

## Reforming Land Policies and Institutions in Developing Countries

# Reforming Urban Land Policies and Institutions in Developing Countries

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Urban Management Program

## Urban Management and Land

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## Foreword

This paper has been prepared for the Land Management component of the joint UNDP/World Bank/UNCHS Urban Management Program (UMP). The UMP represents a major approach by the UN family of organizations, together with external support agencies (ESAs), to strengthen the contribution that cities and towns in developing countries make toward economic growth, social development, and the alleviation of poverty. The program seeks to develop and promote appropriate policies and tools for municipal finance and administration, land management, infrastructure management, and environmental management. Through a capacity building component, the UMP plans to establish an effective partnership with national, regional, and global networks and ESAs in applied research, dissemination of information, and experiences of best practices and promising options.

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### **Executive Summary**

i.

This paper is an attempt to define and assess the various institutional and mechanical elements which constitute a land management system and which have a significant impact on the functioning of land markets. The assumption of this report is that the accumulation over time of different institutions and instruments, which have reflected different priorities and policies, has inhibited the efficient and equitable operation of land markets and that reforms of institutions and policies are now urgently needed.

#### **What Are the Rules of the Game?**

ii.

Land is a unique commodity which is affected by the forces of demand and supply. Unlike other markets however, ease of entry or exit is closely controlled by local and national government policies. Well-functioning land market can therefore be characterized by the level of ease of entry into the system and of carrying out land markets transactions, both of which depend on the availability of adequate land information, secure tenure arrangements, and appropriate registration/recording mechanisms. On the other hand, nonperforming land markets are plagued with a number of problems easily recognizable and commonly found such as (a) overcentralization of management and administration; (b) inappropriate, over detailed, and inflexible regulatory and legal frameworks; (c) lack or inappropriate use of resources and political will to tackle problems; (d) administrative systems lacking in efficiency, equity, accountability, and probity; (e) a failure or reluctance to encourage participation from the urban poor. Among the main policy instruments affecting the supply of land, the paper will focus on four of them, namely property rights, land registration, land use regulations, and planning and direct public intervention in the acquisition and disposal of land.

#### **Why Are Reforms Necessary?**

iii.

Experience shows that the journey toward the lawful acquisition of a plot of land is a long and confusing one; access to land, registration of land, permission to develop the land involve time consuming, unduly cumbersome, and costly procedures which make the legal system very difficult to access. In Peru, for example, the adjudication process of state lands takes about 43 months and is the result of 207 bureaucratic steps involving 48 different government offices. In Ghana, where the absolute ownership of land is held by two main groups, the state and the many stools or skins (customary authorities), the process of entry is equally complex. It has been estimated that in the case of stool lands, for example, the tedious process of access to land involves twenty major steps and in all its complexity can take several years. In Cameroon, it is not uncommon for the registration process to take between two to seven years, which explains why out of an estimated 1,600,000 plots countrywide only 100,000 (6%) are registered. With less than 20% of the urban plots demarcated and titled and without any properly maintained cadastral maps, it appears impossible to have a clear picture of the land tenure situation. The absence of a clearly defined land ownership situation constitutes a major deterrent for the realization of priority public investments in infrastructure and industry as well as for the implementation of public and private land development programs. The formal process of land development requires high up-front investments and creates scarcity. In Malaysia, for example, the net cost of land is doubled because after receipt of the relevant planning building control and

services approvals, only 48–50% of the land is useable for building purposes. In addition, obtaining the

permissions greatly adds to the cost of developing the land.

### **What Are the Deeper Roots of the Problem? The Governance of Land, the Gatekeepers and the Policy Instruments**

iv.

The trend of governance in developing countries has been that of centralization of power, which does not leave much room for strong urban local governments. In the area of urban land management, this in turn provided the rationale for land nationalization, the substitution of parastatal land development authorities for local government land management, central controls over land transactions and land use, the use of the bulldozer as a tool of land management and other manifestations of overcentralized bureaucratic systems of management.

v.

A second set of issues is related to the law, its formulation, and its use. The published laws of many developing countries suffer from a number of common defects, ranging from the form in which they are published to the way in which they define the fundamental nature of the power relationship between the state and its citizens. Too many laws, particularly in the area of land management, are procured and passed by the economic and social elite to facilitate their benefitting from state activities rather than from any perceived need of society at large. There is considerable evidence that the adjudicative processes of the law are not working, and this is a contributory factor to ineffective management of urban land. In Ghana, for example, there is a backlog of over 16,000 cases relating to land in Accra, and large areas of land in the city are effectively sterilized from any developments pending the resolution of these cases, some of which go back forty or more years. Compensation for compulsory acquisition of land cannot be paid because of unresolved disputes as to who is entitled to compensation. Tribunals and boards do not sit because no members are appointed. This state of affairs can be paralleled in other countries.

vi.

The approaches being argued for in this paper such as the orderly development of land markets; the creation of flexible consumer-oriented systems of land management; the commitment to transparency, probity, equity and value for money in administrative processes cannot be divorced from and indeed may be seen as a paradigm of the wider issues of governance now on the agenda of many states and of the international aid community; participation and decentralization in government, transparency and accountability in administration, an enabling rather than a controlling function for the public sector are integral parts of this new agenda.

vii.

It is crucial to understand the primary functions or the "raison d'etre" of the gatekeepers of the system in order to understand what is at stake for them and the implications of change. Furthermore, this is also a prerequisite for identifying the scope for privatization and a proper division of labor between the public and private sectors. The fundamental issue is: what are the legitimate interests of central governments in land management and how can these be provided for so that the interests of other centers of public power (local authorities) are not inhibited and the private sector is not impeded in its use and development of land? In virtually

all countries, central governments set the policies, enact the legislation necessary to implement the policies, provide some or all of the financing to carry forward implementation, act as supervisory mechanism/auditors of the implementation by other agencies of policies and programs. There are few countries where local governments or local authorities of some sort do not have some role in land management. In practice, however, local governments rarely have full authority to take decisions over land; there is a residual power vested in central government to intervene or to hear and determine an appeal or to give final approval. The costs and delays of this additional layer of the bureaucracy are too often ignored. Two questions need to be uppermost in the minds of those charged with improving land management systems at the local level; does a particular activity need to be controlled at all, i.e. developing land, buying and selling land; secondly if there is to be control and if it is to be

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located at the local level, how can it be structured so that it operates efficiently, cheaply, speedily and equitably? Urban Development Authorities (UDAs) have been created with the twin aims of superseding inefficient local governments and isolating urban development from politics. However, experience shows that they have not been able to address these two objectives adequately. Too often they have created inefficient public monopolies of land development. Separate and distinct from UDAs are the land administration agencies (LAAs) responsible for the management of public lands on behalf of the state. The main danger with LAAs is that they often substitute political for market criteria in land allocations and transactions. The existence of such agencies is inseparable from the public ownership of land. Extreme inefficiencies as in India, partiality as in Nigeria, overcentralization as in Ghana have affected the management of public lands by land administration agencies so that the wheel has in effect come full circle and the argument now is that land is more efficiently and equitably allocated by the market.

viii.

Traditional authorities constitute another important interest group in most of Africa and some parts of Asia and the Pacific. Where traditional authorities are a part of the official land management procedures, the process of obtaining land can be extremely complex, time-consuming, and expensive as both traditional and statutory authorities have to be dealt with. To try and eliminate the traditional authority input into land management, either by nationalizing land and centralizing land administration under a statutory regime and agency, or by the facilitation of the growth of land markets, is to invite the growth of a parallel unofficial land management or land market system and conflict and confusion in land management. In many countries, traditional authorities are in a process of transition in respect to their attitudes towards land, moving from a social to an economic, more market-oriented, approach. We would therefore argue that there must be an acceptance of the continued involvement of traditional authorities in land management, and the aim should be to encourage and facilitate a convergence of social and economic approaches to land, a recognition of the advantages in terms of economic benefits to traditional authorities as landowners, and in terms of social benefits to their people, of a more professional approach to land management.

ix.

Property rights and tenure systems are regarded in this report as the first group of policy instruments which have an impact on the functioning of land markets. Three major policy issues relating to tenure need to be addressed: whether to modernize and reform tenure on the basis of freehold as in Kenya or leasehold as in China; each form of tenure has advantages and

disadvantages which need to be carefully assessed before action is taken. Second, the issue of landlord/tenant relations and the extent and nature of any regulatory controls on that relationship; increased access to land by the urban poor is as effective a way to limit landlord power as are controls. Third, general controls over transactions; these do not work well. Fiscal instruments may be better than regulatory ones.

x.

Registration and the operation of land markets have strong linkages as well, which can be simplified as follows:

- a. it can help land markets;
- b. it can facilitate the conveyancing process and subsequently ensure the transparency of the transactions;
- c. it can provide availability of records for land market operations.

xi.

Any discussion of land registration must clearly distinguish between the public and private function of registration. As has been pointed out, the former relates to the welfare of the state or community as a whole, the

What Are the Deeper Roots of the Problem? The Governance of Land, the Gatekeepers and the Policy Instruments

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latter to the advantage of the individual citizen. On one hand, registration may be used by the state as an inventory tool of the national land resources for fiscal purposes or it can be used to ensure the rights of the owner or occupier of land and to enable him or her to conduct transactions safely, cheaply, and quickly. This is an important consideration when thinking about any improvement of the registration system. For whose benefit is land registration being urged? If for the benefit of the individual citizen, consideration should be given to whether there may not be alternatives to title registration which are more appropriate under the circumstances. Three sets of problems hamper improvements in land registration systems. First, institutional problems. These include lack of skilled staff, lack of coordination among the various agencies involved and lack of clear policies on the respective roles of the public and the private sector in registration procedures. Second, technical problems; should one continue with deeds registration or move to full title registration, and if so with what degree of sophistication and occurrence of survey? Third, financial problems; should registration be regarded as a public good or made to pay its way. Little work has been done on this matter.

xii.

Regarding the third group of instruments (i.e land use regulations), the problems related to them are well known. Existing regulations in many countries are criticized for both their rigidity and the high costs that they impose on the builder or developer and ultimately the purchaser. At the risk of oversimplification, one could categorize the most common grievances along six main lines: regulations are outdated and based on inappropriate colonial models; master plans take too long to prepare and fail to address implementation issues or the linkages between spatial and financial planning; there is too much centralization; yet at the same time too much institutional fragmentation at the center; there is too little coordination with financing planning; and the process of control leads to delays in land development. What should we expect from urban planning and land use regulations?

better coordination in land management

integration of spatial planning with financial, sectoral, and institutional planning

definition of a collective rationale for intervening on the land markets

better protection of the environment

economic efficiency to maximize the benefits of urban development

equity considerations

cost effectiveness to minimize public costs and to recover them

xiii.

It is now widely recognized that there is a direct and reciprocal relationship between informal housing production and government regulations. One has to be very cautious, however, about deliberately promoting deregulation. The relevant question then is: What are the minimum levels of regulations that can be compatible with easy access to housing and services and yet preserve communitywide interests and the environment?

xiv.

The fourth group of policy instruments relates to the direct public intervention in land markets and takes three major forms; land nationalization; eminent domain and land readjustment. The first intervention involves substituting public authority allocation of land for market allocation; the record does not inspire confidence in this form of intervention. The second intervention is a necessary but generally deeply unpopular form of intervention. In too many countries it is backed by out of date and inappropriate laws; incompetent and unfair administration of those laws and inappropriate and inadequate systems of compensation.

What Are the Deeper Roots of the Problem? The Governance of Land, the Gatekeepers and the Policy6Instrum

xv.

One of the principal disadvantages of compulsory acquisition is that it involves confrontation between government and the people so that needed public development runs the risk of being stigmatized as something undesirable before it begins. The aim of reforms is to reduce the element of confrontation and increase cooperation and participation in the process. Another way to achieve this is through an alternative to public land acquisition via compulsory processes, namely land re-adjustment, developed for urban purposes in Japan and Korea. This process took over procedures first used principally for rural purposes in Germany in the nineteenth century, and which are now spreading to other countries as a way of harnessing private and public initiative in land development.

### **Who Are the Winners and the Losers of the Existing Situation?**

xvi.

At one level, the question of who are winners and losers is simple to answer: winners are those who have land or access to land or access to those who can grant them land or access to resources which will enable them to buy and develop land; or are part of the administration of the system with regular jobs and an income; losers are those who have none

of these things. Winners are politicians, senior public servants, traditional rulers, existing landowners. They are, however, not the only ones who have a major interest in the status quo of the existing legal and administrative complexities or urban land transactions. Armies of lower and middle civil servants and thousands of persons who make a living by guiding both the poor and the middle class through the mazes that we have described, all have a substantial stake in the confused, multi-layered and irrational systems that now prevail. Devising incentives that will defuse the opposition of these groups is a necessary precondition to change. The overall aim must be to extend the facilities already available to the winners to the losers and enable winners to gain legitimate rewards in place of foregone illegitimate ones.

### **The Path of Reform: A Strategy for Action**

xvii.

What is being proposed is a major long-term program which would imply a major political re-orientation of urban land management? The approach promoted here will involve changes in the legal and administrative superstructure and will imply a new role for the public sector. Instead of having the dominant controlling role, it will have a residual enabling role. In stead of the private sector operating at the margins, especially in areas of low-income settlements where its activities may be technically illegal, it will develop into the primary mode of land delivery and development. A move toward greater reliance on markets for land delivery and development is expected to benefit the general population by making it easier for them to obtain and develop land, but it may disadvantage those in the political and administrative hierarchies for whom existing secretive and inefficient administrative discretionary systems provide opportunities for illicit private gain and political influence. Bringing about more accountable and participative governance cannot be divorced from reforms in political and administrative processes. The basic objective of reform is as follows:

xviii.

The institutions and instruments which between them provide for the management and operation of urban land markets should be based on the principles of equity, efficiency, flexibility, and participation with the overall aim of facilitating increased access by all citizens, and especially the urban poor, to affordable and appropriately located land with adequate security of title and occupation and adequate development rights, i.e., rights to use the land for a wide variety of purposes, restricted only by essential environmental, public health, and public safety regulations.

### What Are the Proposed Reforms?

#### On the Institutional Front:

a. With regards to administrative institutions, the objective is to define the scope of responsibilities of the public sector and to improve the capacity of government at all levels to enhance the tasks it does best. The activities recommended to achieve these objectives are (1) audit existing administrative institutions; (2) decentralize activities such as land registration, allocation of public land, permits, and approvals needed to undertake development of land;

(3) develop transparent administrative procedures to handle activities such as registration of titles, recording of transactions, grants of permission, allocation of plots, compulsory acquisition, land adjudication, and fiscal exaction; (4) train local officials and private actors to function in the new administrative environment; (5) develop incentive-based systems of personnel management to enhance efficiency and businesslike practices in public agencies; (6) establish a monitoring mechanism with joint public/private sector participation to keep under review the operation of the decentralized system of land management and to further progressive involvement of the private sector.

b. With regard to legal institutions, the objective is to create a comprehensible readily available systems of land laws catering to all sections of the community and to develop efficient user-friendly systems of dispute resolution on land issues. The activities recommended to achieve these objectives are: (1) audit existing legal institutions; (2) create or revive specialized dispute resolution mechanisms for land suits; (3) publish land laws that are easily available to the public; (4) develop standard forms; (5) train lawyers, legal administrators, and judicial decisionmakers to equip them to undertake the tasks outlined above.

c. With regards to institutions of the private sector, the objective is to assist the private sector to function more effectively in its role as the primary operator in land markets. The activities suggested to meet this objective are the following: (1) review and when appropriate revise legal codes governing the establishment and operation of corporate, bodies to facilitate small-scale, corporate and cooperative land development activities and access of such bodies to credit; (2) liaise with associations of land-related professions to develop programs for the transfer to or the sharing with such professions of land management functions; (3) work with traditional land holders to enhance modern urban uses of their land, the continuation of traditional residual rights in land, and a regular income from the land; train private-sector participants to take on transferred responsibilities.

#### On the Instruments:

a. On the land tenure issue, the objective is to develop a framework for a system of land rights, providing a reasonable measure of security and a simple and efficient system of affecting land transactions, taking into account the traditional and informal systems of tenure. The activities recommended are the following: (1) assess what is happening on the ground in respect of land rights in urban areas; (2) review the existing laws governing land tenure with a view to their reform, updating, re-organization and codification; (3) decide on the course of reforms and choose between the full-fledged code or the development of a simplified system for lower-income groups; (4) simplify procedures, mechanisms, and forms used in connection with land transactions; (5) develop

a system of financial incentives and rewards to encourage use of the formal land tenure system.

b. On the land registration side, the following actions are recommended: (1) assess the existing system; (2) define the objectives sought from an improved registration system and make the political choice of improving existing systems or setting up full-fledged title registration; (3) define the role of the government and stimulate the scope

for privatization; (4) address technical issues such as data acquisition and data/record management; (5) improve institutional arrangements to improve the organizational structure and the human capabilities of the land registration functions; (6) introduce incentives to use the registration system; (7) improve nonformal records; (8) improve the registration of customary land; (9) strengthen the dispute settlement process and the judicial system.

c. In terms of land–use regulations, the objective is to discard obstructing and costly regulations and promote regulations focusing on essential public health, public safety, and environmental factors. The activities include: (1) audit the existing land–use regulations in order to assess their impact on the functioning of land markets; (2) audit regulatory authorities monitoring performance standards; (3) rethink the existing system of regulations and planning in view of priority concerns; (4) design a bottom–up approach to identify those regulations which are essential for the pursuit of set objectives; (5) decentralize the planning function; (6) enhance institutional coordination; (7) establish zones where development may take place with a minimum of regulations; (8) release all small–scale development from the requirement to obtain permission to develop; (9) develop a "one stop shop" for the obtaining of all necessary permission to develop land; (10) develop fiscal and other incentives to use the regulatory system; (11) declare a moratorium on enforcement activities against unauthorized developments in informal settlements.

d. In terms of public intervention, the objective is to reorganize and improve systems and procedures for direct public intervention in land markets so as to minimize disruption of the market. The following activities are recommended: (1) develop an inventory or register of all publicly owned urban land with information on which public authorities own what land, what the land is being used for and where it is; (2) prepare a program for the development or sale of publicly owned urban land; (3) revise the legal framework empowering public authorities to acquire land compulsorily so as to enhance consultation and prompt payment of compensation; (4) develop legal frameworks and administrative processes for the practice of land readjustment.

x.

Land management is an extremely complex system which encompasses interrelated activities and actors. There is therefore no unique solution. Perhaps the best that can be hoped for is the timely identification of periods of transition during which well–targeted windows of opportunities or new policies can be promoted.

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Land belongs to a vast family of which many are dead, few are living, and countless numbers are still unborn.

## — Introduction

### Land Markets: What Are the Rules of the Game?

1.1 Like any other market, the land market is governed by the forces of supply and demand. These forces determine the dynamics of land market operations and thus affect adjustments to land prices. Unlike other markets, however, land is not a homogenous product. Each parcel is unique, with a particular set of locational and

physical attributes, and actors in the land market are diverse and often have conflicting agendas.

1.2 The demand for land is determined by the product or service produced on the land, in other words, by the use of the land. This characteristic, in itself represents a fundamental difference between land and other commodities. The demand for residential land derives from the demand for housing and is affected by demographic and economic pressures such as the rate of household formation, the level of household income, the capacity for mobilizing household savings, and the access to credit. It is also affected by the number of people wanting to hold land as an investment and therefore by the incentives to do so, such as some form of security of tenure and a good recording and registration system.

1.3 On the supply side, the quantity and price of land are affected by the spatial pattern of infrastructure (the constraints on infrastructure capacity frequently impede land development); the topography, which determines the extent to which the land can be developed physically; the willingness of land owners to make land available on the market (speculators may keep land off the market in anticipation of a substantial price appreciation); and by the government's restrictions on the use of land (by means of zoning and other land-use controls).

1.4 Another distinctive feature of land markets is that ease of entry or exit is closely controlled by local and national governments. Indeed, five main policy instruments affect the supply of land: property rights, land titling and registration, land-use regulations, direct public intervention in the acquisition of land, and fiscal practices.

1.5 A growing concern of policymakers in many countries is that urban land markets are not operating efficiently and that land is in short supply or the price is too high, or both. This situation in turn leads to pluralistic land market systems with their own sets of rules and actors.

### **What Works and What Doesn't**

1.6 This discussion is concerned with the operation of urban land markets, the processes by which land in towns and cities can be and is being made available to the urban population in the appropriate places, in sufficient quantities, and with sufficient security of tenure. Well-functioning land markets can be recognized by the ease of entry and the ease of performing transactions, both of which depend on the availability of adequate land information, secure tenure arrangements, and appropriate registration/recording mechanisms. Thus urban land markets work well where these conditions are present in some degree and do not work where they are absent. It is unrealistic to look for 100 percent success; the objective should be to attain some degree of

performance and to put in place those institutions and instruments that will point land markets in the right direction and ensure that they will operate in such a way that success is likely to continue. This is essentially a modest standard.

1.7 By this modest standard, there are few urban land markets that work and many that do not. To be fair, it should be pointed out that in those land markets that do not work, some pockets have achieved a measure of success. Examples of markets that work include those of Bangkok, Botswana, Barbados, and Singapore. In the case of Bangkok, the caveat on the modest standard needs to be borne in mind; the lack of infrastructure and planning in Bangkok indicates that "success" has been bought at a price there.

1.8 In the category of partial success are the upgrading programs in Lusaka in the 1970s and early 1980s, the Community Mortgage Program in the Philippines, the Kampung improvement program in Indonesia, some aspects of urban land management in Mexico and regularization processes in Venezuela, the management of land development in Kumasi (excluding the operations of the Accra-based Lands Commission), and some small-scale examples of community-based improvements in low-income settlements in many countries.

1.9 Turning now to the large number of markets that don't work, the reasons for their lack of success may be summarized as follows: (a) overcentralization of management and administration; (b) inappropriate, excessively detailed, and inflexible regulatory and legal frameworks; (c) the lack or inappropriate use of resources—skilled persons, finance, equipment—and no political will to tackle problems; (d) administrative systems lacking in efficiency, equity, accountability, and probity; (e) a failure, or at least reluctance, to encourage participation by the urban poor and their organizations.

1.10 Now compare these defects with the successes and partial successes. Decentralized management has been a positive force in managing the land market in Bangkok, in upgrading management in Lusaka, and in developing the Community Mortgage Program in the Philippines. Regulatory systems were simplified in Lusaka, in the Kampung upgrading program in Indonesia, in Botswana, and in Bangkok. Resources and political commitment were in evidence in Botswana and Singapore. Effective administrative systems have made important contributions in Singapore and Barbados. And community participation has strengthened land programs in Lusaka, Bangkok, Barbados, and Venezuela and the efforts to improve small-scale areas.

### **The Political Dimension**

1.12 The general political trend throughout the world in the four decades since the end of the Second World War in 1945 has been toward the centralization of power to achieve economic growth, social welfare, and national cohesion. The developing world was offered powerful and apparently successful models, notably the colonial form of government, in which power resided in a strong central executive body with direct lines of control leading back to the metropolitan government. These models of governance did not seem to leave much room for strong local governments in urban areas.

1.13 Developing countries base their structures of government and administration on these models. In order to build a nation, many countries had to develop a program of unification, modernize their legal and administrative systems, and reduce the powers of local and traditional rulers. As a result, political, economic, and social development moved in such a way that central power was constantly expanded at the expense of local power. For reasons that need not be reviewed here, many governments took the form of military or civil oligarchies concentrating all resources in the center so that they could retain power by rewarding supporters through the judicious use of these resources. In many countries, resources included urban land, the same land that was traditionally a source of local power.

1.14 Despite the importance of land, many governments have felt ambiguous toward illegal land markets. Policymakers often regarded the illegal settlements made possible by such markets as a solution to the problem of rapid urban growth, which they could not possibly cope with if public agencies rigidly enforced the conventional systems then available to them (Serageldin, 1990).

1.15 Rapidly rising urban land values, particularly on the periphery of cities, generated large profits that created strong economic interests, which in turn put pressure on bureaucrats and government decisionmakers and made them reluctant to take steps to end market inefficiencies and distortions that operated to the benefit of such interests (Payne, 1989).

1.16 Thus, the assumption about where the power to govern came from and the assumption about where the power needed to be located to achieve economic development provided the justification not merely for the practice of centralizing power but for the robust and nonparticipative use of power. In the area of urban land management, this provided the rationale for land nationalization, the substitution of parastatal land development authorities for local government, central controls over land transactions and land use, top-down management of sites and services and squatter upgrading programs, the use of the bulldozer as a tool of land management, and other manifestations of centralized bureaucratic systems of management. In short, the approaches being argued

for in this paper—the orderly development of land markets, the integration of formal and informal land markets and settlements, the creation of flexible consumer-oriented systems of land management, the commitment to transparency, probity, equity, and value for money in the administrative processes connected with land—cannot be divorced from and indeed may be seen as a paradigm of the wider issues of governance now on the agenda of many states and of the international aid community; participation and decentralization in government, transparency, and accountability in administration, an enabling rather than a

controlling function for the public sector, are integral parts of this new agenda. This new philosophy and approach to governance as a whole will make it much easier to develop a system of urban land management that aims to facilitate the operation of efficient and equitable land markets and to contain the externalities of such markets with a flexible, modest, and implementable set of regulatory instruments.

### **Scope and Objectives of This Report**

1.17 This report assesses the various institutions and policy instruments that affect the functioning of land markets. It focuses primarily on the institutional and mechanical issues that affect access to and supply of urban land, and therefore takes the viewpoint of both the consumers and producers of urban land. The main objectives of the report are to highlight the factors that limit the supply of urban land and its availability and to provide a framework for introducing reforms. The assumption is that the accumulation over time of different institutions and instruments that have reflected different priorities and policies have prevented land markets from operating efficiently and equitably and have often achieved conflicting results.

1.18 More specifically, the aims of this report are as follows:

- a. To assess the role and function that each institution and instrument is expected to perform in isolation and in their relationship with others, and the implications for the land markets.
- b. To highlight the most commonly found bottlenecks and constraints in existing systems.
- c. To identify a policy package that would include recommendations or options or actions for improving the institutional arrangements of land administration and for improving the use of policy instruments.

### **Targeted Audience**

1.19 This report is for policymakers and practitioners concerned with urban land policy and planning at all levels of government. It also provides some operational guidance for donor agencies and for all others concerned with improving governance in developing countries. Because we hope that it will have operational as well as policy value, we have deliberately explored some issues in detail and included detailed case studies.

1.20 While it is, unfortunately, all too easy to make broad recommendations about what should be done to improve the functioning of land markets, the successful execution of such policies often depends on even greater attention to procedures and instruments than in other economic markets. In all countries, it is already surrounded by a Gordian maze of laws and customs that are peculiarly resistant to internationally applicable panaceas.

### **Structure of the Report**

1.21 This report is organized around three central questions:

**How Does the Formal System Work? (Chapter II)**

1.22 It is crucial to understand what is meant by dysfunctional land markets. The best way to explain such markets is to examine the steps that must be taken to formally enter the system. This part of the discussion highlights the typical formal processes of (a) the acquisition/access to land, (b) the registration of land, and (c) the development of land.

**Why Is it Not Working? (Chapters III and IV)**

1.23 Chapter III outlines the most commonly found bottlenecks at the level of land governance as well as the interests at stake of the many gatekeepers of the existing land management systems.

1.24 Chapter IV looks at policy instruments such as (a) property rights, (b) registration, and (c) the land–use regulatory framework in an attempt to assess their impact on the functioning of land markets.

**What Can Be Done to Improve the Existing Situation? (Chapter V)**

1.25 Chapter V offers recommendations for improvement and provides a conceptual framework for analyzing issues of an institutional nature as well as methods of improving policy instruments.

**II—**

**The Formal Path:  
An Often Long and Confusing Journey Toward Legal Status**

2.1 This chapter describes the various stages that one must pass through to enter the legal land market system. The selected case studies illustrate the long and confusing journey toward legal status. Three main aspects of the journey are considered here:

- a. Access to land.
- b. Registration of land.
- c. Compliance with the land development requirements.

**Access to Land**

2.2 For the sake of simplicity, access to land can be divided into the following categories:

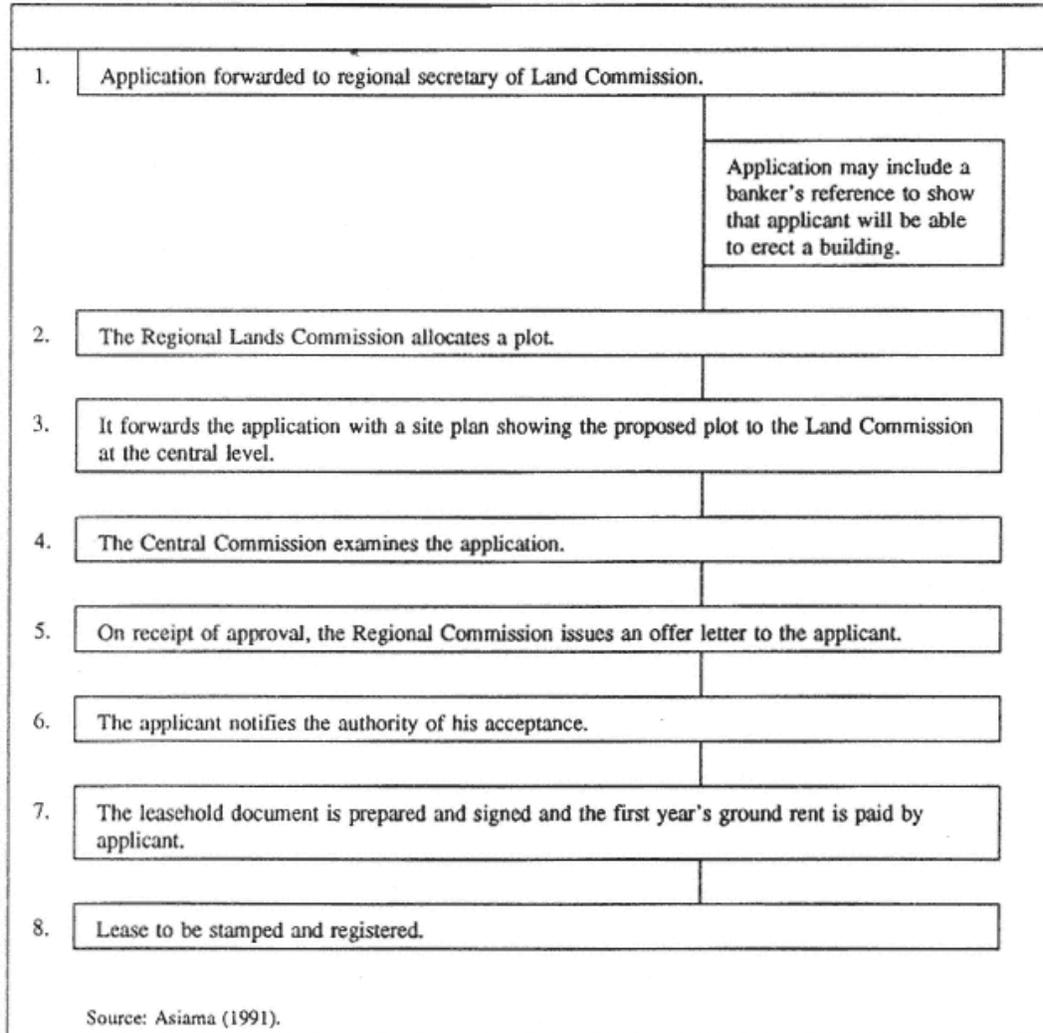
- a. Private–private: This type of access is gained through the transfer of ownership in private transactions or through the inheritance of land.
- b. Public–private: A state allocation process may give private individuals access to state lands.
- c. Private–public–private: There may be a land banking scheme by which private lands are pooled together under state monitoring and then redistributed to the private sector.
- d. Private/public–private: Private or public lands may be invaded by private individuals; this type of access falls completely outside the formal sector.

e. Customary allocation: Land delivery may take place in the framework of customary law, as is still applicable in many parts of Africa, Asia, and the Pacific region.

In many developing countries, much of the peripheral land on which new urbanization occurs is public land that can only be allocated through government procedures, which in most cases are unduly cumbersome.

2.3 In Peru, state lands are adjudicated through a long and time-consuming process, which takes about 43 months, consists of up to six stages, and even involves the president of the republic (de Soto, 1989). According to studies by the Instituto Libertad y Democracia (IDL), an adjudication comprises 207 bureaucratic steps involving 48 different government offices. The worst part of all this is that in the end the title to the allocated land is still not clear and holders are unable to exercise their full rights.

2.4 Entry is equally complex in Ghana, where absolute ownership to land in urban areas is held by two main groups: the state and the many "stools" or "skins" (tribal authorities). The main steps in the process are outlined below. To acquire a public plot for any purpose in Kumasi, a person has to apply to the regional secretary of the Lands Commission in Kumasi.



**Figure 2.1**  
**Steps in the Acquisition of State Lands: Ghana**

**Source: Asiana (1991).**

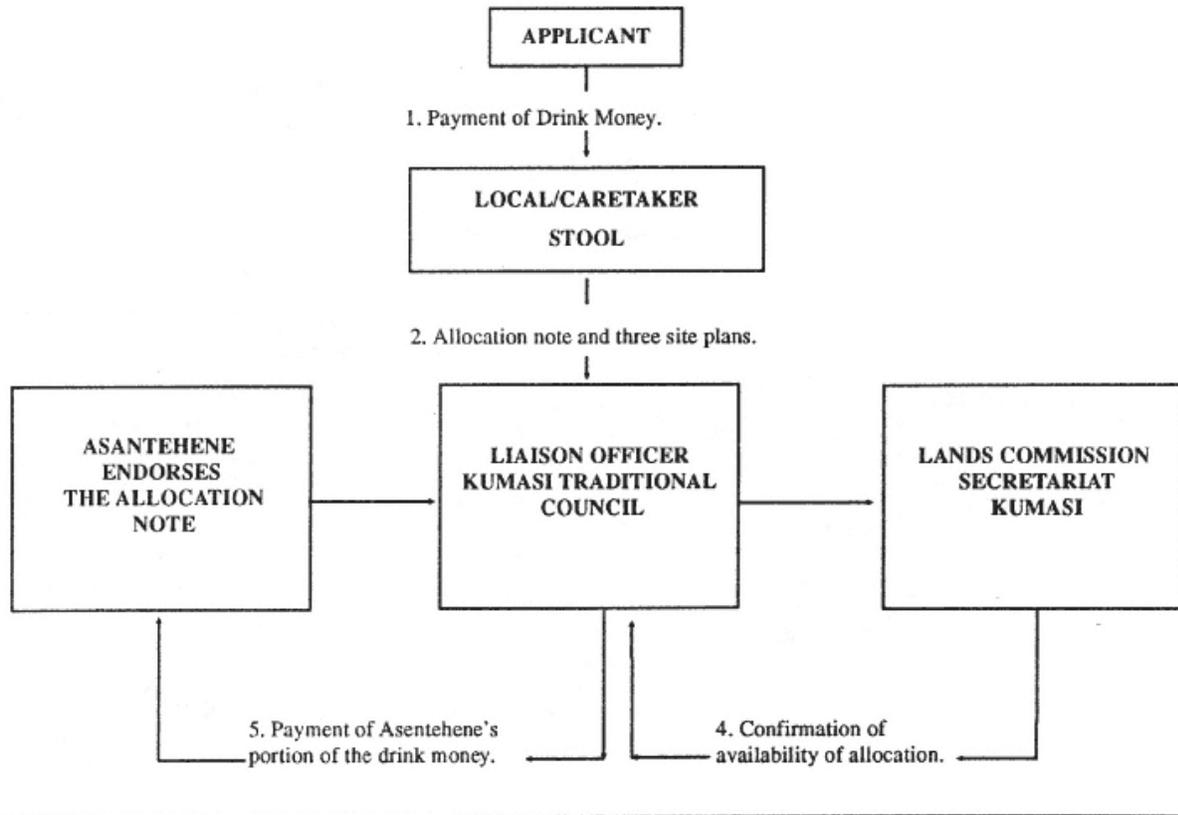
Under normal circumstances, grants of land by the commission are made on the basis of first come first served, and every Ghanaian—irrespective of sex, age, educational or social status—is entitled to a plot, where such plots are available. In accordance with section 45 (6) of PNDC Law 42, a person can only be granted one plot of land by the commission for residential purposes in the same city or town. An applicant for a plot of land must also show a favorable banker's

reference that would enable him to erect a building costing not less than 5 million cedis on the land. Where the application is found to be in order, the regional secretary of the Lands Commission allocates a plot to the applicant and forwards the application together with a site plan showing the proposed plot to the Lands Commission in Accra for approval. The commission examines these documents to ensure that both are in order and approves the proposal. The approval has to wait until the commission meets again to confirm its minutes before the decision is communicated to the regional secretary of the commission in Kumasi.

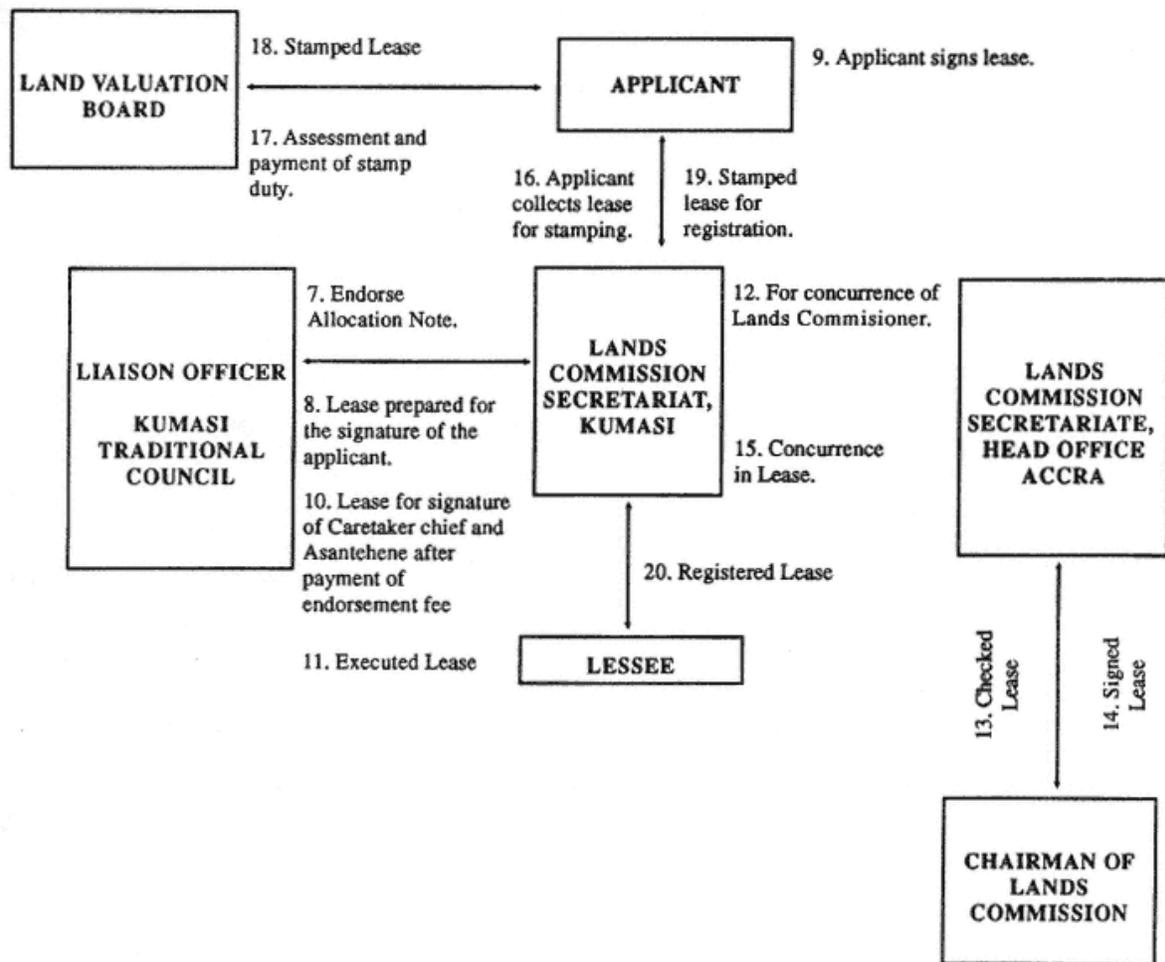
2.5 On receipt of the approved proposal, the regional secretary issues an "offer letter" to the applicant. The offer letter identifies the exact plot that is being offered through a block and plot number and a site plan. The letter also provides information on the conditions under which the offer is made. The applicant must examine the conditions with some care because they are the same conditions that would eventually be incorporated in a leasehold document. The conditions embodied in the offer letter include the terms and conditions of the lease (99-year lease, annual rent, site improvement within 12 months). The applicant communicates his acceptance to the regional secretary of the Lands Commission. In the next stage, a leasehold document is prepared embodying these conditions. The applicant is then invited to pay the first year's ground rent, the development charge, and the preparation and presentation fee. The document is then forwarded to the Lands Commission in Accra, where the commission's chairman executes the document on behalf of the government as lessor. The process of acquisition is then completed.

2.6 In the case of stool lands, the prospective grantee has to identify an area where land is available for alienation and development. This information may be obtained through friends and relations or through contacts at the Lands Commission, the Town and Country Planning Department, the Valuation Board, or the Asantehene's Liaison Office. The next step is to identify and contact the chief whose area of jurisdiction includes the identified land. The person needs to contact the chief through a "front man" for the chief. After attributing the vacant land, the chief issues an "allocation note," which is the written verification of the stool's grant of land. Like the offer letter of the Lands Commission, this allocation note specifies the conditions that attach to the grant. A common stipulation is that development of the land must start within the 12 months following the allocation and be completed within 24 months. The allocation note is addressed to the regional secretary of the Lands Commission. The grant is not enforceable, however, unless it is endorsed by the Asantehene.<sup>1</sup> To obtain the endorsement, the prospective grantee must present the allocation note together with three site plans to the Asantehene's Liaison Office. Once the Asantehene signs the allocation note, it is forwarded to the Lands Commission's regional secretariat, and the allocation process is completed. This tedious process includes 20 major steps and can take several years to complete.

1. Asantehene: Ashanti king in Kumasi, Ghana.



**Figure 2.2**  
**The Process of Preparing a Stool Land Lease in Kumasi, Ghana Stage 1: Allocation**



**Figure 2.3**  
**The Process of Preparing a Stool Land Lease in Kumasi, Ghana Stage 2: Lease Preparation**

**Getting Through the Land Registration Process**

2.7 The compilation of land ownership records consists of four basic steps:

- a. Adjudication, or determining who owns what: adjudication is the process by which existing rights in parcels of land are finally and authoritatively ascertained. It is the first step in a title registration system. This process establishes what rights exist, who exercises them, and what limitations apply. The boundaries of each parcel must be agreed upon by all parties. The process of adjudication can be sporadic or systematic and compulsory.
- b. Demarcation, or marking out the boundaries on the ground: This procedure consists of various levels of complexity, depending on the distinction between fixed and general boundaries and the required level of surveying involved.

c. Surveying or recording the position of the boundaries: Surveying represents an additional step, after the adjudication of ownership and location of boundaries, for providing the necessary conditions for secure tenure.

d. Documenting, or compiling all evidence into a set of registers. The results of the above steps are entered into a register. Two types of records are maintained: (a) data indicating the name of the property owner and the details of the tenure, including encumbrances, and (b) graphic data showing the results of the survey on a plan.

What does this mean for the prospective registrant? Consider the example of Cameroon.

2.8 Under laws enacted in 1974, land titles are the only legally recognized evidence of property in Cameroon. The procedure for obtaining land titles (defined by Decree no. 76165) is a cumbersome and lengthy process made up of the following steps:

a. The application (documenting the identity of the applicant and describing the plot) is sent to the Subprefecture that has jurisdiction over the subdivision in which the property is located.

b. The application is then forwarded by the subprefect to the Prefecture and the Provincial Lands Department (Service des Domaines). It is published and posted in the local offices of the Lands Department at the prefecture.

c. A month after this first inquiry and depending on its results, the prefect sets a date for the assessment of the plot occupancy and improvement.

d. Land occupancy and development are assessed by a Consultative Board chaired by the prefect and including members of the traditional community.

e. After assessment, the property is demarcated and surveyed in the presence of the applicant's neighbors by a certified surveyor of the Provincial Surveys Department.

f. The prefect then forwards the technical "dossier" to the Lands Department, which will countersign it, if approved, and prepare the presidential decree for publication in the official gazette.

g. If there are no disputes within a month following the publication, the application will be transmitted to the Provincial Lands Department for registration in the Lands Book (Livre Foncier).

2.9 It is not uncommon for this process to take two to seven years, but many people are willing to wait this long because of the benefits of improved security of land tenure. At the same time, the number of untitled plots is increasing both because of the lengthy and complex titling procedures and the institutional inability of the land agencies to meet the demand. Out of an estimated 1,600,000 plots throughout the country, only 100,000 (6 percent) are registered.

2.10 Title applications are plagued by numerous problems. Existing legislation has tried to ensure that local people are informed about the procedure and can apply for or contest a title at the local level. However, the process involves a multiplicity of agencies and actors at all levels of public administration and is therefore cumbersome. Moreover, local administrators often lack the expertise and competence required to carry out the investigation and successfully complete the administrative and technical dossiers. In 1985, the new director of the Lands Department (Domaines) found 16,000 unresolved applications.

2.11 With less than 20 percent of the urban plots demarcated and titled and without any properly maintained cadastral maps, it is difficult to obtain a clear picture of the land tenure situation. Since land ownership is not clearly defined, important public investments in infrastructure and industry tend to be put off and public and

private land development programs fail to be implemented.

2.12 Although every country is a special case and procedural details vary greatly, the slow pace and complexity of land registration in Cameroon is not untypical of developing countries.

### **Getting Through the Land Development Process**

2.13 The formal land development process requires high up-front investments and creates scarcity.

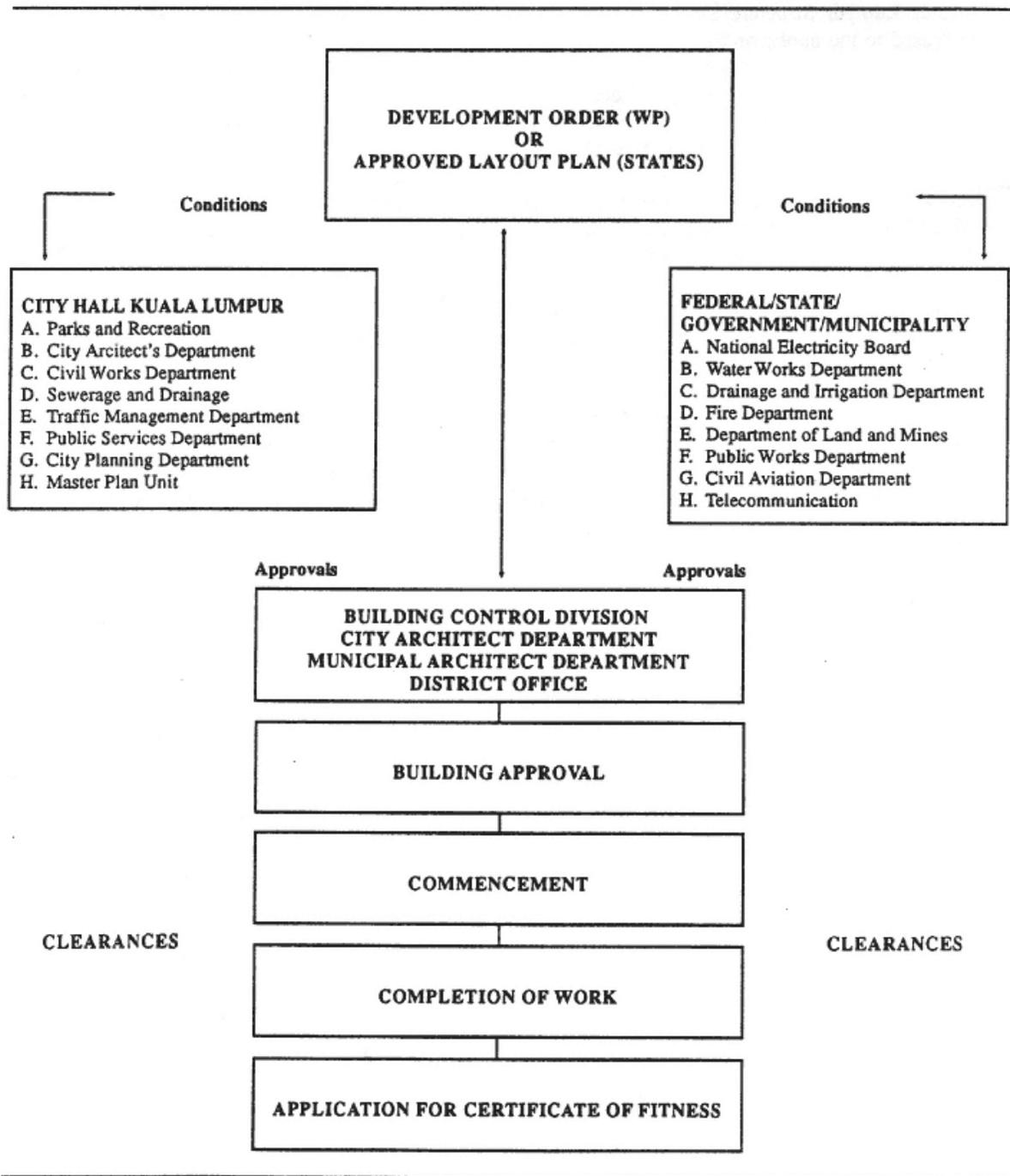
2.14 In Malaysia, the net cost of land is doubled after interest and holding charges are added to the original cost, because after the relevant plans and services have been approved, only 48.50 percent of the land is suitable for building purposes (Sen, 1989). In Malaysia, approval procedures are time-consuming, complex, and fraught with uncertainties. Some 1820 departments participate in the approval cycle for urban plans in the states of Malaysia, and the final approval

can take between one and seven years, depending on the particular state or local authority. The Kuala Lumpur Structure Plan is a case in point. Plan preparation was begun in 1978, was released to the public on September 1, 1982, and was finally gazetted in June 1984, almost six years later. The unofficial estimated cost is M\$6 million (US\$1= M\$2.50). The administrative process of receiving, examining, and deciding on applications for conversion and subdivision can take anything from two to seven years. Building approvals are generally obtained faster and are more readily understood; however, some 16 to 20 departments are involved.

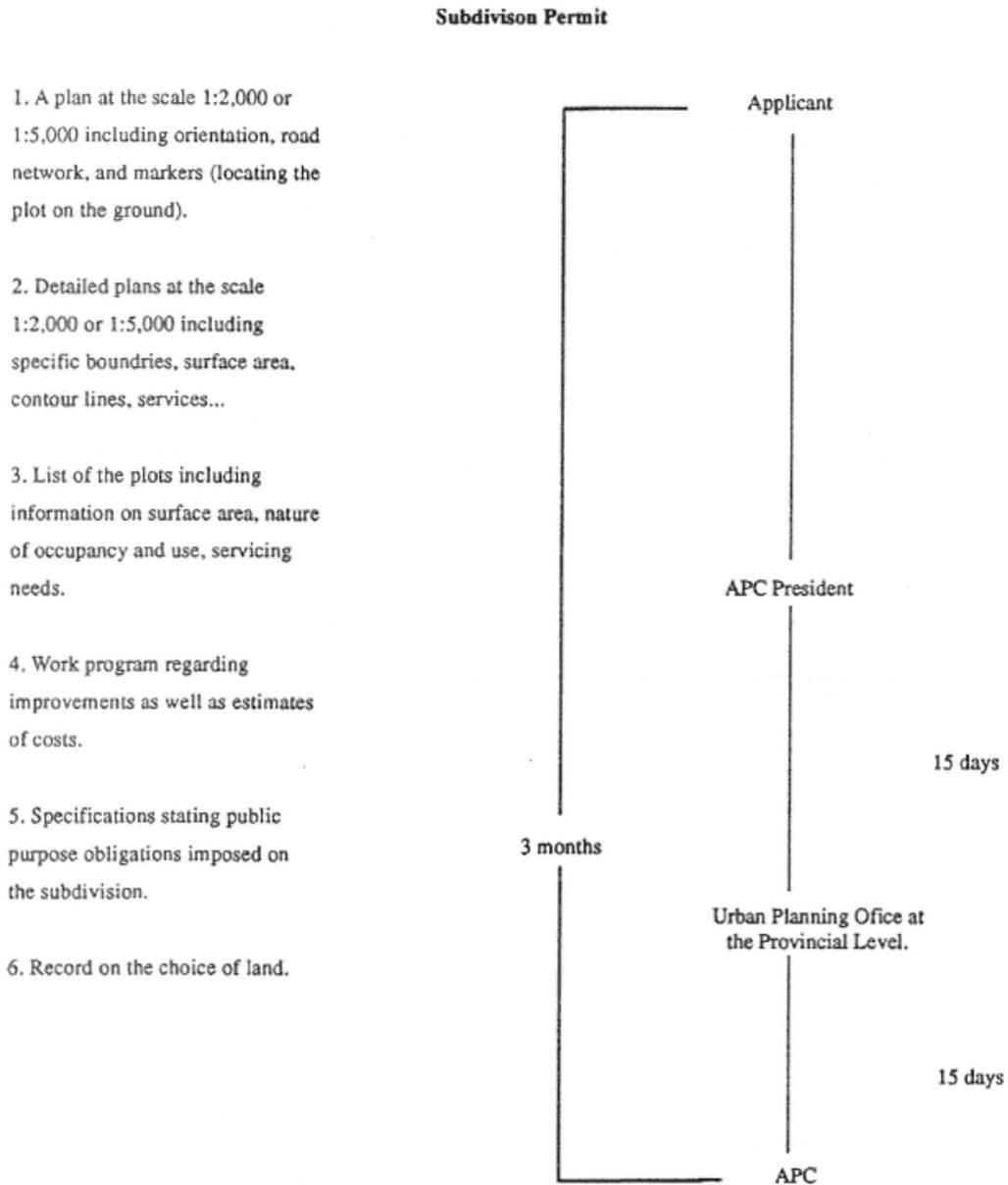
2.15 In Lima, Peru, subdivision approval takes an average of 28 months and must go through three stages, all of which must be overseen by the Lima City Council. It takes another 12 months to have building permits approved.

2.16 In Algeria, building and subdivision permits must meet strict regulations and standards. A building permit cannot be approved without legal proof of rights to the land, as documented by the "Acte de Propriété."

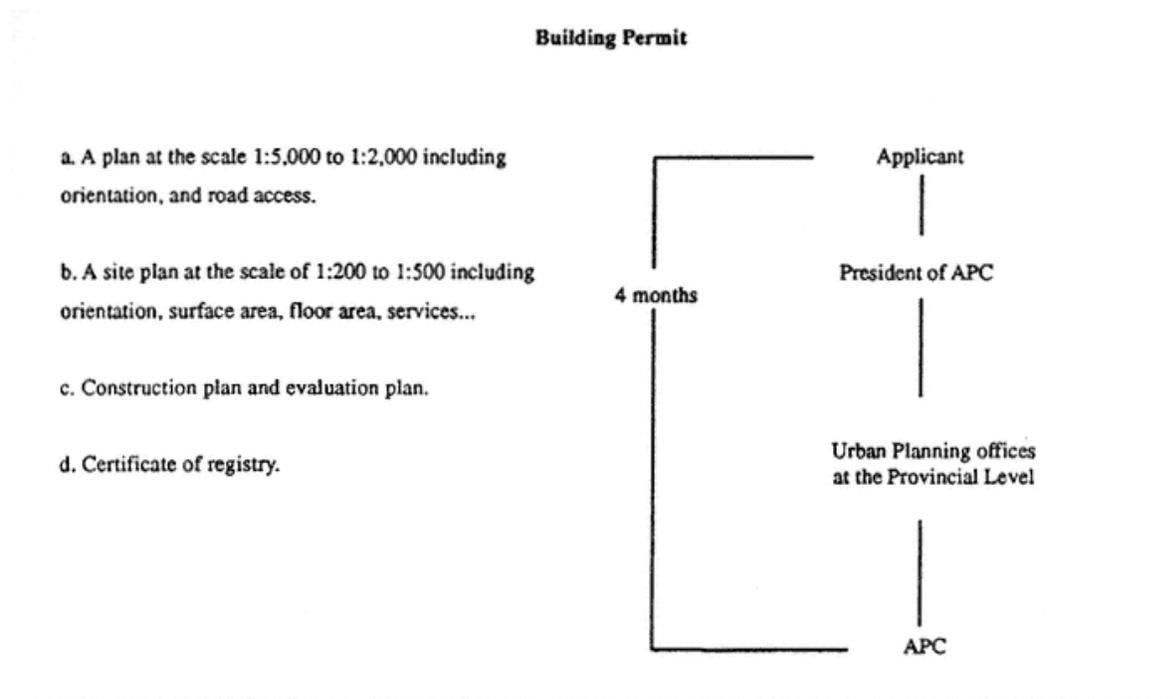
2.17 Although we have emphasized the inadequacies of current practices, it should be pointed out that many governments have recognized the need to simplify the procedures and requirements for approvals. Such is the case in Brazil, where federal law 6766 of 1979 was a first attempt to ease the legal requirements for subdivision approval and to facilitate compliance with the formal system.



**Figure 2.4**  
**Building Approval Process: Malaysia**



**Figure 2.5**  
**Algeria Subdivision Approval**



**Figure 2.6**  
**Algeria Building Permit Approval**

### III—

## What Is Blocking the Land Management Process: The Governance of Land and the Gatekeepers

3.1 We now move from the mechanics of gaining access to land, registering it, and complying with requirements for its development to broader issues of land governance. This chapter gives special attention to the gatekeepers, who are the most important actors in that governance.

### The Governance of Land

#### The Law

3.2 According to de Soto (1989),

All the evidence suggests that the legal system may be the main explanation for the difference in development that exists between the industrialized countries and those, like our own, which are not industrialized. . . . The debate about development will therefore have to be reformulated to take the importance of legal systems into account. We cannot continue to close our eyes to the fact that not all of a society's decisions are determined by its cultural characteristics or economic systems.

3.3 Any overview of the institutions and instruments associated with land markets must first focus on the law that is supposed to provide a framework for policy formulation.

### What Is Wrong with the Existing Legal Systems in Developing Countries?

3.4 It has been said that not all laws are good laws and that there are good laws and bad laws: "a good law being one that guarantees and facilitates the efficiency of the economic and social activities it regulates and a bad law, one that disrupts or totally prevents it" (de Soto, 1989).

3.5 The published laws of many developing countries are deficient in a number of respects, ranging from the form in which they are published to the way in which they define the fundamental nature of the power relationship between the state and its citizens. To all intents and purposes, laws are meaningless and unenforceable if they are not published and generally available to the citizenry. The same may be said of laws drafted and published in a language with which the majority of the citizenry are unfamiliar. The language of the law is often the language of the metropolitan power. This is inevitably the language of the urban elite but of too few others. Furthermore, there does come a point when the sheer bulk of the law becomes counterproductive, however well drafted. The fact that laws have costs as well as benefits is too often overlooked. Nor are they seen as a reflection of the relations between citizen and state wherein mutual rights and duties are constantly being readjusted. Instead they are viewed as the formal part of the business of acquiring and exercising power. Too many laws, particularly in the area of land management, are procured and passed by the economic and social elite to help them benefit from state activities rather than to meet any perceived need of society at large. Part of the problem is that many countries fail to consult on or properly scrutinize legislation before it is enacted.

3.6 The adjudicative process has its problems as well, mainly in the area of efficiency and effectiveness. Considerable evidence from many parts of the world suggests that adjudicative processes are not working and that this is having an adverse effect on the management of urban land. In some cases, adjudicative problems are bringing administration to a virtual halt, as can be seen in the operation of the Land Acquisition Act in India and similarly in Pakistan. Planning and land development are seriously impeded by delays in the courts associated with land acquisition under the act. In Ghana, there is a backlog of more than 16,000 cases relating to land in Accra. Development is, in effect, banned on large areas of land in the city pending the resolution of these cases, some of which go back 40 or more years. Compensation for compulsory acquisition of land cannot be paid because of unresolved disputes as to who is entitled to the compensation. Tribunals and boards do not sit because no members are appointed to them. Where the courts finally do reach a decision, the situation is often merely made worse for boundaries are described in relation to old landmarks and therefore are impossible to locate on up-to-date maps. Backlogs are also a problem in Jamaica, where title registration is preceded by a lawyer's detailed and time-consuming examination of the whole history of the title and all associated documents. Peru has to deal with an inefficient system of justice, and Tanzania does not have enough trained manpower to handle the cases in the courts.

3.7 Other issues affecting adjudication have to do with access to and the "user-friendliness" of the courts. Disputes over land are considered so important that they have to be resolved in the higher rather than lower courts in the judicial hierarchy. These are both fewer in number and more expensive to use. Court procedures create additional problems for the litigants; originally developed to clarify issues and bring order to the proceedings, in too many cases they have now taken on a life of their own and impede what they were designed to facilitate. In response, many developed countries have established specialist tribunals and courts that concentrate on one subject only and so have been able to develop expertise in that subject, which itself helps speed up the resolution of disputes. A few such specialist bodies have emerged in developing countries, particularly in the area of landlord-tenant relations (rent tribunals, for example, enforce rent control and security of tenure legislation), compensation for compulsory acquisition of land, boundary and titling disputes, and disputes arising out of various land transactions and land-use controls. The experience with these bodies has been mixed: Although some of them have provided a better, cheaper, speedier, and more informed service, others have suffered from the same defects as the courts they were designed to replace. Their language is not the language of the majority of the population, and their decisions can be appealed to the courts, which merely adds one more layer to the

adjudicative hierarchy.

### **Who Gains and Who Loses from Such a Situation?**

3.8 Formal adjudicative processes help reinforce the alienation that many people feel toward formal legislative processes. Where courts in Western democracies, however imperfectly, perform and are perceived to perform an important role in providing some protection against the administration, those in developing countries do not have such a role, and that has been the case since colonial times. Courts were then, and still are now, seen as agents of the government, enforcing the government's will.

3.9 The operators of this system, namely lawyers in public and private practice, have not seen their role as embracing the concerns of the urban poor. The part they play in urban land management is that of processing land transactions in the official legal sector of the economy. In the absence of any system of legal aid, lawyers inevitably provide their services for those who can pay for them. As a result, numerous studies have concluded that lawyers are available to landlords rather than tenants; to landowners rather than squatters; to officials rather than those officialdom is meant to serve. To be fair, however, mention should be made of the thin stream of legal concern that does address itself to the urban poor—the informal sector. There are numerous examples of lawyers who have established legal practices in informal settlements and of lawyers' associations that have funded legal aid and assistance programs. This suggests that one way to improve both equity and efficiency in land management would be to include legal and other relevant professional assistance in the package of management reforms.

### **The Gatekeepers of the System: Issues and Trends**

3.10 The extent to which land markets function effectively depends in part on the appropriateness, relevance, and operational efficiency of the institutions of land management. It is essential to understand the primary functions of the gatekeepers of the system in order to understand what reform would mean for them. Furthermore, such an understanding is needed to identify the scope for privatization and to appropriately divide labor between the public and private sector.

### **Central Government Bodies**

3.11 First, we should ask what should be the overriding aim of the government bodies involved in land management at all levels of administration. It should be to provide the policy and administrative framework needed to ensure the smooth operation of the urban land market, that is, to provide the mechanisms that will ensure a ready supply of land is available to a wide range of people and organizations at prices that they can afford for purposes of their choosing, and to ensure that due attention is paid to careful use of the environment and to issues of social equity. It is in light of this objective that these institutions should be judged. Two examples will serve to illustrate the complexity and the number of institutions involved in urban land management: Penang in Malaysia and Indonesia.

3.12 In virtually all countries, central governments set the policies, enact the legislation necessary to implement the policies, provide some or all of the financial support needed to carry forward implementation and act as some kind of court of last resort or supervisory mechanism or auditor of the implementation by other agencies of policies and programs. In addition, central governments may own land in urban areas and be reluctant to allow this land to be regulated by any other agency. In some countries, the role of central governments and other levels of governments is set out in the constitution, and in such cases it is difficult to bring about the necessary reorganization and reallocation of responsibilities. Urban land issues are often said to be too important to leave to lower tier authorities. Under the guise of setting policy, allocating

### **Box 3.1 Institutional Arrangements for Land Management in Penang**

Penang is under three levels of government administration. The federal government is involved in the affairs of the municipality, mainly through the Ministry of Housing and Local Government. However, there are two other federal inputs into urban land management: the National Land Council, established by the constitution, chaired by the Deputy prime minister, which ensures that there is uniformity in the administration of land within the country and the Urban Development Authority established in 1971 to promote and carry out urban development projects in certain areas of Malaysia.

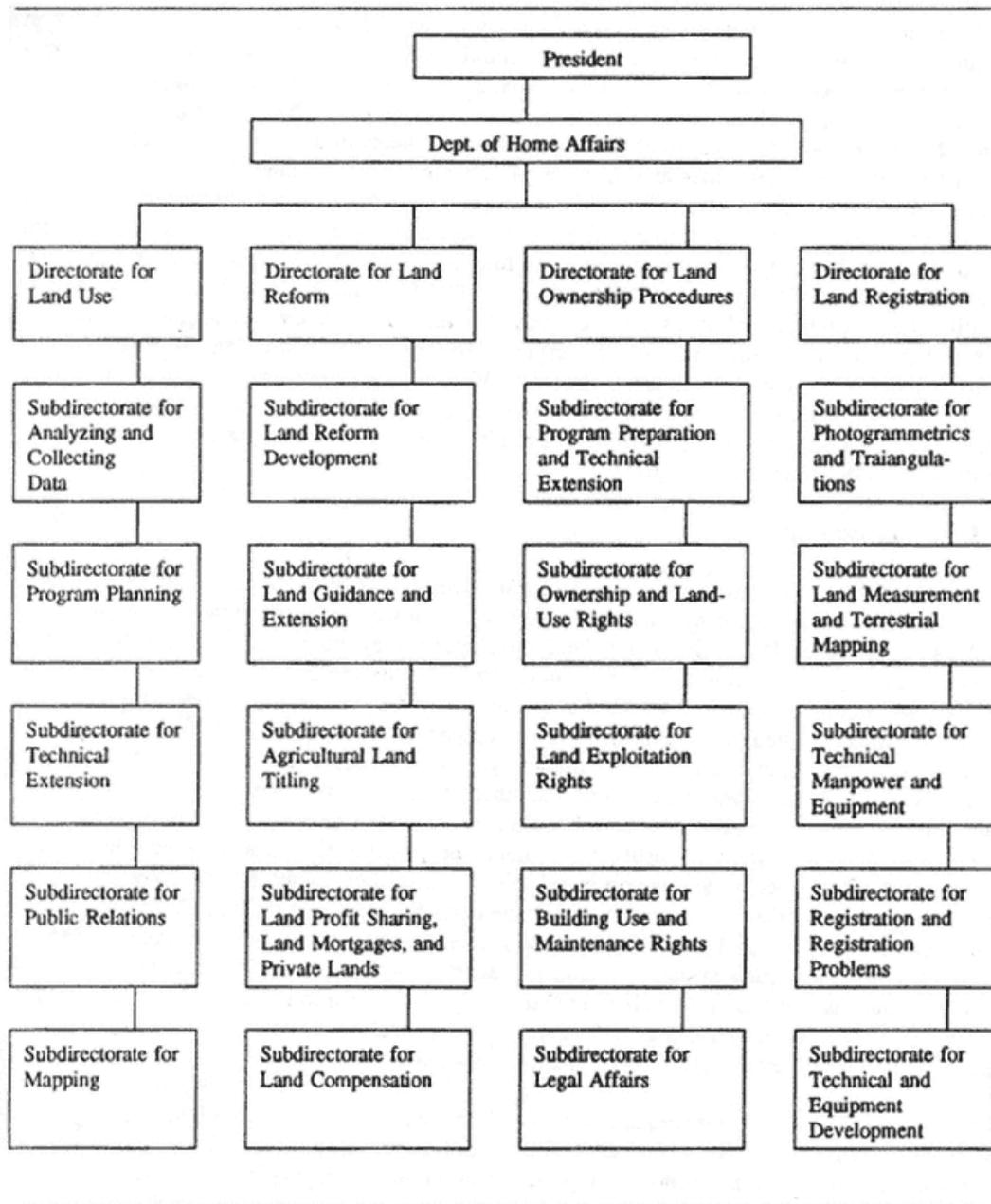
Under the constitution, states are responsible for all land matters. There are 11 departments or parastatals in the Penang state government that have some responsibility for land management. Among the most important are the following: the Lands and Mines Department, which is responsible for the alienation of state land, the amalgamation and subdivision of land, the issue of land titles and temporary occupation Licenses, the registration of all land transactions in Penang, and for taking action on offenses against land law. Second, the Survey and National Mapping Department whose primary function is to undertake cadastral and title surveys for the issuing of land titles by the Department of Mines and Lands. An additional function is to evaluate applications for the amalgamation or subdivision of land.

Third, there is the State Town and Country Planning Department and State Planning Committee. The department advises the committee and carries out decisions and implements the Town and Country Planning Act 1976. The committee, chaired by the chief minister of the state and consisting of 11 other people from different departments, advises the state government on all matters relating to the conversion, use, and development of land in the state and coordinates the planning work of the two Municipal Councils of Penang state.

The Public Works Department might also be mentioned. It is responsible for the design and construction of all government buildings and comments on road requirements before the municipal authority gives planning permission.

Two state parastatals relevant to development are the Penang Development Corporation, which has engaged in commercial development in Penang, and the Penang Water Authority. Turning now to the Penang Municipal Council, it is divided into different technical and other departments reporting to the full Council through committees. The Council's principal involvement with land management is via town and country planning. This takes the form of preparing development plans and dealing with applications for permission to develop land. Applications are referred to four Council departments for comments; Town and Country Planning, Building, Engineering, and Health. They are also referred to eight departments of the state government for their comments. According to one commentator: "The average duration of the process of planning application to the grants of planning permission has been worked out to average 11 months. This however depends on the complexity of the application. Generally, planning permission have been granted in a matter of 36 months although in certain exceptional cases, the duration process can take as long as 23 years. Applications for permission to plan buildings are part of a separate process, which also involves several departments within and outside the Municipal Council.

Source: UNCRD workshop in Urban Land Policies: "Towards Better Management of Asian Metropolises: The Case of Penang, Malaysia" (1991).



**Figure 3.1**  
**Organization of Land Administration: Central Government of Indonesia.**  
 Source: Macandrews (1986).

funds, providing the basic legislation, or approving a plan, upper tiers of government seek to control lower-tier decisions. Indeed, sometimes the upper tiers flatly refuse to allocate powers and responsibilities to lower-tier authorities on the grounds that they are incompetent. It is common to find the law being used to ensure ultimate central control or to approve urban development plans made by local authorities. This often leads, as we have

seen, to long delays in the final approval of plans, which are consequently even more out of date when they finally come into force than they would be because of the length of time it takes to prepare them. Such examples could be replicated many times and disclose an unhappy state of affairs. Central governments control the law-making process and through it they ensure themselves a continuing involvement in land management and development. Clearly, the use of the law is important as it legitimizes the desire to hold onto power, but at the same time it inhibits the reexamination of structures, functions, processes, and procedures. And the more that officials strive to comply with the law and its often arcane procedures, the more likely it is that the citizenry will turn away from the law and develop their own methods of carrying through and protecting land transactions and development. The fundamental issue then is: What are the legitimate interests of central government in land management, and how can these be provided for so that the interests of other centers of public power (local authorities) are not inhibited and the private sector is not impeded in its use and development of land?

### Local Governments

3.13 There are few states in which local governments or local authorities do not have some role in land management. This may take several forms; local governments may own land and as such act as landlords and/or land developers; they may act as agents for central governments in the allocation of land or in other aspects of its administration; they may have the primary legal duty to determine whether individuals may develop land and to draw up plans for the development of their areas; and they may be empowered to acquire land compulsorily or to initiate that process. In practice, as examples will show, local governments rarely have full authority to make decisions concerning land; there is a residual power vested in the central government to intervene or to hear and determine an appeal or to give final approval. Many of these residual powers may be justified—it should be possible to appeal a refusal by a local authority to allow a person to develop or sell his or her land as a matter of common justice, or to have it reviewed by a higher authority—but the costs and delays of this additional layer of the bureaucracy are too often ignored. Two questions need to be uppermost in the minds of those charged with constructing systems of land management at a local level: (a) does a particular activity—such as developing land, buying and selling land—need to be controlled at all; and (b) if there is to be control and if it is to be located at the local level, how can it be structured so that it operates both efficiently—cheaply, speedily—and equitably?

3.14 What does the record say about the functions of local authorities? And what general conclusions can we draw from the record? Two specific areas may be considered: the allocation of public land to private users and developers, and the control or regulation of land development. With regard to allocation, there appears to be considerable ambivalence toward local authority functions; on the one hand, there is a perceived need to placate local interests, whether traditional

(in customary land areas) or elected; on the other hand, vague formulations such as "national interest" or "public policy" are invoked to justify the central government's continued involvement in land allocation decisions. Thus, even in a federation such as Malaysia, where land is a state matter, the constitution establishes a National Land Council whose function is to formulate, in conjunction with the federal government, state governments, and the National Finance Council national policy for the promotion and control of the utilization of land throughout the federation. This body is used by the Town and Country Planning Department of the federal government to promote national policies on town and country planning. In Mexico, too, the same dissonance between the federal constitution and land management practice is present:

One of the main constraints for an efficient land management process is accounted for by the many coordination problems among the various public agencies that are involved in urban affairs. It could be said that there is a contradiction between the decentralized nature of the federal structure of the Mexican State on the one hand and the de facto highly centralized mode of functioning of the State on the other. (Azuela, 1990)

3.15 Turning to the control of land development, there is a high degree of uniformity in different systems, whatever their metropolitan or colonial origin may be. Systems derived from the English model of town and country planning divide responsibilities between central and local levels, the boundary usually falling between general policy considerations on decentralization and specific land policy considerations. Similar comments may be made of systems derived from French models. Two examples may be quoted. First, in Mali:

Urban planning and land tenure are subject to overlapping competencies of several organizations, often working without any meaningful co-ordination. The most obvious example is the fact that both the Ministry of Transport and Public Works and the Ministry of the Interior were preparing substantially different solutions for the same problems. Inevitably, representatives of services affiliated to different Ministries often show little restraint in expressions of mutual hostility when interviewed. (Baross and van der Linden, 1990)

Second, in Tunisia:

The Bureau of Planning of the Ministry of Equipment is the ultimate authority for all urban plans in Tunisia as well as for approval of zoning and building permits. In a country of 158 communes, such a high degree of centralization can easily lead to bottlenecks at the top, as well as insensitivity to local conditions in elaboration of urban plans. Although some such problems exist, the ministry has managed to work out partnership arrangements with municipalities, backed by presidential decrees, that permit a much more flexible situation in practice, fairly well tuned to local circumstances and responsive to requirements of specific development projects. (Rivkin and Rivkin, 1986)

3.16 Some common themes run through these examples of local government involvement in the management of land. Local governments are given limited powers by the relevant laws; there are either legal, administrative, or conventional restrictions on their powers. These restrictions tend to discourage coordination between different tiers of authorities and cause delays in their decisions. Furthermore, in many countries the legal boundaries of local powers have not been reviewed for many years and local authorities may thus be unable to take effective action on questions of urban development. Nor should the political dimension be overlooked; many countries have great difficulty in accepting either the possibility or the actuality of cities and towns being planned and governed by parties and groups of a different political persuasion from that of the people in power at the center or, in a federation, at the state level. This is particularly the case in the capital city. Because that city is likely to be the largest in the state and to have the highest concentration of urban challenges to tackle, it often suffers the greatest confusion about who does what. All these factors tend to limit and restrict further the land management powers of local governments and have given rise to the institution to be considered next, the Urban Development Authority.

### **Urban Development Authorities**

3.17 The term "Urban Development Authority" (UDA) refers to a legislatively established body of either the central/federal government or the state/provincial government, the members of which are appointed by the government that enacted the legislation. The UDA's duty is to plan or develop (or both) the land of a particular urban area, or in some cases all the urban areas, within a country or state.

3.18 Urban Development Authorities come in many shapes and sizes and have, a long history, albeit under other names. Moreover that history has a habit of repeating itself. Under the earlier name of Improvement Trust, UDAs functioned in India in the nineteenth and early twentieth centuries. According to a noted Indian town planner, they were created when, under pressure from rapid population growth, the urban local authorities were unable to undertake the necessary developmental functions:

The new developmental agencies had more official elements in them and being nominated by state government could not be as responsible and sensitive to the people's needs as the local body. This was however considered an advantage in that the developmental function was freed from political pressure. It was not realized that these very political pressures and influences were the means of reflecting the needs of the community. (Chandrasekhara, 1978)

3.19 These twin aims, to overcome inefficient local government and to isolate urban development from politics, have been the driving force behind the modern UDAs—such as the Calcutta Metropolitan Development Authority, created at the behest of the World Bank in the 1970s, and the Reconstruction and Development Corporation established in 1981 in Uganda at the prompting of UNCHS (Habitat).

3.20 Just as all countries have local authorities, so virtually all countries have UDAs of one sort or another. A representative example is the Lahore Development Authority.

### **Box 3.2 UDA: The Case of Lahore**

"The Lahore Development Authority (established under the Act of 1975) replaced the Lahore Improvement Trust under the Town Improvement Act, 1922). The LDA Act 1975 provides the Constitution and the institutional set up of the Authority. According to the Act the objectives of establishing the authority were:

- a. to evolve a comprehensive system of planning aimed at improving the quality of life in the area of Lahore;
- b. to optimize use of resources and ensure an effective utilization of land;
- c. to evolve programs for improving the environment of housing, industrial development, traffic, transportation, health, education, water supply, sewerage, drainage, and waste disposal.

It is therefore, responsible for preparing and monitoring metropolitan development plans, for initiating and implementing schemes for housing, solid waste disposal and transport, improving Katchi Abadis, general beautification of Lahore, maintenance of parks and places of historical significance and for formulating and administering building regulations.

LDA with a professional strength of 270 and non-professional staff of 1700, plays the lead role in area settlement but also has become the axis for future development. The planning and development of land is the principal function and responsibility of LDA with civic services provided by the LMC and the Water and Sanitation Agency (WASA). For its residential projects, LDA acquires land, plans and develops land. The developed land is sold through allotments, by ballot, or through public auctions.

Although its primary function is the creation of infrastructure for developing housing schemes LDA is called upon to perform much more as is apparent from the discussion above. It is, for instance, required to perform a whole variety of functions which include normal repairs and maintenance of the capital assets and physical infrastructure—activities which essentially fall within the functional domain of the

municipal council."

Source: (Kardar 1990)

3.21 UDAs perform such a variety of functions that it has often been argued they tackle too much and therefore have not been able to fulfill their basic mandate. This criticism has been leveled against UDAs in India, for example, where these agencies have played an active role in land banking and land development. In the words of a noted Indian commentator:

It is in Delhi that a beginning was made with the concept of socialization of urban land and the creation of an urban land. . . . One can write reams on how this land has been used in Delhi and depending on whether one is a protagonist or antagonist of the Delhi Development Authority (DDA) to hold this up as a model for urban development or to condemn it in toto. However, regardless of its efficacy in serving desired goals, the fact remains that this policy for Delhi, supported by hefty financial aid from government, was sought to be replicated in other states, with calamitous results. . . . Development Authorities were established all over and told to go ahead and acquire land, almost as monopolists. Funds or the expertise to assess needs, plan and executive development programs or to manage the lands were not provided. Thus the Jabalpur Development Authority, for example, notified

6000 hectares for acquisition, actually took over about 1200 hectares and developed less than 400 hectares. What was effectively achieved, however, was the blocking of developments by individual initiative and therefore spawned a multitude of unauthorized colonies. . . . One of the underlying assumptions of large-scale public ownership of land was that part of the land would be used to generate profits which would be ploughed into developing more land. . . . In actual operation, however, all Development Authorities, especially the DDA have been forced into a spiral of making huge profits which are channelized into highly visible ventures such as Hyderabad Urban Development Authority, for example, has been virtually brought to a standstill because of such hare-brained schemes. (Buch, 1984)

3.22 It is because of such criticism that UDAs are generally considered more of a hindrance than a help to the efficient and equitable operation of land markets. To counter that criticism one might mention the new approach to UDAs exemplified by the Zimbabwean UDC and the Singaporean URA, which are much more concerned with facilitating development by others, both public and private, than with developing land themselves. Such UDAs might well have a useful role to play in urban land markets, especially where, as in Zimbabwe, the skills and disciplines needed for such public involvement in urban land management are in short supply, especially at the local level.

3.23 What other advantages might UDAs have? Is it an advantage to "cut out" politics? Is this even possible? The fact is that politics cannot be entirely divorced from public sector involvement in land management and development, and UDAs are often a way of substituting one set of politics (and politicians) for another. The idea of a "single-purpose" authority is often advanced as being the strongest argument for UDAs; rather than a local authority with a multitude of functions to attend to and never able to give sufficient time and resources to land management and development, a UDA's function is solely that and therefore likely to be more effective. But one of the problems, as we have seen from the Indian experience, is that UDAs tend to take on too much, so they fall victim to the multipurpose disease. In addition, they tend to become monopolists of land supply and as such constrict and distort the markets in which they operate.

3.24 In addition, UDAs are a centralizing mechanism; they remove development from the people and make it harder to put local inputs into plans and proposals for development. Increasingly, this is being seen as a disadvantage; without the full participation of those who are to benefit from the development, the plan runs the risk of not meeting relevant needs and concerns.

3.25 The point, then, is not that there is no place for UDAs in urban land management but that where they exist, they should be used as a mechanism both to help local authorities perform their functions better and to assist the private sector in their efforts to obtain and develop land through the market. An effort must be made to ensure that coordination takes place on an institutional basis. Equally, UDAs must be integrated into the "bottom-up" approach to development; their existence must not be used as an excuse for ignoring the need to consult with and involve the people in urban land development programs.

### Land Administration Agencies

3.26 Separate and distinct from UDAs are the land administration agencies. These are public sector authorities (often parastatals or agencies having a separate and distinct legal personality from, although reporting to, the ministry responsible for lands) in which are vested, or that manage on behalf of the state or the president (in those countries where land is vested in the president), the public lands. Their primary management functions are to allocate public land to persons and organizations in the private sector and to public sector organizations; to fix the terms on which such allocations are made (e.g., land use, rent, rights of reentry, and resumption); to acquire land from the private sector, and sometimes to undertake land titling. Where, as is the case in many countries, all land is public land (i.e., land has been nationalized), such land administration agencies are of central importance to the development and operation of a land market.

3.27 Unlike UDAs, land administration agencies vary a great deal. Some are highly centralized: the Land Commission in Ghana is a case in point. Some operate on a decentralized basis: in Nigeria, all land is vested in the (military) governor of each state, who is advised as to the allocation and management of urban land by the State Land Use and Allocation Committee. Similarly in Mali, the district governor must be petitioned for public land, and he delegates his responsibility to a commission. Some embrace all facets of land management; others only some aspects. An example of the latter is the directorate-general of agrarian land in the Department of Home Affairs in Indonesia.

3.28 The Lands Commission in Ghana is an example of the former. Its principal function is to make grants of public land, but it also exercises extensive powers over stool land, that is, land held under customary tenure. First, the government has the power to vest stool land in itself in trust, and when it has done so, the powers of management of such land are exercised through the Lands Commission. Second, it is required to consent to any assurance of stool land by a stool or any person entitled under customary law to possession of such land. Third, the secretariat of the Lands Commission acts as the administrator of stool lands<sup>2</sup> and as such it is responsible for the management and disbursement of all existing funds held for stools by the government and for the collection of all rents due to stools, and for their disbursement.

3.29 This example demonstrates that a land administration agency may, in effect, control the operation of the land market, and as was noted in one report on the equivalent agency in Uganda, may substitute political for market criteria in land allocations and transactions. Such agencies are part and parcel of the public ownership of land, which, as already mentioned, has a long history and a firm ideological base in the many ex-colonies in the developing world. In many countries, public ownership of land has increased in the past 30 to 40 years as policies have been adopted to nationalize land—India via the Urban Land (Ceiling and Regulation) Act, Nigeria via the Land Use Act, Cuba after the revolution, to name but three countries—in the belief that public control and allocation of land will be both more efficient and more equitable than leaving allocation to market forces or to traditional authorities. A national approach to land allocation was and is still seen as an important aspect of nation building. This is not the view

2. Stool Land: Land under customary tenure, generally allocated by a local chief or oilier tribal authority.

everywhere, however; extreme inefficiencies (as in India), corruption and partiality (as in Nigeria), overcentralization (as in Ghana), have affected the management of public lands by land administration agencies so that the wheel has in effect come full circle, and the argument now is that land is more efficiently and equitably allocated by the market. Realistically, however, it is unlikely that policies are going to change to the extent that land administration agencies are going to dump all the land they control on the market and close down.

3.30 Thus, recognizing that land administration agencies are going to continue operating, we have to focus on their strength and weaknesses, boost the former, and try to eliminate the latter.

### **Traditional Authorities**

3.31 Traditional authorities straddle the boundary between the public and the private sector. Where they still exist, they derive most of their official authority and power over land from statute from the government. Yet, in their own eyes and in the eyes of many of those who still regard them as the fount of legitimate authority, their authority and power are derived from their traditional status, and their powers over land are akin to those of an important private landowner rather than a government official. And even in the countries where they have no official role at all, any attempt to deal with land without their unofficial involvement would be likely to fail. There is, then, considerable ambivalence about the role, status, and functions of traditional authorities in land management, which makes it both necessary and yet difficult to discuss them and formulate principles of land management that might be applicable to them.

3.32 Traditional authorities are distinguished from statutory authorities such as land administration agencies in that they are concerned first and foremost with allocating land to "their" people; indeed, one of the driving forces behind the nationalization of land and the creation of land administration agencies was the desire to overcome this approach to land management. It would be a mistake to assume, however, that traditional authorities do not accommodate the allocated land to "strangers." Thus in Ghana, one may distinguish between a subject usufruct, which is "indefeasible, indeterminable, inheritable and alienable," and the specific or stranger's usufruct, which is a "specific grant made by the stool or its subjects to persons who are not members of the land-owning group." Such an interest "is potentially secure unless he (the stranger) grossly misbehaves by mortgaging, subletting or selling part of the land without the consent and concurrence of the land donor or by denying or subverting the allodial title or the customary freehold of the land donor." In urban and peri-urban areas, allocation of land to "strangers" is the rule rather than the exception. In Port Moresby in Papua New Guinea, for instance, complex rules and arrangements have been developed between strangers and hosts to allow for their coexistence in that city.

3.33 Where traditional authorities are a part of the official land management procedures, obtaining land can be an extremely complex, time-consuming, and expensive process as both traditional and statutory authorities have to be dealt with. It is unlikely that the process is much different where traditional authorities are not part of the official process but are part of the real process. The dilemma for any government or any would-be reformist is to try to eliminate the traditional authority's input into land management—either by nationalizing land and centralizing land administration under a statutory regime and agency or by facilitating the growth of land

markets—without inviting the growth of a parallel unofficial land management or land market system and thereby introducing conflict and confusion into land management. On the other hand, to incorporate traditional authorities into the official system is to build the potential for conflict into such a system as different criteria for decisionmaking may be used by the different components of the system, and this may cause delays and further complicate matters.

3.34 The question of the place of traditional land authorities in land management must be viewed in relation to their approach to land and the nature of power over land. Those traditional authorities that continue to see the land

as a social asset, as an important part of their political control over "their" people, remain reluctant to adopt a more market-orientated or a more regulatory approach to land management—Swaziland is a good example of this. Those traditional authorities more attuned to the economic approach to land have been able and willing to adapt both to regulation and to market-led allocation. That has been the case in Botswana and among the Ashanti of Kumasi. In many countries traditional authorities are experiencing a transition, whatever their official position, in the land management system, and are moving from the social to the economic approach. Therefore there is every reason to continue to involve traditional authorities in land management, and the aim should be to encourage and facilitate a convergence of social and economic approaches to land, in recognition of the economic benefits to traditional authorities as landowners and of the social benefits to "their" people (and "strangers") that can be derived from an approach to land management that makes room for both the market and regulation.

### **Private Consumer's Organizations: NGOs and Cooperatives**

3.35 Private institutions that play an important role in land markets are the nongovernmental organizations (NGOs), including community-based organizations (CBOs) and cooperatives. These institutions tend to operate at the lower end of the formal land markets and in informal land markets. They act as the point of contact between formal and informal markets, between public sector agencies and the people in the informal sector, and often between private landowners and people wanting land. Because they operate in part within and in part outside the official system, an important issue to address is what should be the relationship between officialdom and these organizations? To what extent does the official system, as discussed in the preceding sections, provide an welcome climate for these organizations to work in, and to the extent that it does not, how can such a climate be developed? Equally important are issues arising from these organizations themselves: How are they structured; how do they involve those with whom they are working; to what extent do they wittingly or unwittingly take on the characteristics of the public bureaucracies?

3.36 In concentrating on cooperatives, NGOs, and CBOs, we are not ignoring the important role that land developers play in the operation of land markets. Many land developers are incorporated and operate in the form of a company; companies, partnerships, and other forms of business association must all be seen as private sector institutions whose effective functioning is a vital aspect of the development of a land market. Fine though the distinction may be, the institutional questions on land developers as corporate bodies lie outside the scope of this discussion. Our concern rests with the NGOs, CBOs, and cooperatives since they are significant and often overlooked institutions for improving the functioning of land markets, particularly for the poor. It must also be remembered that such organizations, by their very nature, are tempting

vehicles for political action, either by those who may be opposed to an existing government, or by an existing government that sees them as an excellent way to maintain contact and support at the neighborhood level.

### **Nongovernmental Organizations (NGOs)**

3.37 In the past decade increasing attention has been given to the role of NGOs in providing shelter and developing land in both rural and urban areas.

3.38 NGOs perform at least seven kinds of functions. First, they provide a vehicle for popular participation and mobilization. Second, they can assist in local planning and goal setting. Third, they can provide services, for example, in urban areas, schools. Fourth they can mobilize local resources, both human and material, in order to execute a project. Fifth, they can define and express local needs and demands, which can then be incorporated into government programs. Sixth, they can influence local administrations and make them more responsive to local needs. And seventh, they can create political awareness among people at the local level (see Cheema, 1983).

3.39 There is some overlap between these seven roles. At the risk of oversimplification, they can all be classified into two broad categories: those roles and activities that concentrate on and at the local level—providing services, mobilizing resources—and those that represent local concerns and needs to various branches and agencies of government. The first category encompasses institutional issues concerning whether NGOs have the power and authority to carry out their activities and what happens if their activities are illegal; the second category includes issues pertaining to relationships with government—whether there is a formal framework of consultation in place, and what, if any, legal status in the judicial or administrative process NGOs have.

3.40 In matters relating to urban land, NGOs frequently take an active role in acquiring and developing land for housing and other services. They have been particularly effective in pooling the resources of individuals and buying and then developing the land on a community basis, as the following example illustrates:

In Kenya the people of a small squatter settlement known as Mjini pooled their resources to buy some land when they were faced with eviction. . . . A different, though equally impressive approach to finance, is provided by the Sou Sou [penny by penny] Land Limited in Trinidad and Tobago. It operates a traditional group saving system whereby people contribute on a regular basis and take turns to withdraw the total sum of deposits. Sou Sou Land was started as a way of buying land for squatters. It has grown into a major exercise that numbers some 12,000 participants who have invested in the region of US\$5 million for the purchase of 1,200 hectares of land. A similar experience is that of the Pagtabmayayong Foundation in the Philippines. Here people also pool resources to buy land, while the Foundation, as the sum of their small contributions, represents an acceptable partner for financial institutions. . . .

In the Republic of Korea squatters used a grant from MISEREOR (Private Voluntary Organization of the Catholic Church in the Federal Republic of Germany) to purchase land. People paid for their lots and this money was then used to provide housing loans. In other words, a revolving fund was created. MISEREOR also provided the funds for the purchase of land by the residents of the Kampung Sowah in Indonesia who had to be relocated when it was decided that the area they occupied should become a green belt. (Habitat, 1988)

3.41 In these cases, the purchase of land provided a legal basis for later development, but this did not automatically ensure that later development was itself legal. In Trinidad and Tobago, the land that was purchased by Sou Sou Land Limited was relatively cheap because it had not been zoned for development in the country's National Physical Development Plan. In the view of Sou Sou Land Limited, the town and country planning system in Trinidad and Tobago was unconstitutional, since it operated to deprive people of a right to a home. Thus, there was a deliberate refusal to seek planning permission before development started on Sou Sou Land, with the result that such development was illegal. There was, however, an understandable political reluctance to take any action with respect to that illegal development.

3.42 What NGOs do appreciate are the advantages for operating, as far as possible, within the law. There is, it is generally conceded, an enormous gap between official law and administration and the lives of the urban poor; NGOs may well be the crucial link in closing the gap. NGOs can help the urban poor form a co-operative, purchase land, fill in the necessary legal forms, negotiate with administrators and lawyers to obtain permission to build, and finance the eventual project. These are all ways in which NGOs can help extend the protection of law to the urban poor. In this respect, it may be that, whatever the merits of the Sou Sou Land approach, encouraging the landless to ignore and defy the law might not be in their own long-term interests.

3.43 As for the relationship between NGOs and the government, this may be discussed from the perspective of land management in particular or the situation in general. In the first case, it is on the whole rare to find in land-use planning legislation, for example, a specific provision for consultation with NGOs in the preparation of plans. Thus, where NGOs do attempt to formulate local plans or to put forward, perhaps at a national level, an alternative approach to development, they must rely on personal contacts, networks, and administrative goodwill

to have their views and ideas fed into the official system. Perhaps consideration should be given to providing for specific consultative and participatory roles for NGOs in the land management process, as was proposed in draft legislation on Town and Country Planning in Trinidad and Tobago.

3.44 The more general question of the overall relationship between governments and NGOs must be viewed in terms of the "political" dimension of NGO activity. In the urban context, that dimension has been summed up as follows:

As governments increasingly become constrained in their ability to provide essential services, more emphasis is placed on the role of the active citizen in self-provisioning, and in taking responsibility for the maintenance of those public assets which they have managed to secure. This involves not only neighborhood

committees but also voluntary organizations, as a re-negotiation of the role of government and the individual is sought and the boundaries between statutory and voluntary provisioning change. (Marsden and Moser, 1990)

3.45 Obviously, NGO involvement in urban management means a good deal more than helping the poor obtain land and housing and fill in legal forms correctly. It also has to do with empowerment—participation as an end, not just as a means—and a restructuring of relations between government and the governed. Although this idea may be tolerated or even encouraged by some governments, other governments react negatively to this aspect of the work of NGOs. In El Salvador, after the 1979 coup d'état, for example, much hostility and suspicion was directed at the work of the Salvadorean Foundation for the Development of Low-Cost Housing (FUNDSAL) and other NGOs "who through their methods or philosophy, attempted to go beyond the mere supply of service (i.e., housing in the case of FUNDSAL) and [they] were pressured to abandon their long-run objectives" of contributing "to social change not only by transferring resources to the urban poor but also by organizing them and raising their consciousness" (Stein, 1990).

3.46 The second example comes from Kenya and concerns the recently enacted Nongovernmental Organizations Coordination Act of 1991.

The stated aim of this legislation is to provide for the registration of all NGOs in Kenya and to co-ordinate their activities within Kenya. An NGO Coordination Board is established with a substantial official membership. This Board is to coordinate the work of NGOs, maintain the register, advise Government on the activities and roles of NGOs in Kenya, provide policy guidelines to NGOs to harmonize their activities to the national development plan for Kenya and to approve a code of conduct for the self-regulation of NGOs and their activities in Kenya. The code is to be developed by a Kenya National Council of Voluntary Agencies, which will be composed on an interim basis of the first one hundred NGOs to be registered by the Board, and whose first meetings will be supervised by an official designated by the relevant Minister. The code is to cover "activities, funding programs, foreign affiliations, national security, training, the development of national manpower, institutional [*sic*] building, scientific and technological development and such other matters as may be of national interest The Board shall ensure that the code of conduct is consistent with the national and foreign policies and all written laws of Kenya.

3.47 The thrust of this legislation is plain: NGOs are to be brought under stricter government control and will have to comply with and implement government policies. If they do not, they will be struck off the register, and persons involved in such NGOs will face heavy penalties. Such an approach to NGOs repudiates their whole purpose, which is to experiment, innovate, show the way toward new policies, suggest ways to improve (in a lawful way) current policies and their implementation where they are hurting the clients or members of NGOs. Under the constraints outlined above, NGOs will be transformed from private to public institutions; inevitably, they will have to have more regard for the Coordination Board, its officials, rules, and

policies than for their members or clients. It will require extraordinary sensitivity on the part of the board and its officials to ensure that Kenyan NGOs—the large international NGOs will be able to look after themselves—are not in the future perceived as just another government agency implementing policies decided on elsewhere. We would argue that insofar as an institutional framework for the operation of NGOs is thought to be necessary, it should emphasize and facilitate their creativity, their unorthodoxy, their role "to empower the urban poor" and their role "to build effective and legitimate networks connecting local social movements with national governments" (Marsden and Moser, 1990).

### Cooperatives

3.48 Turning to cooperatives, the principal purpose of cooperatives in the area of land markets is to acquire and provide housing. Housing cooperatives perform several tasks:

- a. self-help (mutual assistance through association), which does not necessarily imply manual self-help or the renunciation of external assistance
- b. membership promotion, which means promoting the economic interests of the members through service relations between the members and the cooperative enterprise
- c. safeguarding the identity of co-owners and customers of the cooperative
- d. democratic management and control of the society by the members and thus also equality of the members. (Lewin, 1981)

3.49 According to Lewin, one of the main institutional problems of low-income housing cooperatives is the difficulty they have reconciling the formalities of the law with the realities of low-income life-styles. On the one hand,

the legal framework is vital to the operation of the housing co-operative and essential for the collective acquisition of land, procurement of construction funds, and the determination of rights, duties, and liabilities of the members the co-operative, and the sponsoring agency. If the housing co-operative is not legally recognized as a corporate body, it is neither able to perform its obligations towards the members, nor are the members bound by any agreement with the co-operative.

On the other hand,

the stipulations of co-operative laws involve some important problems and difficulties of adapting by-laws to the requirements and socio-economic realities of low-income households. The formalized institutional approach and proceedings, particularly as far as the general meeting and committee is concerned, assume a high degree of adaptation to formal organizations and a level of formal education which may rarely be found among low-income households. . . .

Adapting the by-laws of the co-operative to the principles and practices of the customary law and prevailing social traditions, may at times be a difficult task, traditional concepts of the family, and responsibility towards its members, may often seem at odds with the requirements of co-operative legislation and the by-laws of the society. (Lewin, 1981)

3.50 The task of reconciling law with reality and helping members understand their roles and responsibilities and helping them participate in management is usually assumed by some governmental agency, at least until a cooperative has become self-reliant and acquired the necessary degree of "technical, financial, administrative and

legal expertise on the one hand and a thorough knowledge of co-operative practices, responsibilities and duties on the other." However, such external assistance itself creates problems: Experience in various developing countries has shown that governmental or semigovernmental organizations for the promotion of cooperatives often tend to develop a stiff bureaucratic approach and practices to discourage initiative and overemphasize their own role.

3.51 At the same time, the case for persevering with cooperatives, and with other similar kinds of organizations geared toward meeting the needs of the urban poor in the housing and land market, has been forcibly argued in a survey of access to land by the urban poor in Latin America, which

stresses the difficulty, if not the impossibility, for a family with limited resources to find a place to live when acting on individual terms, because the disparate nature of the urban land market makes for a very uneven and unequal relationship. A logical line of action would be for the promotion of organizations of lower income households affected by the housing problem, in order to improve their chances of faster and better solutions. Such organizations could play an important role by providing a better bargaining position in the market as well as in "extra market" situations.

These organizations could be of great help in the market in providing a rallying point for dispersed individual efforts. Advantages would accrue in such aspects as: the possibility of buying large plots of land which could later be sub-divided; lowering per unit prices as a result of usually paying less for large tracts of land; providing greater flexibility in location decisions; making possible the alternative of implementing ad hoc saving schemes and providing access to bank loans with conditions of shared responsibility. In addition, such organizations could play an important role at extra-market levels. As shown, urban public authorities are subject to strong pressure from different agents who require government support in varied aspects of urban development. Strong organizations could not only increase the amount of benefits to be directly received, but could also affect the ranking of priorities or urban public authorities. A healthier balance between effective participating agents and interest groups in the urban scenario could possibly stimulate a more active public policy with regard to the urban land problem. (Trivelli, 1986)

3.52 Trivelli's remarks draw attention both to the market and to the political role of the organizations he has in mind (which could in fact be cooperatives, NGOs, or CBOs). It is necessary to add, however, that many governments consider that a political role for such organizations is unacceptable, so that great care has to be taken in going down that path.

3.53 Although cooperatives as a private institution in land development are a sound idea in principle, institutional arrangements need a good deal of thought to guard against creating a legal-bureaucratic maze that could destroy the spirit of cooperation and self-reliance characteristic of most cooperatives. Indeed, the formation, development, and management of and support for cooperatives brings into sharper focus than most aspects of the institutional framework on urban land development the dilemma for those searching for appropriate institutions: how to develop a framework that facilitates land development and the operation of a land market by and for the urban poor yet at the same time provides a regulatory framework that ensures, in equal measure, efficiency, equity, and probity in the management of urban land.

### IV—

## **What Is Blocking the Land Management Process: A Look at Policy Instruments**

### Property Rights

4.1 It has been said that land tenure forms the basis of development policy, performing both an indirect, facilitating role, and a direct and active one. It interacts strongly with other elements of the urban economy, being closely linked to the mortgage market, which takes a substantial proportion of borrowed funds in most countries; it is a major determinant of the local tax base and significantly affects the quality and return of investment undertaken in land and structures. The objectives of urban tenure policy must, therefore, be viewed within the setting of more general policies concerning urbanization itself . . . One way of stating the problem of determining an optimal system of land tenure may therefore be that it is the task of finding tenure arrangements most capable of reconciling the contradictions between the public and private natures of land. (Doebele, 1983)

4.2 Another important point to note is that all societies see land tenure as more than merely a relationship between people and land. It embraces cultural, social, and political concerns; indeed, the evolution of government is closely connected with struggles over land, and the present patterns of land tenure everywhere cannot be properly understood without examining how they evolved. This is particularly true of urban land tenure in the countries of the developing world, where many different approaches to land tenure—often conflicting—have come together over the years and jostle for recognition within the confined space of a city. This near-Hobbesian struggle for recognition has in the past been dignified by the term "dual system of tenure," which is actually somewhat confusing because it implies urban land tenure is characterized by an ordered rationality, which might exist in theory but rarely in practice. More important, it fails to recognize one of the key difficulties in attempting to create a "system" out of current confusions; different systems of land tenure—with their different sets of rules, practices, and tacit understandings, which profoundly affect relations between people and land—are based on fundamentally different conceptions about the role of land and land tenure in society. Unless these different conceptions are fully appreciated, future attempts at reform, like those of the past, will be thwarted.

4.3 In considering, as we must in a policy context, the brakes and the accelerators of any particular land tenure system—what blocks development, what facilitates it—we need to assess the basic concepts of the system as much as the specific surface characteristics.

#### Basic Concepts:

4.4 Every land tenure system is founded on certain social and economic concepts. In some systems, land is considered part of the social relations between people and society and no distinction is made between the economic and social aspects of these relations. This approach is common in traditional societies governed by customs of long standing. In contrast, other systems treat land as part of the economic relations between persons in society. Modern societies dominated by the market, for example, keep economic and social relations strictly apart and view land as a commodity and a factor of production. Unless both approaches are taken into account, however, urban land policy and land management are likely to be ineffective. In giving this recognition to both approaches, one must bear in mind that they overlap; land might be, de facto, subject to rules and practices derived from land tenure systems based on each approach; people might move from one or to the other. Each approach, in the eyes of its users, is legitimate; each

is therefore an integral part of the whole society and one cannot make assumptions about the legality or illegality, legitimacy or illegitimacy of either.

4.5 The situation in the cities of the developing world is even more complicated than this. They do not have two or three discrete systems of land tenure, each occupying its own space, applicable to its own group of people, and having its own set of institutions and instruments. Rather, one will find there pluralistic systems of overlapping tenure arrangements, including (a) a formal official statutory system, (b) an informal system applicable in unauthorized settlements, and (c) indigenous Islamic or customary land tenure.

4.6 These systems overlap in three respects: First, people move between the systems both in terms of their actual relationship to land and in terms of the transactions they engage in; a person may own and deal in land in the formal statutory system in one part of the city and have rights and duties associated with customary land tenure in another part of the city. Second, it may be difficult to determine whether a particular piece of land falls under a particular system of tenure; it may in fact be within two systems and thus be open to conflicting rights and duties. This is usually the case with land occupied by squatters in an informal settlement: the tenurial relations within the settlement are one system; the relations between the squatter and the official legal landowner—public or private—is another system. One finds similar conflicts between customary land tenure and statutory regulation of land use: permission from a chief to build a house on land that falls within his customary jurisdiction may well conflict with the statutory regime of land-use control applicable to the same piece of land, so that the house can be considered legal or illegal depending on which system of land tenure and land use controls one judges it by.

### Forms of Land Tenure and Their Characteristics

4.7 This mosaic of ownership concepts can be analyzed in the context of three broad groupings, namely, statutory systems (including common law and civil law), informal systems (including the many shades of informality), and customary system. The latter two are offshoots of the statutory systems.

#### Statutory Systems

4.8 **Common Law Land Tenure** . Many systems of urban land management are based on concepts arising out of the common law. Their most important characteristic is that they permit multiple rights to the land. Different people can have or own different sets or bundles of rights in the land, which may last for different periods of time or may be so arranged that they only come into being in the future and may cover different aspects of the total corpus of rights to land—the right to use and manage it; the right to the fruits; the right to dispose of it. The notion that two or more people could have rights to the same piece of land at the same time arose from the concept of the estate. In common law systems, people do not own land; they own estates or bundles of rights in the land. "A" may have the right to an income from the land, "B" to live on the land, "C" to walk across the land, "D" to build on the land and, E to abstract water

from the land. All these persons have legally enforceable rights that also command a price in the market.

4.9 The common law of the land is thus an extremely flexible body of law; indeed, its flexibility has been the cause of considerable complications over the centuries as different bundles of rights were invented and made it extremely difficult to buy and sell land. Legislative reform was necessary to untangle the confusions, but legislative reform itself was based on the fundamental principle of the division of interests in land. Reform was based on the separation of two sets of rights—rights of management and rights of enjoyment, which would make it easier to develop a market in land. Rights of management were located in freehold estates (those that have the potential to last indefinitely) and leasehold estates (estates that last for a fixed period of time, e.g. up to 999 years), while the rights of enjoyment were relegated to rights to insist that the owners of the legal estate (managers or trustees) paid to the beneficiaries what they were entitled to receive.

4.10 **What Does It Mean for the Market?** The division of interests or rights into rights of management and rights of enjoyment is a fundamental principle of a market economy. It is at the root of the company structure and its division between managers and shareholders. The last major package of reforms that set the land law firmly on the path of facilitating a market in land in England was enacted in 1925. However, in many countries where this law was imposed at the outset of colonialism, it was a nineteenth-century version of the law (in Caribbean countries, it was a much older version) and it contributed to the existing jumble of concepts, rules, and philosophies. The conceptual framework of the common law has been carried over into the regulatory framework that has been added to the basic land law. The laws regulating land use (town and country planning legislation)

are based on the concept that there is a distinction between the existing use of land and the right to develop. The latter is said to be of interest to society and for this reason may be controlled by the state, which may restrict its allocation to a person or a body that comes forward with an acceptable proposal for the development of the land.

**4.11 Civil Law Tenure.** The civil law system is another extensive system that is applicable to urban land in countries on every continent. Unlike the common law, which derives almost entirely from one source (England), the civil law, although it can be traced back to the Napoleon Code, was imposed or imported from a variety of metropolitan sources—France, preeminently, but also Belgium, Holland, Portugal, and Spain. The civil law system grants outright ownership of the land. The code defines ownership as "the rights to absolutely free enjoyment and disposal of objects provided they are not in any way contrary to laws and regulations." Like common law, the powers implied in the ownership of land are not completely unrestricted; over the years, all civil law systems have accepted the need for restrictions imposed on the owner in the interests of the wider community (public law restrictions) or of neighbors (private law restrictions and in particular the important civil law concept of the abuse of ownership).

**4.12 What Were the Aims of the Statutory Systems?** Statutory systems were introduced with three main objectives in mind. First, they were to make it possible to acquire land in colonial possessions from the indigenous people and grant it to settlers, mining concessionaires, and other commercial organizations. This was the case in Malaysia, Indonesia, the South Pacific, and many countries of Africa. Second, the system was expected to simplify land transactions, which was the primarily goal in the Indian subcontinent and in Malaysia, where the national land code enacted in 1965 provided one of the most comprehensive statutory systems of land law contained in one code. Third, as Indonesia's Basic Agrarian Law of 1960 demonstrates, the law could also serve to unify dual systems of tenure based on a coherent philosophy reflecting indigenous interests and ideas. Land is a gift of god and constitutes the wealth of the nation; the state, on behalf of the nation, regulates land and other resources; land has a social function and land rights have to be adjusted to national laws and interests. Social functions and interests take precedence over land as a commercial commodity, which can be freely bought and sold in the market. It is important to be aware of the aims of the statutory system for they can affect its evolution just as much as the historical circumstances affect the potential changes of the total system.

### **Diversions from the Statutory Systems: The Many Shades of Informality**

**4.13 Degrees of Informality.** Most often, there are several informal systems in operation, owing to the fact that the concept of informality covers a wide spectrum of cases: (a) defective land tenure conveyed by the original landowner to the subdivider; (b) defective tenure conveyed from the subdivider to the purchaser; (c) the establishment of the subdivision in an area in which it is not a permitted land use; (d) failure of the subdivider to follow applicable subdivision regulations governing layout, plot sizes, and the provision of basic services; (e) failure of land purchasers to follow building and occupancy codes when constructing buildings on their plots. At one end of the spectrum is the classic squatter settlement, which can be defined as the illegal occupation of land, either public or private, followed by the building of structures that ignore all planning, zoning, building, and public health regulations. No official acceptance is granted to such an occupation and development so any tenure relations and transactions must develop without reference to official institutions or procedures. At the other end of the spectrum is the development that is "5% below the required standard" (Doebele). The land has been sold legally by a landowner to a developer who subdivides it into plots below the required standard and sells the plots to individuals who construct houses based on but not fully complying with the relevant statutory codes. Because the regulations have already been by-passed and in order to save on costs, plot owners may not register their titles, which are thereby rendered technically illegal and unenforceable. In short, there are almost infinite degrees of informality, which are normally paralleled by almost infinite degrees of official toleration. Informal systems come in a wide variety of forms and involve a wide variety of parties.

4.14 It was widely assumed in the past that only two parties were involved in informal or illegal settlements: the squatters and the rightful owners, public or private. This is an oversimplification. A considerable amount of evidence is now available to show that, in all parts

**Box 4.1 Madagascar: An Illustration of the Many Shades of Informality**

According to the existing legislation, all urban land occupied before February 15, 1950, and on which site improvement has occurred (Mise en Valeur) can be granted full title. In other words, any pretender to a title would have to show evidence of occupation exceeding 40 years!

In this context, occupation of land without legal property rights represents the only alternative for many urban dwellers. In practice, this situation gives rise to the following broad categories:

- a. Private, registered properties occupied by owner legal situation.
- b. Housing built on private registered land but belonging to another owner: illegal.
- c. Urban land occupied and improved before 1950: no title but can be legalized if beneficiary wishes it.
- d. Rural land occupied for 10 years: same as above.
- e. Urban land occupied and improved since 1950: illegal occupation of land belonging to the private domain of the state.
- f. Registered land (private state lands) occupied by squatters: illegal.

It is estimated that 85 percent of new construction activities are carried out informally.

of the developing world, middle persons are involved in informal systems.<sup>3</sup> Consequently, the operation of such systems cannot be understood without taking into account the roles of such middle persons. They may act as wholesale purchasers of land, subdividing and then selling individual plots. They may organize invasions and be responsible for ensuring plots are subdivided and demarcated once the invasion has taken place; they may be lawyers completing transactions and using forms and procedures similar to those used in official transactions to give a simulacrum of an official legal transaction; they may be party officials who settle disputes unofficially in informal settlements; they may be persons holding a customary office who perform some role on behalf of a customary landholder allocating land to a person; or they may be state officials or public servants supplementing their income through extracurricular activities undertaken on behalf of informal settlers. There may be a combination of such persons involved in an informal settlement and relations and transactions between such persons are all part of the informal system of tenure.

4.15 Keeping these complexities and pluralities in mind, it is nonetheless possible to make a broad distinction between two sorts of informality: that which arises when lawful tenure under the official formal regulatory system is not practiced and that which arises when tenure does not comply with the official formal regulatory system. We will focus here on the former.

4.16 **Informality through Tenure Not Lawful under the Official System.** A further distinction may be made in

this type of informality between (a) tenure obtained in disregard of

3. For other information concerning these middlepersons, see Payne, 1989 and Serageldin, 1990.

any system of tenure relations (an invasion of land), (b) tenure considered lawful by one system of law (i.e., customary or Islamic law) but unlawful under another system or not recognized by the official system, and (c) tenure obtained through processes that the informal system recognizes as sufficient to give valid possession or even ownership but that the official system does not recognize as creating any such interests. Illustrations of the latter include sales of land carried through in accordance with standard informal procedures but the land cannot be sold or developed for urban purposes (as is the case with the ejido land in Mexico), or official permission is needed before the land can be transferred (as in Zambia under the Land [Conversion of Titles] Act 1975,) or the sale takes place outside the official system for transactions in registered land, which the land is officially deemed to be (as in Jamaica, where the Registration of Titles Act 1889 applies to all land in the country).

4.17 The best-known examples of complete illegality are the land invasions that have occurred in several Latin American countries. Despite the illegality of such invasions, it would be a mistake to assume that they are without order or that some kind of system for conducting tenure transactions and resolving disputes does not quickly develop. As the invasions in Venezuela illustrate, informal settlements do not exist in a Hobbesian state of nature. First, some system of ordering interpersonal relations concerned with tenurial issues and other matters quickly comes into being. Second, the institutions involved in such a system come from both inside and outside the informal settlement—those outside the settlement being part of the official formal system of governance. In practice, they may be local government institutions (as in the Caracas example, and as in the land-sharing operations in Bangkok); party officials (as in the informal settlements in Lusaka and Dar es Salaam and in many Indian cities); organizations of lawyers, either official ones (as in Caracas), quasi-official ones like the legal aid society formally registered in accordance with governmental regulations (such as the Legal Advice Center in Nairobi), or unofficial groups of lawyers willing to give their time free or for a fee to persons within the informal settlements (as in Bangalore); NGOs; or in areas where customary law applies, those with authority over land and people within the customary system (as in Douala, Bamako, and Accra). Third, although there may be some reference to formal legal terminology, concepts, or practices within the informal systems, develop and operate in an eclectic and consumer-orientated way; they aim to satisfy their clientele, keep the peace and uphold claims and interests to land and housing. Fourth, assuming that some official involvement in ordering informal tenure relations betoken official tolerance of the informal settlement, a fair degree of security of tenure may be obtained from external forces—such as eviction or demolition. Even security of tenure from internal forces—landlords—may be strengthened by the existence of official involvement. With respect to absolute illegality, there may be a difference between occupation of privately owned land and occupation of publicly owned land. The Venezuelan example makes that distinction and emphasizes that the authorizations, issued by the *junta communal*, to occupy a plot of land are relevant only in dealing with others who live in the barrio. Similarly, in Thailand, unlawful occupation of privately owned land is likely to be challenged by the landowner, even if, with the intermediation of official bodies, the ultimate solution is land sharing, which confers considerable security of tenure on the erstwhile illegal

### **Box 4.2 Invasions of Urban Land: The Case of Venezuela**

The great majority of the dwellings in a barrio in Venezuela have been built on land owned by somebody else since barrios are often the result of squatting. The title to the dwellings and the title deeds of the land on which they are built were vested in the same person in only 28.2 percent of the cases investigated and whereas 80.7 percent of the respondents said that they, their wives, or their relatives owned the dwelling, only

21.6 percent owned the land. Official law dealing with this situation is still based on traditional European law as set out in the Civil Code of 1804 under which the landowner becomes the owner of whatever is built on the land. However, the reality being that occupation is the result of a well-planned and organized invasion in which the occupiers are prepared to resist eviction by force, "the landowner faces difficulties in actually achieving the advantageous position which formal legal regulations award him . . . the law puts the landowner in a very advantageous position while simultaneously the bodies charged with the duty of setting it in motion render it ineffective." At the same time, in order to protect the occupants of barrios from exploitation, the official law forbids the renting or selling of ranches—houses in barrios—thereby rendering the most important possession of the occupants nonnegotiable in the markets. Thus if we keep to the letter of the law, the position of the builder or owner of a rancho is an insecure one: he cannot carry out any legal transactions involving the rancho and, since he does not hold any legally valid title to the dwelling, there is no machinery to which he can resort to prevent anyone depriving him of it. But barrios are not a legal jungle. Research by Karst and others have "pointed to the creation of a spontaneous law . . . which is the result of the social situation itself brought about by the formation of barrios and the influence of formal law with which inhabitants of the barrio have many contacts. The barrio 'junta,' a body having no official representative standing . . . takes . . . the principal role in resolving disputes and its method of creating and applying the law is similar to that of a judge in common law." In addition, official local bodies are involved in settling disputes; indeed, even Karst's own figures show that more than three times as many people in a barrio would go to an official body as would go to a barrio junta if there was a dispute over their dwelling. The lowest official local body is the junta communal, and research has indicated that while such juntas have no specific official role in such matters, their "most important activity is in actions aimed at avoiding conflicts breaking out, or at least to set up machinery to enable itself to solve any conflict that does break out or put it on the path to resolution." In legal procedures associated with formal law, these activities would correspond to the checking and supervision of documents drawn up by lawyers. Of these activities, the issuing of "authorizations" appeared to be the most common. These covered land occupation, rancho occupation, and nuisances to neighbors. There appeared to be no fixed rules governing the juntas' decisions. Another body involved in dispute settlement is the Seccion de Asistencia Juridica de la Sindicatura Municipal (the Legal Aid Section of the legal division of the Municipal Council). Lawyers from this office act as mediators and conciliators. Being a lawyer from an official organization, his/her opinions carry great weight; so that while the records indicate that solutions to disputes are reached through agreement between the parties, in reality "there is some element of coercion in the decision." Cases involved property relations (squatting, occupation of dwellings, nuisance, rights of way) and contractual relations (renting, buying and selling, gifts).

Some general points arise out of what is described here. First, "it is possible to speak of an informal official system of regulations in the barrios. We use the term 'official' because those who run it and who prevent and resolve conflicts, are public servants. . . . We use the term 'informal' to contrast it with the formal law which is easy to identify." Second, the criteria for decision-making are by no means clear. Juntas comunales appear to use political factors—support for a particular party, e.g. With respect to criteria used by the Legal Aid Section "while continuing to use legal terms, the lawyers appear to have been obliged by the situation to create solutions that are

adapted to the needs of life in the barrios and to the particular circumstances in which the parties to the conflict find themselves." Third, "the scanty legislation (that is, official legislation dealing with barrios) has effectively avoided commercial speculation in dwellings in barrios. . . . Moreover the informal systems have avoided the mountainous and cumbersome paperwork that surrounds conveyancing in commercial and bureaucratic spheres. If the high cost and the slow pace of the formal system of preventing and resolving conflicts is considered, the system as it operates has solved many of the basic problems connected with dwellings, including security of tenure and ease of conveyancing."

Source: Pérez-Perdomo and Pedro Nikken, with Elizabeth Law (1980).

occupiers. In many countries, it is not possible to ignore or overlook constitutionally based protection of private property. To deny a private landowner a remedy to evict squatters would be, in effect, to acquire compulsorily his/her property without compensation for the benefit of other private persons. As noted in the Venezuelan case study, the state may be prepared to acquire compulsorily the squatted land, or the landowner may be prevailed upon by political pressure to come to some arrangement with the squatters, but these approaches cannot be relied upon, and therefore an element of insecurity remains. Second, insecurity can be a problem even on publicly owned land. Illegal occupation of land earmarked for a prestigious sports stadium in Accra was summarily ended by the authorities; similarly, the demolition of some informal settlements in Nairobi affected those on public land. Public land earmarked for some specific project for which funds have been allocated and that is ready for implementation is highly likely to be cleared of informal settlements. The difference between this situation and private land is that the public authorities may be more inclined to provide alternative accommodation for those evicted from public land.

4.18 At the least, official tolerance of informal settlements is the vital sine qua non of the development of internal processes, structures, and institutions that between them provide for a recognizable system of land tenure. This tolerance may be absent for a variety of reasons, all of which will need to be addressed in any policy attempting to regularize or integrate formal and informal systems.

4.19 Do these generalizations indicate a way forward, an approach to issues of tenure in informal settlements? Can prescriptions be based on them? We think the answer is yes. What the generalizations show is that informal settlements are likely to be or may grow into ordered communities with institutions and instruments at least of a quasi-legal nature available to protect and secure the interests of community members. Furthermore, tenure matters are in many cases handled through contacts and links between institutions and people within the informal settlements and institutions in the formal official system of governance. In sum, informal settlements, despite their formal tenurial illegality, are already a part of the urban polity and society. Thus it seems logical to integrate the two systems, formal and informal, in a way that will preserve the simplicity and user-friendliness of the informal system yet provide a sufficiently authoritative declaration or backing of existing tenure arrangements within the informal settlements so that security is enhanced, transactions are possible, and credit for house improvement or purchase becomes easier and cheaper to obtain.

### **A Third Set of Tenure Systems: The Survival of Customary Systems**

4.20 Although noncustomary informal systems of tenure are not officially recognized, customary systems of tenure can claim a legitimacy that other informal systems cannot. Just as there are many shades of informality, customary tenure varies greatly in urban situations, three types being of particular note. First, the peri-urban case arises when the town extends outward beyond its official boundaries onto land officially subject to customary law. Second, an urban area may have a customary enclave consisting of a group of people from the same community living in one area in town, and their interrelations including tenurial relations, are regulated by

customary law. This is the situation in some parts of Port Moresby. A variant of this occurs where, although statute law has replaced customary law as the law governing tenure in urban areas, many people still abide by the laws of customary tenure. This is the situation in Jakarta, where although officially abolished and replaced by the basic Agrarian law, Adat law still holds sway in many areas. According to a recent study, persons holding land under customary law that gives the holder of a right "a perpetual and complete right of ownership but one which has not been registered and certified by the National Land Agency" represent about one-third of all residential landowners (Hoffman, 1990). Third, customary law may play a role in transactions affecting people's rights to land under the official system and may therefore lead to a mixed formal–informal arrangement.

4.21 Examples of this third arrangement may be found in Ghana and Nigeria. A family has to agree to a sale of land to be carried out in the formal system; a sale without such agreement will create instability in tenure relations, which may continue for years and make it difficult to determine the position of the land and what system it comes under. An important traditional ruler, such as the Asantehene in Kumasi, has to be involved in land allocations that are determined by a mixture of traditional and statutory criteria. In Tanzania, on the other hand, land subject to customary law on the peri–urban fringe of Dar es Salaam is bought and sold without the titles being recorded. The phenomenon of customary tenure combined with urban land tenure has met with a variety of official responses. Some countries have attempted to legislate the problem out of existence via land nationalization. But nationalization has not eliminated customary tenure, in part because centralized systems of land allocation tend to be inefficient. If land cannot be obtained through the official system, then an unofficial system will be used. Those who claim to have rights in the land will be approached and will sell the land.

4.22 Other countries—Ghana is a good example—have tried to incorporate the customary system into the official system. Ghana officially recognizes two categories of customary land, vested land and stool land. Vested land is stool land that has been vested in the president as trustee, the beneficiary being the indigenous community on the land. Vested land of this kind is managed by the Lands Commission. Stool land is vested in and managed by customary allodial title holders but a transaction in stool lands "shall not pass an interest in or right over any stool land unless it was executed with the consent of the Lands Commission" (PNDC law 42, sec. 47).<sup>4</sup> The same law sets out the proportion of money received from a sale or lease of stool land that goes to the stool, that is, to the chief and to other agencies. Although the system appears rational on paper, it does not work well in practice. Chiefs require unofficial payments (drink money) for their services in land transactions. In Accra, constant disputes arise over who is entitled to receive this money and the boundaries of land being allocated; the Lands Commission is too centralized and takes too long to approve transactions. The system is not geared to cope with the allocation of small plots to the urban poor.

4. Allodial: Opposite of feudal; pertaining to an allodium i.e., land not held of any lord or superior.

4.23 The third approach is basically to do nothing while perhaps deploring the system verbally. Chiefs or other traditional landholders allocate land for urban purposes as they see fit, paying as much attention to the formal system of plans, title registration, surveys, and infrastructure provision as they see fit. As a result, ill–planned, unsanitary developments have sprung up on the outskirts of many towns and officials or local authorities have been unable or unwilling to do anything about the situation. This approach tends to occur in those countries where, whatever the formal constitutional or legal position, chiefs still exercise considerable political power.

4.24 Customary tenure systems in urban areas are fraught with problems in part because of the general ambivalence toward customary law and traditional practices. Should they be swept away as anachronistic instruments or considered authentic expressions of cultural inheritance? Only Botswana has attempted to follow the example of Indonesia's agrarian law, which tried to establish a statutory system of land law firmly grounded in traditional principles. That law is still not universally followed in practice, but the approach is surely a sound one.

4.25 The role of customary landholders (chiefs) has also proved troublesome. In some countries chiefs are still part of the official government and can seemingly play a role in land management. In other countries, they have no official position so their land activities fall outside the state system. In both cases, many chiefs retain a traditional "social" approach to land rather than a more market-oriented approach. Thus, quite apart from the wider political question of the role of chiefs in modern governance, the differing approaches to land are a potential source of conflict—some consider it a source of political power or a resource for a particular social group only, whereas others see it as an economic asset of national interest, to be subjected to market forces. Where chiefs still play an official or a recognized role in urban land management, they must be provided with some benefit or compensation for giving up their political role in the process. If the political, financial, or other benefits from operating outside the formal system are greater than those obtained from operating inside, chiefs will continue to operate outside and informal settlements will continue to take place customary land without regard to the official system. Even where traditional land right holders still exercise power or influence over land management unofficially, the question of how to handle the matter should be approached from the perspective of those who have obtained the land and are living on it, rather than be treated as a challenge or an affront to the official system.

4.26 If customary land tenure is dealt with in a positive way, what, in the past, have been considered disadvantages may be treated as indications of the need for integration with the official system. The communal element in customary land tenure could be developed into cooperative ownership and joint tenancies of urban land; community mortgages along the lines of those developed in the Philippines could then be used to finance the building and improvement of housing; and the multiplicity of interests that can exist in customary land tenure could form the basis for ensuring traditional right holders some residual rights in the land and for ensuring that women have certain rights in urban land. The existing structure for regulating decisionmaking pertaining to customary land could be harnessed to perform the same tasks in urban areas. The customary system could be used to keep a register of who is on which plot of

land; to enforce minimal and basic land-use guidelines to ensure that public health requirements are met and that land for essential utilities and services is reserved; and to settle minor disputes on boundary and nuisance issues. In this way, customary authorities could become the bottom layer in the hierarchy of an urban authority, but would derive legitimacy from below as well as from above. The first necessary step would be to accept and work with customary tenure and authorities before more formally regularizing tenure to facilitate access to credit and security of tenure.

### **Policy Issues Related to Tenure**

#### **Freehold versus Leasehold**

4.27 The debate on the respective merits of freehold versus leasehold tenure is not confined to developing countries. Nor indeed is it a recent debate; it stretches back to the nineteenth century in England, it has gone on in Australia since the colonization of that continent in the nineteenth century, and it sparked an early clash between settlers and the colonial authorities in Kenya.

4.28 To all intents and purposes, freehold tenure is absolute ownership of the land. No land-right holder is superior to the freeholder. A freehold is of indefinite duration and is inheritable. Leasehold tenure, in contrast, involves a landlord and in most cases the tenure is of fixed duration. According to Simpson (1978),

A lease may be defined as a contract granting the exclusive right to possession of land for a fixed or determinable period shorter in duration than the interest of the person making the grant. The interest created by the grant is formally called a "term of years" but is more usually referred to as a "lease" or a "leasehold interest." The grantor is called the "lessor" or "landlord," and the grantee the "lessee" or "tenant." All leases are necessarily derived

directly or indirectly from the freehold. Thus A, the freeholder, may grant a lease to B for any period of years he thinks fit. B may then grant a lease to C for any period ending before the expiration of his own term. B's lease is then known as the "head lease," and C's as an "underlease" or "sublease." C in his turn may grant a "subunderlease" to D for a period less than his own term, and so on without limit, provided that the term of each lease is always shorter than the term out of which it is granted. The interest which remains vested in the landlord after a lease has been granted is termed a "freehold reversion" if the landlord is the freeholder, and a "leasehold reversion" if he is himself a lessee. Perpetual leases, after the fashion of the emphyteusis of Roman law, are unknown to strict English law (though they are allowed, for example, in Australia), but there is no legal limit to the term of years for which a lease may be granted, and therefore no technical difficulty in making it virtually perpetual. Obviously a very wide variation is possible in the duration and importance of leasehold interests. Leases for 999 years are common.

4.29 Note, too, that while English legal terminology has been used to describe the lease, other systems of land tenure recognize a division of rights in land that resemble a lease, such as

the *hat guna usaha* of the Basic Agrarian Law of Indonesia, the *strangers usufruct* of certain systems of customary law in Ghana, and the *Ijarah* or *Ariyah* of Islamic law.

4.30 Essentially, the crux of the legal difference between freehold and leasehold is that the freeholder is bound by the laws of the land and nothing else, whereas the leaseholder is bound, in addition, by the terms of the lease laid down by the landlord. The leaseholder is then less free and unrestricted in his or her use of land than is the freeholder.

4.31 This is the formal legal position, and much debate has been conducted on that somewhat unreal basis. For instance, the supposed fundamental issue of more or less "freedom" is overdrawn. Few if any states allow the freeholder freedom to do what he or she likes with the land; few if any states allow the landlord unrestricted power to impose whatever terms on a lease he or she chooses. The issue is not freedom versus restriction but the degree and nature of restrictions imposed on land tenure and land use and the best method of implementing such restrictions. Again, it is sometimes argued that leaseholds are unpopular with property developers and financiers because of the inherent risks of terms coming to an end and landlords, particularly public sector landlords, interfering. But, as noted above, a lease can last for as long as 999 years, which is ample security for a loan (in Singapore, Hong Kong, Canberra, and Lilongwe they are for shorter terms yet do not appear to inhibit property development). Moreover, the risks of public sector interference in development depend far more on the nature of the public sector and governmental attitudes to private land development than on whether development is based on leasehold or freehold tenure. Where leaseholds are for long periods, or become very common, the distinction between them and freeholds becomes less clear. When a significant proportion of the residents of an urban area have the municipality as their landlord, the city will almost surely be subject to political pressures that may distort the theoretical economic and functional advantages of its being a landlord. It is true, however, that if leaseholds become a common form of tenure, amendments to banking legislation may be necessary to define clearly the conditions under which financial institutions may accept leaseholds as legal collateral.

4.32 Another common criticism of leasehold tenure in developing countries is that where the freeholder is the state or a public body, it requires scarce resources of skilled manpower to manage the leases, whereas no such resources are needed if freehold is the norm: the land is allocated and that is the end of it. This argument, too, seems misguided. If it is possible to register titles to land, then the same officials are needed to register leasehold as freehold titles. If some form of annual or more frequent rent has to be paid, so too, more than likely, will there be some form of payment by installments for a freehold; both will require officials to process and record payments. It was pointed out several years ago that land use can be controlled more efficiently and at less cost via conditions on a title (i.e., conditional freehold or leaseholds) than via statutory planning and development procedures (Willcox).

4.33 What, then, are the substantive arguments for freehold tenure, since it appears to elicit strong cultural support in many parts of the world? First, whatever the rational arguments may be, the general feeling is that leaseholding is less safe, less free. Second, where the freeholder is the state, there is every likelihood of becoming entangled in a slow, inefficient

bureaucracy. Third, the question from a personal point of view is what happens at the end of a lease: Will it be renewed? On what terms? What redress does one have? If the tenant dies, can the spouse or children remain on the land? Fourth, since all buildings and other improvements to the land revert to the landlord at the end of a lease, there is a strong tendency to disinvest (that is, to let buildings deteriorate) in the final years of any leasehold. Fifth, are the problems related to landlord–tenant relations?

4.34 What are the arguments for leasehold as the basis for land development? If land development is to be planned and controlled, it is preferable to do it from a position of ultimate owner than from a position of statutory regulator. With respect to building or long leases, regular rent review clauses can ensure that the financial benefits of capital appreciation can be shared between the developer/tenant and the public sector/landlord. This, too, is a better way of managing urban land than trying to recoup betterment via taxes, levies, and charges. Furthermore, redevelopment of land can proceed in a coherent planned manner as leases fall in rather than in a haphazard way that depends on the fortuitous circumstances of freeholds coming onto the market or using compulsory acquisition powers. In addition, controls on transactions in land (e.g., high–income speculative purchases in low–income housing schemes) can be better operated via conditions in a lease than via statutory control boards.

4.35 As already mentioned, the leasehold system has parallels in customary land tenure. In those countries where the customary approach is still an important mode of tenure, use of the lease may be the key to reconciling customary concerns and rights with a more market–oriented system. A close parallel is the development of agricultural land owned by traditional landowners for industrial, mining, and residential purposes in England in the nineteenth century. This land was all on leasehold, and to this day the freehold of large parts of central London and other cities are still owned by the descendants of these landowners; this has not prevented the development and redevelopment of the sites. The leasehold concept might also be a way around the problems of informal settlements developed on privately owned land, without the owner's permission—the classic squatter settlements. Rather than going with the two choices of evicting squatters or buying out the landowner, compulsorily if need be, policymakers could seek a solution based on using the lease, with the public authorities and the settlers each paying a proportion of rent to the landowner so that he or she could obtain a fair return from the land, yet no one would be dispossessed.

4.36 "Feelings" about tenure are important, and governments ignore them at their peril. In Kenya, for instance, the rural land reform program of the 1950s and 1960s was based on the conversion of customary holdings to freehold; it would now be quite impossible to change policy and move to leaseholds. Where feelings are strong about freehold, then it would be best to stay with it or move to it; where feelings appear neutral, there is some merit in basing a modern land tenure system on leasehold, with the state holding the freehold reversion and exercising management powers via that interest in the land. Significantly, the People's Republic of China is reforming its urban land tenure system replacing thereby "socialist freehold" with arrangements which resemble a market oriented leasehold system. It is vital, however, if that choice is made, to develop efficient systems of urban leasehold management that assist the operation of land

### **Box 4.3 Urban Land Tenure Reform in the People's Republic of China**

Under the prior system of strict public ownership, land was clearly not treated as a

commodity; it could not be sold, leased, mortgaged or inherited. Instead, land in urban areas was bureaucratically distributed through a two-step administrative allocation process (xingzheng huabo), emulating the standard form of Soviet land utilization. In the first step, the economic planning authorities approved the enterprise and in the second, the local land administration bureaus appropriated the required land for the users. Through this process, state agencies, social organizations, and public and private enterprises were able to obtain the right to use land free of charge for indefinite periods of time. Thus, except for the fact that these rights were inalienable, it seems that the user received rights of virtual ownership while the state retained only nominal title.

This system of urban land allocation, modeled after the Soviet system, suffered from the shortcomings typical of a non-market allocation process. Gratuitous and perpetual land use, with its lack of cost discipline, tended to foster waste, inefficiency, and rigidity. Because users could obtain land free of cost, they demanded, and were frequently granted, far more land than they needed.

The new assignable land use rights system is modeled after that of Hong Kong, whereby the state retains ownership of the land and leases out the land use rights. The process used to accomplish this is the reverse of that under the intermediate system of "payment for land use allocation" (tudi piyong). Under that system, the prospective user initiated the process and the approval of the investment project preceded the allocation of the land. Under the new system, however, the state first parcels land to be developed and prepares a draft granting contract accordingly; detailed construction plans are approved afterward. The draft contract is prepared in accordance with state economic plans and municipal development requirements. It is then offered to prospective developers and users either by negotiations, by invitation to tender, or by open auction, depending on the circumstances.

As in Hong Kong, the government imposes terms and conditions as covenants on the lessee and the assignee in order to effect land development according to its land use planning. The lessee may still mortgage or otherwise assign the land.

The major breakthrough in China's urban land reform is the development of assignable land use rights, facilitating sale, exchange, mortgage, gifts and inheritance. All land regulations, however, place some restrictions on assignment.

The advantages of this system compared with the old are manifest: rigidity, waste and inefficiency have been replaced with flexibility, prudence and productivity. Assignability makes possible the voluntary transfer of land to more productive uses. The clearer definition and increased protection of proprietary interests in land will enable planning and encourage long term investment by land users while the ability to mortgage these interests will facilitate the growth of the capital markets needed to fund such investments.

The transition from the traditional method of state bureaucratic land management to a system in which land use rights trade in a commodity market was as innovative ideologically as it is economically. The key to making the development of a commodity market ideologically consistent with socialist concepts of public ownership was the recent theoretical discovery that "use and management" could be

separated from "ownership."

From this point of view, the emerging urban land system in China is not fundamentally different from what is common in the West: land will be managed and operated on a decentralized basis by more or less autonomous individuals and corporate economic agents, subject to the planning requirements of the state. What distinguishes the two systems is their differing points of departure. In the West, where land has long been privately owned, the state exerts control by regulation; in China, where the point of departure is state ownership, similar results are achieved in a more proprietary manner—through the use of leasing contracts.

Tung-Pi Oien, *Emerging Real Estates Markets in Urban China* (1990)

markets, deliver land to the urban poor with a minimum of bureaucracy, and ensure a fair return to the public exchequer from rents and lease payments. Such systems have worked in Singapore and Hong Kong; that such systems need to be developed is evident in far too many developing countries that have opted for the leasehold system, yet manage that system in an inefficient and inequitable way.

4.37 Freehold versus leasehold is not an all or nothing decision. "Selective" leaseholds are an alternative policy. Possibly, a distinction can be made between leaseholds on (a) industrial and commercial sites, and (b) sites of special importance such as the old central area, historical districts, areas around major monuments, and transportation gateways, as opposed to leaseholds on all property.

### **Landlord–Tenant Relations**

4.38 It is now widely recognized that the majority of the residents in informal settlements and in many sites and services and upgraded areas are tenants of private landlords. Paradoxically, it is the growing acceptance of informal settlements by governments, the considerable amount of public investment from aid sources that has gone into such settlements, and the increasing integration of these settlements within the formal systems of tenure that have contributed to this fact. As settlements become more accepted, private capital invested in the settlements will clearly become secure. As more private capital is invested, so other sectors and classes in the community besides those residing in the settlements will develop an interest in the maintenance and upgrading of the settlements, as opposed to their demolition. Another important factor is the rate of return on private capital invested in low-income residential accommodation. Where there is great pressure for such housing, where too little land is being made available for low-income groups, rates of return are likely to be high, for there will be little alternative to the accommodation offered by landlords, who will have the resources to obtain what land there is.

4.39 This input of private capital into low-income urban land development raises several issues. On the one hand, it may look as though such an input will increase the amount of accommodation available to low-income groups, so the management of urban land should facilitate the growth of a market in private rented accommodation. If, however, the growth of rented accommodation has been brought about by the purchase of property originally allocated on an owner-occupier basis to individual families (as has occurred in Dandora in Nairobi), or by the acquisition of plots in developments originally set aside for owner-occupation (as in Traditional Housing Areas (THA), in Lilongwe), or by the purchase of houses in informal settlements, then it may well be that any overall growth in available accommodation will only be obtained by putting more people into the property so acquired—that is, by reducing the space made available to persons offered accommodation.

4.40 This leads to the broader question of the extent to which the market for rented accommodation should be subject to some sort of regulation, and if so, what kind, and what institutions should be used to implement

regulation? Those who are opposed to any form of

regulation argue that there is a need to attract private capital into low-income urban land development and to ensure the economic viability of low-income housing schemes funded by public funds. Rented accommodation can meet both those needs, and nothing should be done to hinder its development. Note, too, that regulations don't work; they increase costs and bring no benefits to anyone. Exploitation will not be stopped by regulation but by increasing the supply of developable urban land and by expanding the facilities for obtaining title and credit.

4.41 It is necessary to be clear about what may be covered by the notion of regulating rented accommodation. Three broad areas are usually covered; rent, security of tenure, and quality of accommodation. Studies of formal rent control in developing countries are not, on the whole, sanguine as to the benefits of such regimes, which in any event do not generally reach down to informal settlements. A better case for regulation can be made on equity grounds in the areas of security of tenure and quality of accommodation, and in the latter area, on public health grounds as well. Unfortunately, for various reasons, the reach of such regulations is unlikely to be any more effective than the reach of rent control. First, there are a variety of informal and formal landlord-tenant relationships in both the formal and informal sector. In some of these, customary factors may play a role in determining the beginning and the end of a relationship; in others, political affiliations may be important. Furthermore, large-scale landlordism differs significantly from the small-scale tenancies characteristic of most African and Latin American cities. Regulation of the former, however difficult, may be more justifiable than regulation of the latter. In any event, it would be extremely difficult to design and operate a regulatory system for such a *mélange* of relationships. Second, those who have to design and operate a regulatory system may be those against whom such a system would have to operate: their enthusiasm for an effective system is accordingly muted. Third, even if the first two hurdles can be overcome, an effective formal regulatory system would greatly consume resources that could probably be better spent on more positive activities to increase the supply of urban land.

4.42 Does this mean that no form of regulation can be contemplated and that we must rely on the chancy results of market forces or political patronage to ensure fair play for tenants? A comment on that "solution" comes from a study of squatter landlords in Nairobi: "It is in the interests of the ruling elite to continue to prevent easy access to land by the urban poor because controlling access to land as a scarce resource provides a source of cash income and political support" (Lee-Smith, 1990).

4.43 This statement applies not just to Nairobi. It suggests that market forces do not work without manipulation from one source; some countervailing force via regulation may therefore be both justifiable and necessary.

4.44 The appropriate solution in this area was mentioned earlier in the chapter: build on what exists; develop local forms of regulation rather than try to impose, however well-meaning, institutions from the center that are modeled on English, French, or other institutions. Informal settlements have bodies that can help settle disputes, including landlord-tenant disputes. Such bodies could be encouraged or empowered to extend their remit in this area. It has been suggested that neighborhood councils could play a role in setting rents (Malpezzi, quoted in Amis

and Lloyd, 1990). Urging that legislation defining the rights of tenants vis à vis landlords should be considered in the cities of developing countries, Dochele (1988) argues, "What is needed is legislation that can be activated by the aggrieved tenant at will. In other words, those who wish to exchange lower standards for less rent should be able to do so by foregoing the right of complaint. Those who are being unfairly treated should have the possibility of recourse."

4.45 Thus, systems of regulating the landlord–tenant relationship should be geared to the type of landlord–tenant relations that exist on the one hand, small tenancies may need no more than a local reference point for ironing out small disputes; large–scale commercial landlordism, on the other hand, may need more formal centralized regulation. In the final analysis, proponents of regulation agree with proponents of market solutions that "the best form of rent control is to facilitate access to home–ownership. This relieves the pressure on the rental market and automatically leads to lower rents" (Edwards, in Anus and Lloyd, 1990) and "to a considerable degree the market may be able to provide adequate protection and tends to be much more sensitive to trade offs of standards versus price than legislation" (Doebele).

### **Restrictions on Transactions**

4.46 Many countries impose various restrictions on transactions in land. Restrictions on the sale of Malay reservation land to non–Malays has parallels in many African countries with restrictions on the sale of land owned by Africans to non–Africans, and similarly in Fiji, which has a considerable body of law and administration governing land transactions between indigenous and nonindigenous people. Aside from controls on land sales between different racial groups, many countries restrict or prevent noncitizens from purchasing land.

4.47 A second form of restriction applies to the amount of land a person may own, which in Nigeria is limited to half a hectare of urban land. In India, under the Urban Land (Ceiling and Regulation) Act of 1976, owners are restricted to vacant landholdings of 500 square meters in Bombay, Calcutta, Delhi, and Madras; to 1,000 square meters in other cities with a population of one million or more; and up to 2,000 square meters in towns with a population of 200,000 to 500,000. Landholdings in excess of those amounts are subject to acquisition by the state at a price less than the market price.

4.48 Third, the price of the land may be examined to determine if it is a fair price; the terms and conditions of the sale may be examined or, indeed, may be determined by a public authority. There may be restrictions on when a sale may take place; in a site and service scheme, settlers may be forbidden to sell their plots for a certain number of years or be required to sell them only to those on a waiting list. These restrictions may be applicable in both informal and formal settlements, especially those on land governed by customary tenure.

4.49 These restrictions stem from a variety of motives. Restrictions designed to protect the economically weak or unsophisticated members of the population from the economically strong or sophisticated are motivated in part by the desire for equity, as are those designed to limit

the amount of urban land any one person may own. More general restrictions are often based on a suspicion of the market.

4.50 Although such motives are in many cases understandable and even admirable, there is a good deal of evidence that the restrictions do not work. Either they are evaded, as in Nigeria, or the effort to enforce them succeeds not in making more land or cheaper land available for development but instead causes the reverse to occur: the restrictions force prices higher for less land (as in India), or they ultimately begin to penalize those they were designed to protect (as in the case of Malay reservation land), or attempts to enforce restrictions are quietly abandoned in the face of market pressures (as in several sites and services schemes, e.g., in Dandora in Nairobi).

4.51 Should all such restrictions, then, be swept away as being incompatible with a free market in land? Should the aim of all reforms be to make all urban land freely available to the highest bidder, and, conversely, should economically weaker sections of the population be forced to live in the least salubrious areas or those furthest from the city center, always liable to be forced out by market forces even after having upgraded where they are living through their own efforts. Is there not a case for deliberately retaining some restrictions or even informal settlements with no security of tenure so that the urban poor are protected from market forces, which would

otherwise operate against their interests? In the low-income urban developments in Lusaka, for example, restrictions on sales do seem to have permitted low-income groups to continue living in and to buy into the upgraded areas (Rakodi 1987); and the Caracas case study discussed earlier suggests that continued informality discouraged speculative buying of land in the settlements.

4.52 Although there can be no single universal answer to these questions, some general points may be made. Where all the evidence points to widespread evasion of restrictions or a failure of restrictions to achieve their stated purposes, serious consideration should be given to drastically overhauling or even abolishing them. This is not a recommendation that principles of equity be abandoned in connection with urban land management, but only that, since the chosen instruments are not delivering equity, consideration needs to be given to new instruments or new policies to achieve that desired goal. Financial instruments, for instance, may be much more effective in preventing land hoarding and speculation than ceiling legislation. A planned and rapid release of public lands in urban areas in realistically small lots is a more positive way to provide land equitably than trying to prevent certain classes of people from buying certain types of land. Second, Brookfield et al. (1991) pointed out in their study of Malay, restrictions need to be kept under constant review for even where they are being complied with, they may no longer be serving their original purpose and indeed may be hurting those they were designed to protect. Third, where for reasons of national policy, restrictions are to remain, their implementation must be managed efficiently; an overcentralized process such as exists in Ghana and Zambia invites evasion, or alternatively increases land prices through delay.

### Techniques of Tenure Reform

4.53 Two possible models of reform are of interest here: (a) to develop a code of land law, which, like the Malaysian National Land Code or the land law reforms in Trinidad and Tobago, does attempt to cover the whole field of basic land relations between citizens, or (b) to move forward on a more piecemeal basis and even to develop, as Zambia did, a separate system of statutory land law as one part of a program of integrating informal settlements into the formal system. There are arguments for and against both approaches. A uniform code simplifies land management and facilitates the market for land; whenever you are, whoever you are, you use the same procedures, the same forms, visit familiar-looking offices, and achieve the same result. The system is easier to follow and to monitor.

4.54 Or one could argue that society might not be ready for such a uniform code; some areas or groups of people might find such a code too sudden a change from existing patterns of life. Even in Malaysia, for instance, the National Land Code does not apply in Sabah and Sarawak. A uniform national code that is not observed by many people will not facilitate the operation of a market for land or land management. Where the cost of introducing the code is high or land-related professions are not convinced of its necessity—both reasons given as to why the land law reforms of Trinidad and Tobago have not been introduced nine years after their enactment—the case for a code is weakened.

4.55 Certain criteria need to be met before the code approach is adopted; first, those who operate the land market—both public sector officials and private sector land-related professionals—have to be convinced of the desirability of the approach and committed to make it work. Second, the costs and benefits of moving in this direction have to be carefully assessed. Third, and with particular regard to informal settlements in urban areas, there has to be some reasonable evidence that such an approach will be functional in such settlements, that is, that people will begin to order their land relations in accordance with the code.

4.56 This brings us to the alternative approach: a "junior" or simplified system of statutory land tenure for low-income urban areas that runs alongside the full statutory system. This would build on existing informal or customary systems and make the transition from the latter to the former less abrupt. A simplified system would be more easily managed by a local authority or even a community organization, and thus aid in the devolution of

power from the center. Finally, a simple system of statutory land tenure could be part of a total package of a simplified legal regime applying to informal settlements as part of a program of regularization and integration.

4.57 The arguments against this approach are, first, that multiple systems of land tenure (and regulatory regimes relating to land and buildings), even if they are statutory, are confusing to manage and deleterious to the operation of a land market. There are inevitable complications in land being "transferred" from one system to another; two or more land title registries may have different information on them and so different degrees of security of tenure; two or more sets of rules about boundaries and the degree of accuracy of surveys, about specifications and

standards for buildings, about the modalities of transactions, will not help people adjust from an informal to a formal system. Second, formally to accept a system of "lower standards" for the urban poor is to go backward; the aim of policy is to improve their lot, not to confine them to a legal ghetto. It is probably better to have one unified system that can be applied in various ways than multiple systems.

4.58 Arguments against the development of "junior" systems tend to see matters from an official point of view; those in favor tend to favor the consumer. The criteria to be applied here are the same as for codes: convince the officials and professionals, assess the costs and benefits and what would be functional within informal settlements. If the overall objective is integration, regularization, and the operation of an efficient and equitable land market, it would be reasonable for the long-term goal to be a national unified system of land tenure backed by law. The method of achieving that goal will depend upon the circumstances of each country and the state of land tenure and its management when the overall policy objective is adopted. There should be no assumption that one approach or the other is the "correct" one. If there is one guiding principle that should inform the choice of approaches, it is that the approach to be adopted should be the one most apt to benefit the consumer. In some countries this may mean offering a choice of systems, in others providing a unified system.

### **Registration of Transactions and Titles**

4.59 Why is land registration important and what functions is it supposed to fulfill in relation to market operations? What are the costs and benefits of registration? What are the main problems associated with existing registration or the lack of it? What can be done to improve the situation?.

#### **What Is Land Registration?**

4.60 Land registration is the overall process of recording information about land parcels for the purposes of land ownership. This information is recorded on official registers of land transactions and real property rights. They may be solely concerned with private lands, with public lands, or with both. By recording a land transaction in a registration system open for inspection, the state gives public notice to the community that a transaction has taken place and that land rights have been exchanged. In conclusion, one of the primary functions of land registration is therefore to facilitate the processes of transfer of property rights over land between parties: the conveyancing process. It serves to make information available to all parties in the transaction so as to lessen the risks they run in deciding to transact or not. It supports the task of proving legal title and allows notice to be given of encumbrances on a piece of land. The secondary function of land registration is to provide information. Many such registrations will produce cadastral maps that portray the legal parcel and framework of an area. The cadastre as a public register of the quantity, value, and ownership of land has its roots in antiquity, although its present form dates from the late eighteenth century. Within Europe, the modern cadastre serves mostly taxation purposes, while in much of the English-speaking world, the cadastral activities have been directed at protecting property rights. Within the developing world, the

## Reforming Land Policies and Institutions in Developing Countries

cadastre has been used to support land settlement and sort out land ownership, since there was a need for colonial powers to alienate the land from indigenous people. Today, three main systems for recording rights in land remain:

- a. The Deeds registration system in which the documents of transfer are recorded. Land documents (bills of sale, mortgages) were recorded or registered 2,000 years ago, as evidenced in the Bible. In the sixteenth and seventeenth centuries, copies of transactions were kept in an official office or a courthouse. This filing system was introduced into the colonies in the nineteenth century. It became a public record known as a registration of deeds system.
- b. The Title registration system which shows the evidence of the person's right to property and in which the land parcel is the focus of the records. In the nineteenth century, a new system of land registration, known as registration of title, was introduced in the United Kingdom and Australia. Under this system, the state actually declares which people have rights in land for a particular parcel, and this right is shown on a certificate. "A register of title is an authoritative record, kept in a public office, of the rights to clearly defined units of land as vested for the time being in some particular person or body, and of the limitations, if any, to which these rights are subject" (Simpson, 1978). The register provides the following information: definition of the parcel of land, name and address of the owner, and any particulars affecting the parcel enjoyed by someone else. The register is divided into three sections: property, proprietorship, and encumbrances. Under most systems of title registration, the information on the register is guaranteed by the state so that in the unlikely event of fraud or error, anyone affected will be compensated. Two different systems of title registration emerged in the nineteenth century: the Torrens system (Australian system) and the English system.
- c. The private conveyancing system: The formal system most common in developing countries is the registration of deeds. However, most transactions are not registered and private conveyancing is the norm. About 10 to 20 percent of transactions are registered (e.g., in Ghana, Pakistan, Bangladesh) with the remaining transactions either formally or informally conveyed, with or without a person of legal training involved. In the days when communities were small and people knew their neighbors, an oral declaration and a symbolic payment were sufficient evidence of the transfer of land. The basic rules for conveyancing and registration that have evolved in most societies are that land transactions should be written (though not necessarily in informal urban areas) and that a witness is needed to testify that a transaction has taken place between the parties. In some customary and traditional land administration systems in Africa, there may be a recorder of

rights for the clan or the tribe. This notion of publicity has grown into a witnessed document or deed, a copy of which is lodged with some official office, which may or may not be open for public inspection.

### **Why Is Registration Important?**

4.61 Registration can stimulate land markets in the following ways:

- a. It can help monitor land markets.
- b. It can facilitate the conveyancing process and subsequently ensure the transparency of the transactions.
- c. It can make records available for land market operations.

4.62 It is estimated that each year 5 to 10 percent of all private urban land in most markets (both formal and informal) is traded; this is the equivalent to 10 to 20 percent of GNP. The transfer of such vast assets requires security in trading and assurance that the actors are dealing with the registered legal owner of the property.

### Costs and Benefits of Registration

#### Registration: For Whose Benefit?

4.63 Any discussion of land registration must clearly distinguish between the public and private function of registration. As rightly pointed out by Simpson (1978), "The former relates to the welfare of the state or community as a whole, the latter to the advantage of the individual citizen. On one hand, registration may be used by the state as an inventory tool of the national land resources for fiscal purposes or it can be used to ensure the rights of the owner or occupier of land and to enable him or her to conduct transactions safely, cheaply and quickly." This is an important consideration when thinking about improving the registration system. For whose benefit is land registration being urged? For the benefit of the individual citizen, consideration should be given to whether other alternatives to the title registration may not be more appropriate under the circumstances.

#### Registration, Security of Tenure, and Resolution of Disputes

4.64 Typically, the absence or presence of a title document or the quality of documentation attesting to landownership constitute the main basis for characterizing property claims as secure or insecure. How accurate an indicator of security or insecurity is the presence or the absence of title? Documented titles (1) publicly and officially associate specific pieces of land; (2) precisely define a property's physical boundaries, thereby reducing potential disputes; and (3) carry the implicit backing of the state against any challenges to granted property rights (Lemel, 1988). In areas of long-term settlement, underlying respect of each other's boundaries will often

prevail; however, programs designing specific boundaries have sometimes stimulated conflicts among neighbors.

#### Registration and Revenue-Raising

4.65 Land records for tax purposes date back to ancient times. Historians of ancient Egypt have shown that as early as 3400 B.C. measures of length were in regular use and that a cadastral record was in existence by about 3000 B.C. And of course, the Domesday book in England compiled 20 years after the Normans had defeated the Saxons at the battle of Hastings in 1066 is a perfect example of an early comprehensive attempt to set an inventory of national resources for fiscal purposes. In a sense, it gave birth to the cadastre of today. How does the cadastre fit in with the registration of deeds and title? The cadastre originated much earlier than the registration of deeds and was instituted to serve the needs of the state for the purpose of assessing and collecting revenue, whereas the purpose of registration of deeds was to protect the interests of landholders. As a result, cadastres may differ from registration in the following respects:

A cadastre is necessarily complete, while the compilation of a deeds register is sporadic since transactions occur here and there and are recorded as they happen.

A cadastre requires classification and valuation so that the tax can be assessed, whereas registration of deeds is not concerned with value.

Deeds registration is intended to make land dealing public but does not itself prove ownership (unlike title registration). The original and principal purpose of the cadastral record is not to prove ownership, but to assess the liability for tax and determine the responsibility for payment.

4.66 The relationship between registration and revenue raising is not as obvious as it would seem. On one hand, registration represents an extremely valuable tool on which to capitalize to set up property taxation; on the other hand, the political liabilities linked to property taxation are so high that any registration system linked to fiscal objectives has difficulty being accepted and implemented. Even a property tax generates little revenue in most developing countries. Property taxes account for an average of only 1.3 percent of total public sector tax revenues

in developing countries, according to the International Monetary Fund's most recent survey. It typically accounts for less than 20 percent of municipal recurrent revenues in developing countries (Dillinger, 1991). The low yield of the property tax is the combined result of inappropriate policy and poor tax administration. In the sequence of property tax administration, registration has a vital role to play in the discovery stage of this process. Base maps that could be used to discover and identify property are nonexistent. Data on property ownership is inaccessible, either because ownership is disputed or because deeds registries are unwilling or unable to cooperate with taxing authorities. The rapid growth of the city and the ever-changing informal development make it all the more difficult to administer the property tax. The standards required of a property tax map are modest. Parcel boundaries need not be mapped with precision. The standards of accuracy that would apply to a legal demarcation of boundaries

are inappropriate to a tax map. A tax map does not constitute recognition of a legal claim to property ownership. Precise boundaries therefore do not need to be determined on the ground, nor accurately represented to scale on a map. Registration can provide important support in updating property information for tax purposes. To monitor changes in the physical characteristics of the tax base and changes in ownership, all developing countries use a combination of field surveys and cross-referencing. Cross-referencing is often mandated by regulation. In the Philippines, surveyors (private or public) are required to provide the taxing authority with copies of approved subdivision plans within 30 days of their receipt from the Bureau of Lands. When property is sold, the registrar of deeds is required to provide the taxing authority with a copy of the deed of sale, and both the purchaser and the seller are required to notify the taxing authority within 60 days. Tax clearance systems are more effective in the sense that the taxpayer is required to obtain certification from the taxing authority before seeking a building permit, a subdivision approval, or a registration of deed. Such is the case of the tax clearance imposed by cartorios (deeds registrars) in Brazil as a condition of deed registration.

4.67 Experience with cross-referencing is mixed because many of the changes in the property tax base fall outside the system of permit and registration. Taxpayers may also be induced to voluntarily supply information directly to the taxing authority. Where ownership is subject to dispute, purchasers will register their property with the taxing authority in an attempt to strengthen their claim. Registration with the taxing authority does not legally constitute government recognition of a taxpayer's claim, but in the absence of evidence to the contrary it is often accepted as such by the courts.

### **Registration and Improved Environment for Investments**

4.68 Unregistered private conveyancing conducted in the informal sector constrains the use of institutional formal housing finance systems. The most favored form of collateral for securing loans is real estate, yet if documents are not reliable or are unavailable, credit may not be available or the costs may be much higher. A study of the Thailand titling project (Feder et al., 1988) concluded from the effects on farm productivity following the provision of security of land ownership through the issuing of registered title that landowners benefitted in particular from access to cheaper credit after being able to produce evidence of secure land ownership.

### **What Hampers the Reform of Registration Systems in Developing Countries?**

#### **Institutional Problems**

4.69 Many countries do not have enough skilled staff, the various agencies involved are poorly coordinated, and there is little open debate concerning the scope for privatization.

Skilled staff: The issue of land registration inevitably leads to the question of land offices. The whole process of land registration tends to be operated by the public service: the Survey Department, the Registrar of Titles, the Valuation Office. The evidence from many countries indicates that these

**Box 4.4 Zanzibar**

Zanzibar has never had a comprehensive system of land registration, despite various efforts dating back to 1912 when, for the first time, the government initiated a study of the issue. Land registration on the island was essentially a system of voluntary deeds registration. It was only when such lands changed hands that entries would appear in the register, if one of the parties (usually the purchaser) wished to have the transfer registered. The registrar was not required to make a thorough investigation on the legal position of the vendor or the root of the title. In many cases, property boundaries were defined with reference to the names of adjoining owners, and no survey plan was attached to the deeds. The register was maintained under the Registrar's Office, which also kept other registers, such as those of births, deaths, marriages, companies, and wills. In 1989, the government of Zanzibar took steps to establish land administration machinery on the island, by creating the Commission for Lands and Environment with three departments: (a) Department of Lands, (b) Department of Survey and Urban Planning, and (c) Department of Environment. Three pieces of legislation designed to facilitate the land registration process were enacted: the Land Survey Act (specifically designed to facilitate the involvement of private surveyors and to introduce flexibility in survey standards for title registration), the Land Adjudication Act, and the Registered Land Act. A new land bill was drafted for enactment in 1991. The new legislation and machinery established a framework for a comprehensive land registration system through systematic adjudication, survey, and recording.

Among the constraints was the inadequacy of the required relevant skills at all levels of management. Zanzibar, being a predominantly Islamic society, widely preferred the Islamic way of inheritance, and in some respects the registration program went against that tradition. Large numbers of uncontrolled settlements in the urban areas posed an intimidating dilemma with regard to how and where to start; in addition, there were not enough funds to effectively tackle a problem of such magnitude.

Source: UNCHS (1990).

offices do not have the quantity or quality of staff they need. Huge backlogs exist in title registration or in surveying of land or in valuation for tax purposes. Jamaica, Zambia, and Pakistan may be cited as examples. The shortage of management skills, reluctance to take risks, ignorance of the true needs of users of the system, inability of the system to respond rapidly to the demand, failure within departments or governments to treat information as a resource are among the many complaints.

**Lack of coordination:** An even more complex problem is the lack of interministerial or interdepartmental coordination. There is often no coordinating mechanism among the relevant arms of government to deal with land registration.

**Scope for privatization:** Services offered by the state vary from a near complete service ( as in Thailand) that includes searching, contract preparation, registration to the more conventional receipt of a contract-like document prepared by a private sector lawyer or notary, followed by registration in a state or county agency ( as in the United States, Hong Kong,

**Box 4.5 Private Sector Land Registration in Brazil**

The registration of transactions in Brazil is undertaken by private registration offices, or Cartorio de Imoveis. There are more than 3,000 such offices in the country; Rio de Janeiro, itself, is subdivided into 12 cartorio districts. Transactions of private lands (not public or parastatal lands) are registered there under federal regulation and monitoring. The "Caurara escritura" constitutes the document of transfer or conveyance prepared by the notary and is added to other conveyance abstracts concerning the parcel. The information in the Cartorio de Imoveis is open to the public upon request and a copy of every transfer has to be supplied to the Treasury for income tax purposes.

the Netherlands). The difference in state intervention can also be described in terms of active and passive (Jeffress and Holstein, 1991): in the active case, the state checks the transaction, files it, indexes it, updates the appropriate title file, and in some cases provides some warranty; in the passive case, the state provides a central depository so transaction records are available for public inspection. The private sector intervenes frequently in the conveyancing process with a large array of actors such as lawyers, real estate agents, assessors, land surveyors, and land developers. In formal societies the function is regulated by governments, although it may be delegated to the private sector. In Brazil, for example, the function has been franchised to the private sector and supported by both federal and state laws. There are more than 3,000 cartorios for the registration of transactions involving immovable property. There is therefore scope for privatizing some registration functions that could be supported if this service could be self-financed.

### Technical Problems

Choice of systems: For the most part, efficient systems are rare in developing countries. Instead they tend to be incomplete and greatly outdated. There is little agreement on the level of sophistication needed in any given system since the greater the precision and amount of information collected on each piece of land, the more expensive is the process. A number of countries are still debating whether to improve the existing deeds registration system or introduce a new system based on the registration of titles. Although some argue that deeds registration is adequate and far less costly to administer, the deed system is readily open to fraud. The main differences are the extent of state affirmation of the existence and ownership of interests.

Survey laws and regulations: High standards for surveys imposed by regulations often create formidable bottlenecks in the land registration process. Survey regulations and requirements need to be made more flexible and the desired precision should be achieved in stages.

### Box 4.6 Malawi: From Deeds Registration to Title Registration

Land interest in Malawi can be categorized under three main kinds of holdings: customary landholdings, government and public landholdings, and private landholdings. Prior to 1962, interests in land were registered under the Deeds Registry system. Owing to the inaccuracies and imperfections of deeds as legal documents, the system was replaced with the registration of titles system in 1962. The Land Title registration system was therefore the only system of land registration existing in Malawi. One of the main bottlenecks it suffered was in the land survey regulations, which required a fixed boundary survey for issuance of land title in the urban areas. The delays and costs involved in that process, particularly in the checking and examination process, are enormous and have the effect of deterring people from undertaking the process. For the rural areas, however, the government relaxed the requirement for a fixed boundary survey, and land titles could be issued in those areas

on the strength of sketch plans. Resistance by the traditional chiefs was another major constraint in the advancement of the land registration system in Malawi. The government had passed the Customary Land Development Act with a view to adjudicating and bringing that category of land under the land register. That policy and program led to a curtailment of the powers of traditional chiefs whose powers were closely linked to their control and administration of customary lands. They consequently strongly resisted the program, and in some areas such as Lilongwe they actually held up development projects for long periods of time.

Source: UNCHS (1990).

### Financial Problems

4.70 Most land registration programs are highly subsidized and it has often been assumed that land registration should be a public good. Indeed, little research has been undertaken to assess the cost of the real property transaction recording process. A survey of these recording costs (Jeffress and Holstein, 1991) suggests that title registration and transaction recording, once in operation, need not be subsidized by the government. In fact, land registers can also bring in substantial transaction fees. In Thailand, for example, the government spent roughly US\$20 for each parcel of land registered in nine provinces. It charged property owners only a small fee (US\$4) at the time of the action, thus heavily subsidizing the effort. But authorities correctly saw that the government could gain a great deal later by charging transfer fees as a percentage of the sale price at the time of subsequent land transactions. Because of high turnover (10 percent of properties are sold every year), the government brought in US\$200 million in 1988 alone, the bulk from transfer fees amounting to about 10 percent of the sale price of each transaction, against an agency overhead of US\$24 million.

### Motivation Problems

4.71 Land registration runs into considerable difficulty when under the pressure of development standards, cost recovery, or a change in cultural patterns. "For the individual, the hassle and cost of regularization must be balanced by prospects of immediate benefits. Experience has shown that access to housing or small business credit finance alone, is often not a sufficient incentive to prompt title registration. More tangible benefits are needed namely: improved

security of tenure; validation of inheritance rights; and most importantly higher property values" (Serageldin, 1990).

### Land–Use Regulatory Framework

4.72 The problems related to land–use regulation are well–known. Existing regulations in developing countries are criticized for both their rigidity and the high costs that they impose on the builder or developer and ultimately the purchaser. The most common grievances fall into six main categories:

a. Most regulations are based on outdated and inappropriate planning legislation or urban planning codes that are reminiscent of colonial times. These systems were inspired by the traditional European models that emphasized centralized public interference according to which government permission is required for any kind of land development initiative.

b. Master plans take too long to prepare; they seldom offer guidance on the phasing and techniques of implementation; they seldom evaluate the costs of the development they propose or try to determine how they would be financed and pay little or no attention to the necessary resource allocation and financial feasibility of

policies and programs; master plans are seldom based on realistic appraisals of the city's economic potential or likely population growth; community leaders and implementation agencies are seldom meaningfully involved in the master planning process; master plans are infrequently updated and their static nature cannot keep up with the dynamic process of urban growth in the developing world. In the majority of cities with master plans, the supply of shelter for the low-income population is built in spite of the master plan, not because of it. In brief, master planning and comprehensive planning techniques are primarily concerned with the product rather than process and do not adequately address implementation issues, the increasing complexity of land markets, the role of the public sector versus private sector actions, and the links between spatial and financial planning.

c. Centralization: the preparation and enforcement of spatial plans are often based on obsolete planning ordinances that place all planning powers and responsibilities with the central government. This centralization has often widened the gap between the planning process and the executive system at the local level.

d. Institutional fragmentation: The ministerial location of the urban planning function is another common issue. In many countries, the responsibility for spatial planning has been shifting from ministry to ministry, in some cases being attached to the Ministry of Lands, Public Works, Housing, Economic

### **Box 4.7 Land Use Regulatory Framework: Some Definitions**

The most common forms of land-use regulation and control are (1) zoning, (2) subdivision regulations, (3) building regulations, and (4) urban planning. They regulate such things as the shape, volume, density, placement of buildings, height limitations, setback requirements, and requirements for open space around buildings.

Zoning is the demarcation of a city by ordinances and the establishment of regulations to govern the use of the zoned land (Courtney, 1983). Zoning is the division of a community into districts or zones in which certain activities are prohibited and others are permitted (Fischel, 1985). According to Fischel, zoning should be thought of as a collective property right, vested in community authorities. It also includes general rules about location, bulk, height, and thus plot ratios, shape, use, and coverage of structures within each zone. It is an attempt to organize and systematize the growth of urban areas into categories, classes, or districts of land in the community. Early zoning ordinances were based on a scale of intensity ranging from single-family residential to heavy industrial use. Older zoning ordinances regulated the shape, volume and placement of buildings by height limitations, setback requirements, and requirements for open space. Zoning is one of the community's "police powers," probably the most powerful device because it permits the community to exclude many uses altogether. Under a valid zoning ordinance, developers do not have the right to erect any structure not conforming to the zoning district. Zoning is an eminently political process that may be the most important municipal function in many communities.

Subdivision regulations govern the development of raw land for residential or other purposes and prescribe standards for lot sizes, layout, street improvements, and procedures for dedicating private land for public purposes. Subdivisions can be effectively applied only to areas being urbanized for the first time, and even then there are difficulties of enforcement. Their importance lies in the fact that they enable the community to force the developers to pay for some of the community infrastructure

occasioned by development. They have been powerful tools in Europe, but have not found an equally successful application in most developing countries.

Building regulations limit or define the way new structures are to be built and the materials to be used. Building regulations are one of the oldest and most common methods for controlling land development.

Urban planning: it is the process by which decisions are made regarding the global configuration of a city and its projections for expansion. The plan is the reference framework which is used for the application and the use of the regulatory instruments mentioned above.

Planning, or Local Government. This issue of the ministerial responsibility has contributed to the isolation of the planning function and its lack of coordination with the work of the infrastructure delivery agencies. This in turn has caused a proliferation of parallel interventions and wasteful investments. The problem is compounded in the case of metropolitan areas.

e. Lack of coordination with financial planning: traditional planning has too often set forth development goals that have no bearing on their cost implications. But the reverse is also true, in that budgetary exercises

frequently have little to do with the spatial implications of investment decisions (Peterson, Kingsley, and Telgarsky, 1991).

f. Approval process and procedural delays: The control over development rights is enforced primarily through approval by government agencies. As discussed in Chapter II, this problem is easy to document. In many countries—such as Ghana, Rwanda, Madagascar, Malaysia, Pakistan, and Peru—the approval process can take from 15 to many more steps, with an average time frame of two to seven years. This tedious process of approval adds substantial costs to any development ventures, and this explains why only 10 to 20 percent of development is formally approved under these regulations.

4.73 A World Bank housing sector study in Malaysia revealed that housing prices increased by an annual rate of 18.9 percent between 1972 and 1982. Among the reasons mentioned are high housing standards and overly complex and time-consuming housing project approval procedures. In Malaysia, it can take between five and eight years to obtain all the necessary permits from 15 to 20 government agencies for subdivision approval. In Thailand, in contrast, it takes about five months to secure subdivision approval from five government agencies.

### **Impact of These Constraints on the Land Markets**

4.74 How do government policies and regulations affect land and housing markets? By controlling the supply of land and altering the costs of development.

#### **Supply of Land**

4.75 Zoning can have considerable impact on land supply. The supply of residential zones can be limited, for example, when communities attempt to maintain environmental quality or fiscal improvements by designating land for open space or agricultural use, or commercial and industrial use. In India, the Urban Land Ceiling Act adopted in 1976 to control speculation has apparently caused significant reductions in the supply of land for residential development, leading to the creation of a large informal market and making housing less affordable. Another case in point is Serpong in Indonesia (Bertaud and Hoffman, 1991). In the Serpong area (southwest of Jakarta), the zoning plan restricts residential use to only 34 percent of the total land area. Furthermore, a large part

of the area zoned residential is not accessible by road. Because no developer will risk acquiring land in areas without road access, the area of developable land that is in fact on the market is further reduced to about 15 percent of the total land area. In addition to land– use restriction, zoning regulations impose a control on population densities. Planned densities are usually much lower than the actual densities in middle– income residential developments. For instance, planned densities in residential areas in Serpong have an average of 56 persons per hectare. By contrast, densities in middle–income developments of the type financed by the National Mortgage Bank vary from 300 to 500 persons per hectare, which correspond to plot sizes ranging from 60 to 90 square meters. The amount of land per household

that corresponds to the permissible density is about 830 square meters; this would produce an average plot size of 500 square meters, which would be affordable by only 5 percent of the urban population.

### **Costs of Development**

4.76 Costs associated with land regulation include: (1) the costs incurred by the government in administering and enforcing the regulations, (2) the cost to households and enterprises incurred in complying with the standards set by those regulations.

a. Costs to government: Although there is little empirical evidence, one can assume that the bureaucratic procedures involved in the administration and enforcement of regulations are costly for the government. Furthermore, confronted with long and costly delays, many developers and households make informal payments to government officials to expedite the process. The process of making informal payments to obtain in a shorter time what is authorized by the law is said to be inefficient and to discriminate against the poor. It is also a substitute for direct payment to government operations and the cost of maintenance.

b. Costs to households: They are (1) direct costs to meet minimum standards, (2) costs in time and manpower to obtain necessary papers and permits, and (3) informal payment costs.

4.77 It has been argued that the regulatory environment has a negative effect on the poor for two reasons: (1) the cost to comply with the law is often beyond the means of poor households and (2) many regulatory practices create distortions in the land market and in the distribution of urban services. In Jakarta, the minimum legal standards for a dwelling unit result in a minimum cost of about RP 4 million per unit (internal World Bank document, 1989), establishing thereby a "minimum standard income" and preventing a large number of low–income households from receiving the benefits associated with the formal sector. A private developer, intending to develop a parcel of land, first has to obtain a "location permit" and second a "land rights grant." The two different committees from which these permits are requested have to decide whether the proposed use is consistent with government policy and conforms with existing land–use plans. In Indonesia, the major cost is not incurred by the minimum standards per se but is the result of the complex administrative system of subdividing land.

4.78 In Karachi, extensive land subdivision regulations stipulate large residential plots. All the plots allocated by the KDA are more than 60 yards square. In Malaysia, the area per house provided for roads is up to four times greater in the typical Malaysian subdivision than in comparable North American or European projects.

4.79 In many cases, then, zoning regulations have no technical justifications and resemble the rules of a private club, which indirectly eliminate those who do not belong.

### **Box 4.8 Land Development in Indonesia**

Trade and development of urban land takes place within two parallel markets: first, the formal market is heavily regulated and allows access to formal housing finance facilities with mostly subsidized interest rates, and, second, the informal market operates under minimum regulatory constraints but requires cash transactions or is restricted to the informal finance system. The formal market emerged only recently with the availability of Bank Tabungan Negara (BTN) mortgage financing. About 20 percent of the dwelling units built annually are provided through the formal market. The present dual land development system has the advantage of providing easy access to land for many middle- and middle- to low-income households. The disadvantage is that it slows down the development of infrastructure, making it difficult for small developers to enter the housing market and restricting access to housing finance to a small group of households. The land development process takes an average of 32 months and the direct and formal costs associated with getting the necessary permissions vary from 10 to 30 percent of the cost of land.

Source: Hoffman.

Minimum plot sizes or maximum densities are a good example of exclusionary rules based on income.

4.80 Informality has its costs as well:

- a. The costs of avoiding penalties: considerable resources are devoted to corrupting the authorities and bribes often replace the taxes that the informals do not pay.
- b. The costs of transfers: the purchasing power that informals lose by keeping cash in hand is a transfer of resources to formal activity as they bear the cost of inflation. The disparity in the cost of money is also caused by the informals' lack of access to formal and cheaper credit. There is a large difference in the interest rate between formal and informal credit.
- c. The cost of not having property rights: In the case of Lima (De Soto, 1989), it has been estimated that secure property rights did encourage holders to invest in their property. In a sample of 37 settlements surveyed, the ratio of the value of settlements with title and those without is 9 to 1.

These are the costs of being informal or illegal. In other words, if the law was changed to allow smaller plot sizes than the ones used in the illegal subdivision, the costs of informality would immediately disappear. This is true for any land dimension standards, although it may not be true for qualitative standards for infrastructure (e.g., an underdesigned sewer system has inherent costs related to maintenance or bad performance that are independent of whether the standards are legal or not).

### **The Way Forward**

4.81 At the root of the problem lies the fundamental dichotomy between the basic function of land development control and the objectives set in the current practice of city

planning (Guarda, 1989). Some have argued that land development controls should not go further than promoting private property interest and protecting its market value. This, in turn, does not produce what urban planners regard as desirable land-use patterns. This dichotomy is to some extent reflected in the differences between the European and American planning systems. In the European system, the promotional function of planning through the development control mechanisms, and through conferring to the master plan the normative authority of a statutory document, assumes total controllability of the land market. The American city plan is less ambitious in

that it does not pretend to acquire the force of law. It only represents a working document for the local administration. The contrast between the American and the European attitude toward public intervention in the land market in a sense illustrates the tone of this controversy, the first being firmly entrenched in the free market/private enterprise ideology, viewing land–use control mainly as a local, voluntary device to protect individual property rights and to promote development, whereas the second, led by the British and French planning schools, is inspired by public interference according to which government permission is required for any type of land development initiative.

4.82 Ideally, what should we expect from land–use regulations and urban planning?

Better coordination in land management.

Integration of spatial planning with financial, sectoral, and institutional planning.

Definition of a collective rationale for intervening in the land markets.

Better protection of the environment.

Economic efficiency to maximize the benefits of urban development

Equity considerations: Land–use regulations should not contain any absolute minimum threshold of land consumption that would eliminate poor households that cannot afford the minimum level of consumption set by the law.

Cost effectiveness to minimize public costs and to recover them.

### **Is Deregulation the Way to Go?**

4.83 It is now widely recognized that there is a direct and reciprocal relationship between informal housing production and government regulations. One has to be cautious, however, about deliberately promoting deregulation. Many efforts to demonstrate the constraints imposed on the market by land–use regulations have given rise to the assumption that "free markets are beautiful" and that, in many ways, informal settlements have found a proper answer to the problems of the urban poor. This ignores the fact that development generates externalities such as water pollution, traffic congestion, and sanitation hazards, and furthermore that residents demand public services such as infrastructure, schools, and health facilities. After making the mistake of trying to apply to developing countries a regulatory model that was successful in Europe, one should not rush into a deregulation model that may not be applicable in many developing countries. The relevant question then is: What are the minimum levels of regulations that will be compatible with easy access to housing and services and yet preserve community wide interests and the environment?

We would suggest a "bottom–line" approach to this problem, which would be based on a preliminary identification of those public concerns on which no compromise can be made (i.e., environment). This preliminary identification of public concerns would help distinguish necessary regulations from the unnecessary and burdensome ones. In reviewing land–use regulations, policymakers should address the following questions:

What purpose(s) do the existing regulations serve?

How much do they cost?

How many households cannot afford to pay the cost of meeting these regulations?

### **Is Deregulation the Way to Go?**

What will happen to these households?

What would be the impact of not having these regulations?

### **What Should Be the Role of the Planner?**

4.84 Opinions differ as to the proper role of the planner.

4.85 For some, the planner should exert both regulatory and promotional functions: the regulatory function involves collaborating with the lawyer and the politician in identifying a system of land controls that actually preserves property rights, reduces disputes, and sets out standards for private development. The promotional function consists of helping public authorities prepare capital improvement programs.

4.86 According to this point of view, the main activities of a planner should be the following:

- a. To help the representatives of the community interest groups mitigate potential conflicts in development through a set of mutually agreed performance standards. The instruments do not need to be reinvented: zoning ordinances, subdivision regulations, building codes that establish the developer's modus operandi and must be subject to a process of review, appeal, and adjustment.
- b. To advise local officials and departmental agencies on how to prepare project plans and capital improvement programs. This activity consists of multisectoral coordination (multisectoral investment planning) that brings the planner in close contact with the financial and fiscal constraints of the local administration.

4.87 For others, a totally new approach is required, and the functions of the planner should then include:

- a. Systematic monitoring of land use, of supply of developed land, shelter, public facilities, and utilities consumption.
- b. Systematic monitoring of land prices, rents, shelter prices, property tax and other local tax yield per unit of land.
- c. Keeping urbanization prices low by stimulating supply, by providing trunk infrastructure, by progressively upgrading the infrastructure of existing neighborhoods, and by increasing the capital available for housing finance and municipal finance.

There is considerable truth in the observation that planners in developing countries have been too much concerned with regulation and promotion and too little concerned with being "monitors" of the land supply situation. Undoubtedly the latter role should become increasingly important.

### **Direct Public Intervention in the Acquisition of Land**

4.88 Governments use three principal instruments for the acquisition of land: (a) nationalization of land; (b) eminent domain, or the compulsory acquisition of land, and (c) land readjustment.

#### **Nationalization of Land**

4.89 The nationalization of land certainly represents direct intervention in the market; indeed in some countries it is designed to eliminate the market and replace it with the administrative allocation of land. In other countries, nationalization is less dramatic and merely transfers the ultimate or freehold title of land to the state so that

thereafter, market transactions can only be in leasehold.

4.90 Algeria provides an example of the former and Cameroon an example of the latter.

4.91 Until recently (November 1990) land policy in Algeria was based on 1974 legislation that promoted both the nationalization of all lands and a highly decentralized land management system to the benefit of the local governments. All lands exceeding the "personal needs criteria" was nationalized, and local governments were given full control over land transactions. The implementation of this policy has proved to be highly problematic. Designed to meet the increasing demand for land, reduce speculation, control urbanization, and preserve rural lands, it has not had the intended impact.

a. Local governments did not have the expertise or the long-term management concerns that were required to carry out this policy. Until recently, the Communal Popular Assembly (APC) and its executive council were elected on the basis of a list proposed by the party. The president of the local assembly was himself elected by the council. The institutional and political organization preempted any control over elected local officials with respect to their management of state lands.

b. The land reserves that they were supposed to manage were often wasted and given away to individuals in accordance with allocation procedures that were not accompanied by legal acts of transfer of property. This explains the lack of accurate and complete information on land reserves transactions.

c. Some built-in unjust features—related to the nationalization of lands, the creation of land reserves, and the reallocation of state lands to individuals—quickly became apparent. While inappropriate compensation fees (when given) were given to people whose land was nationalized, the amount of land that could be acquired by individuals through the public allocation of land reserves was not limited.

4.92 This unhappy state of affairs led to severe price distortions and profound disequilibrium in the supply of land available on the market. As mandated by legislation, the price of land purchased by the state for integration into the national reserves varied from US\$0.73 to US\$5.4 per square meter. Because prices were so low, private landowners often refused to sell to the state, and therefore contributed to a shortage of land on the market and a global phenomenon of land retention. Prices of land sold through state allocation were grossly under market value, ranging from US\$1.3 to US\$18 per square meter, depending on the level of servicing, as compared to much higher prices in the informal market ranging from US\$200 per square meter in secondary city centers to US\$4,000 per square meter in the center of Algiers. An immediate consequence of such a situation has been the emergence and continued growth of illegal transactions through "Actes sous-seing prive" and inflated land prices in the informal market.

4.93 Although the story is different in Cameroon, the end result is similar. In 1974, Cameroon adopted a set of land laws that provided the framework for land nationalization. The 1974 legislation introduced a new tenure typology that still prevails, including national lands (Domaine National), state lands (Domaine Public et Prive de l'Etat), and private lands (covering basically the minority of land parcels for which titles had been previously granted and were registered in the Lands Book, Livre Foncier). The two basic aims of this legislation were (a) to come to terms with the traditional/customary rights to land and (b) to improve the management of the "Patrimoine Foncier." This is basically the story of many African countries that decided in the late 1960s and early 1970s to follow the path of nationalization. In most cases, the results of these policies have been diverted from their initial goals. Instead of protecting national lands, they have grossly mismanaged them and wasted vast assets; instead of resolving the political interference of traditional authorities, governments have allowed a pluralistic system and overlays of bureaucracies to emerge; instead of providing adequate land and housing, countries have experienced an ever-growing shortage of both, poorly compensated by the informal market.

4.94 Correcting past nationalization policies will be a major challenge that a large number of developing countries, and indeed today the Eastern European countries, will have to face up to. Some pointers in this direction have been discussed in the section on land administration agencies.

### **Compulsory Acquisition/Eminent Domain**

4.95 Unlike nationalization, which represents a full-fledged state monopoly over property rights and transactions, compulsory acquisition is a government tool used sporadically for two main purposes: land banking and resettlement. Because of its widespread use and interference in the land markets, such a policy needs to be carefully assessed.

The concept of expropriation is based on a sovereign's power of eminent domain; this power is generally accepted worldwide and allows the state to take private land for the good of the state. Much of the laws pertinent to eminent domain in developing countries is inherited from former colonial powers. The cost and time required to implement these outdated laws make them almost useless. According to the World Bank, the majority need drastic revision, if they are to be effective during periods of rapid urban expansion. Furthermore, it is necessary to adopt and modernize comprehensive land-acquisition legislation and policies, through democratic processes to secure the kind of public support needed for compulsory acquisition. (Kitay, 1985)

4.96 By way of example, those countries that draw on the common and statute law inherited from England follow a fairly similar format. Indeed, many countries derive their basic law from the model of the Land Acquisition Act of India, enacted there in 1894 and applicable both there and in Pakistan. The problems of the 1894 act are notorious and well documented:

As it stands today, the act neither passes land quickly to the State, nor does it ensure timely payment of compensation. The Commission feels that the act be so amended that while, on the one hand, the purpose of acquisition, the scheme for compensation and rehabilitation, and the details of the project are prepared and published for inviting objections at the very outset of initiation of acquisition proceedings, on the other, the land must actually vest in government without delay and the major part of the compensation should be paid to the landowners at the time of vesting and even prior to a final award. (National Commission on Urbanization, Delhi, 1988)

4.97 In Ghana, delays in completing the procedures of compulsory acquisition and in paying compensation in some cases cover a span of more than 20 years; organizations and officials do not know the procedures they have to follow; land is acquired by public organizations that do not have the financial capacity to pay for it or develop it, and the public's objections are ignored. There is consequently greater resentment over the exercise of these powers.

4.98 Similarly in Colombia, a recent comprehensive reform law on urban land is likely, in the view of one commentator, to run into difficulties on expropriation since

Expropriation procedures in Colombia have traditionally been very time-consuming and cumbersome. These difficulties stem from a system that intends to offer extensive protection to private property rights; such protection translates into an obligation to offer to the owner sufficient opportunities to challenge the taking of his property and to obtain fair treatment and

adequate remedies. The constitutional formula for this protection is the requirement of judicial intervention and prior compensation. Although the importance of giving landowners adequate protection when expropriated cannot be underestimated, it is well established that without reasonably efficient procedures, most tenure reforms are

impractical and unsuccessful. In Colombia, the problem arises from the complicated, rigid, and formalist traditions deeply rooted in its judicial system. (Vargas, 1989)

4.99 The examples could be multiplied and serve only to reinforce the basic point that expropriation is deeply unpopular in all states and among all classes in the community. At the same time, such a power cannot be fully abandoned: it has to be available for use on occasions and the task is therefore to (a) pinpoint those special occasions that do require compulsory acquisition; (b) try to find out why the expropriation is unpopular; and (c) address those with appropriate remedies.

4.100 A particular problem in the purchase of land by public authorities is that of publicity. Most countries require that public authorities give public notice of their intention to buy land; this practice has a tendency to escalate prices and encourage landowners to hold out for higher prices. In Thailand, for instance, "The National Housing Authority will publish its land requirements from time to time and invite voluntary tenders. It might publish a call for 1000 hectares in the Northwest of Bangkok for instance. After that it must wait for the private sector to present offers. It often takes months, even years before the NHA is satisfied that the landowner's price is justified. After months and months of official deliberation over whether to pay the price the NHA often finds that the landowner has then escalated his demand because of inflation" (Kitay, 1985).

4.101 Few private land developers would advertise their intentions to purchase land in that way. While recognizing the need to prevent secrecy being a cloak for corruption, more consideration should be given to devising modalities of purchase that will allow public authorities to take advantage of and follow normal commercial practices in large-scale purchases of land, using, for example, intermediaries such as private realtors, or alternatively devising incentives to encourage private landowners to sell their land—as tax relief mechanisms, priority service in respect of land title registration, or permission to develop other land. Penalties have a role to play as well; an idle-land tax, if stiff enough and vigorously enforced, might also act as an inducement to sell. Kitay (1985) sums up the position thus:

The techniques used by the public sector to purchase land in a voluntary-sale procedure will affect the success of a land-acquisition program. Public officials should study carefully the strategies of individuals and organizations in the private sector who have developed successful techniques for acquiring land in the complicated and risk-prone real estate market. Understanding such techniques may well provide some guidelines for similar ventures in the developing countries. While assuming the same degree of risk may not be suitable for government-directed activities, some of the methods used by the private sector may be suitable for government-directed acquisition programs. . . . Under the best of circumstances, compulsory acquisition takes time, causes political resentment and creates hidden costs. Developing

countries, therefore, should invest time and resources to ensure a workable system for voluntary acquisition. It is rare for a voluntary system to work well in developing countries without some positive incentives to sellers. Any attempt to revise laws and regulations for public land acquisition will be seriously deficient unless the bulk of the effort is concentrated on how to make voluntary transactions the major tool of public land acquisition.

### **What Is the Purpose of Compulsory Acquisition?**

4.102 Land may be acquired for a variety of purposes, compulsorily or otherwise. Two that have given rise to considerable controversy are advanced land acquisition, or land banking, and slum clearance and redevelopment.

#### **Land Banking**

4.103 The principal purpose of land banking is to acquire land for urban development, public or private, in advance of need so that the land can be acquired relatively cheaply. A secondary purpose is to influence the

direction of urban development That is, advance acquisition followed by the development of urban infrastructure—roads, sewerage facilities, electricity—will inevitably affect the direction of urban growth in the future.

4.104 Several issues need to be addressed in connection with land banking. For convenience, they may be broken down into two broad groups, those external to the operation of the process and those internal to it, that is, those having to do with the modalities of the process. The external factors are well summed up in a discussion of Korean Land Acquisition Policies:

"The effectiveness of public land acquisition policy depends heavily on the overall structure of decision making for land use. Specifically the extent to which land acquisition can be successful in providing land more efficiently and equitably is determined by (a) the direction and management of implicit land use policies, (b) the structure of demand–and–supply–side programs and (c) the relationship between land acquisition and other policy instruments" (Gill Chin Lim, in Kitay, 1985).

4.105 Thus land banking has to be developed on a national scale as an integral part of land–use policies and has to be used as one of a number of instruments to advance those policies. It cannot be used as a substitute for national land policies, nor can it be used in isolation of other instruments. Following the logic of the above quotation, it may be said that where other land–use instruments are very weak, in the sense that although they are largely ignored, either because they are circumvented by major landowners or because they are irrelevant to the needs of the urban poor, land banking is likely to achieve neither efficiency nor equity in the supply of land for urban development, since its operation will be likely to be skewed by the same defects that affect other instruments—weak implementation, over bureaucratization, abuse of power.

### **Box 4.9 Korean Land Development Corporation**

The KLDC was established in 1979 to engage directly in the acquisition and disposal of land. Its establishment reflected the recognition of the limited effectiveness of incentives and regulatory approaches to land markets. It was given large powers such as preemption, eminent domain and designation of idle land which are necessary for acquisition, development and disposal of land. Initially, it relied mostly on negotiation for land purchase. Since its establishment, and especially since the enactment of the Residential Land Development Promotion Act of 1980 the use of land development i.e. acquisition by the KLDC and sale or lease to users, has rapidly overtaken the use of land re–adjustment as the principal technique of residential land development, going from under 10% in 1976 to 80% in 1986. The rapid increase in the land acquisition method of land development as opposed to the land re–adjustment method has speeded up land development—a project takes 35 years for completion whereas a land re–adjustment project often took more than 10 years—but several criticism have been made the process. The most serious criticism is the propriety of public acquisition of private land without due process. Equally serious is the issue of just compensation. The difference in land price before and after the project is substantial and the original land owners do not feel justly compensated for their properties. This feeling is particularly strong among the land–owners whose properties were expropriated . . . The third problem has to do with improper relocation in the project areas. The re–locatees are often either rural–to–urban immigrants or unskilled farmers. The monetary compensation is not always sufficient enough for them to resettle elsewhere. Psychological problems resulting from deprivation of their living

grounds cannot be compensated. Similar criticisms, have been made in respect of urban re-development of green belt villages. These criticisms made after a decade of land development programs and of activities by the KLDC temper the more optimistic early 1980s assessment of Gill Chin Lim that "existing evidence indicates that the quantitative goals in land acquisition has been satisfactorily met. This fact demonstrates that the KLDC is basically capable of attaining its most essential objective—an achievement which few other public land agencies in developing countries can match." Even this assessment however notes that there are problems of making land prices affordable for low income households; and there is a need for a careful co-ordination of land acquisition with other land use policy instruments.

Source: Gill Chin Kim, op. cit., Hyun-Sik Kim 1991.

4.106 There is another more fundamental issue here. Is land banking to be used as a substitute for the operation of a land market (i.e., as something approaching total public acquisition of land needed for urban development) or as an aid to a land market? In the first case, private land developers are virtually eliminated; in the second case, a degree of cooperation between the public and the private sector will be necessary. The record of land banking as an instrument for acquiring and operating a public monopoly of urban land supply is not one to inspire confidence, so land banking as an instrument of public-private partnership in land development is definitely preferred, if it is to be used at all.

4.107 Should land banking feature at all as an instrument available for use in land markets? At a time of increasing skepticism because of the record of poor performances by public land acquisition agencies, problems have been identified as to actual practices in land banking, for example, its seeming lack of positive impact on land prices, the amount and type of compensation offered, coordination with other policies and instruments. This case reaffirms that countries should move slowly down the road of land banking.

4.108 The principal issues pertaining to the internal aspects of land banking are those of appraisal and accountability. Appraisal is concerned with making informed judgments about the costs of any program of land banking, about how much land to buy in which area and how much to pay; about when to commence releasing land by what method, and on what terms; about likely future trends in the economy in general and in the specific urban economy in which one proposes to operate. Accountability is concerned with the manner with which the operations of land banking are conducted; the transparency of the process; the probity of the selection of land for acquisition and of the negotiation for its purchase and ultimate sale; the delicate but necessary balance between market efficiency (speed of operation with a minimum of bureaucracy) and conformity with the norms of public administration (checks and reviews, compliance with rules on procurement). These matters have to be addressed and determinations made about them before a program, selective or general, of land banking is begun. Are there sufficient professionals with the right skills and experience available to staff a land banking agency or manage a land banking program? Is there sufficient information available about land markets, trends in the economy, and population projections to make informed decisions on the forward purchase of land? What is the track record of public administration in general and urban land management in particular with regard to the economy, efficiency, and probity? Are there alternatives to land banking by public agencies that need to be explored—public/private joint ventures, or taxes and financial incentives to ensure land is made available for development? Candid and honest answers to these questions are an essential condition to embarking on land banking.

#### **Clearance and Redevelopment/Resettlement**

4.109 The policies and practices concerned with urban land management in the past two decades have generally been opposed to large-scale demolition and clearance of "slums" followed by redevelopment. It would be a mistake, however, to assume that such practices are a thing of the past. In many countries the bulldozer is still

seen as an important tool of urban land management.

4.110 Clearance and redevelopment is by and large an outmoded way of dealing with informal settlements, although the practice is certainly used in connection with informal settlements and with other types of settlement and for more positive purposes than merely clearing away the "eyesore" of informal settlements. Thus there have been a number of highly visible clearance and resettlement operations such as the redevelopment of green belt villages in Seoul to a higher density to pave the way for rapid urbanization. The Lesotho Highlands Water Project also involved the clearance and resettlement of several highland villages in the area of the project; and a considerable amount of clearing and redevelopment/resettlement has taken place in the Singrauli region of India in connection with industrial development. The development of the new capital of Nigeria at Abuja also occasioned considerable clearance and resettlement of residents in the areas allocated for the development of public buildings. Indeed, major public works—dam, roads, airports, public buildings sewerage and waste disposal facilities, power stations—are now probably the principal cause of the public acquisition of already settled land. The question of interest here is not whether such activity should take place but how it

### **Box 4.10 Resettlement In Abuja, Nigeria**

Abuja was chosen as the new capital of Nigeria in 1976. It was decided to start the town without incorporating existing infrastructure and settlements. Existing land-use patterns consisted of dispersed clusters of dwellings with very light population density. "Land use was in equilibrium with the ecological capacity of the environment." The Federal Capital Authority was charged with resettling those people who wished to remain within the Federal Capital Territory.

A master plan for each resettlement area was prepared. It was proposed that "the population should be rehoused at minimum cost and the housing and the environment should be acceptable to the people." Practice, however, departed from the plan. Corrugated iron sheets instead of thatch were used on the roofs of the houses. "Since the houses were not adequately ventilated they are unbearably hot during the season of maximum isolation. In addition, the housing units are congested, with houses standing only about 10 meters apart. This pattern of housing has seriously eroded the privacy which the people highly regard. Population density within the small area of the housing units has been very much increased, thereby affecting land claims and land use in the resettled area. Households are restricted to minute holdings which are usually insufficient for cultivating and grazing . . . also, a serious omission in the housing arrangement was the lack of recognition of the differential status of households in the allocation of houses. Perhaps the most serious omission in the resettlement housing units is that there was no provision for granaries and animal shelters. Many households have suffered losses in grain as a result of inadequate arrangements for grain storage in the resettlement units. Consequently, the incidence of famine resulting from prolonged shortage of stored grains has been reported in the two settlement units. Villagers who are unable to tolerate this increased hardship have migrated or joined the nomadic group. . . . The speed at which the resettlement program is being carried out does not allow a thorough study of the ecological variations in the resettled areas in order to guard against their disruption."

"When all factors are considered, the Abuja resettlement program has not been able to provide an environment within which the peasants will quickly re-establish the

ecological balance already attained in their previous settlements. This would require a greater involvement of the affected population in the decision-making process over matters affecting such issues as farm organization, land allocation and design of dwelling units. Planning and implementation of any resettlement program should be based on participation of the people involved."

Source: Okafor (1988).

should take place. Two case studies, from Barbados and Nigeria, highlight various issues in resettlement.

4.111 The contrast between these two examples is instructive. In Barbados, after an initial top-down false start, the government adopted a more participative and cooperative approach to resettlement in which the concerns of those being moved were taken into account and responded to. Efforts were made to resettle the community as such and although there was some inevitable unhappiness at moving, the exercise was, as a consequence, deemed successful. In Nigeria, the opposite was the case. A top-down Master Plan was the blueprint for action; little attention was paid to the needs, concerns, or life-styles of those being moved, with the result that resettlement has destroyed communities rather than preserved or enhanced them. In Barbados, time was taken to get it right; in Nigeria, speed of resettlement was emphasized.

### **Box 4.11 Resettlement in Emmerton, Barbados**

Emmerton is an area of land immediately adjacent to Bridgetown, the capital of Barbados. The country's Physical Development Plan of 1971 judged Emmerton the city's worst slum area, and made it a high priority for clearance and renewal. Thus it was not surprising that after considerable time was put into design development and economic considerations, it was decided to use 5 acres of the Emmerton area for the construction of the sewage (wastewater) treatment facility for the city's first sewerage system. At the time, some 560 people were living in the Emmerton area, predominantly in chattel houses, many of them in a dilapidated condition. Social surveys showed that a majority of the residents did not wish to leave Emmerton but "in general, the persons to be removed accepted it as a measure which the government had to take, but were insistent that uprooting them from their leisurely happy way of life should have its compensations in better standards of living and the minimum dislocation from their livelihoods."

A loan for the construction of the sewerage system was to be provided by the Inter-American Development Bank, on condition that the government would provide a program and schedule for the relocation of persons from the site before any disbursement of the loan. The government selected a site 2 1/2 miles from Emmerton and formed an interdepartmental committee of senior officials to plan the logistics of the clearing and the compensation "of landlords who may have suffered any loss as a result of clearance." The National Housing Corporation was designated as the agency to execute the relocation. This early planning for clearance and "rumors of crude methods to be employed by government in the implementation of the removal of residents brought very sharp resentful and hostile reaction from the persons concerned in the removal as well as from several sectors of the Barbadian community."

The government recognized the need for a different approach. The Community

Development Division was brought in, and a citizens' committee representing residents to be removed from Emmerton was established. The functions of the committee were to mobilize the entire community; learn about its problems, needs, and concerns; discuss the government's plans with its residents; and represent their views to the government. The Community Development Division's function was to "obtain the active and positive participation of the people of the Emmerton Community" and, via in-depth interviews, become familiar with their concerns about moving. The government responded to the views and concerns expressed by the citizens' committee and, among other things, agreed to provide improved amenities and utilities at the relocation site rather than, as had been initially determined, the same standards as existed at Emmerton. The conclusion of the commentators on the whole operation was that it "cannot be otherwise described but as a successful coordinated operation" even though surveys after the move showed some dissatisfaction with some aspects of it. In general, however, "the early recognition by the Government of Barbados that the people of Emmerton should become actively involved in the matters of resettlement which concerned and influenced their lives and welfare, contributed to the establishment of a harmonious relationship with widespread cooperation and the willingness by most to sacrifice some of their prejudged suspicions and recalcitrance. The establish of the Citizen's Committee helped to engender that feeling of belonging and participation in the sewerage cum resettlement project which helped both the Government and the residents affected in clarifying roles, solving problems and to prevent the spread of unfounded rumor and faulty beliefs among the residents. The interchange of ideas and goals led to more effective decision-making by government."

Source: Alleyne, Archer. and Walters (1990).

4.112 These examples of clearance and resettlement provide an idea of some appropriate principles of administration. To begin with, there is a need for administrative systems that

encourage the participation of local communities and their organizations, that expand the concept and scope of compensation, and that are open, flexible, and responsive in operation.

### **Land Readjustment**

4.113 One of the principal disadvantages of compulsory acquisition is that it sets up a confrontation between the government and the people so that needed public development runs the risk of being stigmatized as something undesirable before it even gets off the ground. The aim of reforms is to reduce the element of confrontation and increase cooperation and participation in the process. The same results can be achieved through land readjustment, rather than public land acquisition via compulsory processes. Readjustment, developed for urban purposes in Japan and Korea, took over the procedures first used principally for rural purposes in Germany in the nineteenth century, and now is spreading to other countries as a way of harnessing private and public initiative in land development.

4.114 Land readjustment/pooling—"a technique for carrying out the unified servicing and subdivision of separate landholdings for planned urban development," has a number of advantages:

Each pooling project involves the consolidation of a group of adjoining landholdings in an urban fringe area for their design, servicing and sub-division as a single estate into a layout of streets, open spaces and building plots (sites) for the planned urban uses of the lands. Some of the new plots are sold to recover the project costs and the

other plots are re-distributed to the landowners to sell or to build on themselves. Each pooling project is therefore a compulsory partnership of the landowners for unified land sub-division with the sharing of the project costs and returns between the landowners and with the recovery of the costs out of the land value increases, generated by the project. Land pooling provides an alternative to private land sub-division on the one hand and to government land acquisition and sub-division on the other. (Archer, 1987).

Land re-adjustment is attractive because of the extent to which it mobilizes existing resources and facilitates development rather than restricting it, as is the case with many of the forms of land use control that have been derived from western models. Secondly, land re-adjustment has social benefits in that it imposes a kind of betterment levy on landowners who are compelled to sacrifice some of their property in order to keep the capital gains that occur as a result of comprehensive development . . . certain basic prerequisites must be kept in mind. First, it is essential that there should be an appropriate legislative framework. . . . A second prerequisite is for an effective system of cadastre and title registration operated by a body of well trained and objective real estate appraisers. . . . Last but not least there is a need for dedicated and energetic staff. (Masser, 1987)

4.115 A disadvantage is that since that land readjustment reduces the area of every owner's property, it will be attractive only where infrastructure is difficult to obtain by other

means, and where the demand for serviced land is strong enough to compensate the owner for the loss of area by making the remaining property more valuable, even though it is smaller.

4.116 The two most important advantages of land readjustment as opposed to land acquisition, compulsory or voluntary, are the involvement of the landowners and users in the process and the reduced costs to the public authorities for the provision of infrastructure or public buildings. This would suggest that readjustment may in some cases be appropriate for the upgrading and/or redevelopment of informal settlements and inner city high-density low-income settlements. Land readjustment is, in fact, used for this latter purpose in Japan, where the time taken by a project, which may be considerable, is not regarded as a disadvantage. As with land acquisition and indeed other policies requiring an input into the land development and land markets by public authorities, it is necessary to translate principles of cooperation and participation into structures and processes that require officials to act so as to facilitate such an approach. While a small element of compulsion may be unavoidable in a land readjustment project—a decision based on a majority vote of residents in a readjustment area or a decision by an adjudicator on a dispute unavoidably forces some person or persons to do what they would prefer not to do—a land readjustment project that is not based substantially on the voluntary cooperation of the residents and/or landowners in the area selected for the project will arouse as much resentment as an old-style top-down compulsory acquisition exercise, and may lead to delay and unnecessary expense through litigation or political intervention. Here, as elsewhere, efficiency, economy, and equity march together.

### **The Way Forward**

4.117 The first point to make relates to the need to adapt and modernize land acquisition policies and procedures through democratic processes to secure public support. Part of the public's hostility to expropriation is that it is seen as one of the most arbitrary actions that a government can take against a citizen; where governments lack legitimacy, either through an absence of democratic processes or through a lack of transparency and equity in the administrative process, the seizure of a citizen's land, with minimal notice, minimal rights of objection, and minimal compensation paid long after the act of expropriation, is bound to fuel resentment. In countries where courts are available to the population and are regularly used by them, they will be used to block expropriation. In countries where courts are not so regularly available to the population, other ways of expressing objection to expropriation—refusing to leave the land or attacking officials—will be resorted to. Thus there is a clear need to examine the procedures and purposes of expropriation with a view to developing more efficient and equitable processes.

4.118 What should be the criteria for developing such processes? A UNCHS (1985) publication has set out the desiderata of an effective land acquisition law. It must

- a. Be precise in conceptualization and wording
- b. Be capable of review and updating
- c. Be enforceable
- d. Be understandable to the layman
- e. Be fair in its application and impact on the various sections of the community
- f. Respond to the cultural, social and economic reality of the people.

4.119 These may be summarized as clarity, certainty, transparency, and fairness. Clarity requires that an expropriation law be set out clearly, including the duties and responsibilities of officials and public bodies, the rights of the citizens; the criteria to be used in determining whether to acquire land and how to assess compensation; the procedures to be followed and forms to be used, which must all be set out in language that can be comprehended by ordinary people and does not leave any doubt as to what is to be done.

4.120 Certainty refers to discretion. Many laws state that land may be acquired for a "public purpose" but then leave the definition of a public purpose to the Minister or some official. Their certificate or ruling is final. Such a wide discretion invites arbitrariness. Some laws place few time limits on actions by public authorities, with the result that proceedings can drag on for years. Clear time limits, by which actions must be taken—with the penalty that failure to act will abort the whole procedure and free the targeted land from the threat of expropriation for a stated period—might go some way toward overcoming the apparent arbitrariness of actions by public authorities. Where discretion must be provided for, it should, wherever possible, be limited by stating the criteria to which its use must have regard.

4.121 Transparency requires that officials be forthcoming and open about the purposes of expropriation, how the procedures are going to operate, and what assistance is to be given to dispossessed people. Citizens are more likely to respond positively, or at least with less hostility, if they can understand how the taking of their land fits into some wider scheme of public benefit, what alternatives were considered, how they are going to be treated, and what opportunities for redress and/or compensation they have. Transparency in expropriation procedures will also reduce the opportunities for corruption or abuse of power and so help to legitimize the process.

4.122 Fairness is perhaps the most important and most comprehensive principle, and arguably it embraces all others. Here there is both procedural and substantive fairness. Procedural fairness covers the areas discussed above: opportunities to challenge the decision to acquire one's land; assistance in understanding and complying with procedures; opportunities to participate in processes and decisions that lead up to the need for land acquisition; the provision of bodies, judicial or quasi-judicial, which can give an independent decision on those many issues brought about by expropriation; minimal delay in the payment of compensation.

4.123 Substantive fairness concerns compensation. If land has to be taken, if the challenges have been met and the case for expropriation satisfactory put forth then compensation becomes due. It is failure of compensation that gives rise to so much hostility to the whole process. The solution is not an easy one. India's Land Acquisition Act of 1894 has had since its enactment a provision requiring the payment of a solarium of 10 percent of the market value of the land—raised to 30 percent in 1984—"in consideration of the compulsory nature of the

**Box 4.12 Compensation Provisions in the Lesotho Highlands Water Project**

The Lesotho Highlands Water Project will reverse the flow of the Senqu/Orange River in the Lesotho Highlands, create dams to store the water, redirect its flow is measured quantities into South Africa to provide irrigation for farmland in the Orange Free State, and to develop hydro–electric power for Lesotho. Many highland people—predominantly cattle farmers—will lose their land and their livelihoods as a result of the project. The Lesotho Highlands Development Authority has developed, after widespread consultations with the highland people, realistic and novel form of compensation set out in a policy document of the Authority:

"Where a field is acquired by the project, LHDA should replace the income thus lost by the affected household and its descendants. Such compensation for the loss of land rights must be directed to both the individual and the community. Compensation should take the form of replacement income rather than replacement land. . . . During a transitional period while these alternative forms of income are being introduced, there should be direct replacement of the agricultural income which has been lost. This direct replacement income should be provided to the head of the household, annually for not more than 15 years from the time the field is lost. . . . The Government of Lesotho should make an explicit long term commitment to devote a major portion of its revenues from the sale of water from LSWP to the welfare and economic development of the communities affected by the project . . . Where it is necessary for LHDA to acquire residential property, it should where possible arrange with the chief of the affected village for a new residential site or sites to be allocated to the household in question within the same chiefs area of jurisdiction . . . Where LHDA acquires residential property comprising of one or more single room dwellings it should build a new house or houses, totalling the same internal service area as those acquired, on the new site . . . Any person aggrieved by compensation arrangement made or not made by LHDA in connection with his loss of land, income or other assets or rights because of the LHWP should be permitted to appeal to the land tribunal established by s. 64 of the Land Act 1979 . . . if his representations to the LHDA do not satisfy him."

acquisition." This additional payment has not prevented constant challenges in the courts over the years to the operation of the act by those whose land is being expropriated. So the issue is not just the amount of compensation, or that the amount of compensation is not just; it is, we would suggest, the nature of the compensation and the manner in which it is determined.

4.124 What needs to be done is to rethink the conception of compensation, the manner of its determination, and the persons who are to receive the new compensation. Compensation must, in the words of the UNCHS (Habitat) publication quoted earlier, "respond to the cultural, social and economic reality of the people." If expropriation will destroy a community, then compensation should take the form of rebuilding that community elsewhere. If expropriation will destroy livelihoods, then income support and retraining programs should be introduced. Where people view land as having a meaning beyond a capital asset, then land must be replaced by land. Second, people and communities must be involved in making decisions about the nature of the compensation to be made available to them and the modalities of that availability—when, how, what, where. Third, facts—not law—should determine the persons who are to obtain

compensation; those actually living on the land, deriving a livelihood from the land, have an equal if not a greater

claim to compensation than those with "rights" to the land who are not physically on the land; in other words, persons in informal settlements who had invested their capital—sweat equity, money—in their homes should receive compensation in some form—usually new homes, building materials, or assistance in developing new community facilities, if their settlement is to be demolished.

4.125 There are some signs that this approach to compensation is beginning to be given serious consideration. A good example comes from the Lesotho Highlands Water Project—a massive project funded by the World Bank to reverse the flow of the Senqu/Orange River in the Lesotho Highlands.

4.126 Although there will always be those for whom the loss of their land is so traumatic that they will fight to the bitter end, a policy framework and an open administrative system along the lines set out above could go a long way toward reconciling both landowners, their advisers, and the courts to the exercise of the powers of compulsory acquisition.

### Winners and Losers

4.127 It is time now to stand back from the details of the preceding sections and try to pinpoint who are the winners and losers in the existing systems of urban land management. This needs to be done both to direct attention to what reforms might be necessary to convert losers into winners and, equally important, to identify what blockages might be expected to such reforms if winners think that reform will turn them into losers.

4.128 At one level, the question of who are winners and losers is simple to answer. Winners are those who have land or access to land or access to those who can grant them land or access to resources that will enable them to buy and develop land; or who are part of the administration of the system with regular jobs and an income. Losers are those who have none of those things. Winners are politicians, public servants, traditional rulers, existing landowners, both individual and corporate, regulators land-related professionals—lawyers—and financiers. Losers are, in many countries, the rest—preeminently the urban poor living in informal settlements among which women-headed households must be specifically highlighted; if these are, using Indian terminology, the economically weaker sections (EWS), losers are also to be found among the lower-income groups (LIG) who may be in formal housing or upgraded informal and now officially recognized settlements, and even in some countries among middle-income groups (MIG) where land allocation procedures are so inefficient or corrupt that too little land is made available for such persons to obtain adequate housing.

4.129 It is impossible to limit answers to that question to the narrow confines of land management or land tenure. Let us take a straightforward example. A has a university education, is in a reasonably well-paid, secure job in the public sector, with prospects of advancement and a pension. His wife is employed as a teacher. B is a daily wage laborer on a building site. The job is not secure; he has little formal education. His wife has an uncertain income from an

informal wayside stall selling consumer goods in small units. We do not have to presume any corruption, or any inefficiencies in the land management system to realize that A has a much better chance of obtaining adequate affordable housing in a pleasant environment than B has. A will have better access to credit and to professional advice and assistance than B will have. Both the public sector and private developers are, on past evidence more likely to provide housing for A than for B. Relevant factors here are A's educational background, which gives him his start on the ladder, the nature of the socioeconomic system that awards A with a steady and secure income and the nature, almost certainly, of the political system that pays more attention to the need to satisfy the aspirations of the vocal middle class to which A belongs than of the inarticulate and intermittently unemployed working class to which B belongs. To suppose that a bit of tinkering with land tenure systems on its own will bring about a significant alteration to the respective positions and life-chances in society of A and B is bordering on the naive.

4.130 In fact, we know that the "ideal" position of A and B is rarely in evidence. A will have relatives in positions who will be able to help him; will be able to afford to lubricate the wheels of the bureaucracy if that is the way to get things done; will have easier access to politicians and fellow public servants if that is necessary; and may well be already living in subsidized accommodation, which increases his disposable income to purchase land and build a house. B will rarely, if ever, have any of these advantages. Even this scenario is, in many societies, too idealistic. Unless A is in the top 1015 percent of the income groups in urban society, or has a clear inside track to those who allocate land or credit, he too will experience considerable difficulties in obtaining land or a house and may be driven to go outside the official system. In sum, urban land tenure systems that reward A and penalize B are a symptom and not a cause of the respective position of A and B in urban society. Behind both "A" and "B," although no doubt closer to "A" than "B" are those who are the principal beneficiaries of many current systems—politicians, both civil and military, large private and public landowners, senior public servants. These are the gatekeepers to urban land and these then are the persons who above all others will have to be convinced of the need for change.

4.131 It is also important to remember that politicians, large landowners and senior public servants are not the only persons who have a major interest in the status quo of the existing legal and administrative complexities of urban land transactions. Armies of lower and middle civil servants and thousands of middle persons who make a living by guiding both the poor and the middle-class through the masses that we have described, all of these have a substantial stake in the confused, multi-layered and irrational systems that now exist. Experience with attempted reforms in many countries has been shown that all of these groups will resist simplifications and reforms no matter how sensible they may be. Devising incentives that will defuse the opposition of these groups will not be easy, but may be necessary for the political viability of reform.

4.132 Convincing the gatekeepers is a necessary but not a sufficient condition for change. Two other categories of persons need to be convinced. The first are those—the As of this world—who are doing reasonably well out of the present system. Will change improve their lot or at least not make them any worse off? Second, the officials who operate the system, are often quite humble people closer to B than to A. Will their jobs be at risk from change; will their

unofficial "perks" disappear; will they themselves be better off from change? The generalizations about "deregulation" or "improving efficiency," or "reordering priorities" have to be translated into specific proposals for action that do not threaten those who are or see themselves as winners, or that provide them with compensating benefits for any losses they may sustain.

4.133 A possible approach to this task is to aim to extend the facilities already available to the winners to the losers. Let us take the example of access to credit and access to professional services: There is a need to develop or assist in the development of small-scale revolving credit organizations ( such as Sou Sou in Ghana) in urban areas catering to the urban poor and to encourage professional organizations to establish facilities for making their services available to the urban poor, and to assist in the designing and development of simpler forms, standards, and practices for use in their work generally. This approach can be replicated in other areas. Similarly, regarding administrative reorganizations and deregulation, retraining and upgrading programs leading to higher status and qualifications and incentive payments rewarding increased productivity will be important ways of winning the cooperation of those officials without whose cooperation such reorganizations will be ineffective. Recognizing the abilities and skills of the middlemen and incorporating them into new land management arrangements aimed at facilitating access to and the development of land will ensure their support for new approaches.

4.134 The key issue, however, will be what can be offered to the gatekeepers to induce their cooperation? To be specific, what can be offered to senior officials who effectively control access to urban land throughout the country, and have in that capacity built up networks of contacts and "banks" of favors owed for past services rendered? Why should such officials cooperate in any program designed to make access to urban land more

simple, more transparent, and more free since this would undermine their own positions and powers? Lee-Smith's point based on research in Nairobi is still pertinent: "It is apparent that maintaining control over informal systems of land allocation is easier and more rewarding for individuals within a ruling elite than formal systems of land allocation to the poor," as it generates both cash and political support.

4.135 Doebele has suggested that the best occasions to try to bring about changes in land management practices are in what he calls "moments of transition"—occasions when some specific change in the status of land is about to take place—the subdivision of rural land into urban-sized plots; the provision of infrastructure; the commencement of actual construction; and the reassembly of lands for redevelopment. To this may be added the fact that external events may also trigger a moment of transition, for example, "the impact of falling foreign remittances on people's propensity to invest in land," which in the specific case of Jordan led to a willingness to contemplate reducing plot sizes so as to maintain land development, albeit with lower profits for developers (Clarke). This is a useful approach and can be developed in this context. Just as there are moments of transition in land management, so there are moments of transition in the wider context of governance, either exogenous (i.e., structural readjustment programs) or endogenous (i.e., a fundamental change of government from military to elected civilian or from one party to multiparty or from a command-economy government to one committed to introducing market forces). These moments of transition can be used to explain the advantages

of more equitable and efficient urban land policies and management practices to the incoming gatekeepers—sometimes even to some of the outgoing gatekeepers who hope to hang on in the new government. There will be, and have been, occasions when the ready availability of such new policies and programs for implementing them—which seem likely to provide an immediate and positive political return to a new government or an existing government having to implement a series of policies imposing heavy costs on the usual losers—will be taken up and acted upon. This is perhaps the best that can be hoped for.

4.136 Must strategies for improving the lot of the losers focus on the winners? As a matter of tactics, the answer is yes, since the winners, by definition, control those institutions and process that can be used to block or bring about the changes needed to benefit losers. But tactics, it must be realized are a means to an end. The end, is, as was set out in section I of this paper the orderly development of land markets, the integration of formal and informal land markets and settlements, the creation of flexible consumer-oriented systems of land management and the commitment to transparency, probity, equity and value-for-money in administrative processes, so any overall problem or set of policies for change or reform must be geared to achieve those goals. If they are all achieved, all will be winners for even those who have lost some powers and privileges in the transition from the old to the new system will have opportunities for legitimate rewards and benefits in a more open and market orientated system of land management. This point must be kept in mind in the inevitable processes of bargaining which will be an integral part of the introduction of new systems of land management.

## V—

### **The Path of Reform Suggested Framework for Policy Formulation**

#### **Priorities and Reforms**

5.1 This report does not attempt to provide a detailed framework for policy formulation, but rather offers some basic principles that can be used to this end and to examine the institutions and instruments of land markets. This chapter merely presents a conceptual framework for consideration. Future guidelines will address some of the issues raised here in greater detail.

### The Basic Issues in Urban Land Management

5.2 What are the issues that need to be addressed? The issues concerning administrative institutions revolve around (a) the appropriate functions to be undertaken by central and local government and the desirability of locating as many functions as possible at the lowest feasible level of government, and (b) the development of frameworks and practices of consultation and dialogue with the private sector, including NGOs, about the operation of land markets. As for legal institutions, the issues pertain to the development of (a) better access to more user-friendly, expert, and speedy systems of adjudication; (b) more relevant systems and codes of laws relating to land and their wide dissemination via media, targeted to specific groups in the community; and (c) a heightened awareness by lawyers of their responsibilities toward the whole urban community in respect of land matters. Where private sector institutions are concerned, the issue is how to integrate them into the urban land management system, both at the center and at the local and sublocal (ward or community) level, and make use of their skills and perspectives.

5.3 Turning now to instruments, the overwhelming issue regarding land tenure is to accept the ordinariness and regularity of tenure in informal settlements and work toward an integration between formal and informal systems of tenure. This in turn involves subissues of working with residents and their organizations, middlemen, and traditional landholders, and using the last group and NGOs and CBOs as the first line of management of urban land, and, second, devising forms of tenure that meet and accommodate the various interests of different groups in sections of the community, including gender questions. Following on from land tenure in general terms is the matter of security of tenure. Here the question is how to develop simplified, cheap, and locally manageable systems of land title security, which would usually be some form of title registration. This in turn involves the subissues of surveying practices and rules; second, compiling legal definitions and requirements of such matters as "title," "boundaries," interests in land that may be registered, and security; third, the location and management of and staff skills and incentives in offices providing title security services; and fourth, the balance between public and private sectors in the provision of this service.

5.4 The second group of instruments are those relating to transactions in land, the instruments that provide the machinery of a private market in land. Here the issue is to develop a set of instruments and the modalities of using them that—also in some cases arising in security of title—is the question of the monopoly of the legal profession to undertake transactions in land. A second issue is the development of new instruments—innovative instruments—that can give backing and authority to innovative ways of providing and developing land for the urban poor.

5.5 The third group of instruments are those covering the regulatory framework, and the direct involvement of the public sector in land development. The basic issue concerning regulatory frameworks is their nature, scope, purpose, and implications on the ease of entry into the formal system. There is an urgent need to assess the costs and benefits of regulations; and to identify regulatory policies that do not impede the facilitation of market operations. On instruments of direct involvement, two basic issues pertain to the impact of compulsory acquisition on the availability of land released on the market and equity in resettlement programs.

### Strategies for Action

5.6 This section is about how to address these issues, what practical steps might be taken to move away, over a period of time—since important changes cannot come about overnight—from present policies and practices, which are deleterious to the efficient and equitable operation of land markets, to the enabling environment and transparent administration that will facilitate their efficient and equitable operation.

5.7 Before considering these practical steps, it is necessary to formulate and explain the principles that inform them. Formulating principles is no mere academic exercise; the principles provide the underlying rationale for the

practical proposals and suggestions to be offered and the measuring rod for judging their worth and consistency. They will make explicit what will be implicit in the practical proposals; in effect, they will provide the essential transparency to this part of our discussion and, if acceptable to governments and aid agencies, will provide the sets of objectives at which both should aim.

5.8 The institutions and instruments that provide for the management and operation of urban land markets should be based on the principles of equity, efficiency, flexibility, and participation, the general aim help all citizens, and especially the urban poor, to gain access to affordable and appropriately located land with adequate security of title and occupation and adequate development rights, that is, rights to use the land for a wide variety of purposes, restricted only by essential environmental, public health, and public safety regulations.

5.9 The principles enunciated above merit a brief comment.

### **Equity**

5.10 Equity refers to two matters: substantive equity and procedural equity, or due process. Substantive equity refers to the need to review and reform institutions and instruments so that their structure and operations are no longer biased against the urban poor. Instead of law and administration being used to bolster and maintain a divided urban system between an illegal or extralegal city of the urban poor and the legal city of the urban elites, they should be used to facilitate the integration of the urban poor into the legal city. Insofar as they are responsible for the matter, central government agencies and local authorities should speed up the release of land for urban development, facilitate the acquisition of title to land, extend the benefit of urban services and facilities to informal settlements, and develop programs for regularizing rather than

demolishing such settlements. Institutions of adjudication and dispute settlement need to be adopted and developed to cater to the real and perceived needs of urban residents, and professional monopolies that stand in the way of innovative development because of their high costs and slow delivery of services should be curtailed.

5.11 Due process is an important value that, unless explicitly addressed, may become submerged in the concern for efficiency and ease of management. It refers to the need to create a system that ensures, as far as possible, that proper consideration is given to any action that is likely to have adverse consequences on people before it is taken; that where hearings are provided for, they are conducted in accordance with recognized principles of administrative justice; that where compensation is due, it is paid promptly and in full; that there are internal checks on public officials to ensure that they carry out their duties properly; and that there are adequate external checks to investigate allegations that they have not done so. One does not have to subscribe to all the details of administrative law to make the point that, as a matter of principle, a system that allows some challenge to administrative action is preferable to one that allows none. It is much more likely to be the poor who will lose out in an authoritarian administrative system than the wealthy or well connected.

### **Efficiency**

5.12 The notion of an efficient system embraces several points; the costs of the system must not be allowed to grow too large; the costs of development control must be related to some reasonably identifiable benefit to be gained from control; control of hazardous industrial processes, for example, may increase the costs of production but the gains in reducing the danger to life and protecting the natural environment justify those costs being imposed on industry. Granted that there will be costs attached to such an industrial process, it is likely to be more economically efficient and certainly more equitable for the costs to be borne by the polluter than the polluted. In contrast, control over a range of minor works of construction may have no identifiable benefit and should not therefore continue. Equally, this principle would direct attention to effectiveness. What is the more economically effective way of achieving a particular end? There is no magic in any one particular system of regulation or

management, and there should be a willingness to devise a system appropriate to the government and society concerned. Markets may work more efficiently without regulatory mechanisms, which should not therefore be assumed in advance to be necessary. So, too, there should be no automatic assumption that a particular activity has to be undertaken by the public or the private sector; the question is: What works best?

5.13 Efficiency also embraces manageability and implementability. Systems, whether they are directed to the registration of title to land, to obtaining permission to develop land, to undertaking a transaction in land, or to complaining about some adverse decision affecting one's tenure, occupation, or use of land, should be kept simple so that officials can carry out their duties without mistakes and so that ordinary people are not put off using official forms, or going to public offices by the intimidating atmosphere of bureaucracy that too often exists.

### **Flexibility**

5.14 Flexibility refers to the ability of institutions and instruments to accommodate change and growth, two characteristics of urban processes. The forward planning of land development must be of a flexible adaptable kind—must act as a guide to possible futures rather than rigid straitjackets, must be strategic planning rather than master planning. There should be a willingness to develop multiple systems of title security to facilitate the acquisition of security of title by people starting from different positions in respect to their occupation of land. Similarly, with building and land use controls, different degrees and types of control should be permitted for different urban and economic life-styles. There should be a willingness to experiment with new forms of tenure, new forms of compensation for compulsory acquisition of land, new institutions—such as NGOs—to carry out certain tasks of land management and new ways to overcome old and long-standing problems. Flexibility here embraces both innovation and the willingness to encourage innovation. It means a constant willingness to review and revise land management systems in the light of experience and changing needs.

### **Participation**

5.15 Participation is a much overused word and underused activity. It must be understood here as embracing "involvement in"—NGOs' and CBOs' involvement in managing land registration systems at the community level; communities involved in setting and then policing their own land-use standards, in determining where they will be relocated and how they will be compensated if such action has to occur, in planning the future of their own areas; neighbors involved in settling landlord-tenant disputes and systems developed to enable individuals to take action against those who continually flout norms of right conduct, be they neighbors, absentee landlords, or corrupt officials. Participation involves empowerment and the development of self-reliance; it requires a system of land management that facilitates people getting together to acquire land, develop it, and live on it without official harassment. It also involves officials listening to the people and recognizing that a person's worth and rights do not depend on his/her socio-economic position. Finally, participation involves transparency of administration; people must know the bases for decisions, rules, and actions, and these bases must be given in advance, in a comprehensible form, and must be adhered to. Without transparency and predictability, people cannot plan their own futures, and markets for land are unlikely to work.

5.16 One further point must be made about these principles: inevitably, attempts to meet all the principles will encounter the problem that in practice there may be conflicts between them; equity, for instance, may not always be reconcilable with efficiency. Although there is no perfect answer to these conflicts, the aim should be to develop systems for the management and operation of land markets that face up to and encourage decisions to be taken with the full knowledge of and after full discussion of the conflicts. Decisions taken in that way will be easier to justify and easier to accept. Conflict resolution is an essential part of the decision-making process.

5.17 With these principles and the general strategy for action in mind, we may now give consideration to a

program of action to address the specific issues identified earlier. It will be set out in the form of a series of objectives to be achieved, followed by the steps or activities needed to achieve them.

### Framework for Reforms

#### Institutional Reforms

##### Administrative Institutions

**5.18 Objective :** To define the scope of responsibilities of the public sector and to improve the capacity of government at all levels to enhance the tasks that it does best.

##### 5.19 *Activities*

##### 5.20 **Activity 1: Decentralize.**

- a. land registration
- b. allocation of public or publicly controlled land
- c. all permits and approval needed to undertake development of land via a "one-stop shop".

5.21 Explanation: Overcentralization of land management is a major cause of delay and inefficiency. It increases the cost of complying with official laws and procedures and so increases the likelihood of noncompliance. Management must be made more accessible to the consumer, and this can be done by decentralizing management outlets. The three activities mentioned above are key aspects of land management, all of which will provide examples of successful decentralization that can be referred to as models.

##### 5.22 **Activity 2: Confer legal powers on local community level and/or traditional bodies to undertake local land management tasks.**

5.23 Explanation: In many cities, local governments are as remote as the central government is to the residents of low-income settlements, both formal and informal. As noted above, there can be practical and political problems in wholesale transfers of power to local levels. The optimal form of transfer will greatly depend on the context of each community. Nevertheless, in general, there is a need to push land management down to levels that have relevance for the majority of the urban population and to empower organizations at the lower levels to undertake such tasks as dispute settlements, recording land titles and transactions, policing land uses, and liaising with upper-level governmental authorities on public acquisitions and similar matters. Where traditional authorities already exercise such powers, albeit unofficially, consideration needs to be given to integrating them with official management systems. So, too, with organizations and structures in informal settlements.

##### 5.24 **Activity 3: Develop transparent, simple, and fair administrative processes and procedures to handle land issues and to involve private sector actors in the process.**

5.25 Explanation: Land issues here embrace all those matters on land in which public authorities are or may be involved—the registration of titles, the recording of transactions, the granting of permission, the allocation of plots, the compulsory acquisition or voluntary purchase of privately owned land, land adjudication, readjustment, and fiscal exactions. In all these cases, those needing or required to have contact with public authorities must know in advance that both sides' duties and rights are and must have confidence that procedures will be adhered to and that desired or required result will follow from such adherence. Processes and procedures will need to be

published in relevant languages and made available to consumers. NGOs, private sector professionals, and developers will need to be involved in the development of these processes.

### **5.26 Activity 4: Train local officials and private actors to undertake tasks in the new administrative environment.**

5.27 Explanation: As functions are decentralized, so it will be necessary to train officials to handle new tasks. If NGOs are to be given specific land management responsibilities, then members and officials will need training. An administrative culture that has kept informal settlements and their leaders at arm's length or that has a "policing" orientation, will need to change; a change of rules alone will not achieve results.

### **5.28 Activity 5: Develop incentive-based systems of personnel management in relation to public agencies concerned with land management.**

5.29 Explanation: If training is essential to orient officials in the right direction, there is an equal need to introduce changes in personnel management and organization to ensure that the agency they work in is also responsive to a more enabling role. Productivity and commitment need to be encouraged and rewarded, failures penalized. Responsibilities need to be made transparent.

### **5.30 Activity 6: Establish a monitoring mechanism or body with joint public and private sector (including NGO) membership to keep under review the operation of the decentralized system of land management and to further the progressive involvement of private sector professionals and NGOs in land management tasks.**

5.31 Explanation: There will be a need for some organization outside the bureaucracy to monitor progress on the relevant activities. Such a body will involve all parties that participate in land markets—public sector, private sector, and popular sector (NGOs). Given the composition of this body, it could also be used to investigate and make recommendations on the involvement of the private sector in land management.

5.32 To improve the capacity for urban land management there must be decentralization, openness, involvement of the private sector, and training. The balance between these facets of

management, the emphasis given to one or another, will depend on the present position in any particular country, but there are few countries that do not need to give some consideration to some of these matters. Equally, the precise manner in which the activities are undertaken—by law, by administrative directive, piecemeal, after an investigation or inquiry, wholly internally, or with the aid of outside consultants—must likewise be left for national decision.

#### **Legal Institutions**

### **5.33 Objective:**

- a. to develop efficient and expert user-friendly systems for resolving disputes over land issues; and
- b. to create comprehensible, readily available systems of land laws catering to all sections of the community.

### **5.34 Activities:**

### **5.35 Activity 1: Land Institutions Audit.**

5.36 Explanation: This activity has two dimensions. First, the management of litigation leaves a great deal to be desired in many countries. Concepts of efficiency, of the costs of delays, of the management of time are foreign to most systems of judicial administration. Second, in the actual process of litigation, are the rules relating to evidence, procedure, standing of the parties, and functions of the judge apt to ensure speedy and satisfactory results? When were they last examined and by whom? Whose interests do they serve? We are proposing that every country undertake a "Land Institutions Audit," that is, a systematic study of the legal institutions, legal instruments, and adjudicative processes that affect all the land issues that we have discussed in this document, documenting the time, complexity, and costs involved in current systems. The work of the Instituto Libertad y Democracia in Lima illustrates how important this kind of audit can be in identifying bottlenecks and inefficiencies in the legal system.

**5.37 Activity 2: Create or revive specialized dispute resolution mechanisms for land suits involving formal courts or tribunals, alternative dispute resolution (ADR) mechanisms, and traditional and local community mechanisms.**

5.38 Explanation: Many countries have developed specialized bodies for resolving disputes for different purposes: to deal with commercial disputes, labor disputes, disputes arising out of various welfare programs, and various aspects of land disputes—rent tribunals, land adjudication committees, compensation tribunals. Land is a sufficiently important and integrated matter, giving rise to difficult and potentially disruptive disputes, call for the establishment of specialized bodies with wide powers to deal with these issues. Their composition, procedures, and powers will need to be geared to their tasks rather than patterned after traditional judicial models.

**5.39 Activity 3: Draft and publish land laws in forms that will make them easily available to the public.**

5.40 Explanation: This activity does not necessarily require a reformed and comprehensive code of land laws, such as exists in Malaysia, to be introduced. This may be considered a long-term objective. What is of more immediate concern is the bringing together in one or more documents of all the legislation relating to land that is scattered about in the statute books; the consolidation of this law so as to eliminate conflicts, overlaps, and obscurities, and, if possible, reconcile the laws developed over many years and based on different philosophies or conceptions of land management. Such an exercise will also provide an opportunity for simplifying and clarifying the language of the laws. Publication also means keeping the laws in print and up to date. The example of Malaysia may be mentioned here. Commercial publishers produce a yearly updated version of the National Land Code and frequent updates of other relevant laws on land.

**5.41 Activity 4: Develop explanatory publications on land laws geared to all levels of society.**

5.42 Explanation: It is not enough that the laws are published; they need to be explained clearly and simply to users. This already happens in many countries; but the practice needs to be made universal. It is not enough that textbooks for students and practitioners are published; there is a need also for handbooks, guides, charts, and picture books aimed at (or produced by) NGOs and the general public. Again, as well the publication of the laws, this is an activity that can be undertaken perfectly well by the private sector.

**5.43 Activity 5: Develop standard forms for land transactions.**

5.44 Explanation: The purpose here would be to simplify, speed up, and reduce the costs of land transactions. It is the task of a communication professional and not of a lawyer working in close association with consumers and lawyers to develop user-friendly forms. Once such forms have been designed, they, too, need to be made widely available. The aim should be to develop forms and procedures that would enable ordinary people to undertake transactions without having to make use of the services of professionals—lawyers, surveyors, and the like.

**5.45 Activity 6: Train lawyers, legal administrators, judicial decisionmakers, and draftsmen to equip them to undertake the tasks outlined in the above activities.**

5.46 Explanation: In matters such as these, lawyers are no different from administrators; if new approaches are to be called for, new institutions and procedures need to be introduced, lawyers will need to be sensitized and trained to operate in the new environment.

**Institutions of the Private Sector**

5.47 **Objective:** To help the private sector to function more effectively in its role as the primary operator in land markets and to develop its role as an equal partner with public institutions in land management.

5.48 Explanation: In virtually all countries in the developing world, the private sector, including the individuals and organizations in informal settlements, is the main actor in land markets and land development. The objective stated here is based on the assumption that this fact needs to be recognized and built on.

*5.49 Activities.*

**5.50 Activity 1: Review and, where relevant, revise legal codes governing the establishment and operation of corporate bodies, housing, and land development cooperatives to facilitate small-scale, corporate, and cooperative land development activities and to provide such bodies with access to credit.**

5.51 Explanation: A large amount of private sector land development is undertaken by individuals or families building their own homes. There is a need, however, to create opportunities for individuals to come together, to pool resources of land, labor, and capital; and develop land on a collective or cooperative basis. This route is strewn with many obstacles, one being the inappropriate legal frameworks for such forms of development. Simple forms of incorporation, and of establishing a housing cooperative and easier access to credit from banks—usually cheaper than informal lending agencies—will be of enormous assistance to small developers.

**5.52 Activity 2: Liaise with associations of land-related professions to develop programs for the transfer to or the sharing with such professions of land management functions.**

5.53 Explanation: Where there are no national policy or national security issues at stake, private sector professionals can take over the operation of many functions in the land management field. Programs can be developed on a trial basis, and in particular paraprofessionals can be used in informal settlements as part of the process of integration and regularization.

**5.54 Activity 3: Develop links and contacts with associations of urban NGOs, tenants, and urban land developers, and set up regular meetings to review land management practices and the operation of land markets.**

5.55 Explanation: The purpose of this activity is to begin closing the gap that exists in too many countries between the private sector, especially that part of it working in informal settlements, and the public sector land managers. Proposals for new regulations, new administrative procedures, new standard forms, use of building materials or credit facilities tend

to be taken in a vacuum with no knowledge of the views of consumers. Regular meetings with the private sector will do much to ensure that a consumer viewpoint is taken into account in policy formulation and implementation. A caveat must however be entered here. Although the views of the private sector are important, the private sector

embraces small-scale as well as large-scale developers and landowners, tenants as well as landlords. This activity should not be seen as a signal that the making and implementation of urban land policy should be turned over to a few large private landowners. Indeed, the aim of this activity is as much to relocate policymaking away from such groups where, unofficially, it is located in many countries, as it is to introduce the idea that such policymaking must be shared between the public and the entire private sector.

**5.56 Activity 4: Work with traditional landholders and in particular develop and provide for instruments that permit modern urban uses of their land, the continuation of traditional residual rights in the land, and a regular income from the land.**

5.57 Explanation: This activity is of particular concern for urban land management in Africa, the Pacific Region, and parts of Asia. It is based on the view that attempts to eliminate the role, influence, and tights of traditional landholders have on the whole failed, have led to parallel and unofficial land management and land development activities and need therefore to be abandoned. The aim should be to work with such persons to explain the benefits of developing their lands in an ordered way, taking advantage of modern financial and legal tools; and to assist them in formulating and executing land development projects.

**5.58 Activity 5: Develop programs of training for private sector participants in urban land management and development.**

5.59 Explanation: The thrust of all the activities to implement the objective in the private sector is that new roles and tasks will devolve onto or be transferred to the private sector. This will require parallel programs of training to ensure that professionals, paraprofessionals, employees and members of NGOs, small-scale land developers, and members of cooperatives can undertake these tasks. In addition, training should be part of the programs of regularizing and integrating informal settlements; officials need to be trained to relate to and work with informal settlements; builders and "unofficial" administrators in informal settlements need to be assisted to upgrade their skills. Special programs should be developed relating to the role of women in land management. Given the very large numbers of women-headed households in informal and low-income settlements, more women professionals and paraprofessionals are needed in positions of responsibility to work with such households, and to represent and ensure consideration of their interests in land management.

### Reforms of Instruments

#### Land Tenure

**5.60 Objective:** To develop a framework for a system of land rights, providing a reasonable measure of security and a simple and efficient system of affecting land transactions,

which is appropriate for use by all sections of the community and which takes into account and builds on existing traditional and informal systems of tenure, where these exist.

5.61 Explanation: Faced with rapid urbanization and the consequent need to provide land for urban development, developing countries must base their framework of land tenure on an enabling philosophy that translates into a policy of making land as widely available as possible, establishing programs for integrating informal settlements into the formal city without destroying the community process of management developed in those settlements, and facilitating land transactions.

*5.62 Activities:*

**5.63 Activity 1: Assess what is happening on the ground in relation to land rights in urban areas.**

5.64 Explanation: Any changes or reforms in urban land tenure must be preceded by knowledge of what the present position is. There is generally too little knowledge of the current operation of urban land markets, both formal and informal, and in particular about who is operating in the market and how, and who is benefiting or losing from present practices. Both land market assessments (see UMP paper No.1) and more anthropological and sociological studies of informal settlements and the management of land therein are needed.

**5.65 Activity 2: Review or if necessary establish a special body to review the existing laws governing land tenure with a view to reforming, updating, reorganizing, and codifying them.**

5.66 Explanation: Activity 3 of Legal Institutions Reform focuses on the codification, clarification, and publication of the existing laws on the land. That is a necessary first step. This activity is a second step. In many countries the laws on tenure are a confused jumble based on different philosophies and catering to situations no longer extant. There is a respectable argument that to introduce systems of land title registration without accompanying it with reform of substantive land laws will be to compound inefficiencies and confusions in land management. Measures to integrate formal, informal, and where relevant customary systems of tenure will need structures and processes tailor-made for the purpose, and will produce novel interests in land that will need both protection and the status of market ability. None of this should be attempted without a review of the present and possible future directions of urban land policy.

**5.67 Activity 3: Decide on the course of reforms and choose between the full-fledged code or a junior system for low-income and informal settlements.**

5.68 Explanation: It is important to recognize that there can be different levels or degrees of security of title. A "Rolls Royce" level of security with fixed and clearly demarcated boundaries may be necessary for a major commercial or industrial investment in the city; it is not necessary and a waste of resources to insist on it for every plot in a low-income settlement.

In such places, a system of title security is in reality a formal confirmation of what is recognized and accepted by the community, so it can be a simplified system with general boundaries, minimal surveying, and reliance on neighborhood knowledge to determine rights and interests. Such a simplified system—of which there are several extant models to choose from—can be managed by NGOs and community groups within low-income settlements. The system can also be used in recording, without attempting to change the status of interests in land held under customary tenure.

**5.69 Activity 4: Develop instruments that will allow customary allodial land rights holders to benefit from and maintain residual traditional rights in commercial land development on land held under customary tenure.**

5.70 Explanation: Too often, a failure to grapple with issues arising from peri-urban development on customary lands has left the legal status of the development unclear and so prevented credit or infrastructure from being extended to them. Where attempts have been made to sort out problems, they have focused on eliminating customary land rights from developed land. These attempts have not always been well thought out or successfully executed. The alternative approach being advanced here would be to use "modern" instruments such as leases or trusts, or traditional customary instruments such as usufructuary rights, adapted where necessary, to harness together customary and commercial interests in land development and management.

**5.71 Activity 5: Simplify procedures, mechanisms, and forms used in connection with land transactions.**

5.72 Explanation: The concept of user-friendly procedures, mechanisms, and forms is the key to activity here. Few people are at home with forms and procedures and they will only use them if they are available for use and

easy to use. Serious contents can be combined with attractive design and appealing explanations. Vernacular language should be used.

### **5.73 Activity 6: Develop a system of financial incentives and rewards to encourage use of the formal land tenure system.**

5.74 Explanation: The provision of easy-to-use procedures and forms will not, on their own, be sufficient to persuade residents in the informal sector to use the formal system of land tenure. There may well be financial advantages in not using the system—avoidance of fees, taxes, charges. It will be necessary therefore not merely to explain the advantages of using the system, which may to many people be speculative, but to provide financial incentives to do so that are real and immediate. These could be remission on fees, taxes, or charges; opportunities for loans at reduced rates; a cash handout or an equivalent in building materials.

### **Registration**

#### **5.75 Activities:**

#### **5.76 Activity 1: Assess the existing system.**

5.77 Explanation: This assessment should attempt to evaluate the impact of the existing system on the urban land markets. This should include a look at the fidelity of the transactions registered in terms of their representation of the actual legal situation or the de facto land situation, their reliability and their accuracy. What is the quality of the information in the existing registers in terms of its accuracy as a reflection of the actual field situation in portraying current ownership and rightholders, the current parcel framework, reliability of the existing records, coverage of the jurisdiction, maintenance of the system and perception of the system by the users (especially the finance agencies)? Efficiency of the system should be judged in terms of timely performance in registering transactions and the time it takes to gain access to or information from the records already registered. Costs of operation and associated user fees and taxes must also be taken into account. Consider the equity factors such as access to the registration system by low-income earners.

#### **5.78 Activity 2: Define the objectives sought from an improved registration system and make the political choice of improving existing systems or setting up full-fledged title registration.**

5.79 Explanation: The standard assumption is that the only appropriate method of providing security of title is through a system of title registration. Where this is in place and works—that is, most people dealing with land use the system so the register reflects with a fair degree of accuracy what is the position on the ground—it is probably the best system. But where it has not yet been introduced or where it does not appear to be working well, alternatives need to be considered. Two such options are deeds registration and title insurance, the latter of which could be provided by the private sector.

#### **5.80 Activity 3: Define the role of the government and expand the scope for privatization.**

5.81 Explanation: The private sector has a role to play in all aspects of the land registration business. The use of private surveyors, for example, may speed the delivery of the necessary cadastral services for both public and private lands.

#### **5.82 Activity 4: Address technical issues.**

5.83 Explanation: In the technical area, there are two main sets of issues: data acquisition, including the field survey, and data and record management. Too much time and money are currently spent on precise surveys in an

attempt to prevent problems in the future. The consequence is a low level of productivity restricting the benefits of the cadastre and land

registration to relatively few people and to only a few areas in each country. The challenge is to encourage a realistic assessment of what is necessary and sufficient rather than what is technically the best. Both maps and records need to be stored and retrieved, maintained, and updated in an efficient and cost-effective manner. Consideration should be given to the English "general boundaries system" used in Kenya, Sudan, Malawi, and some of the Caribbean islands. A general boundary is one that has not been finally adjudicated in the field. The location and size of the parcel are determined to the extent that they can be located on a map. Experience in Zambia and elsewhere indicates that aerial photography can be used as a less costly substitute for maps. Consideration should be given to more use of "social cadastre" methods, that is, fixing boundaries by consulting neighbors and then simply recording the results on a map or photograph.

### **5.84 Activity 5: Improve institutional arrangements.**

5.85 Explanation: As previously mentioned, the lack of coordination and of skills calls for some basic rethinking of the organizational structure of the land registration functions in order to improve the efficiency and the delivery of such services but also of the human capabilities to carry out these functions. Training programs should be part of this rethinking.

### **5.86 Activity 6: Introduce incentives to use the registration system.**

5.87 Explanation: Look at the critical factors that encourage users to register transactions or that discourage them from doing so. They are fees, distance to the registration office, timely performance of the registration function, regulation. The registration system should not become a policeman for checking all other agencies' property approval requirements. Among some incentives that can be explored are low-cost registration fees, legal aid for low-income owners, the availability of legal information, and a reduction of taxes for a grace period after registration.

### **5.88 Activity 7: Improve nonformal land records.**

5.89 Explanation: When registration improvements are attempted in urban areas, at least four types of land with various legal circumstances can be identified: (a) formal parcels with documents in a registered system; (b) land parcels under customary/traditional administration with various rights that need adjudication; (c) formal private land parcels with multiple unrecorded transactions and possible illegal subdivisions; (d) nonformal private and public land parcels with multiple unrecorded transactions. When a government decides to take action to inventory all identifiable properties in an urban area as well as to give occupants of land documentary proof of their land rights and to improve its ability to manage public lands, it needs to adopt a blend of legal and technical approaches to achieve rapid coverage of the whole area. Progressive mechanisms have been used in many countries over the past 40 years. These are temporary occupancy permits (Botswana), certificates of land use (Thailand), preemptive certificates (Thailand), and certificates of occupancy (Nigeria). Most of these systems allow a number of years after the initial determination of rights, within which possible unknown claimants are able

to register their claims. Some of these methods also allow relaxed methods of parcel identification and definition recognizing the progressive nature of the process.

### **5.90 Activity 8: Improve the registration of customary land.**

5.91 Explanation: Ghana is a good example of what can be done. In 1986, Ghana introduced a Land Title Registration law, promoting a system of title registration. The legislation followed the basic principle formulated in Ghana in 1876 that the customary laws of the ethnic groups in Ghana were to be observed and enforced. The 1986 law was designed not to change customary tenures but to eliminate the uncertainty. It allows the registration of various types of tenure, including allodial under customary law, customary freehold under customary law, freehold under common law, long-term leasehold under common law and customary tenancy of a long term nature. The 1986 law does not change the nature of the rights being registered. This contrasts greatly with the Kenyan legislation of the 1950s and 1960s, which was designed to individualize property rights.

### **5.92 Activity 9: Strengthen the dispute settlement process and the judicial system.**

#### **Land-Use Regulations**

5.93 **Objectives** : To develop a system for the regulation of land tenure and use that focuses on essential public health, public safety, and environmental factors, which is transparent and equitable in operation and which is implementable.

5.94 Explanation: Evidence from many countries shows that the regulatory environment is deleterious to efficient or equitable land development and the operation of land markets. Too many regulations are based on outdated and inappropriate models with enforcement being spasmodic at best, partisan or corrupt at worst. The aim is to select regulation to what would be widely accepted as essential and appropriate, develop more community involvement in their creation and implementation, and free as much land as possible from the inhibitory and constraining effects of the regulatory shadow.

#### **5.95 Activities:**

### **5.96 Activity 1: Conduct an audit of land-use regulations.**

5.97 Explanation: There has been a tendency to impose an array of regulatory instruments without regard to the cost they impose on the process of land development or whether they are enforceable. The purpose of this audit will be to assess the costs and benefits of existing regulations and to identify those regulations that are or are not essential and have or have not proven to have a negative impact on the functioning of land markets.

### **5.98 Activity 2: conduct an audit of regulatory authorities.**

5.99 Explanation: In the private sector, time is money. Delays in administration add on to the cost of the product. There is a need to try and replicate this approach in the public sector, where delays and inefficiencies are not paid for by those responsible for them. An efficiency audit should be established to set performance standards for regulating agencies, monitor performance against these standards, and develop incentives and penalties for meeting or not meeting the standards.

### **5.100 Activity 3: Define growth management objectives.**

5.101 Explanation: Rethink the existing system of regulations and planning in view of priority concerns. Instead of promoting an array of instruments that may sometimes conflict with each other, focus on the end-product by asking the right questions, such as: (a) What are the priority concerns of the city or community? (2) What are the fundamental issues on which compromise will not be acceptable (i.e., environmental aspects)?

### **5.102 Activity 4: Design a bottom-up approach.**

5.103 Explanation: Design a bottom–up approach to identify those regulations that are essential for the pursuit of these objectives.

**5.104 Activity 5: Decentralize the planning function.**

5.105 Explanation: The main objective behind this activity is to avoid bureaucratic delays and lengthy approval processes. Much of that responsibility can be delegated to local governments.

**5.106 Activity 6: Enhance institutional coordination.**

5.107 Explanation: The lack of concerted efforts and miscommunication among the various agencies involved in the land development process have caused wasteful investments and gross duplication in the efforts of servicing land.

**5.108 Activity 7: Establish zones where development may take place with a minimum of regulations.**

5.109 Explanation: There may be some nervousness about what will happen in a regulation–free environment. The way forward is to establish trial zones or areas of land where development can take place with a minimum of regulation to test out new approaches. Lessons can be learned from countries where this approach is already in operation.

**5.110 Activity 8: Release all small–scale development from the requirement to obtain permission to develop.**

5.111 Explanation: Too many systems of land–use regulation or development control require all developments to obtain permission before activity can commence. The increase in the costs of small–scale development is often, in any event, not observed (so that such developments are "illegal") and serve little positive purpose. Regulation should concentrate on major developments with significant environmental implications and leave small–scale developments alone. Informal community controls can be used to ensure such developments do not inconvenience neighbors.

**5.112 Activity 9: Develop a "one–stop shop" for obtaining all necessary permission to develop land.**

5.113 Explanation: Even when regulatory regimes are reduced in scope, there will still be a requirement to seek some permission. This process can be greatly speeded up if all permissions can be obtained from the same office and if that office is a decentralized one. A corollary of this is that administrative procedures will need to be adapted to ensure inter– and intra–agency liaison, and forms will need to be designed for use in connection with obtaining just one permission.

**5.114 Activity 10: Develop fiscal and other incentives to use the regulatory system.**

5.115 Explanation: As with the land tenure system, it will not be enough to create a slimmed down user–friendly regulatory regime and expect people to use it. Too many people have become used to ignoring the system. If the system is to continue and become an implementable one, there must be incentives to use it. It must become more advantageous to use it than to ignore it as penalties alone will be insufficient to create the incentive to use it. Tying lawful development in with security by title would be one possibility; tying it in with loans for development would be another. Where effective property taxes systems exist, a "tax holiday" could be introduced and applied to lawful developments.

**5.116 Activity 11: Declare a moratorium on enforcement activities against unauthorized developments in informal settlements.**

5.117 Explanation: Some central and local governments still use the bulldozer as a tool of urban management. This does not get rid of informal settlements; at best it shifts them from one place to another. Rather than try to eliminate such settlements by destroying them, the way forward is to upgrade them and extend urban facilities to them.

**Public Intervention**

5.118 **Objective** : To reorganize and improve systems and procedures for direct public intervention in land markets so as to minimize disruption of the market.

**5.119 Activities:**

5.120 Explanation: Evidence indicates that programs of direct public intervention in land markets, whether wholesale land nationalization or piecemeal compulsory acquisition, too often fail to take into account the ongoing operation of land markets or of the interests of people on the land. Without denying the need for some direct public intervention, the aim must be to examine existing legal and administrative processes providing for public land acquisition and to develop processes that make more use of market processes and emphasize cooperation with people.

**5.121 Activity 1: Develop an inventory or register of all publicly owned urban land with information on which public authorities own what land, what the land is being used for, and where it is.**

5.122 Explanation: If publicly owned land is to be used more efficiently or is to be made available for development, it is necessary to know the existing situation. An inventory or register is a necessary first step along this route. Many public authorities may not have good records of their own land holdings. Others may be reluctant to disclose what they own or what it is being used for. The decision to create an inventory will need to be made at a high political level and followed through vigorously.

**5.123 Activity 2: Prepare a program for the development of publicly owned urban land, which is zoned or allocated for development but has not been developed.**

5.124 Explanation: The inventory in Activity 1 will in all probability reveal publicly owned urban land which is capable of being developed and the relevant public authority must be required to release it to those who will develop it in the private or public sector. Where the land is occupied by informal settlements decisions must be taken either on regularizing the settlements or in close association with the community, developing a program of relocation and resettlement if the land is needed for essential public work or is otherwise unfit or inappropriate for residential development.

**5.125 Activity 3: Revise the legal framework empowering public authorities to acquire land compulsorily so as to enhance consultation and prompt payment of compensation.**

5.126 Explanation: Evidence from many countries indicates that laws on compulsory acquisition of land are outdated and when used give rise to serious blockages in land development and to social tension, and operate unfairly, especially on lower-income groups. They are a prime candidate for thorough revision. A totally new approach needs to be developed, one that emphasizes as far as possible the cooperative approach to land acquisition and builds into the process maximum concern for those likely to be dispossessed.

### 5.127 **Activity 4: Develop legal frameworks and administrative processes for the practice of land readjustment.**

5.128 Explanation: Land readjustment as a technique for direct public sector involvement in land development is becoming more widely accepted and used. This activity is directed to

those countries that have not yet made provision for the practice. Although it would be unwise to see land readjustment as a panacea to the problem of public sector land acquisition and development, it is certainly a useful alternative to compulsory acquisition and as such should be provided for in the law, and tried out therefore in a pilot project.

### **Expected Results and Beneficiaries**

5.129 What is being proposed here is a major long-term program. It is recognized that not every objective or activity being suggested here would apply to every country in the developing world. But it is as well to make clear what the overall message is: a major reorientation of urban land management as it operates in most countries. There will be changes in the legal and administrative superstructure; in their day-to-day operations, in the roles the various actors perform in the process of management and in land markets, and in the philosophical basis that provides the intellectual justification for the approach to land management. Instead of the public sector having the dominant controlling role, which is the present official position in most countries, it will move to a residual enabling role. Instead of the private sector operating at the margins, especially in areas of low-income settlements where its activities may be technically "illegal," it will develop into the primary mode of land delivery and development, and will be facilitated to do this. The effect of this will be that fewer public officials will be needed and there will be or should be fewer opportunities to manipulate land delivery systems and actions for political ends. A move toward greater reliance on markets for land delivery and development is designed to benefit the general population by making it easier for them to obtain and develop land, but it may disadvantage those in the political and administrative hierarchies for whom existing secretive and inefficient administrative discretionary systems provide opportunities for illicit private gain and political influence. This in turn will likely mean that the chief obstacles to change in the direction being proposed here will be at the wider political level, which in turn reinforces the point made earlier in this chapter: reforms in urban land management cannot be divorced from reforms in political and administrative processes designed to bring about more open accountable and participative governance.

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