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SECTION 1. INTRODUCTION AND PRESENTATION

This research paper on collective and communal forms of tenure (CCFT) is a contribution to the Special Rapporteur on Adequate Housing’s overall study on security of tenure (2012-2014). It will assist the Rapporteur in the preparation of her reports for the 68th Session of the General Assembly and the Human Rights Council in March 2014. It builds primarily upon the following reports: The Right to Adequate Housing (A/67/286, 10/08/2012) and “Report on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context” (A/HRC/22/46, 24/12/2012). At the same time, it relates directly to § 99 (A/HRC/22/46) stating that “security of tenure should be clearly articulated and grounded in the international human rights framework and expressed in a variety of tenure forms.” (Rolnik 2012)

The paper covers the following tenure categories, considered in § 26 (A/HRC/22/46): (i) collective or communal ownership, including co-operatives (ownership is vested in the co-operative or group of which residents are co-owners); (ii) community land trust (a non-profit organisation develops and stewards affordable housing on behalf of a community) and (iii) customary ownership or use. (Rolnik 2012)

This paper focuses particularly on CCFT in urban and peri-urban areas from a range of industrialised and developing countries. In relation to customary ownership and use the report deals primarily with cases and systems in urbanised areas or cities, or with systems that might be of interest for urban areas.

Notions and concepts used in the report

According to the Office of the United Nations High Commissioner for Human Rights, the Right to Adequate Housing should be understood as the right to live somewhere in security, peace and dignity (OHCHR 2009). The Right contains a number of freedoms including:

- Protection against forced evictions and the arbitrary destruction of demolition of one’s home;
- The right to be free from arbitrary interference with one’s home. Privacy and family;
- The right to choose one’s residence, to determine where to live and to freedom of movement.

The right also contains a number of entitlements including:

- Security of tenure;
• Housing, land and property restitution;
• Equal and non-discriminatory access to adequate housing;
• Participation in housing-related decision-making at the national and community levels.

Adequate housing must also fulfil a number of conditions beyond simply providing shelter, these are:

• Security of tenure
• Availability of services, materials, facilities and infrastructure
• Affordability
• Habitability
• Accessibility
• Location
• Cultural Adequacy (OHCHR 2009)

Whilst the focus of this report is on security of tenure as a necessary condition of adequate housing, the authors attempt as far as possible to consider the contribution of communal and collective forms of tenure to the other conditions. Rather than being an exhaustive analysis of the cases and systems described below against the conditions listed above, this paper will draw out only the most salient examples of how CCFT is contributing to adequate housing beyond security of tenure.

Tenure and Security of Tenure

Definitions of land tenure are multiple and the one used here builds on Durand Lasserve and Payne (Payne and Durand-Lasserve 2013) that draws essentially on FAO and UN Habitat:

“According to FAO, land tenure “is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. (For convenience, “land” is used here to include other natural resources such as water and trees.) Land tenure is an institution, i.e., rules invented by societies to regulate behavior”. (FAO 2002)

The Global Land Tool Network at UN-Habitat defines land tenure as “the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land” (Global Land Tool Network 2012). A more detailed definition is provided in an earlier UN-Habitat report (2008:5) defines it as “the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land”. The difference made by Durand Lasserve and Payne between land tenure and property rights remains quite useful for reviewing collective and communal forms of tenure: “More basically… tenure relates to the means by which land is held and property rights relate to who can do what on a plot of land.” (Payne and Durand-Lasserve 2013)

Common Property, Common Property Regime and Communal Tenure

Common Property is “a formal or informal property regime that allocates a package of rights to a group. Such rights may include ownership, management, use, exclusion, access of a shared resources” (Hess and Ostrom 2006, Fuys, Mwangi et al. 2008).
The term ‘common property regime’ refers to a set of institutions, regulations and management practices subject to collective decision-making. In this sense, the term refers to the kind of tenure institutions that exist, not the resources themselves (Ostrom, Dietz et al. 2002).

Common property regimes are also distinct from communal tenure, which refers more broadly to community based tenure systems, in which some form of collective authority (e.g. an extended family, clan or other social grouping) holds allocation rights (Bruce 1999, Fuys, Mwangi et al. 2008). Resources under communal tenure may, in practice, be used and controlled individually or collectively (Otsuka and Place 2001). Within communal tenures, some portion of land and resources may be managed as common property.

Communal tenure “refers to a situation where a group holds secure and exclusive collective rights to own, manage and/or use land and natural resources, referred to as common pool resources, including agricultural lands, grazing lands, forests, trees, fisheries, wetlands or irrigation waters Communal tenure can be customary and age-old, its rules relying community decisions, or it can be newly designed for a specific purpose” (Anderson 2011).

Method and tools

This paper is the result of a desk review of existing information carried out over three months (April-June 2013). Around 250 publications, reports and unpublished notes were selected, reviewed and organised into CCFT systems by case study from all regions illustrated in the report. In order to fill the information gaps, update and complement data, an intense consultation and communication process was established with experts facilitating contacts and with around 20 experts in the field that provided invaluable information on 18 countries (Argentina, Brazil, Belgium, Cambodia, Canada, China, India, France, Kenya, Mexico, Namibia, Philippines, Sweden, Thailand, United Kingdom, United States, Uruguay and Zimbabwe). Their contribution is duly acknowledged. In addition fields visits, parallel to the desk review and not expected in the terms of reference were carried out in Chicago and Brussels on Community Land Trusts. The list of references cited at the end of this report refer only to those documents specifically cited in the report, rather than the entire literature review, the vast majority of which is available on request. The small number of footnotes throughout the document refer to a combination of unpublished and internal sources that are not otherwise included in the list of references.

Cases and systems were scrutinised in the following manner: The first and foremost issue analysed was the extent to which CCFT contribute to security and tenure. In parallel a multidimensional analysis was carried out considering the following: (i) legal aspects; (ii) institutional arrangements and governance, (iii) Social dimension with special emphasis on women (which are the social groups benefitting from CCFT), (v) Spatial implications and (vi) financial mechanisms. Information was in most cases partial and explains why some direct contacts were established. Once the information was organised, a second round of data processing consisted in identifying enabling and supportive urban planning & programs and policies that facilitates as well CCFT. Summary of results and cases are presented in Section 3.

Section 2 of this report outlines three primary cases of CCFT, selected for their scale, contribution to security of tenure and thorough documentation:

(i) Housing Cooperatives systems focused on Uruguay, Scandinavian and the Philippines models,
(ii) Community Land Trusts primarily from USA and the UK
(iii) Collective Land Tenure Agreements from Asian Coalition for Community Action – ACCA – Program

Section 3, ‘Lessons Learned’, draws on the wider literature review, in order to help make effective conclusions and recommendations on the promotion of security of tenure through CCFT that are presented in Section 4.

SECTION 2. CASES AND SYSTEMS AND THEIR CONTRIBUTION TO SECURITY OF TENURE

2.1. Housing Co-operative Systems

Distinction between Co-operative Housing and Housing Co-operative

Co-operative Housing is a system of shelter provision, addressing land tenure and housing issues amongst its members using co-operative principles. Co-operative housing also refers to building communities consisting of members of the co-operative. There are many instances of credit and multi-purpose co-operatives engaging in housing such as in the Philippines (NATCCO National 2004).

Whereas a Housing Cooperative is “a legal association formed for the purpose of providing housing to its members on a continuing basis. It is owned and controlled by its members…Housing co-operative is more than just housing or the physical aspect of the project but also the establishment and maintenance of a community based on sharing, participation and commitment to physical and community environment.” (NATCCO National 2004).

2.1.1. Mutual Aid Co-operatives: the Uruguayan Model

Mutual Aid Cooperatives promoted by the Uruguayan Federation of Mutual Aid Housing Cooperatives (FUCVAM), are normally built through a collective process involving the future occupiers; ownership is collective and indivisible. As Nahoum highlights in the reference book on the FUCVAM experience:

“A very high proportion of mutual aid co-operatives are “users” or “sole mortgage” co-ops which means that the ownership of the houses (and therefore the responsibility over the mortgage) is from the coop as a whole and not from each individual member”. (Nahoum 2008)

In addition Uruguayan legislation permits and recognises Savings and Loans Cooperatives (Ahorro Previo) through which people save instead of contributing labour to the building process. In the case of Ahorro Previo, eventual ownership is individual, similar to the condominium model in the USA. Ahorro Previo is more prevalent amongst lower-middle and middle income households.

By contrast, FUCVAM is far more successful amongst low and lower middle-income families in Uruguay and in a growing number of Latin American countries. Under the
FUCVAM model, families can get access to housing and to collective housing loans without having to save previously; the time they spend building the houses is considered to be down payment (15% of public bank mortgage)\(^1\), and the system allows for important savings that significantly increase the level of affordability (UN-HABITAT 1988). As a result, since 1965, around 600 FUCVAM co-operatives have been consolidated in Uruguay as a whole. Around 20 000 families representing 70 000 persons are living in the houses and apartments built through mutual aid. This is a significant number in a country of around 3.4 million inhabitants.

These cooperatives share the same common principles:
1) Solidarity – creating unity based on common responsibilities and community support to families;
2) Democratic participation – active involvement of families and democratic decision-making throughout the planning, design and implementation process;
3) Self-management – the cooperative allocates resources and directs all aspects of the project, without intermediaries;
4) Mutual aid – joint effort of every beneficiary family in the construction of all homes, each contributing ~21 hours of work per week; and
5) Collective ownership of property, providing security for families and avoiding speculation.

Each family enjoys usufruct rights (uso y goce) that can be inherited within the family ("ascendant, descendant, brothers, sisters") or "sold back" to the co-operative. In this instance, the member will receive an amount of money called social capital that will be described later.

2.1.2. Scandinavian Co-operative model

The influential Scandinavian Co-operative model, also known as the Mother-Daughter Co-operative model, was developed by HSB Riksföbund in Sweden. HSB was founded in 1923 to promote and advocate for co-operative housing with the aim of giving households control over their housing situation and provide good quality housing to large sections of society.

In this model, the ‘mother’ (also known as ‘parent’ or ‘secondary’) co-operative associations are responsible for building housing developments, which are then sold to ‘daughter’ (also known as ‘subsidiary’ or ‘primary’) co-operatives. The daughter co-operatives often purchase management and administration services from mother co-operatives which helps to preserve the organisational relationship, although they are not obligated to do so. Tenants are members of the mother and daughter co-operatives simultaneously. The model is also notable for combining housing and saving schemes within one organisation. Financial risk for members is limited to their daughter co-operative only (NATCCO National 2004, HSB 2012, HSB 2012).

In 2011, co-operative housing accounted for 22% of all housing in Sweden with around half built by HSB or Riksbyggen. The largest co-operative, HSB, has 550,000 members. HSB comprises 3882 Housing Co-operatives organised into 31 Regional Associations (Moreau and Pittini 2012).

Swedish co-operative organisations received significant state support after the Second World War, when the government declared that housing subsidies would apply equally to all forms of tenure, including co-operatives. Measures were also taken to prevent speculation on co-operative housing stocks and shares. Today, Swedish co-operatives primarily comprise middle class families in urban areas. The highly developed legal and institutional frameworks for this model that is presented in section 3 make it a very secure form of land tenure.

2.1.3. Philippines Housing Co-operatives

The Philippine government have initiated a number of programmes to facilitate secure tenure for low-income groups, particularly those in informal settlements, namely: the Group Land Acquisition and Development Programme, Land Tenure Assistance Programme, Community Land Acquisition Support Programme and Community Mortgage Programme (UN-HABITAT 2009). Each programme has a different mandate, however there is significant overlap and a number of common features. Beneficiaries must be organised into a community association, which is most often based upon a financial or multi-purpose co-operative. The co-operative must be legally registered for members to benefit from the land acquisition programmes (UN-HABITAT 2009). The principle advocate and supporting agency for co-operative tenure at national level is NATCCO, the National Confederation of Co-operatives.

Many co-operatives utilise a mother-daughter cooperative relationship, similar to the Scandinavian model detailed above. Whilst the legal framework for multi-purpose co-operatives is well defined, and housing cooperatives are mentioned explicitly in the Philippine Cooperative Code of 2008 (Republic Act No. 9520) it appears that existing legislation favours individual over collective tenure.

2. 2. Community Land Trusts (CLTs)

Statutory definitions vary from country to country, however the one proposed by the Building and Social Housing Foundation (BSHF) encapsulates its unique features:

“A community Land Trust is a not-for-profit community controlled organisation that owns, develops and manages local assets for the benefit of the local community. Its objective is to acquire land and property and hold it in trust for the benefit of a defined locality or community in perpetuity” (Diacon, Clarke et al. 2005).

CLTs have been expanding over the last fifty years, primarily in the USA where, according to the national network, close to 250 were active as of June 2013. Apart from the UK where they do exist in number as well, a limited number of cases have been or are being implemented in countries as diverse as Australia, Belgium (Brussels), Kenya (Voi) and Canada (Milton Park, Montréal). Recent marks of interest by a growing number of governments clearly indicate the interest generated by this system.

As described in ‘The CLT Reader’, CLTs are quite versatile and their basic features might vary from one case to the other (Davis 2010). However, in spite of these variations, a number of unique features usually differentiate them from other CCFT. Key features include:
Dissociation of land ownership and control from ownership and control of what is built on that land. This separation is crucial to capture what makes CLT unique. Normally, the CLT owns the land, holding it outside the market and leasing it to individual or to co-operatives for housing and non-housing uses that will be discussed below.

Leased land. “Although CLTs intend never to resell their land, they provide for the exclusive use of their land by the owners of any of the buildings located thereon. Parcels of land are conveyed to individual homeowner (or to the owners of other types of residential or commercial structures) through inheritable ground leases that typically run 99 years. This two party contract protects the latter’s interests in security, privacy, legacy, and equity, while enforcing the CLT’s interests in preserving the appropriate use, structural integrity and continuing affordability of any buildings located upon its land” (Davis 2010).

Tripartite Governance. Another typical feature of CLTs, at least in the USA, is that one third of the Board of Directors lease land from the Trust; one third are residents from the surrounding community but do not live on CLT leased properties and one third is made up of individuals who represent the “public interest”.

The purchase or rental prices are below market value (typically 20 to 65%, in the case of Highland Park CLT in Chicago), essentially because the leaseholder only pays for the home and not the land. In exchange, homeowners accept limitations when reselling their homes, usually a maximum 25 % profit of the original price paid. Various formulas exist for calculating the limitations. This innovative system “locks” the original subsidy in perpetuity and allowing other low to moderate-income households to access the same property.

Five cases will be briefly introduced to show the diversity of CLT

2.2.1. Letchworth Garden City, UK

(Short intro, 150 words or transfer from section 3 )

2.2.2. Burlington, USA

(Short intro, 150 words or transfer from section 3 )

2.2.3. Brussels, Belgium

This is the first and only CLT on mainland Europe, created in December 2012 through the Foundation Community Land Trust Brussels (CLTB). A first pilot project for nine households is under way integrating not only housing but also a communal space and a garden open to the neighbourhood. A long term lease (99 years) and a new legal framework, similar to USA’s, gives long term security of tenure to low income families in the city of Brussels where 28 % of the population lives below the poverty threshold.
2.2.4. Voi, Kenya

The first CLT in Africa was introduced as part of The Small Town development Project that started in 1988, with the support of GTZ. According to Rigon², ‘The model was coherent with African Customary land management and adapted to the contemporary Kenya legal context. This makes the case unique in terms of securing communal ownership system controlled by the people.’ The main thrust of the Voi CLT was to make land tenure for the targeted community sustainable and minimise negative effects of the land market on poor residents. The CLT gives local communities long-term control over the use, future allocation of land and their habitat³. As a result, by 2009, 565 houses had either been rehabilitated or newly constructed with long-term security of tenure. One of the limits of this CLT that hinders its replication in other interested communities was that tenants did not get any vote on the decisions and therefore their security of tenure could not be guaranteed (Bassett and Jacobs 1997, Bassett 2005, Bassett 2007).

2.2.5. Montreal, Canada, Communauté Milton Parc.

Communauté Milton Parc project was born in the late 1960s out of citizen mobilisation to protect residents from one of the oldest neighbourhood in Montreal from evictions and to obtain long term security of tenure. Land is held in trust and owned communally by 26 different co-operatives representing about 1000 residents (Communauté Milton Park 2013). Data indicates that long-term security of tenure has been guaranteed since then and housing remains affordable for low-income groups and significantly lower than in the rest of downtown Montreal.

2.2.6. CLTs and security of tenure

The following section is a summary from Thaden and Rosenberg, 2010 that presents the results a study conducted in 2010 by the Community Land Trust Network in the middle of the USA’s recent sub-prime mortgage and foreclosures crisis; in 2009, a total of 2.8 million properties had foreclosure filings. The primary purpose of the survey was to examine how many residential mortgages held by CLT homeowners (“CLT loans”) had been seriously delinquent, entered the foreclosure process, or were foreclosed, in other words, how many CLT homeowners had been evicted. Evidence gathered across 53 CLTs clearly indicates that the number of households in the foreclosure process is outstandingly lower than those who contracted prime or subprime loans. In 2009:

- Loans with over 90 days delinquency and therefore at risk to be foreclosed: 30.56% for subprime loans, 7.01% for prime loans compared with only 1.62% for CLT loans.

- Foreclosure process: 15.58 % for subprime loans, 3.31% for prime loans and only 0.56% for CLT loans (Thaden and Rosenberg 2010)²

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² Rigon, A. internal communication 2013
The study also explored the number of serious delinquencies that were resolved and that therefore gained back a secure tenure in the middle of the turmoil. Out of 57 cases identified in all CLTs, 29 were resolved (51%). These “cures” were provided through a set of mechanisms offered and/or facilitated by CLTs, which included financial counselling or referrals to foreclosure prevention programs, providing direct grants or loans to homeowners, or working with homeowners and lenders on permanent loan modifications.

Beyond foreclosure and eviction crisis mitigation, the extremely low rate of foreclosures in CLTs and outperformance of the markets might be explained through a set of preventive measures, primarily (i) pre-purchase education through training seminars that enables prospective buyers or renters to take well informed decisions and (ii) through pre-purchase stewardship provided by CLT trained lawyers and financial counsellors. CLT do not provide loans or financial mechanisms. However, they will work with future homeowners in order to advise them on their best choices in relation with their financial situation and will ensure that they are not taking on subprime mortgages. In other words they are playing a preventing role against the potential abuse of financialisation of housing.

2.3. ACHR’s Asian Coalition for Community Action

The Asian Coalition for Community Action (ACCA) was a programme for the Asian Coalition for Housing Rights (ACHR) implemented from 2009 to 2011. The programme set out to improve housing for the urban poor in over 150 cities across fifteen countries through a combination of large and small, community led development projects. Collective Land Tenure agreements were widely used to secure access to land for urban communities.

Over three years ACCA carried out 111 big housing projects at a total cost of almost $4 million. 8611 households directly benefitted from the projects and a total of 42,760 households got secure tenure either through collective or individual tenure agreements. Collective agreements were used in 36 out of the 111 big housing projects (32%) (Asian Coalition for Housing Rights 2012).

The ACCA programme combines housing projects with community finance and upgrading. ACCA employs a wide variety of tenure options, which vary according to country and context. These include provisional land titles, leasehold and collective tenure. Collective land tenure is particularly prevalent in Thailand, Cambodia and the Philippines. The programme aims to provide a high degree of security for a community in a form of tenure that is robust and congruent with existing legal and institutional frameworks. However there is great variation between ACCA country programmes regarding the length of secure tenure, ranging between 1 and 30 years.

A 2008 UN-HABITAT–UNESCAP report, Housing the Poor in Asian Cities, outlines some of the further benefits of collective land titles:

“[Collective ownership] provides a high degree of security. Gives poor households an important asset which may increase their access to credit. Encourages residents to invest in improving their housing and neighbourhoods. May increase revenues from property taxes. Minimises land and housing market distortions. Discourages further unauthorised development. Reduces administrative burdens. Increases social cohesion and community solidarity. Allows the community to share any windfall profits that a household may get from selling their house.” (UN-HABITAT and UNESCAP 2008)
2.3.1. Thailand

The 2010 Regulation on the Issuance of Community Land Title Deeds ensures that public land owners, such as the Treasury Department, the Crown Property Bureau and the State Railways of Thailand, will grant a 30 year renewable collective lease to a community co-operative or housing association. The lease gives the owners long-term secure access to public land, the community has the right to manage and derive profit from the land, however members of the community do not have rights of exchange.

2.3.2. Philippines

The Philippines has one of the oldest progressive housing policies. It is also one of the most convoluted. Collective tenure is often used as a ‘stepping-stone’ to individual tenure. E.g. Using a Homeowner’s association to secure collective title before transferring title to individual members. ACCA’s partners include: Homeless People’s Federation Philippines (HPFP), Foundation for the Development of the Urban Poor (FDUP), Urban Poor Associates (UPA), TAO Filipinas and Sentro sa Maayong Mag-balantay, Inc – SMMI. One Big housing project at Cortez, Bhohol secured access to land for 1369 households on what was formerly government land (Asian Coalition for Housing Rights 2012).

2.3.3. Cambodia

Two key partners, the national Community Savings Network of Cambodia (CSNC) and the Urban Poor Development Fund (UPDF), both of whom had extensive experience in urban housing development for the poor, implemented ACCA projects in Cambodia. The UPDF also worked closely with the National Committee for Development and Population (NCPD) and Provincial authorities. A number of Big Housing projects secured collective title on land given by the government; one project in Siem Riep secured tenure for 430 households. (Asian Coalition for Housing Rights 2012)

2.4. Overview of Other CCFT Systems

2.4.1. Ejidos, Mexico

To add 200 words or suppress

2.4.2. Collective Usucapião – adverse possession - Brazil

To add 200 words or suppress

2.4.3. Shareholders Cooperatives, China

To add 200 words or suppress
2.4.4. Maharashtra, Pune, India

One final innovative example of communal tenure comes from Pune, the second largest city in the State of Maharashtra, India. The Magar agricultural community faced with increasing loss of farmland to rapid urbanisation, pooled their 400-acres of farmland in order to collectively develop, manage and own a mixed-use township in the rapidly developing peri-urban area. The construction process began in 2000 managed by the purpose-formed Magarpatta Township Development and Construction Company (MTDCC), a private limited company. As the farmers had previously owned the land privately, shares in MTDCC were divided amongst the families by the simple method that one share was equal to one square metre of land contributed to the collective. The shares could only be traded amongst the member families and not on the open market. The development has led to a high degree of tenure security and livelihood diversification. About 70% of the member families are earning a minimum of Rs 40 lakh (approximately US $85 000) per year (Sami 2013). The success of this project has been attributed to uniquely strong leadership and the development of highly effective multi-stakeholder coalitions that have formed as a result of a political power and leadership vacuum in Pune (Ibid).

2.5. Conclusions on CCFT and Security of tenure

CCFT exist in multiple forms and evidence suggest that they increase security of tenure on land and housing. However the time spans involved vary considerably from one system to the other. Community Land Trust is probably the system that offers the longest and more robust security of tenure.

Despite limited information available and research and despite being quite absent from international agendas (with a notable exception of World Urban Forum, in Naples in 2012 when a networking session took place on CLTs), CCFT are expanding, in various traditional and innovative forms, which are based on a limited number of systems.

In addition to expansion, innovations are taking place and three promising directions can be identified:

The first refers to an expansion and adaptation through flexible regional programs: ACCA expanded across 15 Asian countries, with roughly one third of their big projects based on collective forms of tenure, decided upon by the communities themselves. In Latin America, the model of Mutual Aid Co-operatives has been introduced and adapted at least in 14 Latin American and Caribbean countries over the last 40 years, through different initiatives in which FUCVAM, the Uruguayan Federation of Mutual Aid Co-operatives has been playing an important role (Dambrauskas and Gonzalez 2008). The reproduction and expansion of FUCVAM model was carried out in a systematic way with a support grant from SCC, Swedish Cooperative Centre, in Brazil, Paraguay, Bolivia, Guatemala, El Salvador, Nicaragua and Honduras. More limited support, provided either by FUCVAM or through the SCC grant happened in Argentina, Chile, Peru, Haiti, Venezuela, Costa Rica and Cuba. Argentinean MOI, Renters and Occupiers Movement (Movimento de Ocupantes e Inquilinos) acknowledges the importance of FUCVAM model, primarily

for collective ownership and self-management\(^5\). However, MOI model was adapted to Argentinean conditions and would deserve consideration in further studies on CCFT, as suggested in recommendations. Mexico acknowledges as well FUCVAM legacy for the first mutual aid cooperatives introduced in the late 60s and early 70s (UN-HABITAT 1988). In summary not less than 15 Latin and Caribbean countries have reproduced and/or adapted FUCVAM model over the last 40 years.

Political looby in order to change public housing policies in each one the countries, as stressed by Gonzalez and Dambrauskas (Gonzalez and Dambrauskas 2007), is a central aspect of FUCVAM reproduction of its model, beyond mere implementation of projects. Therefore the influence of FUCVAM (Dambrauskas and Gonzalez 2008) on introducing collective land ownership was not limited to introducing cooperative projects, but in various countries these actions were stepping stones for new legal and policy frameworks for Cooperative housing: Nicaragua, Paraguay and Guatemala have voted laws that create a framework for Housing Cooperatives; El Salvador Parliament is currently [2013] debating a Law on Cooperatives; Honduras created a financing facility (PROVICCSOL) for cooperatives including mutual aid cooperatives (Avila 2013:8); In Brazil, “FUCVAM system”, called locally Mutirão, was institutionalised in São Paulo Municipality during Mrs. Erundina mandate [1997 – 2001, check] and is currently one of the components of the massive Housing Federal Program, My House, my Life, (Minha Casa Minha Vida).

A second direction are the Mutual Home Ownership Societies (MHOS) that were carefully designed to “leverage the advantages of three different models, all of which have been around for the last 40-100 years: community Land Trusts (United States), shared equity tenant co-operatives (Sweden) and the vision of Letchworth Garden City (England)” (Lewis and Conaty 2011). They could effectively become, as the authors claim, a “generative 21\(^{st}\) century mode of fair and sustainable housing” probably more appropriate for industrialised countries. Key features can be summarised as follow: (i) CLT for land, (ii) Shared Equity Tenant Co-operative drawing from the Swedish model [with a noticeable monthly rent representing 35% of income independently of the housing solution] and (iii) the mutual community benefit from a land society, as envisioned by Ebenezer Howard, still working well in Letchworth. It will be therefore interesting to assess the process and outcomes of the first MHOS recently completed and inhabited (see recommendations).

A third promising mixed system is being discussed\(^6\) with Chengdu authorities and Chinese Academy of Sciences to turn Chengdu adaptation of Shareholding Co-operative Systems, largely implemented in rural areas of some Chinese cities into CLT, Low carbon Garden Cities that embrace Howard’s principles and adapt them to the challenges of XXI century cities.

SECTION 3. LESSONS FROM THE CASES

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\(^6\) Cabannes, Y, Lewis, J and Ross, P. Unpublished Field notes, Chengdu and Beijing, 2012
3.1. Legal frameworks and policies aspects of Collective and communal forms of tenure

*Mutual Aid Cooperatives, Uruguay*

The original Cooperative Housing Law (number 13.728) was passed at the end of 1968, resulting from the strong mobilisation of movements, trade unions and political parties. It is actually a National Law on Housing that includes a chapter on housing Cooperatives (Chapter X). Prior to this, housing cooperatives were non-existent, and each co-operative sector was ruled by its own law. At a later stage, a “General Cooperative Law” was passed in 1992 and included in its chapter on housing cooperatives virtually the same articles as those from 1968. Currently the TOLVI document – in Spanish only - is the primary legal reference framework produced by the Executive Branch that compiles and orders all legal articles from the Housing Law related to housing cooperatives and that includes as well the few modifications and derogations that were introduced since 1968 (ley no. 13.728 nd).

However, consonant with the central conclusions of the current desk review on CCFT, the security of tenure tends to be guaranteed through the Statute of the Cooperatives and the contract between the user and the Cooperative rather than simply through a legal and institutional framework, as facilitating and beneficial as the framework can be. Therefore even if secure tenure is guaranteed through a multi-layer legal and contractual system: (i) Housing Policy; (ii) Law on Cooperatives, that not only gave a legal framework to mutual cooperatives and collective ownership, but at the same time, allowed them to become a collective (or wholesale) loan taker, (iii) Statute of the Cooperative and finally (iv) the right of use contract. Analysis suggests that security of tenure depends on the combination of these four elements, but the contractual aspect and the statute of the cooperative are essential to effectively protect a long term secure tenure.

In the case of FUCVAM, the contract (contrato de uso y goce nd) between the user and the cooperative stipulates (art. 2) that the term is unlimited (and this refers clearly to *long term* security of tenure). The same contract indicates (art.4) that the user will not only pay monthly his share of the collective mortgage, but will pay as well an additional value to feed the Cooperative Fund for the maintenance of common spaces and services, and for helping out (Socorro) those members that have not been able to pay their due (accident, loosing their jobs, death of bread winner, etc.). Art. 36.2.b reads: “*Helping fund: aimed at addressing members transitory difficulties that prevent them from meeting regularly their financial obligations to the Cooperative*. This solidarity mechanism impacts directly on security of tenure and is managed at cooperative level, and not through a national policy or legal framework. The contract refers back to the Coop Social Statute and its Internal rules to justify the monthly tax to the Fund.

The Statute of each one of the mutual aid coops (estatuto tipo nd) is a central institutional piece that explicitly lays the conditions for long term security of tenure: art 3. Indicates that the “*duration of the coop is unlimited*”, opening up the possibility of a long-term security of tenure. Its social objective is (art 4) to provide adequate and secure [*estable in Spanish*] housing to its members.

*Champlain Housing Trust, Burlington, Vermont*
Quite similarly to FUCVAM model, Champlain Housing Trust Inc. bylaws lay the foundation for long-term land and housing security of tenure. Art. B, Section 2 reads:

"The Corporation [CHT] shall also have the following purposes: A. To provide access to land and decent housing for low and moderate-income people; and B. To preserve the affordability of housing for low and moderate-income people in perpetuity" [emphasis by author].

However, and this is a significant difference with FUCVAM the term of the lease is 99 years (and not unlimited). Nonetheless, Article 3, *Duration of CHT lease* opens an extension possibility: "homeowners may extent the principal term of the lease for one additional period of 99 years".

In relation to ground lease fee, hence to the capacity of the homeowner to stay in place, article 5, stipulates: "in consideration of the possession, continued use and occupancy of the leased premises, homeowners shall pay to CHT a monthly ground lease fee of thirty five dollars". This very low value for having the right to secure tenure, and that can vary from one CLT to another one, is a contractual element and not part of a policy or regulatory framework. Again it strongly suggests the importance of both by-laws and contracts for CCFTs.

**Uganda**

It is beyond the scope of this Paper to exhaustively assess the various forms of customary communal tenure prevalent throughout Sub-Saharan Africa, however it is important to note that there are numerous examples of well-developed legal frameworks that aim to protect communal customary rights, such as the case of Uganda. Uganda’s National Constitution (1995) and Land Act (1998) specify four types of land tenure: Customary Land Tenure, Freehold, Leasehold and Mailo Land Tenure. Land not belonging to one of these categories was defined as Public Land, administered by the Uganda Land Commission.

Broadly there are two forms of Customary Land Tenure: Communal Customary Tenure and Individual/Family/Clan Tenure. Communal Customary Tenure is particularly associated with pastoral communities in Northern and Eastern Uganda. Customary Tenants of all types are known as Kibanja.

Since 1995, the Uganda Land Board grants certificates of Customary Tenure, subject to the approval of a local Land Committee. Certificates may be granted to individuals, families or communities. Owners of this certificate may lease the land or part of it, permit usufruct rights, subdivide or sell the land. The holder of the certificate also has the rights to transfer and dispose land uses. Customary ownership may also be converted to Freehold.

Within both forms of Customary Tenure, the rights to own, use and control land are derived from being a member of a given community. Decisions regarding the use and management of the land are made in accordance with the wishes of the community.

Communal Land Tenure is particularly associated with gardens, pastures and grazing areas. User rights are often guaranteed for activities such as farming and firewood gathering. The land may be subdivided into further discrete parcels, which may be controlled by individuals, families or institutions in perpetuity. The focus of this form of tenure is rights of use rather than rights of exchange.

7 Champlain Housing Trust Inc. bylaws, adopted October 1, 2006, amended January 26, 2008 and January 31, 2009. 22 pages. CHT is Burlington CLT.
The 1998 Land Act also specifies the creation of Communal Land Associations. Associations can be formed by any group of people for the purposes of communal ownership and management of land within any form of land tenure. The group will often agree on a constitution and a responsible management structure.

A Communal Land Association may parcel land for communal ownership. Areas set aside for common use are managed through a Common Land Management Scheme. The Scheme is set up by the Association and agreed with the community that it represents (Busingye 2002).

The most important pieces of legislation governing housing co-operatives in Sweden are the 1991 Cooperative Housing Act, the 1987 Cooperative Societies Act and the Tenant-Ownership Act, created in 1930, revised in 1971 and 1991. The Tenant-Ownership Act broadly lays out the duties and obligations of the co-operative and its members, and defines the legal status of both the associations and the tenant-owners. Whilst these laws govern overarching legal aspects of tenant-owner co-operatives, such as HSB and Riksbyggen, the more tangible rules of the co-operatives are by-laws and regulations passed by the association with majority approval.

3.2. Institutional arrangements and governance

This section deals with issues such as “Who owns and controls the land” and “how is it is managed”. In more general terms it examines the institutional and governance dimensions of CCFT. The Scandinavian model and Community Land Trusts from Canada, USA and UK will illustrate how this dimension of the model works.

3.2.1. Community Land Trusts

*Letchworth Garden City Heritage Foundation, UK*

Letchworth Garden City (LGC) Heritage Foundation was established as a Charitable Industrial and Provident Society. Various other organisational structures preceded the current one. The first objective of the Foundation is to “pro-actively manage assets and income”. When the city was founded, all land was held in trust. However, during the 1970s part of the land of the trust was lost, as a national law allowed people to buy their houses and shift from leaseholders of the Trust to individual Freeholders. Despite this loss of housing plots, most of the city is still held in trust and its assets were estimated to be around £110 million in 2012. The foundation “explores all opportunities to optimise the commercial returns from their asset in order to maximise funding available to support their charitable commitments” (Letchworth Garden City Heritage Foundation 2010).

In 2012, the annual income from the Foundation of just over £8 million (around $US 12.4 million), essentially originated from renting of properties: offices, shops, industrial premises and a limited number of houses that were not privatised. Other sources of income include IT Services, the Educational Farm Company, a cinema and venues. This mix of resources makes the Foundation quite a unique form of CLT.

From this annual income, around £4 million (around US $ 6.2 million) are spent on the community through an array of charitable activities including: small grants, a Day Hospital, transport services, a Tourist Information Centre, Museum, Heritage Management and landscape management. In other words, for a city of around 30,000 inhabitants, a significant figure of US $ 200 is spent per inhabitant each year.
A sector breakdown of community spending indicates that the largest expenditure is on recreation and leisure (£1.6 million), followed by environment and heritage (£800K), Health and wellbeing (£560K), education and learning including study grants (£520K), charities (£240K) and charitable activities (£280K).

The Heritage Foundation employs 145 people (including 100 full-time staff) led by an Executive team comprising CEO, Directors of Property, Finance and Communications. They are accountable to a Board of Governors composed of 30 people: 10 nominated members (appointed by registered LGC Clubs and 2 are from the County and District Councils), plus 6 elected every five years by LGC registered voters and 14 are appointed by the Management Board (nine persons elected by the Board of Governors) for their relevant experience in areas pertinent to the Foundation. As it is the Board of Governors reflects partially the various communities and social groups living in Letchworth.

Champlain Housing Trust (Burlington, Vermont, USA)

Champlain Housing Trust (CHT) manages a diverse portfolio composed of around 500 individual properties, about 1500 rentals apartments and close to 100 apartments organised into five co-operatives, as well as 11 000 square meters of commercial spaces, offices and small retail shops. In addition CHT is the owner of the land beneath these properties. Its assets grew steadily from US $ 200 000 in 1984, when the municipality of Burlington gave its first subsidy to the newly created Trust, to US $ 53 million in 2011. On the same date, the approximate value of land and rental property under CHT stewardship was valued at US $ 246 million (Champlain Housing Trust 2011). Seventy staff (60 full time and 10 part time) manage CHT activities and a large array of volunteers (150 in 2011) bring additional support. They are accountable to a board composed of 15 members structured along the 'classic' Community Land Trust tripartite model: five are residents elected by residents at the annual meeting; five are general members elected by the full membership and five are public representatives, four of which being from local governments that are nominated by the board and elected by the full membership.

Syndicat de la Co-propriété de la Communauté Milton Parc, Montréal, Canada.

The land is held in trust by 26 co-operatives, and therefore differs from Letchworth Heritage Foundation where no co-operatives are holding or renting properties and differs from Champlain Housing Trust where very few properties are held by co-operatives. From a legal point of view the trust is held by a Co-owner Union – Syndicat de co-propriété. CMP’s democratic functioning is governed by a declaration of Co-ownership signed by the 26 housing co-operatives and non-profit housing corporations, with the purpose of ensuring the long term existence of the Milton Park Project as a “Land Trust”. Every year, a Board of Directors is elected by the General Assembly, which comprises one representative of each of the co-owners (Communauté Milton Park 2013). CMP differs drastically from both CHT and Letchworth as far as management is concerned: only one part-time employee and approximately 50 volunteers give their time and efforts on a regular basis to ensure the management of common resources.

Community Partners for Affordable Housing, Highland Park CLT, Illinois

The final two cases illustrate the versatility of institutional arrangements and governance model that can be utilised under the CLT system. Both cases are located in Metropolitan Chicago.
Community Partners for Affordable Housing (CPAH) is a non-profit organisation under US regulation that creates public-private partnerships to preserve, maintain and develop affordable housing solutions. It manages the first community land trust program in Illinois, created 10 years ago. CPAH remains relatively small with a portfolio of 44 homes, a limited number in a city of approximately 30 000 inhabitants and 10 000 households; 20 of these houses are new of which four are rented, 24 were rehabilitated, of which two are rented. This CLT complies with Illinois Housing Planning and Appeal Act, primarily by offering affordable solutions for families below median local income. Accumulated assets exceeded US $ 6 million in 2011, most of it (US $ 3.5 million) being land.

Its governance model is representative of a large number of CLTs. Staff is limited to two people, one executive director and a community relations officer, accountable to CPAH Board of Directors composed of 13 members, the majority being women and composed along the same tripartite model as in Burlington. A strong and wide ranging advisory Board and a large numbers of supporters for a relatively small city and a small CLT complement the governance model.

Chicago Community Land Trust (CCLT)

CCLT is an initiative of the City of Chicago, located within its Department of Housing and Economic Development and therefore an innovative (and relatively rare) top down CLT, in contrast to the vast majority that are community led. It was created in 2006, and in 2009, the City of Chicago and the CCLT executed a Grant and Services Agreement, in order to assist the CLT in preserving the long term affordability of housing units created through public subsidies.8

Members of the Board (14 to 18 people) are appointed by the Mayor of Chicago and include notable housing developers. So far no homeowners are part of the Board. However, the CCLT ordinance stipulates that when it reaches 200 families, homeowners will have to be part of the Board. So far, 67 affordable homes have been provided, 12 of which are rented. This case differs from most CLTs as it owns no land but essentially provides affordable housing, most of them being part of a large development (714 apartments) and falling under the inclusionary zoning ordinance (2007) stating that 10 % of homes should be affordable for families below median income.

3.2.2 Scandinavian Model and Sweden

The model is legislated by the Co-operative Housing Act and the Co-operative Societies Act.

Tenants-owners are simultaneously members of both their Housing Co-operative and Regional Association. Regional Associations are represented at the HSB National Federation by a total of 171 elected delegates each with varying number of votes according to the total membership of their respective Regional Association. At the annual National Federation General Assembly, Regional Association representatives draw up guidelines on the future of the organisation and ways to promote co-operative members’ interests nationally.

A series of by-laws dictate the responsibilities of the tenant and the co-operative regarding the maintenance and improvement of properties. Tenants pay a monthly

service charge, which covers the cost of maintenance and repairs as well as interest paid on the Regional Association's loans.

Decisions regarding the tenant-owner associations are made at general meetings headed by an elected Board. These are usually held annually. Decisions are made if a motion passes with a simple majority (over 50%) of member votes, with the exception of the passing of by-laws, which requires a two-thirds majority. A governing body with a strict purview is appointed at each general meeting to oversee decision making until the next meeting. Tenant-owners may be evicted by the Board, referred to as Forfeiture of the Right of Utilisation, only in a limited number of circumstances, such as in the case of anti-social or illegal activities or if using the property for purposes other than intended, i.e. residence.

Homeowners will typically fund 75-80% of the cost of a housing development, while the rest is covered by a loan taken by the daughter co-operative. Typically, all tenants must be members of the co-operative with the exception of sublets approved by the Co-operative Board. Subletting is permitted in certain instances, such as lengthy hospitalisation of the member-resident. If permission to sublet is denied by the Association Board, members may appeal to the Local Rent Tribunal, which is governed by national law and is independent of the Housing Association.

3.3. Supportive housing policies, programs and tools

Understanding Community Land Trust expansion and successes requires on the one hand an analysis of the evolution in Affordable Housing Policies at Federal, State and Local levels and, on the other the evolution of the relations between CLT and the public sphere. John Emmeus Davis and Rick Jacobus (Davis 2010) underline that:

- “Over the past decade, the relationship between municipalities and Community Land Trusts has shifted from adversarial to collaborative as the two have joined in partnerships to achieve their common goals”. This evolution needs to be placed within a longer period of time, that starts with the emergence of the first CLT in the country. They are summarised in the table below (ibid: 536) [need to ask John for reproduction of this table]

INSERT TABLE

Some of the trends identified in the study at State and Local Housing Policy levels are of particular interest for securing long-term tenure and will be briefly exemplified. In a nutshell, the combination of State and Local legal and policy instruments are one of the keys for CLT development and for long-term security of tenure.

- “Wider Commitment to preserving the affordability of owner-occupied housing created through the investment of public funds or the exercise of public powers.” (Davis 2010:536)
  - See Vermont Housing and Conservation Trust Fund Act (Vermont Housing and Conservation Board 1987)

- “Expanded use of regulatory mandates such as inclusionary zoning and growth management controls that require developers to produce affordable housing”.
  - See Burlington, Vermont Inclusionary Zoning Ordinance (Burlington Community and Economic Development Office 1990) that was
instrumental for the expansion Champlain Housing Trust and pioneered City–CLT Partnerships.

- “Creation of state and local housing trust funds, capitalized through non federal funding sources”.
  - See Highland Park City based Housing Trust Fund (described below)

**Vermont Housing and Conservation Trust Fund Act (1987)**

This State level Act stipulated, “housing that is subsidized by the State of Vermont must be permanently affordable to lower income Vermonters (Libby 2009). It introduced at the same time subsidy retentions through resale-restrictions that became part of Vermont CLTs Leases.

**Burlington’s Inclusionary Zoning Ordinance**

Burlington, Vermont pioneered innovations in inclusionary zoning program that:

“Applies to all new market-rate developments of 5 or more homes and to any converted non-residential structures that result in at least 10 homes. The affordable housing set aside is 15 to 25% of the units, depending on the average price of the market-rate homes – with the higher percentage placed on the most expensive developments. The ordinance does not allow fee in-lieu payments or land donations, but will allow developers to provide the affordable housing off-site at 125% of the on-site obligation. The ordinance provides a range of incentives including fee waivers and a 15-25% density and lot coverage bonus. Affordable homes are targeted to households earning 75% or less area median income (AMI) and rented at 65% or less AMI. Developers can sale or rent the homes for more as long as the average of affordable homes sold or rented are at or below the target household income. Affordable homes are price controlled for 99 years.” (Burlington Community and Economic Development Office nd)

Inclusionary zoning ordinances either at local or State level have played a major role for CLT development as in various cases, such as Burlington Champlain Housing Trust, CLTs are developing the “affordable share” of a development that private companies have limited interest and capacity to do. CLTs in such a case act as real estate “social” developers. The long-term perspective of affordable homes over 99 years, will facilitate the subsequent contract that the CLT will sign with the homeowners.

**Highland Park City based Housing Trust Fund**

Highland Park City, Illinois, illustrates one of the financial mechanisms that make CLT possible, allowing them to access public subsidies for acquiring land and properties. The origin of the resources of the Trust, established through a city ordinance, can be from the city budget itself, but in this particular case it was primarily depending upon the following sources:

- In case a developer does not want to include affordable housing in his development and respect the inclusionary zoning regulation he should pay to the fund $ 125 000 for each missed units. For a development of 100 houses, as 25 of them have to be affordable (half of them for people below 80 % of
median income, and the other half for families between 80 and 120 % of median income), the developer should pay $25 \times 125,000 = 3,125$ millions to the Fund.

- A second source are the *tear down* taxes that a developer needs to pay for every unit he will tear down for making a new development. This tax of a value of US $10,000 per unit torn down is a disincentive for developers to destroy the existing heritage in name of new developments, and at the same time the price of their freedom to develop.

The City Housing Commission oversees the Housing Trust Fund and Community Partners for Affordable Housing, CPAH, local CLT applies for grants to carry out its own affordable housing activities and allow people below 120 % of median income to get secure tenure.

In summary, Affordability Housing Acts + Inclusionary zoning and Housing Trust Funds accessible by CLTs are among the legal and policy instruments for CLTs capacities to provide security of tenure to their members.

**ACCA**

One of the reasons for ACCA’s success implementing collective forms of land tenure was the successful precedent set by existing urban development organisations and governments. In Thailand, the Community Organisation Development Initiative (CODI), part of the Thai government had successfully used collective land agreements for urban slum dwellers throughout Thailand, particularly through it's Baan Makong Programme, literally, *secure housing*. By Jan 2011, CODI had worked with 92458 households in Thailand, 44% of households had co-operative land ownership and 39% had a long-term lease on community co-operative land (Community Organizations Development Institute 2008).

Similarly in Cambodia there were well-established mechanisms for improving housing and security of tenure for the urban poor including city development funds, community savings initiatives and government collaboration. Cambodia also has a well-developed system of commons regimes in rural areas, however, to date the mechanisms relating to indigenous communities and natural resource governance are not employed in urban areas.

**3.4. Social Dimension: Which are the social groups benefitting from CCFT?**

The cases examined clearly indicate that CCFT is largely increasing land and housing security, primarily of middle class, the poor and the most vulnerable:

- Community Land Trusts in the USA greatest contribution is offering affordable and accessible housing solutions for lower middle and lower income households - commonly between 30% to 80% below median income (Greenstein and Sungu-Eryilmaz 2007:10). However they have not been able, except in rare occasions, to reach the poorest 15% of the population (bottom 30% of median income). Importantly, affordability is largely maintained in case of resale as demonstrated by Davis and Stokes for Burlington, Vermont, CLT. One of the conclusion of the study is that “The
average income of the households purchasing … on resale was 67.8% of Area Median Income” (Davis and Stokes 2009:39).

- Voi CLT in Kenya specifically benefits vulnerable groups: “What is unusual about particular land trust is that low-income families, female-headed households, and the elderly are given preferential access to the land. In addition, when the parcels and buildings on the land are registered, they are recorded in the names of both wife and husband”

- ACCA collective tenure forms are reaching families living in poor settlements of Asian cities. The programme specifically targets those living in informal settlements in urban and peri-urban areas. Progress is measured in households.

- The first Brazilian collective adverse possession (collective usucapião) are clearly benefitting the most vulnerable. [might be expanded or suppressed]

- Shareholding co-operative systems in cities such as Chengdu, in Zheijing Province or in Changping District in Beijing are explicitly a way for villages residents to increase their security of tenure and increase their income in order to reduce the unacceptable income gap that exists between urban and rural population in and around cities.

- Communal forms of tenure are primarily concerning indigenous and rural people living in small and remote settlements, who are among the poorest in most countries and at the same time a target for the new Sustainable Development Goals, in relation to poverty eradication.

Gender dimension. CCFT and the Right of women.

Community Land Trusts

A 2012 survey by Thaden explored the characteristics of beneficiary households across 62 CLTs in the USA, that represent quite a significant sample of the 229 CLTs registered in the National Community Land Trust Network data base. One key finding was that out of 3139 purchasers, 21% were single mothers (Thaden 2012), far above the national average of 3.5% in 2009. It therefore appears that CLTs are serving single mothers to a far greater extent than the rest of the market.

Uruguayan Mutual Aid Cooperatives

Art. 148 of TOLVI specifies that man and woman enjoys the same rights, and it is up to the family to decide who will be the legal owner. Historically men became legal owners, as no affirmative actions were taken to counter balance a male dominated society.

However, the Mutual Aid Cooperative Statute stipulates (art.24) that in case of divorce, the right of use of the house remains with who gets the custody of the children, generally the woman. She will therefore retain the security of tenure gained previously: this is quite a significant step for women in Latin America – in case they have the custody of children – and this is an issue that could be discussed further. Women’s role and power in FUCVAM has been gradually growing and explains changes taking place (Ramirez 2008): in the mid 90s the first Women commission was established, and in 2000, the first FUCVAM National Assembly of women

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gathered representatives from over 60 cooperatives. As a result a commission on gender equity was established aiming at changes as far as individual and collective rights are concerned. The Commission presented a law proposal (2003) for women’s headed household with no resources.

**Shared tenure options for women**

A global overview of shared tenure options for women brings some light upon the various forms of joint and shared tenure such as customary communal tenure, family tenure, or co-operatives. The report concludes:

> “While formal law that recognises women’s rights to land and property is fundamentally necessary to ensure that women are not disenfranchised, formal legal rights are mostly ineffective if customary law does not recognize equitable property rights for men and women. That is to say, while it is necessary that formal law requires equity in property relations, it is not sufficient and is often only a first step. Because of these cultural norms and practices, some legislative and social changes may be more readily accepted than others by both men and women, and part of an effective process is to talk to women to understand what legal rights are most valuable to them.” (UN-HABITAT 2006)

### 3.5. Spatial implications

The desk review clearly indicates that Communal and Collective forms of tenure occur in human settlements of all size and kinds: from remote villages and small or intermediate cities (Burlington, Vermont; Letchworth, UK; Voi, Kenya), to capital cities (Montevideo), Districts of megalopolis (Changping district in Beijing), large Metropolitan regions (Chicago) and megacities such as Mexico Federal District (Palo Alto Co-operative) or Chengdu (China).

CCFT not only take place in human settlements of all kinds and sizes, but are found from inner city rehabilitated tenements (Montevideo), derelict neighbourhoods (Burlington North), in municipalities at the periphery of large cities (collective usucapião in Olinda, at the periphery of Recife, one of the major Brazilian cities; villages around metropolis such as in Chengdu (at least 14 millions inhabitants) that tend to be absorbed and bulldozed by the rapid expansion of urbanisation or Highland Park outside Chicago. They have allowed people to stay in place in neighbourhoods under pressure of expansion of cities and market forces. In many cases, because of CCFT, co-operatives and CLT are today located in prime land: this is the case of Palo Alto Co-operative, once a quarry outside Mexico, and today nested in one of the most expensive area of the city.

This variety of situations both in terms of human settlements size and location within or at the fringe of cities offers a wide realm of knowledge for future expansion and scaling up.

### 3.5. Financial mechanisms

*Swedish Co-operatives*
Swedish Co-operatives were part of a national post-war drive to provide affordable housing, however since the early 1990s, the focus has shifted towards providing ‘value for money’; this is indicative of a broader national shift towards a market-oriented approach to housing.

There are also a number of financial mechanisms in place to protect co-operative members, such as HSB’s Security Guarantee, where the mother co-operative takes financial responsibility for any unsold properties for the first seven years after the formation of the daughter co-operative. HSB also provides a number of savings scheme options for young and low-income buyers. Co-operative homeowners also benefit from a 30% tax reduction on interest expenditures on either co-operative shares or properties.

**ACCA**

ACCA began with a modest budget of $7 million that was given in purposefully small grants to community led development projects across East Asia. The largest sum available for a big housing project was $40,000. The small budgets encouraged communities to think economically and derive cost-effective developments; the communities had complete authority over the way that the money was spent. In many instances, communities used the ACCA grants to leverage larger loans from governmental or private sources and also contributed savings from existing savings co-operatives. It is not possible to isolate precisely the impact of ACCA’s financial mechanisms on security of tenure, firstly because of the great diversity of community-led projects, which vary considerably from city to city, and secondly because the money was spent on improving housing in a broad sense, by improving habitability, access to services and infrastructure.

**3.7. Limits and challenges of CCFT and ways to address them**

*Mutual aid co-operatives Uruguay: Risk of gentrification. How FUCVAM is facing it*

In order to assess the risk of gentrification in Uruguayan Cooperatives, one needs to capture the notion of social capital in use that corresponds to the amount of money that the Co-operative will give to a member in case he leaves the Co-operative. This issue is quite a crucial one in CCFT as it addresses the question of what is a fair compensation in case of departure, and can be an incentive for leaving a cooperative or a disincentive. This impacts upon long term security of tenure, and at the same time is a possible source of conflicts between the user and the cooperative. Once again, FUCVAM model seems to work well and social capital in mutual aid co-operative equals:

- The value of the number of hours worked during the construction,
- Plus the value of social charges –that were not paid -, in other words, the value that should have been paid if the work would have been done by a contracted worker,
- Plus the repaid amount of the loan, if any.
- And the value of the interests paid on the loan. The new Cooperative Law
leaves up to each Cooperative the inclusion or not of the interests paid over the loan within the Social capital. According to FUCVAM President, Benjamin Nahum, this new rule is a “serious mistake”\textsuperscript{10}, as it generates a possible source of conflicts.

FUCVAM model, with more than 40 years experience allows examining what might happen in the long run. It seems that the current model bears a risk of gentrification as highlighted by Sablon (2009):

- On the one hand, the co-op member who leaves does not receive his social capital from his co-operative at once: 50 % in less than one year, and the remaining 50 % in less than 3 years later (article 23. Mutual Aid Cooperative Statute), what entails that he or she cannot use his social capital to secure another housing solution.
- The new comer, selected by the Co-op needs to bring upfront over quite a short period of time what the one who left accumulated through a long period of time. He or she will need income and savings much higher than the one who leaves. Sociological changes are observed through time. FUCVAM proposes that loans should be offered to newcomers – who de facto will not have to spend hours building their house -. Such a proposal is being currently analysed by the government.

Slum/Shack Dwellers International (SDI) uses a variety of legal and institutional frameworks and financial mechanisms to improve security of tenure for the poorest urban dwellers across South Asia and Sub-Saharan Africa. SDI works with a range of partner organisations, such as the Zimbabwe Homeless People’s Federation and the Namibia Housing Action Group, fostering collective action, community and group savings schemes to leverage secure tenure for poor urban communities. A number of recent pieces of legislation, such as the Namibian Flexible Land Bill, specifically aid this practice. In the majority of instances, once land is being secured collectively and through collective engagement the tenants might opt for individual freehold. As these processes are underway, it might be interesting to assess whether social cohesion is sufficient to maintain the security of tenure, or if the individualisation of titles is reducing, in these specific cases, the long-term security of tenure for poor families.

\textit{Privatisation of the co-operatives and the commons}

Over the past twenty-thirty years, housing policies throughout Europe have seen increased privatisation, ‘marketisation’ and a decrease in housing subsidies. Whilst these trends are not necessarily linked they are closely correlated. In Sweden in the 1970s it became possible to trade co-operative shares on the open market and in the 1990s, housing subsidies were abolished altogether. Swedish co-operatives now resemble the Finnish system of housing company owner occupation (which itself resembles the USA system of condominiums). Within both systems, tenants are arguably less secure by virtue of being potentially exposed to speculative market forces.

- Difficulties to transfer beyond systems legal frameworks, based on freehold / leasehold separation. Current proposals for transferring CLT practices to the activities of the “Etablissement Public Foncier d’Île de France”. As for Brussels, this transfer is complex because of current legal framework. (2012/ 2013)

\textsuperscript{10} Correspondence with author, June 3, 2013
SECTION 4. FUTURE CHALLENGES AND RECOMMENDATIONS

1. Recognising the balance between state support and space for community and collective self determination

With very few exceptions, this research has found that security of tenure is primarily provided by private contracts and community institutions bylaws and not only through state policies and regulation. Whilst a supportive legal framework and institutional structure is necessary in order to achieve security of tenure through communal and collective means, this desk review has found that in the vast majority of cases, secure tenure results from a sophisticated combination of efforts and instruments from the public (municipal, state, national policies and ordinances), private (contracts) and community/collective spheres (institutional bylaws). The cases of CLTs, ACCA and FUVCAM in particular emphasise the capacity of communal and collective organisations to tailor efficient solutions within a public facilitating framework. This flexibility of solutions, coming from cooperatives, users groups, CLTs and shareholders cooperatives needs to be preserved and is an essential asset for promoting security of tenure for those most in need of it.

One central recommendation to Central, State and Local Governments is to generate an enabling and facilitating framework through (i) legal frameworks that allow cooperative, collective and communal ownership of land and housing in urban areas Housing Policies, (ii) supporting housing policy and financial mechanisms, primarily opening subsidy and/or credits to collective institutions and (iii) generating instruments such as land sharing, affordable housing mechanisms, inclusionary zoning, local trust funds.

2. Areas identified for significant further research and limitations on available data identified

One the one hand, the desk review indicates that some CCFT do contribute to long-term security of tenure. However, on the other hand, the evidence is limited to a reduced number of systems. Most of the information is either partial or accessible in local languages only. In addition evidence beyond the ones gathered in the current report are limited. It is therefore strongly suggested to carry out more in-depth analysis including some fieldwork visits to gather enough sound and reliable information upon CCFT in cities. Such a work could be a decisive input for the March 2014 Special Rapporteur Guidelines. Here are some of the specific research areas identified:

There is a significant lack of data on the long-term outcomes of the cases and systems outlined above. This is partly due to the fact that many have been created within the past two decades and so it is too soon to evaluative their long-term impact. It is also partly due to the lack of systematic surveys into this issue, with the majority of conclusions regarding their value coming expert opinions rather than substantiated fact.

There is a significant lack of research into how CCFTs have performed against other types of tenure within the same market.
As mentioned in the paper, there are a number of initiatives, such as the work of SDI, which utilise collective bargaining to buy land ‘wholesale’ in order to secure tenure for primarily low-income urban groups, before distributing it in individual parcels. To date, there has been no specific research into how this use of collective title differs from the cases and systems outlined above in its capacity to provide long-term security of tenure.

One limitation encountered in this desk review was that the majority of the private and community contracts and bylaws in developing countries were only available in their original language and so, despite the valuable assistance of a number of experts, and reliance upon second hand reports and a number of old or partial translations of legal documents, this review was unable to assess the legal and institutional level mechanisms used to secure tenure.

3. Study on the contribution of CCFT to the Right to adequate housing, beyond secure tenure.

CCFT increases secure tenure for land and housing. However, its contribution goes far beyond securing land for the poor and with least secure tenure as it contributes to the other dimensions enshrined in the Right to adequate housing: Swedish Cooperative system definitely provide habitability (good housing conditions) and Affordability. One key contribution of ACCA collective tenure forms is the availability of services and CLTs have as prime objectives accessibility of low income and moderate income families to affordable housing. In addition most of the systems are in a proper location with access to schools, hospitals, day nurseries and transport.

It is therefore important to establish with much more accuracy CCFT’s actual contribution to the realisation of the other aspects of the right to adequate housing: affordability, accessibility, availability of services, location, habitability and cultural adequacy. An additional global study, not limited to a desk review and highlighting the extent to which CCFT contribute to the Right to adequate housing is needed.

4. CCFT beyond Housing.

CCFT not only contributes positively to the right to housing, but even more importantly to the " right to an adequate standard of living" and “today millions of households rely on common property for their livelihoods and securing access rights is one of today’s biggest challenges facing poverty reduction is rural areas” (Fuys, Mwangi et al. 2008). Some of the CCFT analysed are definitely contributing to improve security of tenure for housing. However, this contribution does not end up in housing, but embraces key aspects of sustainable and just development, such as securing livelihoods of the poor and the under-privileged, increasing significantly food security and food sovereignty or reducing the carbon footprint of villages, cities and towns, while improving their environment.

A recent study on non-housing CLT, primarily urban agriculture and commercial developments (Rosenberg and Yuen 2012)\(^\text{11}\) found that for urban agriculture, CLTs

\(^{11}\) Based on a web-based survey sent in 2012 to 224 CLTs organizations in the USA Community Land Trust Network’s. Fifty-six responded, of those 37 reported some form of urban or rural agriculture activities. Out of these 37, 13 were selected for an in depth data collection. Rosenberg, G. and J. Yuen
have allowed for “Securing access to land through a variety of land tenure arrangements including fee simple ownership, ground leases, deed restrictions and easements” (ibid: abstract). Interestingly the study concludes that to expand into non-residential roles “CLT should focus on the management of land-based resources, rather than solely on the ownership of land”.

In addition, common property regimes and Customary Land are not limited to land in remote forests or rural areas, but are found on the fringes of cities and are being absorbed by the expansion of cities, resulting in the dispossession of massive numbers of poor villagers and land users. Shareholders cooperatives recently introduced in China are an interesting communal tenure system that might avoid the dispossession of the livelihoods basis of hundreds of millions of people.

It is therefore recommended to expand the scope of the current study on CCFT beyond the limitative definition of “land for housing”, and expand to non-housing CCFT, mixed housing / non-housing ones, land for growing food or other activities through which people make their livelihoods. Available information suggests that engaging beyond housing would be a key strategy to broaden the households assets, improve their livelihoods, make them more resistant to external economic shocks and therefore increase their capacity to stay in place and reach a long term secure tenure. A task force spearheaded by various special rapporteurs, primarily on adequate housing and on food security, on the right of indigenous people (for whom community rights are a the center of their survival) or on water could certainly be associated.

5. Support and scale up CCFT

So far CCFT under their multiple forms remain generally on a limited scale, primarily in relation to the scale of forced and market driven evictions or to the millions of families living under unsecured tenure. A central recommendation is that CCFT such as CLT, CHMOs, Mutual Aid Co-operatives or Shareholder’s Co-operative should be scaled up and raised to scale, through a set of measures, primarily constitutional changes (for instance on social function of property such as in Brazil) supportive policies, facilitating legal and institutional frameworks, and higher level of responsibilities and capacities to decentralized levels of governments.

Special emphasis should be made on common property regimes. Synthesis based on an in-depth analysis of 41 case studies on Common Property Regime highlights:

“Most governments continue to have a strong incentive to generate revenues through promoting investment in extractive industries such as mining and plantation forestry or non-consumptive use such as conservation and tourism. Common property is frequently a casualty, as governments are pressured to provide these resources, including a system of property rights (usually private, individual) that investors deem sufficient to guarantee the security of their investments” (Fuys, Mwangi et al. 2008).

The report concludes with a recommendation to be considered at the General assembly of the UN: “Still there is a wider recognition that new legislation and policy

reform are needed as well, in order to support commons property systems and ensure that the rights of both groups and individuals within those groups are secured.” (Ibid)

6. Addressing Land rights for women through CCFT practices.

This paper indicates that some interesting practices do exist worldwide that favor women’s right whereas CCFT does not necessarily mean an increase of land and housing security of tenure and land rights for women The information on innovative practices in most cases is not robust enough and would deserve in-depth and systematic analysis to feed into a global and mutual learning exercise. The SR on Adequate Housing could spearhead such an activity.

7. Legal and financial framework on Housing Co-operatives that maintain and develop CCFT practices.

The desk review gave an overview of the unique breadth and scope of solutions and practices falling under “co-operativism”. Within this vast array of solutions a more restricted number can be considered as truly CCFT and not as an intermediate way to secure private housing within the market rules and with its portion of insecurity. It would therefore be quite a relevant task to explore the legal and institutional framework that the most innovative co-operatives systems have been pushing for: mutual aid co-operatives from Uruguay widely reproduced in Latin America; Scandinavian model of mother/daughter co-operatives already adapted in different contexts; limited equity – or zero equity – co-operatives, as promoted in the USA; multi-ethnic and pluri-cultural co-operatives as in Italy, etc. The end product of such a global task would be to make some progress at UN level of solutions that could be suggested to actors involved in security of tenure and/or housing policies and programs.

8. Special Comment on Security of Tenure and CCFT

Given the important role that CCFT play in securing land and housing for the poor, the UN General Assembly should take the resolution to call an expert group meeting on CCFT and subsequently, form a task force to work on a special comment on CCFT for the effective implementation of the Right to Adequate Housing.

9. Facilitating Urban policies for CCFT

One of the findings of the desk review is that successful CCFT depend largely on Housing and Land policies that go beyond a specific program. This was the case in 1968, when the Co-operative Law in Uruguay paved the way for turning co-operatives into a subject of collective credit eligible to the National Housing Bank. It is also the case for the Social Inclusionary Law in the USA through which 15 %, and sometimes more, of new housing developments should be earmarked for affordable housing to families below the median local income. Without such a law, Community
Land Trusts would not have expanded as they did and would not have become an international reference, in a relatively short period of time.

It is therefore suggested to consolidate knowledge upon policies that facilitate and or support CCFT under their wide variety. Subsequently, Guidelines to central and local governments could be circulated. They could become part of the Habitat Agenda that will be discussed from now up to 2016 and that will be eventually approved at Habitat III.

10. Involvement of Civil Society, of community groups, social organisations and NGOs.

With very few exceptions, the systems considered in this report are characterised by a ‘bottom-up’ approach. Communal and Collective forms of tenure are inextricably linked to enhanced democratic participation and community-led governance. For this reason, civil society organisations play a crucial role in the development and success of CCFTs in securing tenure, particularly for low-income groups. Each one of these organisations is crucial for successful CCFT through time and the most innovative CCFT mentioned in this report would not have been possible without a strong civil society engagement. The following recommendation made in a UN Habitat report on the involvement of civil society for increasing Land Tenure Rights for Women through collective and communal forms remains quite valid for other social groups:

“Lastly, but not least in importance is the involvement of civil society. Of community groups, social organisations and NGOs. Civil Society are crucial at different levels and stages of land and housing programmes. The pressure of social organisations to legally recognise women’s land and property rights has resulted in important reforms of land, family, inheritance and housing laws. Oversight by women’s organisations and other gender-aware organisations are also useful for ensuring that the laws are implemented. Also, as we saw, the involvement of community and social organisations, as well as NGOs in the implementation of land and housing programmes can facilitate the inclusion and participation of women in the programme and the recognition of women’s property rights” (UN-HABITAT 2006).

11. Learning from communal tenure systems for CCFT in urban areas

One of the principle findings of this research was the clear dichotomy between urban and rural CCFT systems. There are numerous examples of successful collective tenure systems for rural areas, particularly relating to natural resource governance, environmental protection and indigenous rights. For example, there is a long history and well-developed understanding of common property regimes in East Asia; the prevalent forms of Communal Tenure are Permanent Title, Delegated Management and Customary Communal Tenure. In Sub-Saharan Africa, there are well-legislated and widely adopted systems of customary land rights, protecting the livelihoods of pastoral and other indigenous communities. And in Latin America, there are numerous well-documented examples of successful rural, collective land systems such as in Tierras Altas in Bolivia. However to date there has been very little attempt to adapt and apply rural collective systems in urban settings. In the case of Bolivia, the strong rural bias in the 2009 Constitution has even made urban communal spaces illegal. It is the author’s recommendation that the Special Rapporteur sets up a task force to address the arbitrary division of tenure solutions by encouraging the sharing of experiences between rural and urban communities and the systematic
evaluation of the potential for collective rural solutions to be applied in urban environments to improve security of tenure for insecure groups.
SECTION 5. BIBLIOGRAPHY SELECTED AND ANALYSED FOR THIS REPORT

Please note that this section of the report only contains references cited in this report and not the entire literature review that included over two hundred documents. With few exceptions those sources are available on request.


Communauté Milton Park (2013). "Application to BHSF Award."


