a community (the social relations), the different forms of ownership within, and how communities view property – land, possessions, communal goods and access to services. Generally more prevalent in customary land tenure situations, the concept of communal ownership of assets is arguably applicable to the anthropological theories of land tenure principally due to the focus on the collective, rather than the individual (Milne 2013), but also because to some degree it is considered to afford greater security than individual ownership (Obeng-Odoom and Stilwell 2013).

From a collective standpoint, the whole community shares the responsibility for improvement and goal achievement, and also share the benefits from their collective action (Hall, Hirsch, and Murray Li 2011). In this way, anthropological conceptions of land tenure security provide the opportunity for betterment of the community as a whole, as opposed to betterment for individuals (Obeng-Odoom and Stilwell 2013) – a fundamental difference to the neoclassical economic perspective. Outcomes achieved through collective action are therefore more inclusive, through the leveraging of community capacity. Similar to the
neoclassical economic conceptions, the anthropological perspective on land tenure also considers the protection from forced relocation and other related government policies as an important contributor to tenure security itself (Payne 2004, Obeng-Odoom and Stilwell 2013). Further, the discussion on land tenure security does not solely refer to land titling or any other permanent and ongoing land allocation mechanism, rather a broad range of means that provide for recognised access to land. In this way, the legitimacy of those who have been granted land tenure security is recognised, and significant benefits of land tenure security are obtained.

Based on this overarching approach I consider that the anthropological perspective broadens the idea of property and ownership outwards from the tangible, such as a land title or rental agreement. In a developed country context this wider view of property encompasses, for example, social security benefits and the welfare state (Hann 2007), as the property of citizens. When applied to the developing country context, the anthropological perspective effectively acknowledges that physical goods such as money, housing, and land tenure security only form a portion of what may be considered property. Ownership of the social benefits and relationships that result out of land tenure security for the urban poor is also significant. This reduces the importance of property ownership (for example in the form of a land title) that is strongly emphasised within the neoclassical economic perspective as the key to development. It also challenges the emphasis the latter school of thought places on engaging in markets through the production and trade of goods by expanding the concepts of property and ownership to include non-physical elements disconnected from land markets. Through emphasis on social benefits it moreover highlights the importance in allowing communities to exploit employment opportunities, services and other goods that the urban poor may face difficulties in accessing, particularly in locations where these goods are in physical proximity.
As an extension of this concept, it is recognised that land has value in more ways than solely financial value, and the social value that it provides is significant (Doebele 1987, Payne 1997). Security in the right to access and use land provides the impetus for investment and improvements to dwellings (Khemro and Payne 2004, van Gelder 2010), as well as a more permanent perspective being taken to communities. This security is however not necessarily attainable through land titling. Upon realising land tenure security through institutionally recognised mechanisms, housing, commerce and social structures may be established in a more permanent sense, and social relationships built and enhanced within and outside the community. Community members are provided with the entitlement to seek employment, informal loans and social services by way of proving residency through recognised land tenure. They now engage and interact in society with greater equality and recognition than would be available in the absence of such security. In this respect location is also fundamental to the anthropological perspective on land tenure, as in many instances the presence (and size) of informal settlements is influenced by their proximity to employment and services, as well as available land.

The significant social capital provided by land tenure is further important in maintaining community authority and harmony and assisting problem solving processes (de Janvry et al. 2001). Land tenure can be a determinant of power within a community (Davies and Fourie 2002), thereby influencing determinations of wealth and social status. Furthermore, land tenure is seen to meet social needs, through providing security, strength and pride to communities (Unruh 2002, Midheme and Moulaert 2013). This emphasises the growth of the community through social capital, and recognises the importance that all individuals have in a community, through established hierarchies and cultural norms.

Given the interdependency of communities and collective social benefits, the primary assumption throughout the anthropological perspectives on land tenure relevant to this research is that there is an existing
community dynamic, or the facility for one to develop, illustrating that social relations matter. This is built on the predication that formation of the community (in the physical and social sense of community) sufficiently predates the moves to secure land tenure recognition, and for a large part the community has had stability in inhabitants.

In an informal settlement within an urban context however, it is common for residents to come from many different locations and social circumstances and to have varying values and aspirations towards land tenure security (Savant-Mohit 2004). As well, they may have a limited sense of community (Phonphakdee, Visal, and Sauter 2009), and also a less-significant connection to land. This is to be discussed further in Chapter 3 in the context of Cambodia. Accessible housing, proximity to employment opportunities or simply a lack of other options may drive locating in the informal settlement, where an existing sense of community and established social capital may take other forms. In these circumstances, it is foreseeable that the community will have to consciously work towards collective action, and against other forces impacting on the community, which by its very nature is contingent upon a strong and inclusive community dynamic. This is fundamental to ensuring development goals are achieved (Baumann, Bolnick, and Mitlin 2004). Certainly the desire for land tenure security may itself present the trigger for collective action to commence in these circumstances (Savant-Mohit 2004).

The participatory approach to land tenure security that involves a high level of community involvement does in itself build such a community dynamic (Archer 2012), and certainly greater aspects of community participation in projects have in recent decades become increasingly important in development discourse, particularly regarding donor funding (Woost 1997). This could arguably lead towards overcoming the presumption of an existing, effective community dynamic in the context of informal settlements. Reflecting back on neoclassical economic conceptions of land tenure, it can be said that although some land titling
and registration projects can demonstrate participatory approaches and the facilitation of social equity (Feder and Feeny 1991, Törhönen 2001, Deininger 2003), these outcomes are contingent upon significant effort in the design and delivery of specific projects, which is viewed as an extension to the typical application of neoclassical economic theory towards land tenure. The anthropological approach would address this additional effort to a greater degree initially, being generally more holistic in nature.

1.4 CONCLUSION

The primary theoretical perspectives towards land tenure security both recognise that it contributes strongly to development and poverty reduction. The neoclassical economic perspective however approaches this through individual’s economic participation, without adequately considering the roles of social networks and power relations in achieving land tenure security. Based on this analysis I argue that the anthropological perspective on land tenure presents a more suitable theoretical framework with which to consider land tenure security for the urban poor. By focussing on communities, collective action and social relations, as well as through considering tangible and non-tangible forms of property, the anthropological perspective is arguably more reflective of the real context in informal urban settlements, and recognises the power of communities in pursuing greater security. This presents an appropriate theoretical perspective for the further research I have undertaken, particularly in the context of temporary land tenure security in Cambodia. The next chapter will describe three mechanisms that I consider are strong examples of community participation in the pursuit for land tenure security, as a practical extension of the analysis of anthropological conceptions of development.
2.0 COMMUNAL LAND TENURE MECHANISMS

2.1 INTRODUCTION

Chapter One investigated in detail the prevailing conceptions of land tenure recognition from the neoclassical economic and anthropological perspectives, illustrating the contrasts evident throughout each approach. This chapter will extend the discussion on anthropological conceptions of land tenure security to examine three specific mechanisms that achieve land acquisition and tenure security for urban communities. This will exemplify the participatory nature of the mechanisms discussed, the social benefits of which have been detailed in Chapter One. As an introduction to this discussion, the focus of this research on temporary land tenure recognition will briefly be explained. Then the Community Mortgage Program of the Philippines will be discussed first, as an example of community-based land ownership that represents a highly organised, effective approach to accommodation for the urban poor, though in the form of land ownership. Following will be an analysis of Thailand’s Land Rental Sums mechanism that takes a much more informal approach to informal settlements, and lastly the usufruct system, that exists in many forms of land legislation, will be reviewed.

2.2 TEMPORARY LAND TENURE

While it is agreed throughout development discourse that land tenure plays an important role in advancing economic development, it is also recognised by many that formal land titling is not the only way to achieve it (Payne 2002b). The process of land titling to achieve tenure security relies on the ability to attain appropriate land to title in the first instance, which results in the sacrifice of this land to a fragmented ownership pattern. This will arguably create great difficulty in consolidating development on the land into the future. In the context of land within urban areas being highly valuable, transferring individual ownership to a group of people in a fragmented manner effectively removes most future development possibilities on that land. These future developments may
include alternative forms of social housing, particularly medium-rise buildings discussed further in this chapter.

Formal titling also requires the financial and administrative resources to survey the land, develop and maintain a land registry, administer land transactions and arbitrate on disputes. The processes involved can be convoluted and expensive, and as a result, out of reach of the urban poor (de Soto 2000, Baird 2013). From a practical sense there may not be the political or institutional capacity or willingness to manage these systems in perpetuity, particularly once external technical expertise has left the country (Törhönen 2001). In these situations it is common for land transfers to occur outside formal systems (Payne 1997), which on a broader scale serves to undermine the institutions in place (Payne 2002b).

The grant of land tenure to a community on a temporary basis – that is along mutually agreed and respected timeframes and conditions – can assist in mitigating the above limitations of formal, permanent land tenure mechanisms, whilst still affording the urban poor access to the social benefits that land tenure security in a suitable location provides. Temporary land tenure maintains the integrity of land for future development, however also provides recognised security for communities in informal settlements in the short term, who may then enjoy the benefits of land tenure recognition discussed in Chapter One. The emphasis on communities is important here as the power to negotiate and agree to a lease or contract recognising temporary occupation is greater in communities (with representatives selected to orchestrate tenure recognition provisions) than for individuals alone. In short, the temporary recognition of land tenure potentially provides a commensurate level of security and benefits for communities, without the permanency of formal titling. This also allows for the land to be redeveloped in accordance with an agreed timeframe and conditions in the future.
2.3 COMMUNITY MORTGAGE PROGRAM

Community Land Trusts are present in various forms across the developing world, and function such that the land is held in communal ownership, with the improvements able to be made to dwellings and some infrastructure. The Community Mortgage Program (CMP) is a widely analysed form of Community Land Trust in the Philippines that uses the collective power of a community to secure land ownership through a community-organised homeowners association. The CMP involves the government provision of low interest mortgaged loans towards community land acquisition, the construction of houses and or connection of services. The loans are then repaid by community members through the homeowners association (Porio et al. 2004). Importantly, there is no requirement for prior individual or community assets or collateral to access this mortgage. The responsibilities of the homeowners association stated within legislation include securing the ownership transfer of the land parcel; ensuring the availability of infrastructure; and managing repayments from community members back towards the mortgage (Congress of the Philippines 2010). Although the CMP provides a land ownership outcome to the community (through the homeowners association) and eventually individual land titles after the loan is repaid, its participatory approach to achieving secure land ownership, and its focus on urban areas, both align with the direction of this research.

The CMP provides the opportunity for communities in urban informal settlements to either purchase the land on which they are living (through the association), or alternatively attain ownership of another land parcel that suits their capacity and needs, to which they will then relocate. The participatory nature of the CMP process ensures that the homeowners association, representing the community, is responsible for the attainment of land ownership and management of the process to achieve it which – similar to other community land trusts – is intended to build community resilience, trust and capacity (Thai 1997). Although, in practice, tensions may develop between households throughout the
management of the CMP process, the facility does enable a high degree of participatory management and decision-making within the community. This allows communities to locate in areas of convenience – close to essential services, employment opportunities and markets, on valuable urban land that would often be inaccessible through the general property market. This is also important for maintaining social networks, with communities able to remain in familiar locations (Teodoro and Rayos Co 2009) and within access of employment.

Although improvements in housing conditions come secondary to the primary goal of the CMP, which is to achieve land ownership for the poor (Lee 1995), the process and outcomes of this mechanism illustrate positive opportunities for communities to improve their land tenure security. Land ownership and occupation is recognised under law, and through this the community is afforded opportunities to access services and credit. Land comes under community control, and the collective management of the land and requisite financial processes builds strength within the community. The community as a group is also able to access capital, and indeed other community land trust examples have been demonstrated to offer greater security for lending institutions than individual low income households (Bassett and Jacobs 1997, Royston and Ambert 2002).

Since its introduction in the late 1980s, the CMP has enjoyed the support of successive Philippine local governments as a mechanism to achieve social housing, and has also contributed the greatest amount of housing for the poor of all government programs (Teodoro and Rayos Co 2009). However, the CMP does have financial impediments to its implementation and effectiveness, which are important considerations for this research. The sustained increase in the value of urban land is recognised as a major obstacle to the success of the CMP in recent times (Porio et al. 2004). With urban land values rising above the typical financial capacity of the CMP mechanism, communities face difficulties in accessing land parcels in locations that would provide the greatest
benefits. Similarly, the value of urban land in prime locations may not be commensurate with the development outcomes that are within the capabilities of a CMP, particularly in terms of the scale, quality and uses of new buildings. Further to the growing disparity between CMP funds and urban land values is the growth of government budget constraints and limited long term sources of finance (Porio et al. 2004), which prevents large amounts of funding being allocated towards CMP loans. This places a greater reliance on established community savings and an accountable structure to manage them, in order to achieve land ownership in a reasonable timeframe (Teodoro and Rayos Co 2009).

An additional obstacle lies in the complexity of the CMP process, particularly in terms of the required documentation and the technical steps of financial management (Porio and Crisol 2004, Teodoro and Rayos Co 2009, Prondosa and Vinluan n.d.). Communities (particularly housing association members) need to have the appropriate skills to undertake the necessary CMP steps. Indeed inadequate experience and poor management of the processes by the homeowners association can affect the efficiency of the CMP (Lee 1995). This illustrates the importance of a process that is simple to understand and implement, within the skill level of communities that may not have a high degree of technical expertise in land and finance management. The discussion also highlights the barriers that poor communities face throughout the CMP process, due to its complexity and requirement for legal and financial accountability. To this end, it is arguable that mechanisms that feature a simpler process are more accessible to the urban poor, and can offer greater opportunities for appropriate land tenure security for communities as a whole.

2.4 LAND RENTAL SLUMS MECHANISM

The Land Rental Slums (LRS) mechanism from Thailand describes informal settlements that have negotiated their occupancy rights for set periods of time privately and for minimal rent, directly with the owner of the land they have established on (Yap 1989). The communities will often
be responsible for the construction of temporary houses and the provision of infrastructure, however in some instances the landowner will also arrange the availability of some services (ibid). Access and occupation of the land may or may not be governed by a contract document between the community and the landowner, but where a contract is in place it can typically be ended with 30 days notice (Savant-Mohit 2002). The active negotiation by communities and grant of land occupancy by landowners comes through in a context where housing for the urban poor is not actively addressed by the government (Yap 2002). In a similar but less formal way to the CMP in the Philippines, the LRS mechanism is a strong example of community action and participation in securing some form of land tenure security.

It is common for communities to undertake negotiations under this mechanism to formalise the occupation of land on which they are already squatting. In some instances, residents are initially unaware of the requirement to undertake a legal process to secure land tenure over a site, particularly where they have come from rural provinces (Savant-Mohit 2002). Due to the less formal nature of the LRS mechanism compared to other programs, the process to achieve land tenure security is somewhat simpler and therefore easy to undertake for poorer communities. The negotiation skills of community representatives and the landowner largely govern achievement of a secure tenure arrangement. It could also be considered that, once the community and the landowner commence negotiations to access a land parcel, the threat of eviction (perceived or actual) is reduced, and the timeframe to secure tenure rights over such land becomes dependant on finalisation of arrangements rather than any eviction deadline. This provides security to the community, who are able to derive newfound comfort in their land tenure situation, and may then dedicate greater money and effort to the improvement of their settlement.

However whilst giving consent to occupy a land parcel, the LRS mechanism does not provide legal recognition of land tenure, or the same
level of protection from eviction that this would afford. Similarly the land which is granted under this mechanism is often not particularly valuable to the landowner, who can afford to lease it for little to no financial benefit, commonly illustrating a disconnect between the land itself and proximity to employment and services (Yap 1989, Yap and De Wandeler 2010). On the other hand the mechanism does provide a vehicle to achieve community land tenure security in an urban context, where the location of settlements is important for livelihoods. Within the context of land value, the landowner may permit occupancy until such time as the value of the land enables further, more substantial development.

An analysis of some communities that have secured land tenure through the LRS mechanism illustrates general improvements in living conditions and infrastructure (Savant-Mohit 2002, 2004, Archer 2012). With the improvements upon the land being temporary in nature, the community holds assets that can be relocated in the event of lease expiry or cancellation. However, as the community is not afforded security of tenure under law (in the same way as the CMP mechanism), as security is negotiated privately, access to social services, credit and formal job opportunities – where proof of residency is required – may still be greatly restricted. In this way the LRS mechanism only affords a component of security to communities, and does not go far enough to achieving the greater social benefits that land tenure security in general is shown to provide. This is arguably the greatest failing of the LRS mechanism.

2.5 USUFRUCT

Usufruct refers to the communal right to access and occupy a parcel of land, undertake work on it and obtain production and value benefits from it (that may not be specified), without actually owning the land itself (Eastman 1990, Teodoro and Rayos Co 2009). In this sense, a landowner (often the government) provides an individual or group consent to use their land for a defined time or in perpetuity, and this consent extends to the enjoyment of goods, value or benefit that arises from using the land. Occupation of the land is often granted with minimal financial outlay
from communities, but often the land is required to be returned to the landowner in the same condition as when usufruct tenure commenced (Teodoro and Rayos Co 2009). The usufruct arrangement provides benefit to the landowner, who ensures occupation use and ongoing maintenance of the land for a defined time period. The benefit provided to the tenants comes from access to land that is sufficient for community needs and able to produce benefits for the community, for minimal rental costs. There are often controls over who may participate in usufruct systems (Haenn 2006, Barnes 2009), which serve to ensure membership functions appropriately, and the community shares benefits of land tenure security. In this way, the usufruct system is seen to be a highly participatory mechanism to achieve land tenure security (Teodoro and Rayos Co 2009).

The usufruct mechanism enables land to be occupied and used on a temporary basis, with an agreed timeframe. This ensures that land may be developed in the future by the landowner, however in the intervening time the social benefit that the land can provide to tenant communities is maximised. Given the common requirement that the land is returned to its original state upon the end of usufruct, any settlement that is established must be able to be deconstructed with minimal permanent impact on the land itself. Although it is arguable that the construction of permanent structures would generally not be possible on usufruct land, the building materials and construction techniques involved in temporary housing design (and therefore the investment that is made in the materials) will enable the easy transportation and erection of structures on another site and maximising the value of construction materials. Given usufruct tenure can be recognised under legislation in some countries, it is agreed that there is greater security for investment in housing compared to the LRS mechanism, there the danger exists for landowners to ignore their obligations under the arranged private lease contract. However in addition to the certainty and security that an agreed tenure period provides, this is likely to encourage the utilisation of better
quality building materials for structures on usufruct land which will provide improved living conditions for communities.

Usufruct systems have been present in Africa, Central America and Asia for many decades, primarily with respect to rural and agricultural land systems. They are derived both out of traditional land tenure systems (Eastman 1990) and legislative introductions to provide rights and benefits to poorer communities (Haenn 2006, Johnson 2006, Teodoro and Rayos Co 2009). In Gambia, new settlers clear vegetation from the bush to enable farming, and through this action establish the right under usufruct to occupy that land for agricultural purposes for the duration that they reside in the community (Eastman 1990). There are recognised processes that enable new households in an existing community to access benefits from this right, and in all cases the right to occupy land under usufruct is contingent upon the continual occupation and use of the land (ibid). In Mexico, usufruct tenure is granted in ejidos, where land is often provided to farming communities by the government, who are able to maintain some extent of legal and structural control over the ejido whilst at the same time affording the community a large amount of autonomy (Haenn 2006).

Although historically present in agricultural contexts, usufruct tenure systems are becoming more common in cities of the Philippines, as another mechanism to provide secure land tenure to poor communities in urban areas. As with agricultural usufruct scenarios, the processes of negotiation, establishment and ongoing management of a usufruct system over urban land is conducted in a participatory manner, through community representatives under the guidance of non-government organisations (Teodoro and Rayos Co 2009). The usufruct mechanism is recognised within the Civil Code of the Philippines, providing for the use and enjoyment of land by tenants or occupiers under usufruct, with the requirement to return the land in its original condition at the cessation of usufruct (Congress of the Philippines 1949). In very recent years in the Philippines, homeowners associations have begun to access government
land and construct medium-rise buildings (up to three storeys) for social housing, as a way to maximise housing provision on valuable urban land (Hutchison 2015). Essentially a usufruct system, the provision of government land for housing development reduces the relative cost of apartments for each household, and in many cases the land is provided to the homeowners association on a subsidy basis for housing (ibid). This approach is still developing in the urban context, however it appears to circumvent some of the risks surrounding increasing urban land value, whilst maintaining the opportunity and flexibility for governments to actively improve the housing situation of the urban poor.

Usufruct systems contribute to the social benefits of land tenure security, by providing an accessible and secure land tenure option for poorer communities, including the right to take advantage of value derived from the land itself. Although still emerging in its application to an urban poor housing context, the principles and technical details of usufruct land tenure are the same as in a rural context. The usufruct mechanism appears to provide strong opportunities for socially beneficial land tenure security (Teodoro and Rayos Co 2009), by allowing an alternative land tenure mechanism for the urban poor that is accessible, appropriate and flexible in terms of location and timeframes.

Common throughout usufruct systems is the presence of a robust community association or community management body that has oversight of land tenure management, participation in administration and membership to the community (Eastman 1990, Barnes 2009, Teodoro and Rayos Co 2009). In a similar way to the associations that are key to the CMP model, these usufruct community associations ensure that the community itself is empowered to manage its own affairs. This builds community capacity and strength, and maximises collective action to achieve tangible community outcomes. The principle of community-led management serves to recognise the strong social function of land in addition to its economic function by placing community access and management of land and its benefits in primary importance (Barnes
2009), and is recognised by communities as providing a high level of land tenure security without going to the extent of formal land titling systems (Teodoro and Rayos Co 2009).

Furthermore, the recognition that usufruct holds under law allows improved access to services, employment and credit for communities, due to the recognised rights to occupy land it affords. This benefit is similar to the CMP outcomes and greater than what would be available through the LRS mechanism, where leases over land are administered privately. In doing so, the usufruct mechanism achieves greater social benefits of land tenure security without the finality of land ownership, particularly those that extend from recognition of resident rights. The legal provisions for usufruct under Philippine law also allow the land to be returned in a condition that is mutually agreed between the landowner and the community (Congress of the Philippines 1949). This provides opportunities for communities to undertake more permanent development work, which would become the agreed asset of the landowner at the end of usufruct, and potentially deliver financial benefit to the community upon their departure, through its sale. In the urban context this allows for a community to construct housing and associated buildings that might be more comparable to surrounding existing development, particularly with regards to scale, materials and quality. It is arguable that this could foster within the community a greater sense of belonging to the urban area, by lessening the visual and perceived disparity between the usufruct community and the wider urban locality.

Despite its social benefits, changing development and land market patterns in the rural context have led to modifications of the usufruct mechanism. Relevant legislation changes in Mexico introduced the ability to convert ejidos into individual private land tenure, as a result of greater urbanisation pressures encroaching on ejido land, and decreasing land use efficiency (Haenn 2006, Barnes 2009). While this can be considered to provide opportunities to usufruct tenure beneficiaries in the context of a changing land market, it also dilutes the social aspect of usufruct as a
land tenure security mechanism. Instead of providing benefit to communities as a collective group, the ability to privatise land and transact it on the land market increases its attractiveness for development. On the periphery of growing urban areas, as in Mexico, large land parcels housing temporary settlements can be highly desirable as new development sites. It is arguable that the same desirability could also present itself in established urban areas, leading to the potential for similar changes in legislation for urban usufruct mechanisms in the future. In the context of rapidly growing cities – particularly capital cities and those that experience a high degree of foreign investment – there is added pressure from large developers who commonly hold great political and financial power. Urban growth and political pressure to release more valuable land for development could endanger the usufruct mechanism as a tool to accommodate the urban poor on such land for defined periods of time. At present however, there is no indication that the intent, legal provisions or application of usufruct within urban areas will experience similar changes.

2.6 CONCLUSION

Through the preceding comparison of three communal land tenure mechanisms, it is arguable that community participation, simplicity of process and the ability to secure institutionally recognised access to land are the primary factors in communal land tenure mechanisms. While all three mechanisms empower communities to various levels to achieve land tenure security, the CMP mechanism goes further to (eventually) afford land ownership to the community, and provide loans towards housing construction and infrastructure delivery. However, private (including communal) land ownership can serve to greatly limit the future development potential of the land in question, which is an important consideration for valuable, well-located urban land. The LRS and usufruct mechanisms both comprise lease arrangements for land, maintaining the future development potential of land through finite arrangements and, in many cases, the establishment of largely temporary structures. However, while usufruct is a legally recognised mechanism for communal land
tenure, and has indeed been in use in other developing contexts, the LRS mechanism is privately-negotiated and not subject to the same level of legislative strength or institutional recognition. Yet I believe the legal recognition provided under usufruct and the strong opportunities to maximise social relations contribute the most towards the pursuit of temporary land tenure recognition or the urban poor. On the basis of this discussion and comparison of three communal land tenure mechanisms, the next chapter will investigate land law and community participation in obtaining land tenure security in Cambodia.
3.0 LAND LAW AND COMMUNITY PARTICIPATION IN CAMBODIA

This chapter is divided into two main sections. The first will provide a very broad overview of primary land law in Cambodia to set the legislative context for a discussion of the ability of communities to achieve temporary land tenure. It is important to understand the evolution of land tenure in Cambodia and the development and progression of legislation concerning land ownership in order to analyse the capacity of collective organisation within informal settlements to secure such temporary land tenure in urban areas. The second section discusses this, to build on from the community-focused mechanisms discussed in Chapter 2. This section will evaluate the use of a particular community participation framework to guide participation towards achieving land tenure security in the Cambodian context. The extent to which community participation is realistically achievable in Cambodia will be identified, and the indicative process for community participation in the drive for temporary land tenure security for urban poor communities will be described.

3.1 LAND LAW IN CAMBODIA – A BRIEF OVERVIEW

The evolution and application of land law in Cambodia has been characterised by a high level of international legal influence, changing political perspectives and unequal benefit. In recent times, the focus of efforts from development organisations and foreign governments in engaging with Cambodian land law has predominantly been with respect to land ownership, registration and the accommodation of poor communities in perpetually secure land tenure (relatively speaking). In the context of a developing country moving toward generally western constructs of land law this is to be expected, however in all cases land tenure security for the urban poor is very limited (Thiel 2010). While I agree that use rights (rather than ownership) allows for a more efficient use of land, particularly in urban areas (Loehr 2012a), comparatively little attention has been paid towards facilitating – or indeed
investigating – the temporary tenure security for urban poor settlements, on valuable land with future development potential or a specific public purpose. The disparity in research between permanent and temporary land tenure security in Cambodia is occurring against a backdrop of continued and increasing encroachment by poor communities on to land that – under legislation – cannot be transferred into private ownership (Khemro and Payne 2004, So 2010, Loehr 2012b, Ngin and Verkoren 2015), but to a large extent meets the locational requirements of the urban poor and could possibly be suitable for temporary land tenure recognition. However, due principally to the nature of land and availability of housing within urban areas, and in part to cultural values around land occupation and the attainment of use rights over land, I argue that the legal recognition of temporary land tenure rights in urban Cambodia can have a significant influence on addressing wider poverty within urban communities.

Historically, Khmer culture did not tie people to particular locations or landholdings, as a pervasive reverence towards ancestors was virtually non-existent (Chandler 1993). This meant that the population was generally geographically mobile if the need arose, and indeed in conflict situations communities would have the ability to relocate elsewhere (Mabbett and Chandler 1995). Prior to Cambodia becoming a French protectorate in 1863, land throughout the country was under ownership of the King, however the population typically held user rights over the land (Greve, in Russell 1997). This could be passed down through families, provided the land remained under cultivation (Trzcinski and Upham 2014). Thus the right to exclusive access land was commonly recognised through the clearing and cultivation of land, typically over a small area (Youn, in Kiernan and Boua 1982, Russell 1997, So 2010, Adler and So 2012). This is considered to have been in essence a usufruct system (Adler and So 2012). Throughout the period prior to French governance of Cambodia, the availability of arable land was relatively high, even as the population increased (Mabbett and Chandler 1995). This ensured that land conflicts were minimal. When Cambodia came
under control of the Vietnamese in the early 19th century, new land allocation systems were introduced, albeit with minimal effect on land availability and use (Chandler 1993).

Under the Vietnamese, the principle of individual (as opposed to communal in the socialist sense) rights to and management of land continued (Russell 1997). In 1884 the French authorities in Cambodia had introduced new land laws – the first example of legislation apportioning western constructs of land management throughout Cambodia. The 1884 Land Act introduced the concept of private property, however the traditional right to land through cultivation was maintained, with ownership of that land attainable after five years of occupation (Russell 1997). Later, the 1920 Civil Code further formalised the concept of ownership through the establishment of official recognition of rights to land arising from occupation (Trzcinski and Upham 2014).

The most significant interruption to Cambodian land law came with the ascension of the Khmer Rouge to power in 1975 and the establishment of Democratic Kampuchea. The Khmer Rouge prohibited all forms of private possession, including of land, which came under state ownership and was allocated to solidarity groups for their use (Un and So 2011, Trzcinski and Upham 2014). This state model of land ownership continued through the subsequent Vietnamese occupation of Cambodia between 1979 and 1989, until the re-introduction of private property rights in the new Constitution of the State of Cambodia in 1989 (Russell 1997). It was common however for people to hold occupancy rights over properties, and even trade them on a growing de-facto land market (Khemro and Payne 2004). Upon its introduction in 1989, Instruction No. 3: Enforcing Instruction of the Principles of Possession and Use of Lands permitted ownership over housing only, whereas access to land was governed by user rights (Russell 1997). Other subsidiary legislation under the 1989 Constitution, including the 1992 Land Law, specifically do not recognise land ownership that existed prior to 1979. This was to facilitate land distribution throughout Cambodia, a principle that has carried through
into present legislation (Russell 1997, Khemro and Payne 2004, Trzcinski and Upham 2014). This is evidenced in Articles 1-3 of the 1992 Land Law (following), which serve to introduce formal property rights into law (with additional Articles featured throughout the 1992 Land Law).

Article 1:
All the land in Cambodia belongs to the State and shall be governed and protected in agreement by the State. The State does not recognize the land property right existing before 1979. The property right and any other rights related to the land shall be governed by this law.

Article 2:
Cambodians have the full right to possess and to use the land and have the right of inheritance of the property provided by the State for living and for doing business.

Article 3:
The State guarantees to the user of the land the right to possess, to use, and to receive lawful product of the land.

The violation of the private property shall be forbidden except when the public interest requires in cases provided by the law. In this case the property owner has the right to receive in advance just and proper compensation.

(Kingdom of Cambodia 1992)

The 1992 Land Law, passed under the 1989 Constitution, replicated many of the 1920 Civil Code provisions (Trzcinski and Upham 2014), and in fact did not override existing land legislation already in place (Russell 1997). Both resulted in significant legal confusion and ambiguity, particularly through the use of varying terminology. Indeed the 1992 Land Law has been considered to have exacerbated land tenure issues instead of addressing them (Un and So 2011).
Based on the Torrens system of legislating land, and developed with a high degree of international expertise, the current 2001 Land Law is intended to afford greater land tenure security to the population, as part of a larger effort to facilitate increased global economic participation (Trzcinski and Upham 2014). The 2001 Land Law does address a number of the deficiencies present in the 1992 Land Law (Gillespie 2009, Un and So 2011) and contains provisions relating to usufruct (Chapter 8 Part 1). However, it is commonly considered to be a top-down legal construct that pays little consideration to the Cambodian social context or the capacity and willingness for accountable and transparent local implementation (Springer 2010, Adler and So 2012, Trzcinski and Upham 2014, Ngin and Verkoren 2015). It is also unknown whether the 2001 Land Law (and the associated raft of land legislation relating to it) will effectively achieve all of its objectives (Thiel 2010).

As in previous land legislation, the 2001 Land Law does not recognise property ownership and delineations that existed prior to 1979 (Article 7), and retains all land in State ownership, unless other ownership is recognised under law (Article 12) (Kingdom of Cambodia 2001). Importantly, the 2001 Land Law delineates three categories of land, each with differing restrictions on ownership, occupation and transfer, as detailed in Table 1. Further to this, Khemro and Payne have collated a number of other land tenure mechanisms present in Cambodian cities into a fourth land category (2004), that includes squatting on private land, including on the rooftops of apartment buildings and within abandoned buildings themselves. While monastery and indigenous property are two additional forms that may be considered separate categories (Thiel 2010), they effectively fall within the category of State Private land. The delineation of these land categories is important as they essentially provide the land tenure context for the second section in this chapter, which discusses the process for community participation in seeking tenure security.
Table 1: 2001 Land Law – Land classifications and characteristics

<table>
<thead>
<tr>
<th>Land Category</th>
<th>Land Types</th>
<th>Permissible Owner</th>
<th>Permissible Uses or Tenure</th>
<th>Transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Public</td>
<td>Natural areas (forests, waterways, coastline, etc.) Transport reservations (road and rail) Railway stations and airports Public educational institutions and hospitals Archaeological, cultural and historical properties Immovable royal properties (not private)</td>
<td>State Public territorial collectives Public legal entities</td>
<td>Can only be used for public purpose, as identified under law Articles 15 and 16 May be subject of occupancy rights that are temporary, precarious and revocable</td>
<td>Not permitted unless deemed to be surplus by the State and transferred to State Private property Article 16</td>
</tr>
<tr>
<td>Articles 12-16</td>
<td>State Private</td>
<td>Government institutions Social Land Concessions Economic Land Concessions</td>
<td>Individual State institutions Public legal entities</td>
<td>Use rights, lease</td>
</tr>
<tr>
<td>Article 17</td>
<td>Private Property</td>
<td>Any other land not classified State Public or State Private</td>
<td>Cambodian citizens Public collectives Public Institutions Cambodian communities Cambodian civil or commercial institutions Any Cambodian organisation</td>
<td>Ownership, full use rights, lease, except where not permitted under law Article 85</td>
</tr>
<tr>
<td>Chapter 7</td>
<td>Additional Tenure</td>
<td>Pavement or itinerant dweller Informal housing tenant Formal housing tenant Unauthorised occupation of land classified in any of the three categories above Temporary government housing Certificate of Possession Certificate of Ownership</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
While the 2001 Land Law provides the ability to claim ownership over land if it has been occupied uncontested for at least five years prior to the date of its adoption (Kingdom of Cambodia 2001, Simone 2008), it does not protect the following: the retrospective allocation of land into categories that by default prohibit the grant of land tenure (Khemro and Payne 2004, So 2010); the transfer of land from people who might have legitimate ownership claims to other individuals or commercial entities (Un and So 2011); or the circumventing of restrictions on reviewing land classifications through instituting lease arrangements to benefit certain actors (Simone 2008). In short, it tends to be circumvented by corruption and patrimonialism that are systemic across Cambodian society (Springer 2010).

Social Land Concessions are a widely discussed and often initiated feature of the 2001 Land Law, further governed by the 2003 Sub Decree on Social Land Concessions (2003 Sub Decree). Initially designed to provide land to landless farmers (Un and So 2011), Social Land Concessions are currently seen as addressing the shortage of attainable housing and land for poor communities who do not have land tenure security (So 2010). Article 49 of the 2001 Land Law permits Social Land Concessions on State Private land, with specific detail pertaining to their establishment and ongoing administration contained within the 2003 Sub Decree.

Amongst their various purposes is the ability to provide land to homeless communities, as well as those that require resettling, specifically arising from the development of public infrastructure (Kingdom of Cambodia 2003). They are also commonly used to provide accommodation for communities resettled from development land within urban areas. In a similar vein to the comparable provisions of the 2001 Land Law, Social Land Concession occupants are entitled to receive ownership rights after 5 years of occupancy under the 2003 Sub Decree (Kingdom of Cambodia 2003). Principally however, Social Land Concessions involve the relocation of urban informal settlement populations to essentially vacant
land on the periphery of urban areas, where services and infrastructure have not been developed and limited employment opportunities exist (Simone 2008, Trzcinski and Upham 2014). In some cases, recipients of land within Social Land Concessions have sold (or simply left) their land and returned to other informal settlements within urban areas (Payne 2004, Un and So 2011). Social Land Concessions are also subject to the encroachment of speculative investment (Thiel 2010), further impacting their suitability for sustainable accommodation of poor communities.

While State Public land cannot, under the 2001 Land Law, be subject to the grant of permission to occupy, there has been a precedent for communities to officially be allowed to settle on it. In 2004 a law was passed by the Government of Cambodia permitting existing communities to remain settled on State Public land within the most central zones of the Angkor Archaeological Park (Gillespie 2009). Zones 1 and 2 of the Angkor Archaeological Park comprise land classified as having archaeological, cultural and historical significance under Article 15 of the 2001 Land Law, and are subject to the regimented oversight and management of the Autorite pour la Protection du Site et l’Amenagement de la Region D’Angkor (APSARA). This precedent is acknowledged as entailing recognition from the government that some of the provisions around State Public land within the 2001 Land Law should be revised to reflect the reality of land occupation and poor communities (Gillespie 2009). I further suggest that this precedent could also be applied to State Public land in the urban context, at least for a defined time period.

Lastly, the 2007 Civil Code was prepared with Japanese expertise to bring together various civil legislation in force in Cambodia, including both the 1992 and 2001 Land Laws in order to help secure the country’s admission into the World Trade Organisation. It only came into effect in 2012 (Trzcinski and Upham 2014). The 2007 Civil Code contains comprehensive provisions on land ownership, access and use rights, registration and other matters. More detailed provisions on usufruct are also featured, particularly regarding the fruits that usufructuaries are
entitled to, as well as the responsibilities of property maintenance (Kingdom of Cambodia 2008). However, the fundamental principles of usufruct under the 2001 Land Law and the 2007 Civil Code remain the same. It is considered of these, that the 2007 Civil Code is far more cognisant of the practicalities and ‘real-world’ issues pertaining to land law within an informal context in Cambodia. Although is at the cost of clear legal guidance, it could be arguably more effective in achieving real outcomes (Trzcinski and Upham 2014).

From this broad overview of the evolution of land law in Cambodia it can be seen that despite common efforts to acknowledge and facilitate private land ownership, the approach to legislation is haphazard and administration of it is not always in accordance with legal requirements. It is also seen that poor communities are not particularly connected to the legal framework governing land occupation and ownership. Moreover the processes to obtain land ownership or occupancy rights are complicated and subject to bureaucratic and political manipulation, which places legal land tenure security even further out of reach of the urban poor. The remainder of this chapter will investigate the potential for urban poor communities to participate in land tenure discourse, with the aspiration to achieve temporary land tenure recognition on valuable urban land.

3.2 COMMUNITY PARTICIPATION IN LAND TENURE

From the previous section it can be seen that the evolution of land law in Cambodia has been arguably haphazard, however land law is evolving to be more applicable to the real local context of land tenure. In particular, while a strong focus on private land ownership prevails in land law, there are legal mechanisms that enable temporary land tenure recognition (Chapter 8 of the 2001 Land Law and Chapters 3-6 of the 2007 Civil Code). These also permit the organisation of communities into representative groups to achieve land tenure security. Through an emphasis on ownership, land law in Cambodia is more favourable to
people who can prove that they own land through a land title (notwithstanding whether the proof of ownership is legitimate) rather than those who simply occupy a space – particularly in urban areas (Springer 2010). Certainly in the urban context those who typically have proof of ownership are the State (State Public and State Private land), the wealthy, the politically connected or investors and developers (Tat and Bagshaw 2014). Nevertheless, the Limited Proprietary Rights contained within Chapter 8 of the 2001 Land Law do provide the legal guidance for temporary land tenure recognition. These are concomitant with Chapters 3-6 of the 2007 Civil Code, which establish and deal with possession (including without the intent to own), perpetual lease, usufruct and rights of use/residence.

The complexity of legislation and processes surrounding land tenure security is clearly evident. This has previously been recognised throughout this research as a barrier to involvement and participation for the urban poor. In the Cambodian context, the apparent initial indifference of some sections of the urban poor toward land tenure (Khemro and Payne 2004), and the very limited capacity (notwithstanding the procedural complexities) of others to engage in land tenure processes, is further hindrance to the ability of communities to assure temporary land tenure security. Yet the perception of ownership by occupation still prevails amongst many Cambodians today (Paling 2012). This is particularly so within poorer groups of people who do not interact regularly with the land and housing markets (Loehr 2012b). It is apparent through this argument that assistance from external actors (considered to be non-government organisations and/or specialists in various fields of land tenure) is necessary to achieve effective tenure outcomes for the urban poor. However, as exemplified through the discussion on anthropological approaches to land tenure in Chapter 1, the primary focus on this must be the empowerment of communities to achieve land tenure security – as much as practical – through their own means. The remaining discussion will investigate the level of community participation that is realistically achievable in
Cambodia at this time, as well as outline a number of indicative community participation steps that I propose will best guide the process of engaging in land tenure security discourse.

3.2.1 Community Participation Framework

With the right framework it is possible for urban poor communities in Cambodia to engage and participate in the process of seeking temporary land tenure security. There are a number of frameworks that describe and categorise various levels of power and engagement afforded to communities, however most tend to be derived from research and practical implementation in a developed-world context. Choguill’s Ladder of Community Participation for Underdeveloped Countries (1996) or Choguill’s Ladder, outlined in Figure 1, provides what I consider is the most appropriate mechanism to guide levels of community participation in seeking temporary land tenure security in urban Cambodia. Choguill’s Ladder is adapted from the widely-referenced Arnstein’s Ladder of Participation (1969), to be relevant for developing country contexts. It outlines eight levels of community participation, ranked highest to lowest, and is grounded on a number of presumed factors, including community organisation and effective and supportive government relationships – at levels that vary with each step on the ladder.

Figure 1 – Choguill’s Ladder (1996).

It is considered that the second tier of Choguill’s Ladder (italicised) presents a realistic target for a level of community participation in the contemporary Cambodian context, to achieve temporary land tenure security. Level 2 – Participation focuses on strong partnerships between communities and the government.
the community and external actors to achieve intended outcomes, through comprehensive participation and shared decision-making. Such collaboration through workshopping with urban poor communities in Phnom Penh has previously shown to raise awareness within communities that land sharing or settlement upgrading are other desirable options for meeting community land tenure needs (Payne 2004, Khemro and Payne 2004). In a more general sense, similar levels of collaboration and participatory action have resulted in greater community involvement in local governance in Cambodia, particularly in terms of the establishment of Commune Councils and implementation of Village Networks in Kampot and Kampong Thom (Pellini and Ayres 2007).

By comparison, Level 1 – Empowerment (where the Philippines’ Community Mortgage Program, discussed in Chapter 2, is considered to sit) is considered too aspirational for the Cambodian context in general, at least in the short to medium term. Level 1 – Empowerment relies on existing hierarchies and networks within the community, as well as the ability to commence improvements and dialogues with supporting organisations and government (Choguill 1996). Both of these elements are often not present throughout informal urban settlements in Cambodia. In particular, government support for addressing the tenure security of informal settlements appropriately is yet to evolve. Alternatively, Level 3 – Conciliation features predominately government-led outcomes, consented to by the community (Choguill 1996) which plays back into a top-down approach to governance that is a characteristic of Cambodian political space, however from a less conciliatory perspective. In the Cambodian context it is clear that there are few government-led projects to secure temporary land tenure for informal settlements in urban areas, to achieve the outcomes desired through this research. Additionally, as discussed previously the Social Land Concessions mechanism enacted in the 2001 Land Law to assist poor communities with land tenure is effectively a peri-urban relocation
mechanism that is not often coupled with the timely delivery of 
supporting infrastructure and services to the new community.

Fundamental to Level 2 – Participation however, and indeed important in 
all upper levels of Choguill’s Ladder is the role of a supportive 
government (Choguill 1996). This element is arguably lacking in many 
instances in Cambodia relating to urban poor communities, as supported 
by numerous examples of evictions, poor relocation planning and a 
flexible approach to the administration of land legislation. The success of 
Level 2 – Participation in securing temporary tenure security is also set 
against a backdrop of prevailing discouragement of the population 
participating in governance and working collaboratively with 
government in the true sense of a partnership (Pellini and Ayres 2007). 
Despite these obstacles, I consider that scope certainly exists for the 
urban poor in informal settlements in Cambodia to pursue temporary 
land tenure security, through a community participation-based process.

3.2.2 Basic Steps Towards Success

The discussion herein is predicated on success being defined in terms of 
the achievement and ongoing recognition of land tenure security for 
urban poor communities on valuable urban land. Such recognition must 
come from the community, government and any affected landowners, and 
is granted for a finite time period. On the basis of community involvement 
in temporary land tenure security being akin to Level 2 – Participation on 
Choguill's Ladder, the primary vehicle for success will be partnership and 
collaboration between the community and external actors, as well as 
government. However, in order to achieve this success from the 
perspective of community participation, I argue that a number of 
elements need to occur. These elements essentially form basic steps in a 
process to achieve temporary land tenure security, are depicted in Figure 
2 and described following. The steps have been compiled based on a 
logical flow of actions to reach an outcome of temporary land tenure 
security, and are not the technical steps that constitute the process to
achieve land tenure security. Rather, they are the key community participation outcomes that sit within the wider technical process.

The steps are based on my personal involvement in practical development work in the Samaky community, an informal urban settlement in Siem Reap, Cambodia (incidentally located within Zone 2 of the Angkor Archaeological Park), a number of individual examples related to some steps and relevant components of land legislation. The steps are yet to be tested against a real example of community participation towards land tenure security, however they provide an indicative breakdown of the key elements in this process.

Figure 2 – Indicative steps in community participation to achieve temporary land tenure security.

1. Establishment of partnership with external actor/s
2. Establishment of community organisation
3. Capacity building of the community organisation
4. Identification of land tenure mechanism
5. Negotiation with government and/or landowner
6. Finalisation of land tenure agreement

Step 1 – Establishment of partnership with external actor/s

Informal settlements in Cambodian cities quite often contain people from widely varying backgrounds, who have located in the settlements for different purposes. After the repopulation of cities following the end of Democratic Kampuchea in 1979, the urban poor did not have a strong sense of community solidarity or trust (Phonphakdee, Visal, and Sauter 2009). This can still be observed in informal settlements today. Over time, however, a sense of mutual aid will typically develop organically and informal relationships transform into a stronger structure whereby social relations evolve and leaders emerge. In some instances, as in the Samaky community, communities will share responsibility for the supervision of children during the day, or participate in maintenance of common infrastructure. This could also play out in the sharing of space for different businesses, in return for labour or training, as evidenced in community networks within the established Tonle Bassac settlement in Phnom Penh (Simone 2008).
Though as discussed previously, the participation of community members in complex regulatory processes is very limited due to the skills and experience available within the community itself. As described by Choguill’s Ladder, community participation must be connected to the involvement of external actors with the requisite expertise to guide process and, importantly, build understanding and capacity within the community. While is becoming increasingly common for the urban poor in Cambodia to engage in the legal processes around land tenure, particularly relating to land rights (Springer 2010), partnering with external actors could focus this engagement more effectively.

However, the partnership between a community and an external actor does not guarantee access to (and navigation of) the regulatory process. In the context of systemic high level bureaucratic and legal manipulation and hidden political networks – particularly with valuable land – the introduction of specialist expertise can fail to deliver the desired outcome (Tat and Bagshaw 2014), which in this instance is temporary land tenure security. Nevertheless the involvement of external actors through this process is recognised as an important contributor to success (Khemro and Payne 2004). Furthermore, such relationships can overcome prevailing political apathy and increase community participation in governance processes, in a realm where communities have historically enjoyed little involvement (Pellini and Ayres 2007).

**Step 2 – Establishment of community organisation**

As evidenced by the Community Mortgage Program in the Philippines, discussed in detail in Chapter 2, the establishment of an effective body of community representatives is fundamental to the negotiation of land tenure outcomes with government. It is also important in the administration and communication of the process, and orchestrating logistics (payment collection, collective action, and so on) with the wider community. In the Samaky community, the building of community respect and support for a Chief and the establishment of community committees has led to greater solidarity and collective action in the
undertaking of communal tasks, such as construction works and the effective management of projects where there is hierarchical direction and administration. In the context of an informal settlement consisting of diverse backgrounds, the involvement of external actors in guiding the operations of community organisations is key to their success. The empowerment of communities through the involvement of representatives (or indeed the entire community itself) can further serve to increase the accountability of government and bring a higher level of transparency to land tenure discourse (So 2010).

**Step 3 – Capacity building of the community organisation**

Interrelated with the first two steps discussed is the need to provide capacity and skills development to the community organisation, to enable them to effectively participate in the land tenure process at an equal (or indeed higher) level than the external actors that have become partners in Step 1. While capacity building is a significant part of the whole process of achieving land tenure security, it is emphasised here as key to providing the community organisation with the ability to move forward, advocate for and negotiate strong tenure outcomes on behalf of the wider community. It also allows the community organisation to engage more effectively with the wider community. Capacity building presents a largely sustainable approach to development, and contributes to ensuring that the community organisation is empowered to participate in land tenure processes into the future without the same need for partnerships with external actors.

**Step 4 – Identification of appropriate land tenure mechanism**

The next logical step towards land tenure security is for a community consensus on the appropriate land tenure mechanism. As the intent of this research is to interrogate temporary land tenure options, permanent solutions such as titling or Social Land Concessions are to be excluded. Rather, it is considered that usufruct provides the greatest flexibility for applications to urban informal settlements, as well as the requisite level of land tenure security and certainty of an agreed timeframe. The terms
of usufruct under Chapter 8 of the 2001 Land Law and Chapter 5 of the 2007 Civil Code provide sufficient certainty and security for land tenure for a defined time period. These terms also allow the community to enjoy any additional benefits from the land throughout their registered period of occupation.

_Step 5 – Negotiation with government and/or landowner_

As discussed in Chapter 2, the involvement of the community organisation (primarily) and the wider community (secondarily) in the negotiation process can lead to ensuring community-desired outcomes, such as location, extent of improvements and duration, are achieved. Collective action to upgrade and beautify informal settlements in Phnom Penh through the Urban Poor Development Fund has demonstrated to government (and the community itself) the effectiveness of organised approaches to issues, which in turn places greater strength in the ability of the community to negotiate desired outcomes (Phonphakdee, Visal, and Sauter 2009).

_Step 6 – Finalisation of land tenure agreement_

Upon the successful negotiation of an agreement to achieve land tenure security, the community is afforded the social benefits that arise from legitimacy through tenure recognition. Through the process to achieve this, a strong partnership has been formed with external actors, a community organisation has developed, and the wider community has been provided the opportunity of capacity building, and to a large extent managing their own affairs.

3.3 CONCLUSION

From this discussion it is evident that the basic process to realise community participation in the achievement of temporary land tenure security is logical, however it requires strong partnerships with external actors to be established, which will play a significant role throughout the process. Furthermore I argue that the pursuit of temporary land tenure security for urban poor communities must be considered one aspect of a
much wider, holistic approach to poverty alleviation for the urban poor. There are a number of other interconnected processes that must also take place in conjunction with this to ensure sustainable outcomes are achieved, which are beyond the scope of this research. However, by applying these indicative steps to the technical processes of achieving temporary land tenure security, community participation can be maximised and community empowerment can occur.
CONCLUSION

Land tenure security is a fundamental aspect of poverty reduction in developing countries. It provides the urban poor with access to employment and greater entitlements to local services. Land tenure security also can contribute to the empowerment of the urban poor, and community participation in local governance. However, through this research I have argued that the framework for achieving land tenure security is a significant determinant of the success of these social outcomes. I have investigated how communities living in urban informal settlements can achieve temporary land tenure security and in doing so, I have concentrated on the importance of community participation in this endeavour. In this case, the focus of the research has been predominantly oriented towards the Asian context, with a specific emphasis on Cambodia.

While neoclassical economic perspectives are certainly very prevalent throughout development discourse and the projects of international development organisations, I argue that they are not always the most appropriate mechanisms to achieve land tenure security, particularly for the urban poor. The neoclassical economic perspectives assume the ability of the poor to participate in markets, as well as the willingness of lending institutions to work with them. They tend to ignore established (and important) social relations in communities and between the urban poor and more powerful others, which in turn can lead to conflicts within and outside the community. The neoclassical economic perspectives fundamentally presume that individual land titling provides the greatest possible security to the urban poor. However, research has shown that in addition to increased costs for new landowners (by way of loan repayments and property tax, amongst others), the allocation of land into parcels can make them susceptible to land grabbing. Certainly it has been demonstrated in some instances that the urban poor find the land titling process complicated and unnecessary, as it tends to achieve similar benefits that are available to communities informally.
From these arguments I consider that the anthropological approach to development is a more appropriate theoretical framework for pursuing land tenure security, and in general a more holistic approach to development. This theoretical framework views land tenure security as enabling the poor to participate in social and economic networks to a higher degree. Unlike the neoclassical economic perspectives, there is not the same emphasis on formal land titling as the clear solution to poverty reduction – which brings a more flexible approach to development. Rather, the anthropological approach recognises the capacity of communities to collectivise to pursue common goals, and enjoy the benefits from successful collective action. The social relations occurring within and surrounding communities are a strong consideration of the anthropological approach. This recognises the interdependency between communities and the collective social benefits.

Extending from the analysis of theoretical frameworks surrounding land tenure, I have identified three forms of community-based land tenure that accord with the anthropological approach to development. The Community Mortgage Program from the Philippines, although directed at formal and subsequently individual land ownership, maximises community participation to achieve legally recognised land tenure outcomes for communities. By comparison, the Land Rental Slums mechanism from Thailand uses private negotiation between communities and landowners to secure tenure through a lease arrangement. This mechanism is implemented outside any formal land administration system and, although it relies upon a high degree of community participation to achieve land tenure security, it does not provide the same formal recognition of land tenure, and subsequent social benefits, to communities as most legal-based mechanisms do. Lastly, the concept of usufruct was reviewed, which is present in many legal frameworks across the developing world, including within Cambodian land legislation. I argue that all three mechanisms comprise elements that contribute to the achievement of land tenure security for the urban poor, however usufruct
contributes to this in the strongest way, due to its legal recognition and the opportunities it provides for communities to maximise social relations.

In the Cambodian context, there is notable scope for communities to participate in land tenure processes. However, this community participation will occur against a backdrop of land legislation that has undergone haphazard development, and is implemented inconsistently and largely affected by bureaucratic manipulation. Although Cambodian land law itself is evolving to be more cognisant of informal settlement contexts, the processes for community participation in seeing formal land tenure security are not particularly clear.

Accordingly, I suggest that Choguill’s Ladder of Community Participation for Underdeveloped Countries (1996) appropriately outlines the level of community participation available to informal settlements in the Cambodian context. However, the presence of a supportive government and the willingness of communities to participate in governance processes, both key elements in Choguill’s Ladder, are not typically available to the urban poor in Cambodia. Despite these absences, I believe that through a partnership with appropriate external actors, it is certainly possible for communities to achieve temporary land tenure security through participatory processes. Grounded solely on the community participation steps involved, I have established a logical six-part process that I consider can assist in achieving land tenure security for urban poor communities, once coupled with the associated technical and legal processes. I believe that this process can maximise community participation and lead to greater empowerment, based on my own experience in development work with a community committee in an informal settlement.

Based on this research it is possible for urban poor communities to achieve temporary land tenure security in Cambodia, through participatory processes. This thesis has argued that through utilising an
anthropological approach the method of gaining temporary land tenure security will be more holistic, and cognisant of important social relations within and surrounding the community. However I believe that further, detailed research is necessary to develop a comprehensive understanding of the processes and extent of community participation involved in achieving temporary land tenure security for the urban poor.
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