

**URBAN LAND TENURE AND PROPERTY RIGHTS IN DEVELOPING COUNTRIES:
A REVIEW OF THE LITERATURE**

by

Geoffrey Payne

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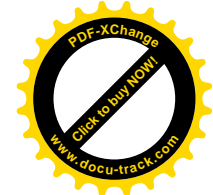
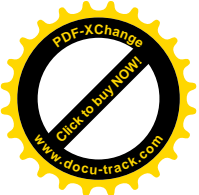
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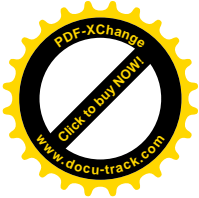
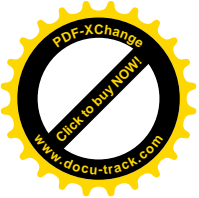
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Disclaimer

Neither the Overseas Development Administration (ODA) nor the World Bank bear any responsibility for, and are not in any way committed to, the views and recommendations contained in this report.



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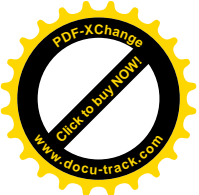
Initial gratitude must go to the World Bank for commissioning the first draft of this report as part of the land management component of the Urban management Programme funded by UNDP and executed by the World Bank and UNCHS. I am indebted to particularly to Lynn Holstein, of the Bank for actively supporting, advising and commenting upon the evolution of the study and supplying a wealth of material. It was at one time intended to publish the report jointly, but this intention was never realised and the review appeared unlikely to be published. However, the Overseas Development Administration has generously provided support to enable the work to be updated to include documents published since 1991. I would like to record appreciation for the support of Michael Parkes, Senior Architectural and Physical Planning Adviser, for his support.

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It is hoped that the present review, partial and incomplete though it inevitably is, will enable readers to access a range of information and ideas which would otherwise remain largely inaccessible. If this leads to the preparation of progressive and realistic policies to improve the clarity, efficiency and equity of urban land markets in poorer countries, then the exercise will have been well worth while.

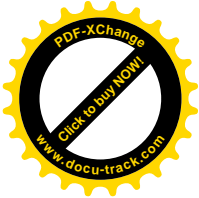
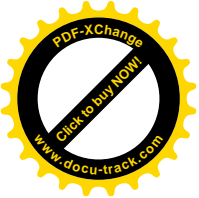
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Preface

To be supplied by Michael Parkes



SECTION 1. INTRODUCTION

The ways in which a society allocates title and property rights over land is an important indicator of the nature of that society. Under conditions of rapid urbanisation, competition for secure, serviced land increases its importance still further.

This increasing competition is reflected in more frequent and intense disputes over land which are not helped by a lack of clarity concerning title registration. Clearly, improving policies and practices concerning land tenure and property rights is an important element in improving the planned development of urban areas, in terms both of efficiency and equity.

Responsibility for formulating and enforcing rules for the ownership and use of land and property rests ultimately with the state. Property issues have commanded the attention of policy makers in countries of all political persuasions throughout history and are commonly a primary consideration in times of change, as could be seen during the 1960's and 70's in Africa and currently in Eastern Europe. In the recent Constitution of the Philippines, (1986), about 5 percent of the articles and sections are concerned with property rights, especially land tenure.

In rural societies without population pressure, local and indigenous rules or sanctions are important in guiding transactions between members and outsiders. In urban areas, however, population pressure and the more complex nature of transactions requires the intervention of the state to cater for the requirements of residential, commercial, industrial and other uses and protect the interests of vulnerable groups. Tenure and property rights systems are needed which address traditional or customary tenure arrangements, squatter settlements and other non-formal tenure categories. In some cities, these house up to 70 percent of the total population.

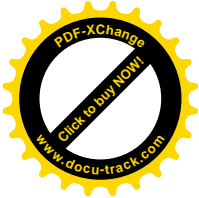
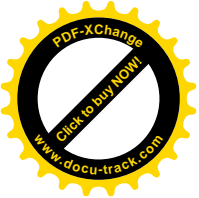
In addition, urban areas require systems of tenure and rights which create security for investment not only by individuals, but also by companies, to create employment. Studies of land tenure are therefore required which include the needs of all groups, including entrepreneurs, since it is they who will help create employment opportunities for low-income earners (Benjamin 1991).

The central issue discussed in this paper is therefore what types of tenure and property rights currently exist, how have these served the needs of lower income groups and what implications do they have for policies relating to urban land tenure and property rights. The literature is examined to obtain evidence of alternative options and experience from different countries. From this, it is clear that, until recently, analysis has concentrated on rural areas. This paper is primarily concerned with urban areas and examines a number of key issues in policy formulation. First, it outlines different concepts and systems of land tenure and proposes criteria by which tenure policies can contribute to effective urban management.

Second, the question of clarity of tenure status is discussed, and the extent to which unclear title or rights frustrates efficient land use patterns. Given that land disputes increase with the potential return on land, a primary consideration in formulating an effective tenure policy must be the need to improve certainty over titles and rights.

Third, the paper considers how improvements can be achieved in tenure security which encourage investment in land improvements without producing a disproportionate increase in land prices. Finally, it explores the need to balance individual security and rights with those of the state to be able to acquire parcels of land and regulate its use and development in the public interest.

These issues raise two further considerations. First, concepts and behaviour concerning urban land necessarily involve a number of psychological, emotional and cultural factors, in addition to the more easily quantified economic ones. Any attempt at a comprehensive examination must therefore take these qualitative aspects fully into account. Secondly, whilst land management involves important technical and procedural questions, it is in the final analysis a political issue, and it is this latter dimension which raises the most fundamental questions.



The paper is in six sections. Following this Introduction, Section II catalogues the main tenure types and offers criteria for assessing them. It is emphasised that distinctions between legal and illegal, of formal and informal are too simplistic to be of conceptual or operational value and that subtle, but significant distinctions exist between different categories within a wide spectrum. Even within categories such as customary tenure, it will be shown that important differences exist.

Such diversity is the product of different cultural, historical, economic and political systems. Maori concepts of land, for example, treat it as a stewardship to be passed on to future generations, whereas the European tradition of individual private land titles evolved as part of a comprehensive framework of rights established after the overthrow of feudalism. As societies change, so concepts of land tenure and property rights adapt, though the literature suggests that there is often a considerable time lag.

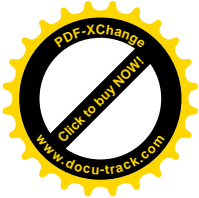
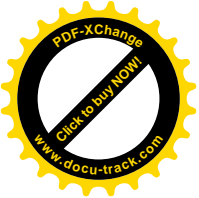
Section III focuses upon national policy issues and briefly reviews the experience gained under conditions where land is nationalised and where pluralistic land markets operate. Variations in policy towards customary tenure are then discussed, together with options for improving tenure conditions.

Section IV concentrates on property rights in extra-legal settlements. It reviews the literature on substitutes for formal tenure and the impact of services provision, duration of occupancy and local perceptions of security on investment patterns and the tenure options used in upgrading programmes.

In section V, the paper examines the impact of urban growth on land held under customary tenure. The provision of formal titles in areas where traditional concepts, rights and practices apply is intended to stimulate investment. Insensitive changes can, however, restrict such investment by undermining locally accepted norms and values. Examples of innovative approaches are cited.

Finally, section VI assesses the implications of the issues raised and identifies priorities for future research. It emphasises the need for action by governments and international agencies policies to develop and implement policies which strike a balance between the needs of efficiency and equity in urban land allocation and development and identifies the key elements of such policies.

Throughout the review, boxes provide case studies or other examples to illustrate issues addressed in the text. At the end, an Annex is provided in which a typology of land tenure and property rights is included as a basis for undertaking assessments of land tenure and property rights systems. There is also a Glossary listing the terms used in the review, though these are not legally precise and should therefore be used with discretion. Finally, the annotated Bibliography offers brief summaries and comments on the literature reviewed, so that readers unable to obtain easy access to the original publications can identify those most likely to be of further interest.



SECTION II. SYSTEMS OF LAND TENURE AND PROPERTY RIGHTS

Land tenure can be defined as the mode by which land is held or owned, or the set of relationships among people concerning the use of land and its product. Property rights can similarly be defined as a recognised interest in land or property vested in an individual or group and can apply separately to land or development on it. Rights may cover, inter alia, access, use, development or transfer and, as such, exist in parallel with ownership.

Rights to land and property exist within a regime of rights in general. The key factor in any system of land tenure and property rights is therefore the relationship of an individual to the group and of different groups to each other and the state and their collective impact on land. From this, it follows that concepts of land tenure are an expression of the values to which a society adheres or aspires. As such, they vary enormously from those at one end of the spectrum which regard land as a sacred trust, to be protected for future generations, to those at the other end which regard it as a commodity to be enjoyed or exploited like any other. Tribal, feudal, colonial, capitalist, socialist and religious societies have all evolved distinctive concepts concerning the ownership and use of land. Countries which have been subject to colonialism have particularly complex tenure arrangements, since indigenous and imposed tenure patterns may exist at the same time in the same area.

Given this variety, it is important to review the main concepts and systems which exist in developing countries and their operation in urban areas.

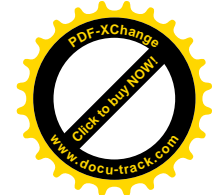
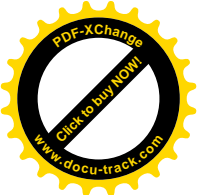
Customary tenure and property rights

Customary tenure systems have been defined by the United Nations as the rights to use or to dispose of use-rights over land which rest neither on the exercise of brute force nor on the evidence of rights guaranteed by government statute but on the fact that those rights are recognised as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicit and generally known though not normally recorded in writing'. As Fisher (1993), has noted, "the major characteristic of customary tenure is that the land is regarded as belonging not to the individual but to the whole social group. Customary land is not subject to personal ownership, although use-rights are alienable within and between members of the community. There is a birthright to subsistence opportunity for each family head; each family is granted use-rights of habitation and cultivation according to their need". He continues, "these characteristics shape not only the relationship between the community and its land, but also between the individual members of the community. Security of tenure and of subsistence opportunity arises out of kinship with and membership of the community group. Land is a social resource; it is through his or her relationship with the land that the individual perceives a sense of place and of personality".

A wide range of customary tenure concepts exist throughout Africa, the Pacific, parts of the Middle East and North America. They also account for a large proportion of the total land area of many countries. Most were developed by tribal societies which considered their role as stewards with a life interest to be passed onto future generations through kinship networks (Dewes 1985, Mabogunje 1990 p16). A late Ghanaian chief encapsulated the essence of customary tenure by claiming that "I conceive that land belongs to a vast family of whom many are dead, few are living and countless hosts are still unborn" (Ollennu 1961). Under customary land systems, there is an individual right of occupation and use, but only a communal right of alienation.

Several groups could enjoy different rights to the same land, such as rights of occupation, grazing, or passage in addition to the group claiming primary rights. The extensive nature of customary tenure systems did not prevent individual allocation of customary land, however, even during the 19th century in parts of Africa.

Customary tenure concepts have evolved from the needs of agricultural societies and are generally based on the notion that land initially belonged to the person who cleared it. Given its relative abundance, and the practice of shifting cultivation, land had virtually no economic value, so the need to retain or develop any system of rights to a particular area of land that could not be protected was both unnecessary and illogical



when land was abundant (Feder and Noronha 1987). In areas where communities were competing for scarce land resources, however, disputes were common and were often resolved by armed conflict. In other cases, disputes were avoided by gathering control under the jurisdiction of a central authority. In Thailand and Swaziland, for example, all land was traditionally owned by the monarch, but there was sufficient for everyone to claim a plot on which to live and farm. The interests of families were protected by an inalienable right to use land for residence and farming, etc (Russell 1986).

Customary rights derived from membership in the political community and, traditionally, no cash payment was made for the land. Instead, a token payment, sometimes referred to as "cattle money" was expected for the services rendered. As pressure on customary land increased with urbanisation, so the amount of this token payment has tended to increase so that, in some cases, it approximates to a market value. The process of allocation, however, generally remains the same. Russell (ibid) notes that this system puts considerable power in the hands of chiefs, who retain the right to banish anyone from their area. While this is rarely enforced, its threat acts as a powerful incentive to conformity to the wishes of the local community and the will of the chief.

These customary systems fuse the rights of the individual with those of the group and individuals possess extensive rights, but not land as such (Kludze 1983). Ownership in these cases is therefore corporate rather than proprietary. To some extent, this acts as a constraint to those desiring social mobility (UN 1973 Vol VII) by making it more difficult for individuals to obtain loans for economic development, since they are generally unable to use land as collateral for such loans. Whilst customary systems have been generally successful in ensuring the equitable distribution of land and reasonably efficient in stimulating productivity, this success is greatest where the rate of social change and the demand for land are both modest (Feder and Noronha 1987; see also Bromley and Cernea 1989, p38).

In many cases, lands held under customary tenure are coming under pressure from expanding rural populations or the growth of urban areas. Under other tenure systems, such as private freehold, the legal status of the customary holdings may also become ambiguous or even subordinate, reflecting changes of influence in the wider legal and institutional environment.

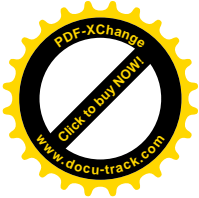
Private land tenure and property rights

The concept of private property rights is an integral part of the legal structure of European society (United Nations 1973). It is held to have arisen in opposition to the rules of feudal society, where a local lord had superior rights of ownership, especially land ownership, and all tenants in the area paid him `feuds` or fees.

The concept of private ownership is embodied in English common law, but is expressed in its purist form in the French Civil Code of 1804-8, which was drafted after the Revolution of 1789 finally overthrew feudalism. It is commonly known as the Napoleonic Code, since it was imposed on countries which he and later French governments colonised or influenced. The Code defines ownership as the right to absolutely free enjoyment and disposal of objects, provided that they are not in any way contrary to the laws or regulations. Private ownership may be in perpetuity, (freehold) or for a specified period (leasehold). In the latter case, terms and conditions of renewal may be based on either statutory or contractual considerations.

The combination of private ownership and extensive individual rights has been the cornerstone of Western European and North American societies for the last two hundred years, to the point that they are commonly known as property owning democracies. Despite the primacy accorded to the individual in such societies, however, governments frequently hold the right of "eminent domain". This gives the state the right to acquire some or all of a property, providing due process of law is observed and compensation paid. In addition to these statutory restrictions, privately imposed constraints may operate through the application of restrictive covenants.

Within developing countries, private land ownership and the registration of individual property rights is largely an imported concept and is most common in urban areas, where it was introduced or strengthened by colonial administrations for the benefit of European settlers (Mabogunje 1990 p18). It may therefore co-exist with other concepts, such as customary tenure.



Private land ownership permits the unrestricted exchange of land and property and the development of land and property markets in which the balance between supply and demand is achieved through the pricing mechanism. It is also intended to ensure the most efficient and flexible use of land and normally produces the easy transformation of rural land into urban use, subject to statutory controls and their enforcement. In many countries, however, a common issue of concern with this concept is its inability to ensure equitable access to land or property by lower income groups.

Public land ownership or control

Virtually all societies acknowledge the concept of public land ownership to some degree. In its extreme form, the state may own all land and also allocate rights of access, use, development and transfer, a situation which applies in half of the countries in sub-Saharan Africa (ibid p20). In other cases, public ownership may be reserved for areas of strategic importance or communal benefit, or as a reserve right in case of future need. Public control of land use, in the form of statutory provisions relating to the permissible development of land is even more widely accepted as a means of protecting the public interest.

The concept of public land ownership was, in part, a reaction to the perceived limitations of private ownership in enabling all sections of society to achieve access to land. In some cases, this took the form of reverting to pre-colonial concepts of communal rather than individual ownership, while in others it was the outcome of socialist ideology. By allocating resources according to perceived need, it was envisaged that greater equity would be achieved. The major limitations of this concept have proved to be the demands which it places upon the capability and integrity of administrative systems and their ability to respond efficiently to changes in demand. Difficulties in practice have raised the costs of land management and constrained levels of investment and development which would have benefited lower income groups. Bureaucratic inertia may also have impeded the transfer of public land from rural into urban use.

Religious concepts of tenure and property rights

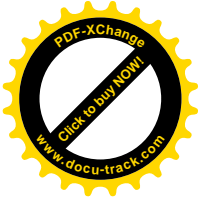
One of the most widely adopted and highly developed systems of tenure evolved by a religion is the Islamic concept. As with customary concepts, Islamic tradition holds that land initially belongs to the person who "vivifies" it, though it differs from customary concepts in that non-use does not automatically divest ownership. Also, Islamic laws provide for defined rules of inheritance both for males and females, either as sharers or residuaries (Feder and Noronha 1987), as in Pakistan.

Under Islamic tenure systems, land is classified into four main categories: 'mulk' (land owned by an individual with full ownership rights); 'miri' (land owned by the state, which carries tassruf or use rights which can be sold by the owner or inherited, but over which the state retains ownership); 'waqf' (land "stopped for God" and owned by religious foundations; and 'musha' (land owned collectively, originally under tribal tenure). In urban areas, mulk land became widespread and facilitated the transfer and sale of land, though in some cities, extensive areas of land remain in waqf ownership, restricting access, transfer and development. The rulers of the Ottoman Empire, which controlled much of the Middle East during the 19th century,, tried to make most land either `waqf` or `miri`. Whilst this restricted land fragmentation and curbed the powers of large land-owners and tribal chiefs, the long term consequence of the increase of `waqf` land was the immobilisation of city land (United Nations 1973 Vol 1 p2).

Indigenous and imported tenure concepts

In practice, many variations exist on all these concepts. Within a single country, a range of tenure concepts and practices may exist side by side and even within a single category, such as customary tenure, different ethnic groups may have their own systems of law (Kludze 1983).

To these complex tenure traditions have been added a number of other practices based often on very different interests, of which colonialism is one of the most prominent. Initially, local leaders often received substantial revenues from granting land concessions to European settlers, whilst retaining their inalienable rights under the local tradition (Russell 1986). Once the Europeans became colonial rulers, however, they found the overlapping rights of several parties to one tract of land intolerable and immediately set about regularising what they saw as a chaotic state of affairs (ibid).



In countries such as Swaziland, the colonial solution was to deprive the nation of land rights by conferring freehold title on most foreign concessionaires (who constituted 1.1% of the population in 1911). In this way, the Swazis lost control of most of their land, while the portion of land seized by the British Crown was rapidly sold off as freehold to settlers to raise revenue for roads, bridges and other services which the new settler state required (ibid).

Variations on this approach were adopted in most of the new colonies and nowhere have they been so clearly enunciated as by Harry Sewell, New Zealand Minister of Justice in 1870 when he declared that "The object of the Native Lands Act was two-fold: to bring the great bulk of the lands in the Northern Island which belonged to the Maoris.....within the reach of colonisation. The great object was the detribalisation of the Maoris...(and) it was hoped that by the individualisation of titles to land, giving them the same individual rights which we ourselves possessed, they would lose their communistic character, and that their social status would become assimilated to our own" (Dewes 1985). Such assimilation was, of course, on terms dictated by the colonial power.

To offset the colonial restrictions on access, residence and purchase of urban land by the local population, various devices were introduced by colonial administrations into customary land tenure systems. These included `occupancy permits`, `occupancy certificates` and `livret de loguer`, which were essentially state leases. Adaptive responses were also generated in customary tenure as an increasingly mobile local population sought to gain access to land.

By the end of the nineteenth century, indigenous land tenure systems were operating in parallel with European concepts in most parts of Africa, Asia and the Pacific. With access by local people to colonial urban areas strictly controlled, and urban growth rates relatively low, these parallel tenure systems operated reasonably efficiently. As countries became independent, however, and rural-urban migration caused rapid urban growth, the anomalies became more apparent.

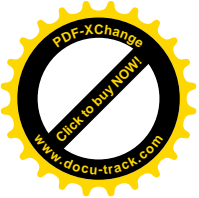
Even countries which had not experienced colonialism found that the imported European tenure systems were difficult to reconcile with traditional practices. Turkey, for example, had applied the Ottoman Land Law of 1858, which entitled villagers in the under-populated area of Anatolia to settle and cultivate 'miri' land. When these villagers migrated to the new capital at Ankara, they understandably followed the same practice and settled on undeveloped land on the urban periphery. In traditional terms, they were acting perfectly legally, but the city was being developed according to imported planning concepts and the migrants quickly found themselves at odds with the authorities (Payne 1982).

The negative impact of inherited, imposed or imported tenure systems can most easily be observed by comparing them to one of the few countries to have based its development upon indigenous systems. Thailand has never been colonised and possesses a well established and accepted Civil and Commercial Code and a Land Code which collectively lay down the rights and duties of individual land-owners. These land laws are now part of Thai culture and has enabled the country to elect the most appropriate systems and laws for the operation of government. They have been amended frequently throughout this century in response to changing needs (UN 1991:16-17).

The importance of land tenure and property rights in rural development has been widely accepted and investigated in developing countries. For some reason, however, it has received less attention in urban areas, even though its importance in achieving developmental objectives is at least as great. In some respects the issues are similar, so that useful guidance can be obtained from assessing the rural experience. However, urban areas are more complex and raise a number of additional issues which warrant specific attention, such as the relationships between formal and informal decision making processes and individual and community needs.

Contemporary urban tenure systems

The major difference between tenure issues in urban and rural areas is that urbanisation has dramatically increased the population pressure on, and demand for, land in and around urban areas. Urban areas generally embody a wider range of tenure concepts and practices for a given area, making the land issue



even more politically contentious than in rural areas. With urban populations commonly doubling every decade, conventional tenure concepts have proved unable to meet the needs of people with low incomes and limited, if any, savings or collateral. In many cases, land on the urban periphery is not registered, so the tenure status of owners and users is extremely difficult, and expensive, to determine.

During the 1950's and 60's, lower-income groups left with no opportunities for formal settlement in market or state supply systems, responded by invading land and establishing squatter settlements. Many of these grew to accommodate vast numbers of people, and evolved tenure subsystems such as squatter tenancies, or the `company` housing found in some African cities. In other cases, land settled under officially sanctioned tenure was sublet or transferred illegally.

These initially non-commercial processes have been commercialised in many towns and cities by the emergence of agents who are adept at effecting the transfer and development of land in accordance with the needs and resources of lower income groups, but without conforming to official regulations and procedures. Unauthorised commercial subdivisions have created yet another category of tenure with which policy makers have to contend.

Such illegal sub-divisions are commonly sold on a hire purchase basis and involve a number of irregularities, though at prices many low-income households can afford (see Payne 1989 for examples). They are seen as a major means of densifying existing settlements, as found in Lusaka. In most cases, plots are purchased from persons who have a conventional title and some form of title (such as the "hisseli tapu" or shared title in Turkey) is given, often with the promise of title at the end of the payment period. In these settlements, the subdivision is not officially sanctioned and housing is usually constructed without official building permits.

Another increasingly common form of non-formal tenure is land rental. This takes place when land-owners wish to derive an income from their land, although still have it remain officially vacant. Such subdivisions often include the provision of water and electricity and are the prevailing system for housing the poor in Bangkok, where both private and public owners rent land, whilst ensuring that tenants do not build permanent structures on the land.

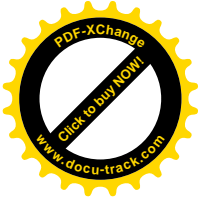
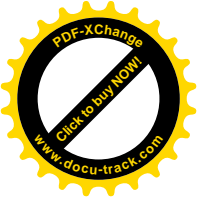
In many cases, tribal groups have also been willing to allow migrants to settle on their land, albeit on a temporary basis and usually for financial reward. Such action tends to integrate customary land into urban land markets, though on a piecemeal basis.

Collectively, these `non-formal` tenure systems provide accommodation for a large and increasing proportion of urban populations in most countries and in some they already represent the majority, as shown in Table 1 below.

Table 1: Recent estimates of the percentage of city populations residing in informal settlements (*)

City	Population 1980 in thousands	Estimated population in informal settlements	
		Number (thousands)	%
Addis Ababa, Ethiopia	1 668	1 418	85
Bogota, Colombia	5 493	3 241	59
Ankara, Turkey	2 164	1 104	51
Lusaka, Zambia	791	396	50
Manila, Philippines	5 664	2 266	40
Mexico City, Mexico	15 032	6 013	40
Karachi, Pakistan	5 005	1 852	37
Nairobi, Kenya	1 275	421	33
Lima, Peru	4 682	1 545	33
Sao Paulo, Brazil	13 541	4 333	32

(*) Source: UNCHS 1984 p9



The reasons for informal settlements vary from place to place, but the most critical factors are the lack of affordable legal options, poverty, intense demand, inappropriate standards and regulations concerning urban development and a lack of savings and investment institutions geared to the needs of the poor. The present position in the urban areas of most developing countries has therefore become extremely complex, with land held under different tenure systems and, in some cases, without any clear status. Despite such complexity, a clear trend can be discerned towards the establishment of land markets, in which de facto individual ownership has taken root whatever the formal rules referring to such developments. Land prices in the major cities of some countries are commonly as high, or higher, than in the capital cities of industrial economies and even pavement dwellers in Bombay or Calcutta are able to command relatively substantial sums for their pitches. These land prices are sustained by high rates of urban growth, further excluding large sections of the population from access to land, encouraging non-productive speculation and undermining public confidence in the framework of law.

Several attempts have been made in the last decade or so to classify contemporary urban land tenure systems. Some, such as Baross (1983) and Gilbert and Ward (1985), focus upon the range of non-formal tenures serving lower income groups, while Mabogunje (1990) covers all the formal and traditional tenure categories found in sub-Saharan Africa. Doebele (1983) covers all the major proprietary types and assesses their advantages and disadvantages against specified criteria, but only refers briefly to the wide range of non-formal tenure categories. None provides a comprehensive view of the full range of tenure types and in Table 2, an attempt is made to fill this gap.

In interpreting this, or any other typology, it is important to remember that the de jure tenure status of a given parcel of land can be markedly different from its de facto status. A squatter, or resident of an illegal subdivision, for example, may enjoy no legal rights of occupation, use or transfer, but can still feel physically sufficiently secure, because of numerical strength or political support, to invest in house building and improvement. In Karachi, for example, only 10 percent of settlers in illegal settlements even applied for leases offered by government, because they apparently already felt secure and did not wish to incur the costs of title transfer and property taxes. In Turkey, residents in unauthorised settlements are generally keen to pay taxes as evidence of their occupation and many are able to claim formal titles after paying such taxes for twenty years. Conversely, households which possess legal title to a plot, but whose dwelling has no official permit, may find it labelled by the authorities as illegal and therefore vulnerable to demolition or harassment.

It is also important to note that local terms relating to tenure, particularly within the various non-formal categories, may serve to confuse rather than clarify. In Turkey, for example, all development carried out without full official sanction is popularly classified as `gecekondur`, a term meaning `to land by night` and literally correct in implying a covert process. However, since gecekondur now accommodate about two thirds of the population in Ankara and a large proportion in other cities, the category includes a wide variety of sub-classes, such as squatting and housing on legally owned land built in accordance

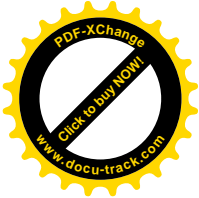
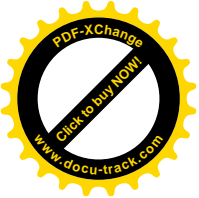
Table 2: A typology of land tenure and property rights*

A: Customary/traditional/indigenous

- Corporate
- Individual
- Other

B: Modern

- Private rights
- Absolute (perpetual):
 - freehold
 - dominium
 - mulk



Less than absolute (finite): leasehold
rental
usufruct
miri
statutory contract

C: Public land systems

State lands (eg Crown lands)
Trust lands
Parastatal
Specific use categories eg national parks

D: Derived rights

Co-operatives
Company titles
Leasehold
Statutory
Condominium
Strata title

E: Non-formal

Primary: squatters (no purchase)
organised illegal subdivision (purchase)

Secondary: unauthorised construction
unauthorised sale or use (all categories)

F: Interests

Easements
Mortgages
Servitudes

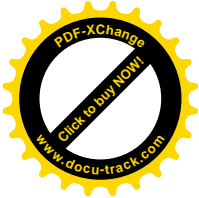
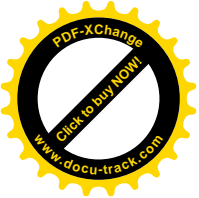
* See the Annex for details of the above tenure categories and their associated rights.

with official standards, but without building permits. These differences are clearly significant in assessing their tenure status and developing appropriate responses. Terms such as bastis, katchi abadis, piratas and barrios therefore need to be clearly understood and treated with caution in defining tenure status and rights and in designing improvements.

Another important distinction is that tenure status per se may not be as critical as the policy environment that generates it; the significance of tenure as such may be limited and options for changing systems of tenure and property rights may also be severely constrained by the policy environment.

Of all the forms of tenure listed in Table 2, non-formal categories have increasingly come to represent the most common, particularly in terms of providing land for low income settlement. However, it also appears that non-formal categories, such as squatting, are being increasingly constrained. Urban land markets are rapidly becoming commercialised and land is being transformed from a resource with a use value to a commodity with a market value. Pressure is particularly strong on customary land areas to individualise land and property rights and to trade land in the market. Small land-owners who were previously willing to allow low-income groups to rent land are now increasingly reluctant to do so, as their lands become more valuable.

In some parts of the world, the commercialisation of land was introduced or accelerated by the wholesale



imposition of European traditions. In South America, for example, the state, including the defence establishments, hold large areas of urban land, but a small number of private land-owners also have extensive holdings. Some restrictions on the rights of individual land-owners have been introduced over the years in order to ensure public interests are served, though the degree varies from one country to another (UN 1973 Vol 4).

Both in Latin America and elsewhere, illegal subdivisions have now become the largest single tenure category in many cities. Whilst these are classified as a single category by Baross (1983), their legal and perceived status varies considerably from place to place and with time even in the same place. In general, they are accepted as successfully meeting the needs of lower income groups who have sufficient incomes and savings to seek home ownership, but not enough to afford the costs of officially sanctioned standards. In cities where the costs of formal development are high, illegal subdivisions effectively serve the needs of middle and lower-middle households. As developers have become more established and efficient, however, they were able to come considerably down-market and now frequently serve the needs of lower-income households (see Payne 1989 for examples).

It is accepted (UN 1984) that informal categories cannot guarantee secure land tenure and houses are therefore often of an unacceptably low standard, particularly in areas where eviction is likely. On the other hand, where the probability of eviction has been low and where the prospects of obtaining legal tenure have been reasonably high, people residing in informal settlements have often invested considerable amounts of money and labour in improving their houses. In some countries where the threat of eviction is minimal, (eg Turkey and Egypt), the standard of housing in informal settlements is virtually indistinguishable from that of formal developments. (See Arandel and Batran 1996:27).

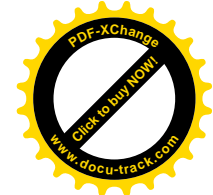
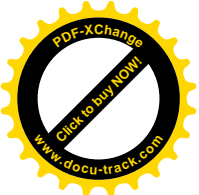
A number of attempts have been made to introduce new tenure systems in order to reassert the primary advantages of traditional systems or to offset the regressive tendencies of market systems. Botswana, for example, has introduced a Certificate of Rights which is not constrained by time and can even be inherited. The emphasis is on administrative simplicity, tenure security, negotiability, control (to prevent speculation and rent racketeering), cost recovery and therefore a low operating cost. The grantee may transfer his right, collecting from the transferee a sum for the improvements on the plot in a similar way that lessees obtain when transferring a long lease. In addition, the grantee has a right of appeal against any decision of the local authority, who administer the scheme, in relation to his right. In return, the grantee must pay to the local authority a service charge for services rendered.

Although a Certificate of Rights is not acceptable for mortgage security, grantees may obtain a "building materials loan" from the local council. Apparently, the scheme was adopted too fast to enable it to be efficiently administered, though the situation has since improved (Dickson 1979).

A similar system has been introduced in Zambia, where "occupancy licences" providing for 30 year occupation of a plot on which householders can build their own house. The land belongs to the state, but the house itself can be improved or sold. A similar system exists in Swedish cities using "land banks". Tenure was granted for residential use for terms of sixty years, though in practice it has proved impossible not to renew the leases of residents, making the leases de facto virtually permanent.

Another innovation which attempts to capture low-income lands consists of "pre-emption rights". These are a variation on the public acquisition of land and allow a public authority or local community to have first option when a private owner decides to sell. If the public authority expresses no interest, then the owner may sell on the open market. Pre-emption rights are often not automatic, and a declaration of public interest must be made. In the event of a dispute over the amount of compensation the courts would normally decide, assuming both parties wish to proceed.

A less formal system is cited by Lea (1983) in the case of Papua New Guinea, where 97% of the land mass and virtually all vacant land adjacent to urban areas is held under customary tenure. Here, "illegal" lease arrangements are made by the owners for migrants as a mutually agreeable means of overcoming the many formal constraints facing the landless. This "tenancy on sufferance" is further complicated by the dis-aggregation of settlers into their tribal groupings.



Similarly, Wegelin (in Angel et al 1983) states that in Bangkok private land-owners often allow slum dwellers to rent their undeveloped land, but insist on maintaining the dwellers' status as temporary occupants. A similar approach can be found in Jordan and elsewhere. In some cases, this may take the form of a verbal agreement or, more often, of written rental contracts ranging from one to three years. Upon expiry of the contract, it is usually tacitly continued and the rent continues to be collected, sometimes for very considerable periods. A significant point is that the degree of tenure security as perceived by the dwellers is only partially dependent on the legal tenure status.

Many other combinations of tenure systems are found in other countries. Silas (in Angel et al 1983) states that in the traditional kampungs of Surabaya, several levels of tenure can be found on the same plot. Similarly, in the Calcutta 'bustees', the 'thika' tenant renting the plot builds rooms for rent to sub-tenants who may in turn rent bedspaces on a shift system. In each case, rights exist to all parties, though each is constrained by persons with a superior status.

In some cases, traditional tenure systems appear to have survived virtually unchanged by recent pressures. In Kumasi, Ghana, the traditional "leasing" system is still intact and there are over 100 chiefs in the city who have the right to allocate land, and often do so irrespective of official sector layouts (Malpezzi, Tipple and Willis 1989).

These examples, however, are not typical and an increasing proportion of urban low-income groups are having to cope with complex and changing tenure systems which tend to exclude them. Doebele (1988) notes, however, that even under these conditions, it is normal for rights to accrue through possession by the simple passage of time—the principle of seniority that affects so many aspects of human relations. He observes that the most interesting aspect of informal land tenure is to identify the conventions by which insecure tenure is made relatively more secure. The completion of a roof will often give de facto security, (in Turkey it is the construction of an inhabited dwelling); in some cases, it may be the provision of services by the local authority; in other cases, adverse possession may be accepted. This is common in many countries, including the USA and Egypt, and provides occupants with title after a specific period has elapsed without a counter claim being made to the land in question. It may, however, be difficult for the occupant to prove the initial date of occupation. Nonetheless, Doebele concludes that such dynamic changes are the norm rather than the exception.

One of the most basic difficulties in assessing land tenure systems is that in many cases no clear title status can be determined. The lack of detailed and up-to-date land registers or inventories acts as a major impediment to the assessment of existing tenure systems and their performance in meeting either productivity or equity requirements. Clearly, the establishment of such registers or inventories to record details of ownership and rights to land and property has to be seen as a pre-condition to both improved understanding of urban land tenure systems and to the formulation of appropriate policies concerning them.

Criteria for assessing tenure and property rights

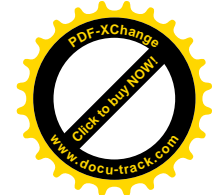
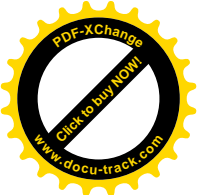
In selecting criteria for the assessment of land tenure systems and their performance, the following are suggested as of primary importance:

Clarity:

- of tenure status and
- registration of all rights, both of which can be measured by the difference between de jure and de facto tenure status;

Efficiency:

- simplicity;
- flexibility;
- transferability, under conditions which provide a reasonable rate of return on investment and a share in the enhanced value;
- compatibility with other components of urban land management;
- potential for improving over time;

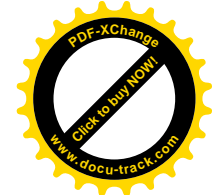
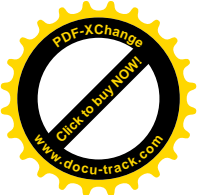


- ability to use land or property as collateral in raising a loan;
- ability to generate additional income from the land/property within planning regulations;

Equity:

- the degree of accessibility to all socio-economic groups;
- the availability of market information;
- a level of security sufficient to encourage investment by residents;
- transferability, under conditions which provides a reasonable rate of return on investment and a share in the enhanced value;
- balance of rights between all parties, especially tenants and sub-tenants with owners.

The above criteria will be applied in the next section, when considering policy issues and options. In assessing the extent to which any existing or proposed form of tenure satisfies these criteria, however, it is important to recognise that perceived tenure status may vary considerably from its formal or de jure status.



III. NATIONAL POLICY ISSUES

Introduction

Access to land with sufficient security to encourage investment for its efficient use and development is a vital component in development strategies for individuals, groups, cities and nations. Nowhere is this more true than in urban areas where demand, and therefore prices, of land for all uses are highest.

Whatever system of land tenure operates in a city, it is clear that access to land is becoming increasingly market driven. This makes it attractive for all groups in a community to hold land as an investment and as a hedge against inflation, a practice particularly prevalent in countries where there is a lack of savings institutions, limited access to alternative and equally profitable investment opportunities and little incentive to hold onto savings in the form of cash, because of high inflation (UNCHS 1984).

Where land registration practices are established and uniform laws governing land transfers become operational, uncertainty is reduced and the transfer of land becomes easier. Where land registers are not accurate, or well maintained, or are not affordable because of high transaction costs. Many transfers therefore take place outside the formal procedures, making it virtually impossible to anticipate who benefits and who suffers from a particular policy. It also impedes the collection of land or property taxes and consequently the development of efficient urban administrations.

Against this background, it is clearly difficult to strike an equitable balance between the interests of land-owners, developers, residents and the state, whilst still recognising the need to increase productivity. Nonetheless, achieving an equitable balance between different, and often conflicting, interests has to be the central objective of any land tenure policy. Among the issues which need to be addressed are the extent of public sector intervention and national land ownership, freehold versus leasehold, women`s rights, foreign ownership and the need to enable cities to strengthen social and economic development strategies. The need to resolve these issues in all developing countries is not to suggest, of course, that the instruments of policy should be standardised, since the major task of all governments is to develop instruments appropriate to the unique social, economic and cultural circumstances which apply at any given time.

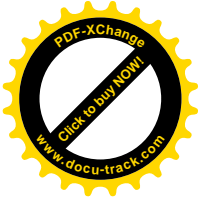
Effective policies on property rights and land tenure require considerable political will and a perspective which embraces long as well as short term considerations. This part of the paper discusses the issues which policies need to address within different land tenure systems.

Policies and national land ownership

Governments have adopted policies of national land ownership for several reasons. In his study of urban land policies in sub-Saharan Africa, Mabogunje (1990) observes that twenty out of the forty countries have nationalised all lands and extinguished private freehold ownership, for which he cites four main reasons: First, a belief that they are carrying on a traditional African practice, in which ownership of land resided in the community and not in the individual, an approach most fully articulated in Lesotho; secondly, a continuation of the French colonial position and a refusal to recognise customary land tenure, as found in the Congo, Mali and Senegal; thirdly, the intention of improving the efficiency of land allocation for both public and private use as found in Nigeria, Sudan, Zaire and the Ivory Coast and; finally, socialist ideology, which motivated several countries, including Angola, Benin, Ethiopia, Mozambique, Tanzania and Zambia.

The existence and promotion of public land-ownership most commonly derives from national or rural development strategies, rather than those of urban development. In Africa, land nationalisation was most extensive during the 1970`s, when urbanisation and rural-urban growth were at relatively low levels and the focus of public policy was on rural, and particularly agricultural development. The consequences of public land ownership for urban areas were, therefore, not a subject of immediate concern while large areas of land were still available.

The rapid growth of urban areas in Africa and elsewhere has led to a need to reassess the benefits and



costs of public land ownership in terms of both efficiency and equity. In theory, the availability of extensive public land-holdings, or legislation to permit state acquisition of private or customary land, is useful to enable the public sector to develop large areas for public purposes, especially housing for low-income groups. The drawback is that the lack of a pricing mechanism makes it difficult to ensure optimal use of land, thereby reducing its efficient use. In addition, the tendency to allocate public land irrespective of its market value creates a climate in which subsidies can become endemic, or available to all income groups. Under such circumstances, public land may be reintegrated into the market through unauthorised or illegal transfers.

In practice, the effectiveness of public land ownership or control depends largely upon the capacity, competence and integrity of the administrative system. This applies to both public freehold and leasehold systems, though the latter places even greater demands upon the bureaucracy (Doebele 1983). Where the administration framework is weak, the evidence suggests that in the long term, public land ownership is not able to guarantee either efficiency or equity. Hooko (1993:19) quotes Asiama (1989) to the effect that "by and large, it is the well placed in society - senior civil servants, politicians, senior public servants, top military brass and police personnel, contractors and businessmen - who are the beneficiaries of state land".

BOX

Algeria: A case of land nationalisation

Land policy in Algeria is based upon legislation passed in 1974 which promoted both the nationalisation of all lands and a highly decentralised land management system to the benefit of local governments, which were given full control over land transactions.

The Act was intended to meet the ever increasing demand for land, reduce speculation, control urbanisation and preserve rural lands. As Farvacque (1989a) has shown, however, the impact has been different to that intended. In the first place, local governments simply did not have the expertise, nor the long term management skills required to carry out the policy. Secondly, the land reserves they were supposed to manage were often wasted away and given to individuals without legal transfers of property and finally, the functions of local government regarding urbanisation control proved to be non-enforceable due to the limited capacity of local government.

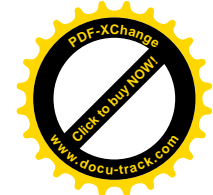
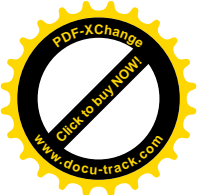
The result of this legislation has been to restrict the legal supply of land to such a degree that demand has found satisfaction through illegal channels. In 1985, it was estimated that there were 320,000 illegal housing units, which is probably an under-estimation. (Farvacque 1989).

END OF BOX

In Nigeria, for example, the Land Use Decree of 1978 limited the amount of land any one person could hold and converted all freehold land into rights of occupancy held by the state. One intention of the Decree was to make plots more easily available to all income groups, but as Lufadeju (1989) has noted, the inability to develop and allocate plots quickly, or in sufficient numbers to meet demand, led to dramatic price increases and a serious housing deficit, particularly for the middle and low-income groups, which in turn led to further overcrowding and the growth of slums.

The administrative burden of direct public ownership has also had a negative effect in other countries. Mabogunje (1990), for example, cites the case of Cameroon, where land nationalisation has increased the pressure on public agencies. He claims that bureaucratic incapacity results in an average of 15-18 months, and sometimes up to seven years, just to register land titles. Since the administration is only able to process 12,000 parcels a year and 30,000 new housing units are being created annually, the estimated total of 1.6 million parcels awaiting registration as of 1988, is clearly increasing rather than decreasing.

Bringing urban land into public ownership is not the only strategy which has been adopted to regulate land market behaviour or achieve other policy objectives. Several countries have initiated selective land acquisition to achieve policy objectives (see the Box on India), but even these have their limitations.



BOX

India: Selective public land ownership

In India, constraints on resources and institutional capacity led to the adoption of a legislative approach. The primary intention of the Urban Land Ceiling and Regulation Act (1976) was to impose a ceiling on vacant urban land holdings in order to prevent the concentration of wealth in a few hands and facilitate acquisition of land in excess of the ceiling for development to serve "the common good" (Mulk Raj 1990).

The implementation of the Act left much to be desired, however, and in some respects was counter-productive. According to Mulk Raj, over 14,000 hectares were vested with state governments, but physical possession of only 3,852 ha was achieved and a mere 621 ha actually developed for housing. This modest contribution to equity was more than offset by long-drawn litigations and administrative delays, which Mulk Raj claims effectively withdrew over 100,000 hectares from the market, enabling those exempt from the law to charge exorbitant prices and further intensifying land price inflation (ibid p10). During 1980-83, land prices in Delhi were estimated to be increasing by 100% per annum.

Another intention of the Land Ceiling Act was to acquire parcels of land for allocation as recreational open space, which is at a premium in India's large cities, especially Bombay. According to D'Souza (1990), however, the Maharashtra State Government has been quietly `de-reserving` such lands to enable their existing owners to realise their full market value. Such allegations of administrative abuses are not restricted to India and reflect the considerable problems which arise even when public ownership is selective rather than total.

END OF BOX

The consequences of these administrative shortcomings may be expressed in many ways. In Tanzania, where all land is theoretically socialised, transactions cannot take place without the sanction of the state. However, there is a thriving market in land in some of the more desirable Dar es Salaam suburbs and surroundings and peasants 'sell' the land they occupy to members of the bureaucratic elite to build houses financed by the National Housing Bank. In Nigeria, the Land Use Act of 1978 was intended to curb land speculation, but land-owners exploited every loophole to frustrate its implementation (McAuslan 1985).

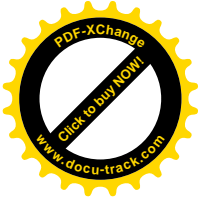
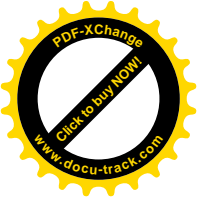
In their study of land rights and agricultural development in sub-Saharan Africa, Feder and Noronha (1987) concluded that the first result of the notion in formal-legal systems that land cannot be sold, or that land (and interests in land) can only be transferred subject to bureaucratic (and frequently arbitrary) approval, results in a divorce of law from reality. The lack of recognition by the State of the right to sell, or pledge lands, does not stop land sales or pledging in an informal market. The only result is that these "sales" or "pledges" are unenforceable in a court of law, with consequent risk premiums in the pricing which cause a deviation between the social value of land and its market value. Sometimes sales may be disguised as the sale of trees or houses, as in Malawi, but they are still sales.

The inability of governments to control or regulate the relationship between the demand and supply of urban land through direct action is as much a reflection of the strength of the demand for land as it is a lack of government commitment and capacity. Nonetheless, it has been demonstrated that governments do not make efficient managers of land resources even within the terms and objectives which they themselves set. Withholding tenure has proved to be an ineffective tool in attempting to assert such control, and in Tanzania this has recently been acknowledged with the introduction of private sector investors and the granting of individual tenure rights.

As Doebele (1983) has noted, the theoretical advantages of public ownership must be traded off against bureaucratic disadvantages. It would appear from the evidence that public ownership is unlikely to achieve a significant improvement in the efficiency of land management or more equitable access unless there is both political commitment and administrative capability. In most cases, the latter has been the major stumbling block.

Policy in countries with private land markets

All markets operate most efficiently when the relationship between demand and supply is self regulating



and well managed, ie when changes in demand are able to generate a corresponding response in systems of supply, in order to re-establish a balance. Such a situation rarely exists in practice, due to the widespread presence of external factors which affect both supply and demand and also because changes in either create a time lag before a balance is restored. Rapid social or economic changes stimulate new demands and therefore new patterns of supply, but also reduce market stability.

Land markets bring an additional set of factors into play. Unlike other resources or commodities, land is unique in three key respects: 1) It cannot be moved; 2) it cannot, at least in law, be destroyed, (since it is held to be the surface area of a quantity which goes downwards to the Earth's core and upwards into space- see Simpson 1976 1.42) and; 3) its supply cannot be increased, (in law, land is finite, though in practice usable land can be increased by reclamation programmes).

In developing countries, markets in many sectors are often dominated by external factors, making it difficult for them to be self regulating and achieve either productivity or equity objectives.

Several factors distort urban land markets and prevent them from being self regulating. Rapid and sustained urban growth has ensured a permanently high level of demand which provides disproportionate benefits to land-owners, or those controlling land allocation.

This sustained level of demand provides guaranteed levels of return on investment which other, more productive sectors of the economy may be unable to match and this serves to attract even higher levels of investment, which further fuels land price inflation. Furthermore, land is traditionally a means of transferring funds generated in the informal, or 'black' economy into the formal sector with minimum risk. Finally, constraints on the supply of public finance and services for land market operation are widespread.

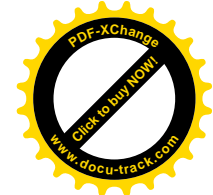
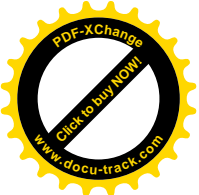
All these factors tend to intensify the levels of speculative investment in land and inhibit the efficiency and equity which markets provide in theory. Given the considerable distortion which also exists in urban income distribution, it is equally difficult to achieve equity in access to land at prices which either lower-income groups or public agencies can afford on more than a token basis.

Another factor here is the competing interests for land in urban areas, such as government, private sector commerce, residential groups and industrial developers, etc, all of which are particularly active in primate cities. Established land and property markets also create powerful vested interest groups and pressures which constrain policy options. The substantial benefits enjoyed by those who own their own plot or property inevitably increases demand for this form of tenure and governments may find it difficult to resist allocating freehold title to the beneficiaries of public housing or sites and services projects.

Since few households can afford the full repayment costs, however, subsidies are invariably required. This reduces the number of units which the public sector can provide, (especially at official planning standards), discourages private sector investment and creates a discrepancy between the prices charged and the market value of a plot which households may be tempted to realise by selling out to higher income groups.

This experience has encouraged many countries to move away from direct intervention and supply in favour of joint ventures and inducements for private sector actions. Examples of such joint ventures include the land sharing programme in Thailand, land readjustment schemes in many parts of Asia and proposals for collaborating with customary land-owners in Papua New Guinea. These options may include private sector developers, customary groups and non-governmental organisations. For such collaboration to be successful, public sector agencies need to be sensitive to the nature and operation of urban land markets and the criteria which the private sector applies when investing in land or property. Such sensitivity may require a considerable change in existing bureaucratic attitudes and practices.

In the interim, land markets themselves have responded to the increased demand for land by lower income groups through the emergence of various formal and non-formal private sector developments. The non-formal developments, such as illegal or unauthorised subdivisions offer plots at prices which lower income groups can afford and are usually developed by specialist land agents who bypass unrealistic official planning standards and complex bureaucratic procedures. Such developments do not provide formal title, though some form of document may be offered. They will be discussed in more detail in



Section V.

Policy in countries with customary land systems

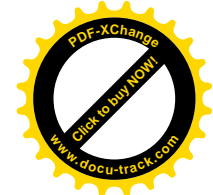
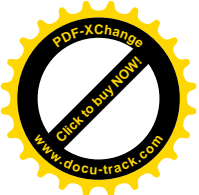
The relationship between customary and "modern" systems of tenure and property rights is invariably coloured by colonialism. As Shivji (1995) has noted in the case of Tanzania, the legal ambiguity of indigenous land rights was the hallmark of colonial land jurisprudence". He continues (ibid:5) "lack of security of tenure in the case of deemed rights of occupancy was thus a deliberate creation of the colonial state policy ingeniously translated into law through the device of declaring all lands public lands vested in the Governor. Insecurity of tenure is not - contrary to the oft-repeated claims of pundits - inherent in customary land regimes. It was a colonial creation which, like many other colonial creations, was attributed to customary system. This attribution was not without consequence. In academic writings, judicial interpretation and administrative practice, customary tenure came to be identified and treated as inferior to statutory or common law tenure. The result was a dualist land tenure system organised hierarchically in which progress was seen and presented as a movement away from the (traditional) customary to (modern) statutory forms of land tenure. "Progressive" or developmental land tenure reforms from the colonial `50s through the modernisation policies of the post-colonial `60s to the current liberalisation, have been based on the assumption that insecurity is endemic to customary tenure".

According to Nair (1984), there is a widespread consensus that customary rights are incompatible with a "modern" agriculture, economy or society. In support of this view, he cites a previous Minister of Agriculture in Malawi as stating that "the customary view of holding land in Malawi and the method of tilling the land were entirely out of date and totally unsuitable for the economic development of the country...the first thing to do was to change the system of land holding".

Migot-Adholla, Hazell, et al (1989), however, draw on information from sub-Saharan Africa, to show that increased population pressure on land has already brought forth a higher degree of privatisation of land rights in areas held under customary tenure, leading them to question the efficiency of costly, ambitious tenure reforms relative to other spending needs. Antwi (1995:4) states that in Ghana "the central cause of the urban land market problem has been the need for the state to intervene and effect a transformation of the unwritten traditional systems of propriety (sic) rights to a system based on written titles. This has meant the need to marry two completely different systems of property law - the English law and the customary law. It is a difficult marriage that requires nurturing and compromises. English law relies upon proof of title through formal documentation. Customary land title systems have evolved through reliance on physical possession and the recognition of this by adjoining owners. Cultures that have developed around possessory title as the only mode of ownership of land would not transform smoothly to automatic acceptance of root title via title deeds. Legislation and policies guaranteeing documented titles without the recognition of the existence of other forms of title would be, at best, difficult to implement, at worst impossible to operate".

Another basis for conflict between customary and statutory tenure systems can occur when migrants move from rural to urban areas. A United Nations study (1991:13) records that in some squatter settlements in Africa and the South Pacific, the settlement may be illegal and unauthorised when judged by formal statute law enacted by the state, though the settlers themselves recognise the customary law of the area in which they are settling, or bring their own customary law with them. Whilst this ensures a more stable legal environment for the settlers, it makes regularisation more difficult, since that has had a tendency to be taken to involve the displacement of customary law by the imposition of statute law.

Despite these problems, many countries with customary systems of land tenure have embarked upon such reforms. Invariably, ties of history or dependence have led to the adoption of European tenure concepts, either capitalist or socialist, in order to improve economic productivity or equity of access to land. Nair doubts that either approach has produced the results anticipated by their proponents and that they have frequently exposed the most vulnerable members of society to further hardship. Thirkell (1994:80) also points out that in the Philippines, "the recognition of use right sales by the *mestizo* elite and the failure of the Spanish to implement a far reaching and comprehensive tenure system meant that traditional land tenure ideology and land trading remained intact, and indeed persists to the present day. The indigenous



Filipinos did not own land through a title and indeed even today many do not understand such a system or have any knowledge of its workings”.

The continued growth of urban areas commonly brings with it increased demand for individual tenure into indigenous or customary tenure systems and threatening their traditional criteria for allocating and managing land. This adds yet another layer to what is already a complex web of overlapping interests and renders the outcome of policy changes unpredictable. Given the diversity in customary traditions and the rights enjoyed by different groups within any given system, it is clearly important that policy is sensitive to this continuum.

The equity record of customary land tenure systems is generally high, since allocation is traditionally made to group members according to need rather than affordability. As towns and cities expand into customary areas, however, households not eligible for such preferential consideration may face additional difficulties in obtaining a place to live.

In terms of gender equity, Osman (1987), claims that customary tenure systems have enabled women to acquire land through grants or by inheritance, though mostly it was through marriage. Women did not fare so well in obtaining credit, however, and normally had to give a male guarantor for any loan application. The practices she describes applied to agricultural land and she does not refer to their application in urban areas. Given the high proportion of female headed households in the urban areas of many countries, this is clearly a subject on which more understanding and action is needed.

BOX

Papua New Guinea: Acquiring customary lands

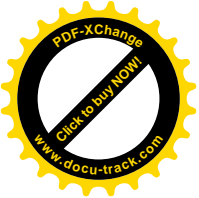
In Papua New Guinea, where 97% of all land is held under customary tenure, tribal leaders are keenly aware of their powers and are under pressure from their communities to protect long term rights whilst maximising short term opportunities. Since customary land cannot be alienated, tribes refuse to accept the permanent loss of their land even when compensation for its transfer to the state has been agreed and accepted. In the celebrated case of the Bougainville copper mine, customary land-owners repeatedly demanded additional compensation once the value of the mine became apparent, on the basis that even though they had "sold" the land, they still retained a long term interest in it. Furthermore, when public sector agencies sought to acquire customary land on the periphery of urban areas for low-income housing projects, tribal leaders were reluctant to accept compensation levels lower than they knew the state had paid to other tribes for the copper mine. The use to which the state intended to put the land was understandably of little interest to the customary owners.

The state has therefore found it increasingly difficult to acquire land for any form of urban development, particularly low-income housing. Ironically, this has led to migrant households squatting on or renting plots on customary land with the tacit agreement of the owners, since there is now nowhere else for them to go. Several attempts have been made in recent years to involve customary owners in joint public-communal developments to mutual benefit, but these have so far foundered and temporary settlements without services or security are growing up which are contrary to the long term interests of all concerned.

END OF BOX

In Ankara, Turkey, a variation on this subject deserves mention. This does not concern customary land as such, but customary settlement practices applicable to rural areas being followed in the periphery of urban areas. When migrants established their "gecekondu" settlements on public land, the authorities responded by adapting rural traditions of self- and mutual-help in the provision of services and tenure was granted at regular intervals to individual settlements. These practices gradually became inadequate, however, in competing with market forces which eventually penetrated the low-income settlement areas (Payne 1982).

One conclusion from these observations is that tenure has proved to be an unpredictable instrument of public policy in regulating customary lands in urban areas. It needs to be used in conjunction with other instruments if its effectiveness in achieving policy objectives is to be improved. One means of achieving this is through joint ventures between the public sector and customary groups, though as the case of Papua New Guinea illustrates (see box), it will require considerable skill, patience and time to overcome



suspicions and establish enforceable agreements.

Policies and plural land tenure

In theory, diversity in tenure options should increase the opportunities for all sections of demand to meet their needs. On this basis, land policy should promote a wide range of tenure systems and encourage plurality and in general, this view has much to commend it. However, the presence of diverse tenure concepts, or laws, may create ambiguity and confusion which offset these advantages and reduce both efficiency and equity.

BOX

Madagascar: Administering diverse tenure systems

In Madagascar, Farvacque (1989b) identified six main systems of land tenure:

1. Private, registered property occupied by the owner- legal
2. House unit built on private registered land but belonging to another owner- illegal
3. Urban land occupied and improved before 1950. No title, but can be legalised if the beneficiary wishes
4. Rural land occupied for 10 years or more- same as above
5. Urban land occupied and improved since 1950- illegal land belongs to the private domain or the state
6. Registered land (private state land occupied by squatters- illegal).

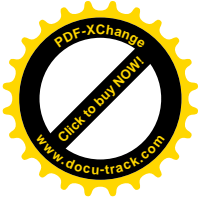
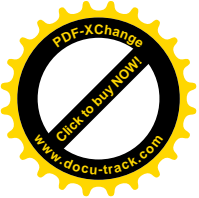
The burden of administering this complex range of tenure systems is compounded by voluntary, rather than mandatory, land registration and a lack of communication between government departments dealing with land management. Consequently, few households bother to register their land, or any transfers or developments on it and most people squat without any preliminary authorisation. It appears that many people who formally request a plot think that, by virtue of requesting it, they will get the right to occupy the land. Private land markets are not very active and people turn to the central government to obtain land, though this is restricted by the small public land reserves. Among the policy recommendations proposed by Farvacque to remedy this situation are the following:

1. Reduce the high level of centralisation in formal land management
2. Improve understanding of how the informal land tenure system operates
3. Make development control mechanisms more flexible
4. Simplify planning documents
5. Simplify subdivision procedures
6. Simplify building permit requirements
7. Establish an urban land data bank.

END OF BOX

According to McAuslan (1989), a major stumbling block in the way of the ideal system of land law is the existence, in virtually all developing countries, of plural systems of land law. He states that a common assumption is that the way forward is to assimilate the traditional and informal systems into the existing statutory system through government action. A second assumption is that one of the deficiencies of traditional customary systems is the absence of an 'owner' who can deal with the land, thus preventing its marketability.

McAuslan concludes that there are many pitfalls along the road to assimilation. He cites Lesotho as a good modern example of how reforms encouraged from the outside can go wrong and Zambia as an example of reforms proposed from the inside which failed the test of political acceptability. Trinidad and Tobago's reforms are held to have failed the test of both political and legal professional acceptability. He considers that the approach most likely to succeed is one which builds on existing laws and practices, rather than one



which seeks to replace them entirely. This would entail providing mechanisms to enable land-holders to transfer their land and rights from one system to another, with incentives as required. The example of Zambia is quoted, under which the benefits of statutory title registration were extended on a simplified basis to households in unauthorised settlements.

BOX

Indonesia: Diversifying land rights

Before gaining Independence in 1945, Indonesia was subject to a dual system of land law. One set of rights, "western rights", was based on Dutch land law, which was in turn based on the 1804 French Civil Code. The other was `Adat`, or customary law, which varied from one area to another. While westerners could hold western land rights and Indonesians could hold Adat rights, the system tended to divide lands owned by foreigners from those owned by Indonesians (Struyk et al 1989).

In 1960, the Government passed the Basic Agrarian Law (BAL), which laid down the fundamental principles for the regulation of land and converted all land rights to the new ones established in the BAL. Within this, `Hak milik` tenure provides the most complete form of individual land right, since it has no time limit and can be used as security for loans. Hak milik rights cannot be acquired by foreigners or corporations. Below this, there are several other forms of rights, such as use rights (`hak pakai`), management rights (`hak pengelolaan`) and security rights (`hak tanggungan`).

Although `hak milik` is similar to freehold, there are several limits, such as the State retaining the right to regulate the use of land and transfers. Overall, the BAL has permitted the development of a flexible land tenure system with many levels of security which allows many low-income households to acquire land rights with some security where a more formal and polarised system would not. Such a framework is not held, however, to have been so successful in areas of rapid urbanisation, where more certainty is needed (Struyk et al 1989).

END OF BOX

National tenure policy options

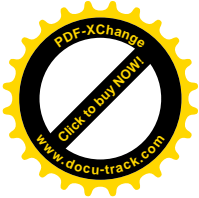
In considering options for national tenure policies, a number of formal systems are available with associated rights which are often applied in tenure improvement proposals. Some of the major options are as follows:

-Freehold

Freehold tenure derives from the State and gives the beneficiary near absolute ownership of land. Strictly speaking, it is derived from English common law, but it is used in many of Great Britain`s former colonies and elsewhere. Its equivalent in Roman civil law is dominium and in Islamic law mulk. Its conditions are full right of transfer, right to bequeath, right to mortgage, full use rights (unless restricted by law) and unlimited duration. Although rights associated with freehold tenure are considerable, especially where the Napoleonic Code applies, they can be restricted by legislation, codes and ordinances and to this extent are variable. Such restrictions commonly apply to the uses, levels and types of development permitted. Non-use can be discouraged through taxation policy. Rights of transfer, sale and inheritance remain with the occupant, subject again to mortgage status.

The obvious advantage of freehold tenure is that it maximises the collateral value of the plot or property and enables the occupant to recover the full added value of improvements. This combination acts as a powerful incentive to stimulating investment in land and house improvements throughout the world, making it equally popular with residents, finance agencies and governments. Politically, it is seen as encouraging support for governments which stress the benefits of free markets and individual rights, and rely on these to ensure a balance between demand and supply.

In all such cases, a large proportion of people have benefited substantially from this approach, but a significant and permanent under-class may be created. In some cases, specifically targeted state action is initiated to protect the basic needs of such groups, though this excludes many in need and creates dependency on those receiving benefit. Where subsidies are used to enable low-income groups to obtain



freehold title, there is evidence of widespread 'downward raiding' as occupants realise the true market value by selling to higher income groups. It can be argued, of course, that such 'downward raiding' (or 'upward filtering'), reduces market distortions by integrating plots into the market at their 'true' value, though once an area is converted to higher income occupation, it may become more difficult for low-income households to obtain housing in areas originally intended for them.

A further consideration is that the provision of freehold title to low-income groups can represent a dramatic increase in social status, as well as security. This is often so great that occupants are tempted to realise the substantial increase in land or property values and sell to higher income groups, thereby distorting land markets and public expectations and enabling higher income groups to receive goods and services intended for low-income groups. With high urban population growth rates and even higher levels of poverty existing in most developing countries, freehold tenure therefore needs to be applied with caution, especially in areas subject to customary tenure, where tenancy levels are high, or where it may cause major distortions to housing markets.

-Conditional freehold

This is a combination of freehold and leasehold and entitles the occupant to full freehold title at the end of a specified period, providing stated conditions have been met. Conditions usually relate to the completion of repayments and achieving an acceptable level and quality of development, usually defined as development in conformity to planning and building regulations within a period of 3-5 years, with extensions available on application. Another condition sometimes applied is pre-emption by government, or the right to refuse a transfer.

Since the primary purpose of this category is to achieve improved housing standards without over-committing household resources, it is normally applied in areas under public, rather than private land ownership. Freehold rights are achieved when the conditions are satisfied.

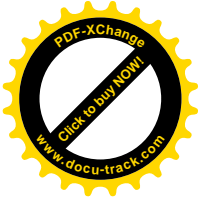
The advantage of conditional freehold is that it maximises the incentives for improvement, whilst leaving settlers free to invest at any convenient time. It does assume, however, the existence of an administrative system capable of inspecting and processing applications for freehold when and as they arise.

-Leasehold

This involves the rental of land or property under contract or statutory conditions for a specified period. Leaseholds may be created by the State, corporations, or individuals. Since the lessor retains a long term interest, an additional level of control applies to the lessee in terms of rights. These may vary considerably and conditions in law may not always be applied in practice, especially in public leasehold systems. The ability to use the property as collateral will be influenced by the duration of the lease, and for this reason, periods of 30 years are normally considered the minimum necessary. At the end of this period, the lessor is entitled to repossess the property, unless the terms of the lease provide for automatic renewal. In either case, renewal is commonly effected, subject to re-negotiated terms and conditions.

The rights enjoyed by lessees can vary with individual contracts, but frequently allows for the right to assign the lease to another or allocate the residual value of the lease. Development and use rights are likely to be restricted by the lessor. The same state restrictions on use which apply to freehold also apply to leasehold, especially in the case of properties.

For individual occupants, leasehold has generally been found to provide a sufficient sense of security to stimulate investment and an acceptable level of collateral to permit this. The long term interests of the lessor, whether public or private, are also protected. For the public sector, an added advantage is that it does not necessarily have to become involved in expensive, time-consuming and contentious land acquisition. Land-owners and settlers can be allowed to make independent tenure arrangements, leaving the local authorities to concentrate on the provision of services and offer other incentives for land development through tax concessions, etc. It is this ability to meet the essential needs of land-owners, developers and residents that makes leasehold an increasingly popular option in extra-legal settlements.



The disadvantage of leasehold is that a lessor is needed, which means another level of administration. Also, for governments, it means administering lease conditions, which in developing countries is not normally done. In some developing countries, rental housing may represent between one and two thirds of the total urban housing stock, making it a significant consideration in polices concerned with land tenure and property rights.

-Other tenure options

The preceding discussion has focused on the major formal tenure options, though others are also available and deserve consideration if the administrative support is available. One is for residents to form themselves into co-operatives or even companies, with each member receiving a share of the benefits and costs involved. This presumes a strong sense of community and the existence of a well organised community organisation which is able to withstand variations in local interest over time and deal effectively with the relevant authorities.

This option provides clarity of tenure status and rights, is efficient in terms of generating and allocating resources and can be equitable for all involved, though low-income groups with little experience of the procedures involved in establishing co-operatives or companies, can easily be excluded in practice.

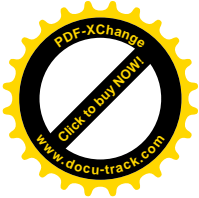
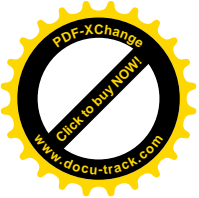
In high density areas, where housing may be multi-storey, another option is condominium ownership. This is common in countries with extensive areas of high rise development, such as the USA. It is not yet common, though it is in use in Malaysia, Brazil and the Philippines. It is also becoming increasingly popular in Bangkok, thanks in part to the availability of financing through the National Housing Bank. Tens of thousands of such units now exist, many of which have been developed since 1988. provides a simple, efficient and equitable solution for all involved, but with the same caveats as discussed above for co-operative and company tenures.

Given that levels of tenure security and property rights in extra-legal settlements may be severely restricted, another option which deserves serious consideration is to increase the existing status or rights of a settlement without granting formal title. This may take the form of `regularising` a settlement, or declaring that it will not be demolished. Such a practice has the merit of increasing security, without dramatically altering the land or property values in an area. It also enables changes to be made on a settlement by settlement basis, giving considerable flexibility.

By comparison, changes in tenure invariably apply across the board, as when all illegal settlements developed before a specified date are granted title, irrespective of their condition or long term viability. This is not only inflexible, but leads to confusion if settlers are unable to provide proof of their initial occupation of their plot. A further implication is that regularising unauthorised tenure in this way may encourage more unauthorised settlements to form. Increasing the rights of such settlements without making dramatically changing their tenure status may therefore represent the most appropriate option in urban areas where the capability of public sector agencies to implement and monitor the consequences of tenure changes is limited.

In conclusion, it is important to recognise that changes in tenure policy involve considerable indirect as well as direct consequences within extra-legal settlements, which affect people currently living in them and those to whom they may represent a future option. As experience to date has amply demonstrated, it is extremely difficult to anticipate these consequences, and many well intended changes have produced unintended and negative effects, such as increased rents, for the most vulnerable sections of the population. Whilst tenure improvements are desirable, particularly for low-income groups in unauthorised or insecure tenure categories, the main policy issue is to determine the most appropriate nature, extent and timing of tenure improvements.

It is therefore recommended that any changes to tenure systems be made cautiously, since titles and rights once allocated to a group or area granted cannot easily be withdrawn. For this reason, tenure is a less predictable and flexible policy instrument than, say, fiscal policy and regulatory instruments, which can be adjusted easily in accordance with changing circumstances.



A step by step approach is therefore recommended, since this will minimise distortions to the local land markets and to popular perceptions of the role and capability of the state. A rapid move towards individual titles, no matter how advisable in theory, is unlikely to be realistic or achieve policy objectives in the majority of cases. The other consideration is that measures should be consistent with ability of the administrative agencies to implement them. This will be discussed in more detail below.

Tenure and access to credit

Land titles are widely accepted throughout the world as a secure form of collateral for large loans and this goes a long way to explaining their popularity. However, many households in developing countries, especially poorer ones, do not require large loans, since they do not earn enough to service them. What they require is access to small loans to enable them to obtain a plot, connect to basic services, build an extra room (eg for rental income), or improve the quality of their existing accommodation. For such loans, other forms of collateral would invariably be acceptable. It is the reluctance of the formal credit institutions to enter the small loans market for the poor, because of the high transaction costs and perceived risk, which is the real impediment to obtaining formal credit.

Even for those wishing to obtain larger loans, the value of titles as collateral may be less in practice than has so far been assumed. The reasons for this are quite simple. Public sector finance institutions frequently find it difficult to foreclose on defaulting loans, even when they possess the title deeds to a property, because it is politically unacceptable to be seen to forcibly remove poor people from their modest homes. Traditionally low levels of cost recovery in public sector housing schemes indicate that it will take some time to change the culture of such institutions.

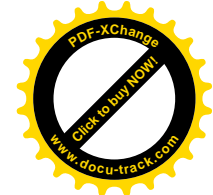
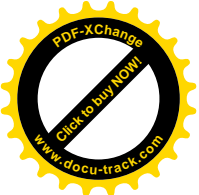
For households seeking loans from private sector finance institutions, the primary consideration in approving a loan is the ability of the borrower to repay it. Collateral is irrelevant unless households can satisfy this initial criterion as no responsible institution will provide loans on which they are likely to have to foreclose. On these considerations, the provision of a title is unlikely, in itself, to increase access to formal credit. Nonetheless, an important objective of any tenure policy is to improve access to credit by low-income households. At the risk of over-simplifying the various tenure and credit systems and their relationships, the following Table 3 indicates the likely credit options associated with different forms of tenure.

From this, it can be seen that extra-legal settlements occupy the first two columns and that they are generally denied access to formal channels of credit. In the worst instances, where settlements have not been recognised or regularised, households are forced to rely on their own savings, informal credit systems or private 'loan sharks'.

For low-income households, savings are unlikely to be sufficient to make substantial investments in housing, especially given their lack of tenure security. Informal credit systems frequently work well and provide a valuable source of capital, but depend upon networks of personal contacts which tend to collapse with rapid urbanisation and the increasing anonymity of large settlements. This forces the lower income groups into the hands of loan 'sharks' who charge rates of interest which can sometimes exceed 1,000% per annum and are always substantially higher than rates charged by formal credit institutions.

Table 3: Credit and tenure options according to levels of security.

	1	2	3	4	5	6	7	8	9	10
Formal credit system	3	3	3	3						
credit unions	3	3	3	3						
savings banks	3	3	3	3						
public grants	3	3	X	3	X	3	3	3	3	3
guaranteed loan										



greater significance, such official endorsement provides an incentive for households and communities to use such capital for long term house improvements.

These indirect means of engendering a sense of permanence and providing the incentives necessary for improving housing and the local environment depend for their success upon the degree of confidence which settlers are willing to place in public sector support or tolerance. A single case of forced removal or demolition can be sufficient to destroy levels of confidence built up over many years.

The specific package of rights appropriate to a given situation will depend upon local conditions and perceptions. The effective use of property rights as a policy instrument to increase security and investment therefore requires considerable sensitivity and flexibility.

Administration of tenure and property rights

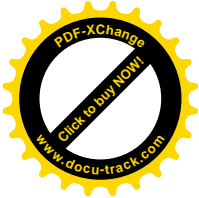
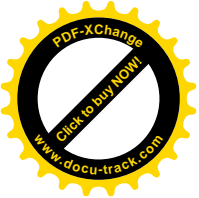
Any proposals to change the land tenure status of a parcel of land imposes a considerable burden on urban administrations. Where the tenure system itself is subject to radical change, this burden increases rapidly and any administrative deficiencies will tend to impede progress in effecting such changes, irrespective of their merits. The ability to implement tenure policy will therefore be determined to a large extent by the willingness, capability, efficiency and sensitivity of the concerned administrative authorities. Radical changes or simplifications in the administration of tenure may be strongly resisted by local politicians. Several observers have noted that many politicians create support by arranging to have status and title deeds granted to illegal settlements in small increments. Major changes in tenure administration may therefore be seen as eroding existing patronage systems.

Official resistance can also be considerable if changes are seen as a threat to institutional interests. This can easily occur if political commitment to change exposes the bureaucracy to dealing with the conflicting claims of owners, tenants and others claiming rights over land. The administrative capability necessary for implementation may also need to be improved before tenure policy can be implemented, and recent innovations in Zambia, Bombay and Rio de Janeiro are expected to face problems in this respect (Angel 1983, Doebele 1988).

Where policy and other conditions are supportive, levels of disputes or litigation provide indications of administrative weakness. Identifying and resolving such administrative constraints will represent a long term task for senior officials responsible for the implementation of all land tenure policies. A good example is that of South Africa, where the new government has placed a high priority on addressing grievances by the black majority over the colonial and later nationalist governments against the seizure of their lands throughout the nineteenth and twentieth centuries. As Budlender (1996) has observed, approximately 13 percent of the land mass was set aside for the 80 percent of the population which was black, within which they were expected to exercise their political rights, leaving the remainder available for the exclusive use of the white minority, in which they could enjoy the benefits of democracy. To redress this injustice, the present government has established a land restitution programme to be carried out through a Commission on Restitution of Land Rights and a Land Claims Court. A major problem, however, is to resolve disputes and to unravel the chaos of overlapping tenure rights and conflicting claims. The importance of this issue is indicated by the fact that of all the injuries done by apartheid, it is only the racial dispossession of land which the new Constitution specifically instructs Parliament to redress.

Prominent among the administrative issues which will need to be addressed in most countries is the very low salaries of officials in land registration offices, combined with the complexities of administrative procedures, both of which provide fertile grounds for under-the-table payments. The adjustment of fees to more realistic levels, although at first glance detrimental to the poor, may be beneficial to all income groups if they result in more rapid and impartial procedures.

The complexity and efficiency of administrative procedures regarding tenure policy have recently received increasing - and critical - attention in the literature. Kitay (1985) states that in many developing countries it takes many years to record a land transaction on the official title register, and concludes that such delays are a major impediment to the involvement of private sector developers in low-income housing. Struyk,



Hoffman and Katsura (1990) record that in West Java, land transfers take an average of 32.5 months for title issuance and that this add between 10 and 29 percent to the cost of land acquisition.

In a celebrated analysis of urban administration in Peru, de Soto and his group calculated that it took 289 days to establish a factory legally, while procedures for obtaining a legal plot of land proved even more of a constraint. It was estimated to need six years eleven months to process applications and 56 times the average minimum monthly wage at the time (de Soto 1989). As a result, many people are forced out of the legal market even if they are otherwise willing and able to participate legally and it appears that in Lima the informal sector now accounts for 70 percent of all new construction in the informal sector, employs 439,000 people and provides 95% of the city's public transportation.

Many other examples can be cited, though one from Tanzania may suffice. In signing contracts to obtain a plot in a sites and services project in Tanzania, beneficiaries are required to obtain a building permit and construct their dwelling within one year of allocation. Failure to conform to either requirement can render the household liable to forfeiture of the plot without compensation. The objective of these conditions is clearly to discourage land hoarding and speculation. However, to obtain the permit involves up to 28 separate steps, and completing them within the one year time limit is practically impossible. These examples confirm that the speed at which tenure systems can be developed or reformed will, in practice, be determined by the pace at which land registration systems can be put into place or upgraded to accurately record forms of ownership and the nature and extent of all rights over land.

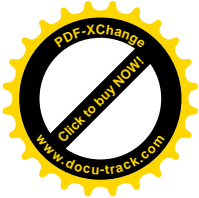
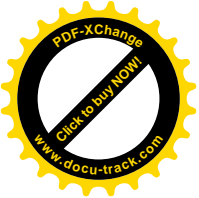
With regard to administrative sensitivity, Osman argues persuasively that women fare particularly badly, despite representing a significant proportion of household heads. She considers that their situation can only improve when their economic contribution is fully recognised, and recommends that a useful start could be made by administrative acceptance of women as the heads of households when tenure, titles and rights to land are being allocated. Although she refers to rural contexts, her arguments are at least as valid in urban areas.

Information on the tenure status and rights over urban land is a pre-condition to successful policy implementation. To effect this, land registers will need to be brought up to date and regularly maintained, though clarification of tenure status and rights should not to be associated with a particular tenure type.

An essential administrative duty of the state is the registration of rights and subsequent changes of ownership. This is necessary to support the whole real property rights system in the eyes of both the existing owners of real property rights, by those who may advance credit and by prospective owners/buyers. (A land registration system is an instrument of the land market, a secure filing cabinet to make the market more secure). The land registration systems can be fully funded by user fees in the longer term; in the short term, they may need support by subsidy for low-income earners. Also, legislative support and incentives may be required to ensure all transactions are registered and, finally, householders will need to be persuaded that they have more to gain from registration than to lose by it provided, of course, that the costs involved are considered acceptable.

Some states actually intervene and guarantee the rights registered (eg, Philippines, England and Wales, New Zealand), whilst others, (eg, Thailand and Malaysia), support their systems with efficient administration and fast turn-around times, giving the necessary confidence in the systems. However, in other countries, the state refuses to guarantee titles. For example, in Pakistan, the Registration Act envisages registration of documents and not registration of titles (Kardar 1991). In addition, the Transfer of Property Act does not envision that the state shall guarantee title to property. The documents of title provided by the vendor to the vendee do not certify title. Kardar states that "they are private documents in respect of a transaction between private parties that only serve to confirm that they refer to one of the transactions in a chain of transactions. The registrar by entering the transaction in the official records only confirms the validity and accuracy of the document. He does not thereby give assurance of title to the transferor of the property" (ibid:3). Such difficulties amply illustrate the problems of updating land registries or transferring titles from one tenure system (eg customary) to another (eg statutory), where rights and obligations may vary considerably. Certainty of title under such conditions is unlikely.

There is a third alternative system which is title insurance. In this arrangement, an insurance company,



(public or private), assess the risks that title will be successfully contested at a future date and collects premiums sufficient to reimburse the owners or their creditors should such a contest be successful. Since successful contests of land titles tend to be rare, the premium charges should generally be reasonable, although they would be higher at first until the insurance companies established had established experience of probable liability. In the USA, title insurance is required as a matter of course in many states, though it is common for many companies to exempt themselves from liability from any flaws in title which is hinted at in the registry "chain of title". Therefore they are more useful in finding potential contesters of title than in being true insurer. Although this modification in the USA does not, of course, invalidate the concept of title insurance, it is essential to be able to draw upon the resources of established insurance companies willing to operate in this field, and that condition may not apply in all countries.

The need to enhance institutional capability to a level where such systems can flourish is clearly a major priority not just for the efficient management of land tenure systems, but for all urban development programmes.

With regard to cost recovery, an advantage to local authorities of allocating more secure tenure is that it permits them to levy property taxes on the newly recognised settlements and therefore widen their revenue base. To achieve this in practice, however, requires administrative capability which is not always available. In Ghana, for example, urban land is controlled by the state or the various Stools and Skins, of which the latter control the majority (80% in Kumasi). Residential leases are normally for periods of 99 years, but ground rents are so low they do not even cover the cost of the postage stamps used to collect them! The administrative procedures for effecting any transfer are so complex that it takes anything between 6 months to 3 years and with interest rates at 26%, many transactions are not recorded on the official registers, thereby making efficient land administration even more difficult (Holstein 1988). One solution to this problem has been to turn long leases into 999 year, or perpetual leases, thereby removing the rental component and the administrative burden altogether, whilst retaining the right to change land use, etc. However, this does not address the conflict between customary and modern systems of titling and land registration. These have resulted in the filing of 16,000 legal claims over disputed properties and the mass of litigation has forced land development on the fringe of Accra to a standstill (Acquaye 1989 in Antwi 1995).

Some experts argue that it is unwise to tie better registration to the immediate imposition of a property tax, since it creates an obvious disincentive for people to bring land into the system. Cost recovery should certainly be related to realistic costs of administration, but the policy issues of when and how to levy a property tax should be considered separately from the policy issues of the creation of better registration.

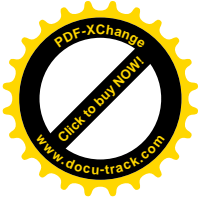
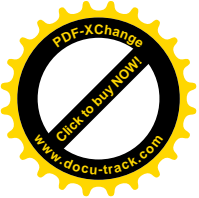
A tenure type which imposes a particular burden on a public administration is leasehold. It must administer conditions, set and collect rents and, if associated with apartments, may be responsible for maintenance. Such overheads must be considered in selecting tenure options.

Tenure and land use

Land tenure and property rights can exert a significant influence over land use and land values. Such control may be achieved through traditional, statutory, or contractual measures associated with most forms of tenure and can form, if enforced, a useful tool in urban management.

Most forms of tenure involve some form of limitation as to the ways in which land or property may be used. In customary tenure systems, this may be determined by the tribal leaders or by tradition and restricts what occupants of land may do with it. Any change of use would require the approval of the leader and possibly other members of the group and is not likely to be easily obtained. In publicly owned or controlled land, occupants are generally subject to a wide range of statutory and contractual limitations, all of which may carry heavy penalties for failure to conform.

In private tenure systems, freehold tenure theoretically offers occupants the greatest degree of autonomy and freedom to use land as they wish and to realise its full market value, though this may be constrained through statutory and contractual measures enforceable in law. (The whole city of Houston, USA, is administered by restrictive covenants). Such covenants will not be effective, however, unless the



developers, shelter authorities and local community possess the ability and willingness to enforce them, and this cannot always be guaranteed.

Use rights are commonly linked to land use regulations in an attempt to ensure 'planned' urban development. Thus plots in an area zoned for residential use may be restricted by covenants, individual contracts, or statutory regulations from any non-residential activity.

Table 4: Control of land use and tenure

Tenure controlled land use conditions	statutory land use unrelated to tenure ie, they impact on all tenure categories
Exclusive tenures:	1: Zoning
1: land use conditions under lease covenants agreed between parties	2: Building height restrictions 3: Environmental protection zones
2: Restrictive covenants imposed under a condition of sale (agreed by buyer and seller) which may include any condition in the right hand column- eg planning, zoning, building, etc.	4: Building regulations
3: The freehold tenure called a 'life estate' has land use implications	
4: Forestry and mining tenures	
Non-exclusive tenures	
5: Use rights eg in connection with, water, agriculture, trees. NB: The above are controlled by associated individuals or the community	NB The above are controlled (enforced) by the state

The enforcement of such measures may well satisfy the objectives of master plans, but this may be at the expense of reducing land and property values, denying economic opportunities which could generate increased incomes and services and increasing the burden on a city's transport system due to the higher costs of serving low density developments. They may also be observed more in the breach than in the letter, since the demand to use plots for more than the specified use may be compelling and sufficient to induce administrative abuse. These tendencies are obviously even greater in commercial areas, where the costs and benefits of limitations on rights are likely to be substantial.

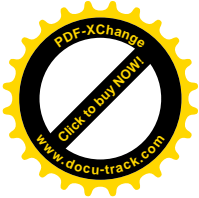
As with so many aspects of urban management, success depends in the final analysis on developing appropriate policies and the capability, competence and integrity of the administrative system. All the above options are vulnerable to abuse and some could even encourage it. For this reason, it is desirable that changes be made with caution.

BOX

The advantages and disadvantages of tenure in managing urban land use

The extent to which tenure compares as an instrument of public policy with land use controls has been assessed by Doebele (1983). He considers tenure controls to have certain advantages, namely:

- They are generally more powerful than land use controls
- They can be individualised
- They permit a wider range of response to policy



He accepts, however, that they also have limitations, including:

- Administrative complexity in dealing with many individuals
- Temptations to graft and corruption are greater
- They are potentially more stifling to private initiative.

END OF BOX

Opportunities for intervention are considered by Doebele to be greatest at moments of transition, as when agricultural land is transformed into urban land, or when services are provided. These are the points at which the most significant changes in value occur and where the influence of the public sector is greatest. However, to be effective, it is essential that public sector agencies are sensitive to such moments of transition and able to respond quickly, efficiently and flexibly.

Tenure, housing investment and cost

As de Soto (1989) has argued, any policy which results in half or more of city populations suffer insecurity of tenure is grossly inefficient, not to mention unfair. A primary objective of any tenure policy should therefore be to provide sufficient security to stimulate investment in land development and house construction.

To this end, it is widely assumed that the granting of formal tenure is the most effective means of achieving this objective. Whilst there is considerable evidence to support this, it is equally clear that tenure is not a sufficient incentive for all population groups in the absence of other factors, such as adequate levels of income and the availability of credit on affordable terms. It is also important to recognise that other policy instruments, such as levels of taxation and interest rates, may produce a similar outcome, especially as tenure security is largely a subjective and relative concept, which involves balancing alternative options under constantly changing circumstances.

Expectations of security can be enhanced by the provision of public services or the collection of taxes. In Karachi, perceived security is sufficient to stimulate investment and reduce demands for title and the payments that are associated with it. In Jakarta, however, the provision of services to the city's kampungs did not stimulate investment, since it was not interpreted as increasing long term security. Angel concludes that the actual expectation of permanent tenure is an important condition for the improvement of houses, but infrastructure improvements divorced from such expectations are not.

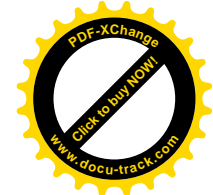
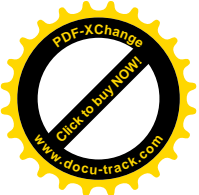
BOX

Thailand: Land tenure security and house improvements

When the National Housing Authority of Thailand initiated a slum improvement programme in 1977, it decided that all residential areas where land tenure, or physical and social characteristics were problematic, would be considered as potential upgrading areas. One of the key assumptions of the policy was that increased tenure security would be the major incentive to encourage home improvement initiatives. In a study of 13 areas in Bangkok (Wegelin in Angel et al 1983), it was found that the extent of home improvements was positively related to the perceived security of tenure and to household incomes. Whilst land was not required as collateral for loans, none of the households who had improved their dwellings during the previous five years had used formal housing finance mechanisms. This suggests that there were other factors at work, such as the lack of incomes or small loans.

Another possible conclusion from this study is that perceived tenure security need not necessarily have required formal title to stimulate the level of investment achieved. If expectations of security are high, experience suggests that people willingly invest in improving their houses and environment. If expectations are low, however, people are inhibited from improving their houses and use their savings for other purposes (Angel, in Angel et al 1983).

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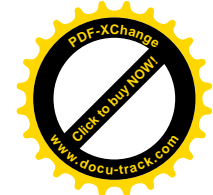
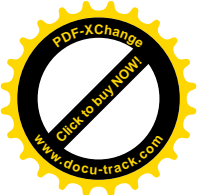
It may be tempting to conclude from this evidence that the provision of individual freehold title is therefore the most appropriate tenure option to achieve policy objectives, since it maximises incentives to plot occupants. This would be to ignore, however, the ramifications for other groups. The provision of titles immediately transforms public perceptions of a settlement from being an illegal slum to an acceptable and possibly attractive area, especially if it is well located. This can produce dramatic increases in land and property values.

As discussed on page 21 (**Adjust in final text**), 'downward raiding' by higher income groups may then be encouraged and the most vulnerable groups- namely the tenants of what were previously non-formal settlements- are forced out by higher rents. Such a tendency is essentially a reflection of the imbalance between the demand for residential land and the existing patterns of supply. Although much of the literature justifiably concentrates on the problems of low-income households, many middle-income households find it impossible to gain access to formal housing developments and therefore compete for units intended for low-income households. Attempting to prevent such tendencies through administrative controls over individual projects is likely to prove ineffective and the most successful approach must be to promote forms of supply which approximate to the range and dynamic nature of demand. In cities like Bangkok, where the market has been reasonably responsive to middle-income demand, there is less pressure to "raid downward", although such raiding has occurred in the Klong Toey project because of its desirable proximity to the city centre.

Of course, tenure has invariably proved to be an important factor in stimulating investment and it may serve as the foundation for developing credit mechanisms, mortgage markets, and revenues for urban development. However, there is an increasing body of empirical evidence to show that full, formal tenure is not essential - or even sufficient, on its own - to achieve increased levels of tenure security, investment in house improvements, or even increased property tax revenues. In a study of legislation intended to enable low-income tenants to purchase their dwellings in Colombo, Sri Lanka, it was found that residents were simply too poor to afford improvements without outside financial aid, regardless of the level of tenure security. A study by Ward in Mexico City also found that levels of investment in improvements were directly related to income levels (quoted in Angel et al 1983). In Madras, Kundu (1990) notes that there was considerable displacement from the World Bank funded MUDP 1 and 2, which provided ownership to the settlers. The Environment Improvement Scheme and Accelerated Slum Improvement Scheme implemented in the same city earlier, however, did not provide full tenure, yet achieved substantial housing improvements with only minimal displacement. Identical results were experienced in the Bhopal and Ahmedabad slum upgrading programmes (Mitra:1988, Parikh:1996).

Finally, in Pakistan, the provision of formal tenure was not regarded as likely to generate investment in house improvements or the tax base, since residents already felt secure without titles and access to formal credit was unlikely to be enhanced because the number of finance institutions is limited and foreclosures are not enforced, reducing the value of land as collateral for loans. Willcox (1991) has even indicated that title documents in Pakistan are worthless, since the state does not guarantee them and possession alone provides security of tenure, a fact well known to all those who encroach on unused land. Whilst this sense of security about possession translates into a willingness to undertake personal investments in housing, and in the amenities servicing them, without any need to offer anything more in the way of legal protection, it deters financial institutions from providing mortgage loans even to those with titles. He concludes that shelter programmes in Pakistan will have to rely on instruments other than tenure for support.

The obvious conclusion from this evidence is that in order to achieve its objectives, tenure policy needs to be part of an integrated programme of action which is sensitive to the social, cultural and economic circumstances of the target groups and takes due account of indirect ramifications. It may well be, therefore, that the objectives of increasing security, rights and access to credit can be achieved with intermediate forms of title. Another option is to grant community mortgages, which are intended to increase access to freehold ownership by low-income groups, whilst minimising risks to funding agencies. Such an experiment is currently being developed as part of a World Bank funded project in the Philippines. However, PADCO (1993), suggests that between its launch in 1988 and an assessment of the programme in 1993, not a single site had progressed to the stage where individual loans are obtained for house improvement or construction, due to bureaucratic delays.



There is, in theory at least, no compelling reason why credit cannot be extended to households in the absence of land as collateral, since interest rates are the price of money, and can easily be adjusted to allow for the risk of default. This inevitably increases the transaction costs, but may still offer a preferable alternative to informal sources of credit on which many low-income groups currently depend. As Bromley and Cernea (1989) have observed in the case of farming, agricultural credit markets have operated throughout history without private ownership of land and the local savings societies (or circles) so prevalent in most developing countries have default rates below those of the "formal" credit sector, where titles seem to be so essential. The same tendency can be found in urban revolving credit systems and other community based credit systems. (see World Development Report, 1989, Box 8.2 p114).

Although such mechanisms would not be appropriate for financing the development of apartment blocks on prime sites in large cities, they may well be able to contribute to the provision of credit for those groups lacking collateral for existing forms of formal credit. The concept of title insurance, as mentioned on pages 26-27 (**adjust in final text**) also deserves serious consideration.

Another initiative in the field consists of 'community small credit'. This involves community based financial intermediaries such as NGO's, Savings and Loan Associations and Credit Unions acting as the agents for retailing loans to communities which would otherwise have problems obtaining formal credit. The high administrative costs and risks involved in conventional financial arrangements are reduced by the familiarity which the intermediaries have with their customers and their different ways of operating. Such a scheme is being proposed in the World Bank funded Third Jabotabek Urban Development Project in Indonesia. Other options are discussed in the 1989 World Development Report (ibid).

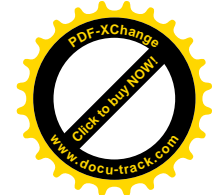
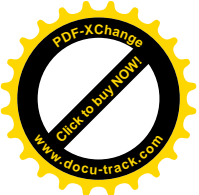
Improving tenure systems

A precondition for any attempt to improve tenure systems is an investigation of existing property rights, for which a detailed and up to date record of the existing tenure status of all land parcels within an urban area is an obvious advantage. Difficulties in identifying and registering the variety of rights that groups and individuals have to land make it equally difficult to determine who should benefit from improved tenure-persons with original rights to land or property, tenants or sub-tenants, or those with various formal or informal documents. It may also be difficult to determine boundaries between plots and properties. These problems apply in most places, but tend to be most intransigent in areas subject to customary land systems. Two technical options exist for addressing these problems, though the equipment required is not yet widely available. The first is what is the concept of "social cadastre" and replaces the need for surveys, It involves taking an aerial photograph into the field, assembling all interested parties and obtaining agreement on the spot, for inclusion into maps. Another option can be linked to this and involves the use of GPS (Global Positioning Satellite) units to record the precise latitude and longitude of an agreed point for inclusion directly onto land registers. Clarification of tenure categories is essential before any decisions can be made regarding future changes, but clarification should not be seen as advocating any particular tenure system.

It may also be useful to distinguish between different means of clarifying titles and rights. The conventional, and admittedly ideal, approach is to establish and maintain a comprehensive, detailed and up to date register of all land titles and property rights in a given area. However, this is not a realistic prospect in many urban areas, since either title records do not exist, resources are inadequate to keep pace with applications, or land occupants do not consider it in their interests to apply, because of the costs involved or the fear of having to pay property taxes. Accordingly, it may be desirable to consider intermediate forms of register, such as a land inventory, which would be mandated to record claims and titles without having to adjudicate or guarantee them by the State.

Decisions regarding tenure policy cannot be divorced from the allocation of rights in general, and therefore require action by central, rather than local governments. As stated above, urban tenure systems exist within a wide continuum. Important distinctions in levels of security depend as much on perceptions as on legal status, whilst investment in housing improvements may depend as much on perceived security and incomes as on access to formal credit.

As mentioned above, the tenure category which gives the greatest level of use, security and access to



credit is undoubtedly freehold. This clearly explains its popularity with both households and finance agencies, for whom it provides the best collateral and simplest form of administration. It does, however, impose a number of disadvantages. One is that not all households can afford the economic, or even subsidised, cost of purchase, thereby denying them the financial benefits enjoyed by those with freehold tenure and reducing equity in land markets. In a well-functioning and self-regulating market, where changes of increases in demand stimulated changes or increases in supply, this would not be a problem, since the price of freehold land is more likely to reflect its "true" value. Even speculation is not theoretically a problem, as long as it leads to more efficient uses of land. However, land markets in most developing countries are often controlled by a few powerful groups, (in Jakarta, it is rumoured that the land market is controlled by ten families), and are severely distorted due to the lack of safe and profitable channels for more productive investment. Until these distortions are removed, it is essential to protect vulnerable groups from the rigours of such markets and the sloping playing fields on which they operate.

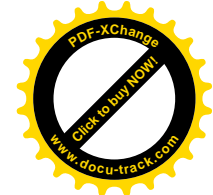
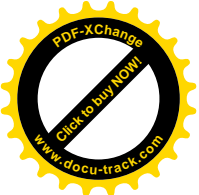
This issue is picked up by Platteau (1994) who notes that, "given the absence of a code of conduct based on the principle of abstract equality among individuals, it is therefore possible that *total* transaction costs will actually be higher after than before the introduction of a free land market and the accompanying institutions". He quotes approvingly from Colclough (1991) the effect that where there are serious market imperfections, liberalising could actually make matters worse: under these circumstances, the market itself is the problem to be addressed. Platteau concludes by going one further and asserting that under certain conditions, more complete liberalisation can entail *new* market imperfections.

Another disadvantage of encouraging freehold is that unless statutory or other means of managing land are enforced, it may well reduce the degree of long term state control over development and force those unable to satisfy the conditions of eligibility into a permanent under-class of exploited tenants. Concern for the needs of existing tenants deserves close attention, especially in the many cities where they represent a significant proportion of the total population, and Doebele (1988) recommends legislation which can be activated by the aggrieved tenant at will. This is intended to enable those tenants who wish to exchange standards for less rent to forego the right of complaint.

Marcuse (1995) raises similar concerns in his study of land privatisation policies in Eastern Europe. He suggests that privatisation is often considered the undoing of something unnaturally imposed by socialist regimes on former 'natural' condition, i.e. private ownership, but asserts that this conceptualisation is wrong. "Private ownership did not always precede 'governmental' ownership; indeed, anthropologically speaking, individual rights in property probably came after social rights, and were carved out of them". He continues, "the new directions towards which Eastern European countries are moving thus involve both changes in ideology and changes in the distribution of power. The result has been seemingly neat general declarations about 'the rights of private property' adopted in constitutions and legislation, followed by more specific but often contradictory legislation regulating specific aspects of property rights (eg housing, land, investment, planning and zoning, agriculture, restitution), followed by even more concrete and even more contradictory administrative actions, sometimes pursuant to such legislation, sometimes in contravention of it". He concludes "it is not 'clarification' of property rights that is being fought over in Eastern Europe, but what constitutes a just and socially acceptable distribution of the bundle of rights and obligations that constitutes 'ownership'".

Policies which emphasise and encourage freehold (as has historically been the case in Great Britain, where owner-occupiers have received substantial tax rebates on mortgage repayments), may intentionally or inadvertently discriminate against other forms of tenure which may be more appropriate for large sections of the population. For example, it is common for many low-income households to prefer the mobility offered by rental tenure systems, providing that they enjoy adequate security and legal rights. Such protection may be easier to achieve in land markets which encourage a variety of tenure options, rather than favour one at the expense of others.

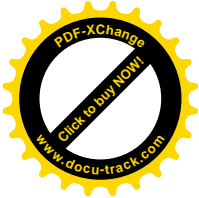
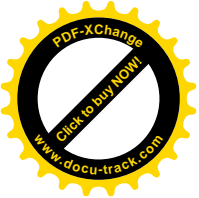
Finally, market systems are considered efficient in that all actors are assumed to compete on the basis of a full information of the options available to them and with the freedom to buy and sell according to their needs. However, Thirkell (forthcoming 1996) has found that in Cebu City, in the Philippines, many low-income households were reluctant to sell their rights to land at its real value because they felt vulnerable to official sanctions, sold at a lower than market rate to resolve a domestic financial crisis, or simply lacked



adequate information on the commercial value of their assets.

Clearly, caution is advisable in effecting changes to tenure systems, especially as title and rights once granted can rarely be withdrawn unless occupants fail to meet agreed obligations. A starting point may be to regard every step along the continuum from complete illegality to formal tenure and property rights as a move in the right direction, to be made on an incremental basis. This would minimise the distortion in urban land markets and the risk of undesirable social consequences.

Criteria for determining the most appropriate tenure category in any given case should be based upon an assessment of what constitutes the minimum level necessary to stimulate local investment, assuming that credit can be made available on terms related to this. Such a step by step approach to tenure improvement can also serve to introduce the concept of cost recovery so essential to the replicability and sustainability of land development policies. It is important to realise that in the process of effecting any change to systems of tenure and property rights, government is not an objective, disinterested agent. Consequently, changes will produce winners and losers which reflect the balance of political forces operating in a given context. Policies which seek to optimise efficiency and equity will need to strike a balance between the interests of all sections of the population. This involves an appreciation of the distinction between the price and value of a parcel of land to its occupiers or users. As Doebele and others have observed, land is more than a financial commodity and any definition of efficiency which ignores its cultural significance is unlikely to meet widespread support.



IV : PROPERTY RIGHTS IN EXTRA-LEGAL SETTLEMENTS

Introduction

This part of the review examines the specific problems of land tenure in settlements which lack formal tenure status and the policy considerations appropriate to such settlements on public or private lands. The focus of the assessment is on problems and policy options at national and urban level, though in section V below, attention is given to tenure in upgrading projects. The assessment of different tenure options will be made by applying the criteria listed on page 10, namely clarity, efficiency and equity. Extensive reference will also be made to Doebele (1983).

Framework of tenure and property rights

The widespread designation of all urban settlement processes into formal and informal, or legal and illegal, grossly over-simplifies what is invariably a continuum of tenure categories, in which there is little black and white, but a great deal of grey. Whilst formal settlements can easily be defined as those which conform to all official standards, norms, regulations and procedures, the degree to which others fail to conform varies so much that single terms tend to confuse more than they clarify.

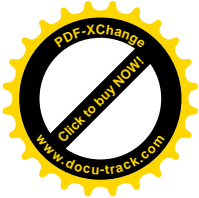
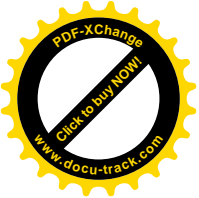
Extra-legal settlement systems have long since expanded beyond the point at which they can be regarded as a single category or process. Squatter settlements, in which land is illegally occupied and houses constructed without permission or conformity to official requirements, now represent a small proportion of all extra-legal urban housing for low-income groups. More recent practices, such as illegal commercial subdivisions, may involve building permanent structures on land designated for housing development, and for which the occupants possess a form of title, but for which no building permit has been obtained.

Initially, these unauthorised developments and subdivisions involved considerable risk. Entrepreneurs skilled at selecting sites where official approval would be easier to obtain, or whose contacts within official public sector agencies gave them advantages, were able to expand their operations rapidly. The success of these early examples inevitably encouraged others to enter the market and now most urban areas contain a number of distinct extra-legal settlement systems, most of which respond dynamically to changes in demand. Such subdivisions are probably the predominant form of land development for housing in all developing countries, except sub-Saharan Africa, and clearly raise different issues concerning tenure regularisation than squatter settlements. Thirkell (1994:76) reports that the informal land market in Cebu City is based on the trading of "use rights" which, in the absence of a comprehensive system of titled ownership, represents an acceptable and practical form of land ownership to most Filipino people.

In some cases, this has involved developers purchasing rights to land acquired by squatters and building luxury housing on the sites, using the considerable profits to compensate the squatters and ensure that the new development received official acceptability. In other cases, land on barren hillsides has been advertised for sale under a perfectly legal 'shared title' arrangement. Purchasers in fact shared a parcel of land with many others and then had to subdivide it and arrange for services connections themselves (Payne 1982). In yet other cases, the developer has remained in close touch with residents and helped in the provision of services and even titles.

In formulating a framework for the evaluation of tenure and property rights in extra-legal settlements, it is important to distinguish between 1) the official tenure status of a given land parcel; 2) the official tenure status of buildings on a plot and the process by which they are developed and; 3) the perceptions of their status by purchasers or occupants compared to other options. These distinctions are of particular importance in assessing the level of legality or illegality of a plot or structure in such subdivisions.

Illegality can arise from at least five separate legal considerations: a) defective land tenure conveyed by the original land owner to the sub-divider; b) defective tenure conveyed from the sub-divider to the purchaser; c) establishment of the subdivision in an area in which it is not a permitted land use; d) failure of the sub-divider to follow applicable subdivision regulations as to layout, plot sizes, provision of basic services, etc, or; e) failure of the land purchasers to follow building and occupancy codes when doing construction on their plots (Doebele 1991; Farvacque and McAuslan 1992:39). Subdivisions may be illegal



on several counts. Whatever the precise factors applicable in a given case, the remedial steps to be taken will differ depending on which type or types of illegality are involved.

The relationship between tenure status and access to credit is another factor which has to be considered in formulating a framework for analysis and policy. Longitudinal studies of all these factors are rare, so information is usually piecemeal and incomplete.

One of the best typologies is that proposed by Gilbert and Ward (1985) in their research on Bogota, Mexico City and Valencia. This lists 1) the original tenure status of land in various non-formal settlements; 2) the role of the urbaniser; 3) the method of alienation and 4) the cost of plot allocation. It enabled them to classify all the main tenure types in each of the three cities. The repetition of this analysis in other locations could also provide an indication of the ways in which tenure systems change over time.

Some of the main extra-legal tenure categories are described below. Each is listed in terms of approximate increased levels of security and rights, but as these are rarely consistent, the sequence should be regarded as indicative only. They are reviewed in terms of the criteria proposed in Section II, namely clarity, efficiency and equity, together with their implications for access to credit.

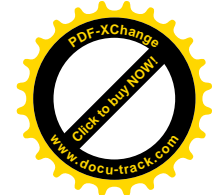
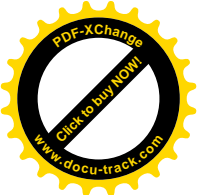
De facto security-no title

This form of tenure may result from squatting, land invasion, or other processes of illegal plot occupation and development. It therefore carries no legal status and perceptions regarding security differ from one country to another. In Turkey, the occupation of a dwelling provides de facto security, since a court order is required before inhabited buildings can be demolished and the backlog of such cases provides effective security of tenure. In other cases, security may be based upon the provision, by local authorities, of basic services, such as access roads, water and electricity. In many cities, (eg Karachi), such perceptions have been justified by the granting of official recognition and tenure; in others, (eg New Delhi and Bombay), settlers have been forcibly relocated despite the previous provision of services. The main disadvantage therefore lies in the lack of clarity of tenure status and prospects for security depend largely upon numbers. Where a large proportion of a city's population lives in such settlements, (eg Bogota and Ankara), sufficient pressure can be exerted on local political leaders to provide adequate levels of security to justify considerable investment in housing by residents.

As de Soto has demonstrated, such a situation can hardly be considered efficient, or in anybody's best interests. It denies a large proportion of a city's population, usually the most vulnerable, the chance of a legal residence, inhibits investment in housing improvements which adversely affect economic development and public health, and reduces already limited municipal revenues to finance essential urban services.

Equity criteria are also badly served by this form of tenure. Occupants are exposed to the worst forms of exploitation and abuse and often pay substantially higher costs for services than higher income residents in formal tenure categories. The only forms of credit available to residents in this type of settlement are domestic savings, private loans, traditional credit systems, or rotating savings and credit associations. In some cases, these can be as substantial source of credit, but interest rates can be very high if social relations between residents are not close enough for loans to be based on trust. Fortunately, innovative credit institutions have increased markedly in recent years (eg the Grameen Bank in Bangladesh, the Self Employed Women's Association (SEWA) Bank in India, Banco Sol and FIE in Bolivia and Scotia Enterprise Bank in Guyana), though these meet only a small proportion of total needs.

No legal rights are accorded to this category, though in practice residents may occupy their plots for many years and use them for a variety of purposes, such as commerce or sub-letting to very low-income groups, to supplement their incomes. Transfer rights may accrue over time through adverse possession, so that plots may acquire sufficient value to support an active market. In this sense, non-formal tenure categories serve to provide an invaluable option for households unable to obtain a legally sanctioned plot and for many they represent a first step on the road to economic stability and formal home ownership.



Official recognition-no title

This category represents a significant increase in legal status, even though it falls short of providing actual titles. Such a status can be achieved through default over time, or by the active efforts of residents, developers and local politicians. It may be expressed, or perceived, through the provision of improved infrastructure and public facilities, such as schools and refuse collection services. For example, in Delhi during the early 1970's, it was common for unauthorised settlements to be 'regularised' by the local authorities and provided with services and even work facilities, but no formal tenure status. Perceived rights are usually sufficient to release substantial levels of investment in housing improvements, though access to formal credit systems is generally denied.

If this form of tenure represent an intermediate stage on the road to formal title provision, it can be considered to contribute to the efficiency of urban management. It does not distort the expectations of those directly involved, or those considering illegal encroachments or subdivisions and therefore encourage them. It also provides a strong incentive for residents to invest in house improvements and economic activity, while maintaining maximum flexibility for public agencies over future development. In some cases, it may also enable households to obtain access to formal credit, though usually this would be provided by local authorities rather than banks.

Official recognition without title can, however, seriously reduce the efficiency of urban management. The practical consequences of official recognition may not be clear to residents, or those responsible for administering such settlements. It may also commit local authorities to invest in environmental improvements without any major prospect of recovering costs through property taxes and many households may even be reluctant to pay the capital costs of services if they are denied title to their plots. Furthermore, it may be difficult to rationalise land subdivisions once improvements have been initiated on individual plots.

In Lesotho and many other countries, regularisation is granted to all unauthorised settlements occupied before a specified date. This immediately encourages communities which settled later than the approved date to campaign for the recognition of their settlements and may encourage more subdivisions or encroachments on the same basis. It also entails a loss of flexibility to public authorities responsible for urban management.

Although rights of occupancy, use, transfer, or development are not generally provided, recognition considerably strengthens the position of residents in practice and in this sense it increases equity. However, it is also a key stage in the transformation of unauthorised settlements into officially sanctioned urban areas with formal tenure. For this reason, it can generate substantial increases in land and property values to the benefit of existing residents, but to the disadvantage of those who would otherwise regard such settlements as an acceptable option.

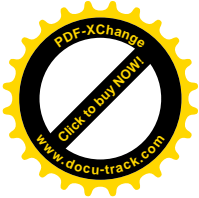
BOX

The Philippines: Administrative constraints to policy implementation

In 1986, following the removal of Ferdinand Marcos, by the 'people power' revolution, the new President granted all squatters on public land security of tenure overnight. This directly affected about 30 percent of the entire population of Manila, but the local administration was not able to translate this into a practical tenure programme, since it was not clear what such security entailed or how it would be administered or financed. The provision of official recognition is invariably granted by politicians responding to local pressures, but needs to be balanced with an awareness of the administrative implications.

END OF BOX

This suggests that official approval without the provision of title is most appropriate under conditions where perceived insecurity is acting as a major impediment to local investment in areas which it is considered will eventually be legalised. In the Manila case, it prompted a huge upgrading and building campaign by virtually the entire community. Officials wanted residents to wait until rights of way and infrastructure lines had been classified, but this proved impossible as people began to make improvements immediately. A similar situation occurred in Amman, Jordan, when squatter settlements were being upgraded. In such



cases, official approval should be regarded as a short term measure to be superseded by formal tenure as soon as practicable, at which time infrastructure improvements can be installed and costs recovered. It should never be provided without a clear appreciation of what its implementation entails in administrative and economic terms.

Land rental

As stated in Section II above, this form of tenure is commonly found in areas where private or customary land-owners wish to derive an income from undeveloped land pending more profitable use. Tenure status may be based on verbal rather than written contracts and although this makes it difficult to enforce in law, clarity is usually sufficient for the parties involved.

To under-resourced local authorities operating under conditions where established land markets or extensive customary land holdings make it difficult for lower income households to obtain an affordable and legal plot, land rental can represent an attractive aid to long term efficiency. This is because it is simple, eminently flexible and reasonably transferable. It also brings unused land into use and moderates what may be excessive expectations of land values by those holding onto land for future gain and restores a 'real' value determined by what local people can afford. By refusing to be party to the removal of such settlements, local authorities may be able to increase their leverage over areas under private or customary ownership.

To occupants, it represents in theory a very limited form of security, though much depends upon the form of contract, (written, verbal, or informal), and the terms involved. Rights of occupancy and use are usually controlled rigidly by the land-owners, in order to protect their long term interests in the land and residents may be vulnerable to demands from public officials seeking payment for assistance rendered. However, rights of development and transfer may also be vested in the occupants through the dwelling and once a settlement becomes extensive, or households have occupied plots for some time, rights often accrue in practice, making it reasonably equitable.

Given the insecurity of tenure, access to formal sources of credit is not available and households are forced to rely upon domestic or informal systems, assuming that they are permitted to effect house improvements under the terms of their rental agreement.

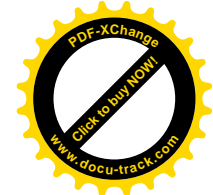
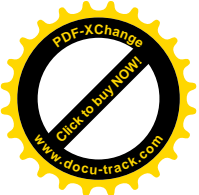
Occupancy and use rights

These forms of tenure represent a compromise between full, formal title and de facto security and are intended to retain long term control over land by the owners, usually the state, whilst providing residents with sufficient security to stimulate improvements. Where land has been nationalised, use rights or occupancy permits are granted to residents. In Zambia, for example, occupancy licences are granted for periods of 30 years.

Providing payments are maintained, residents are entitled to occupy and develop their plots and can mortgage or sell their dwellings without restriction. A novel feature in Zambia is that disputes are settled by community leaders and are subject to customary law. The major feature, however, is that the system of processing licences is quick, cheap and simple, making it accessible to all households lacking tenure security.

As noted in Section II, certificates of use are granted to the residents of squatter settlements in Botswana. These do not have any restriction time and although they do not provide access to formal credit systems, special building loans are available from municipalities to encourage house improvements. It appears that the system was initiated too quickly for the local administration to be able to cope with the demand, but that it has since settled down and is now operating efficiently.

The clear advantage of these compromise forms of tenure is that they avoid the need for technically sophisticated - and therefore expensive and time consuming - surveys and registration procedures. In fact, they provide a valuable 'breathing space' during which public agencies can increase their capability and evolve comprehensive urban management programmes integrating tenure policy with other



considerations. They also provide adequate security to facilitate improvements without rendering settlements liable to downward raiding by higher income groups. Their disadvantage could be, as Angel (1983) states, that as pressure on urban land increases still further, the customary systems on which they rely, may prove ineffective and more formal systems will eventually be required. As a temporary measure, however, they have already proved their worth and meet the criteria of clarity, efficiency and equity in equal measure.

Communal or co-operative ownership

This is at present a small, but possibly growing phenomenon in many countries. It has an established record in British planning practice and was used extensively to develop the early generation of new towns, where it was considered appropriate to the need to achieve both affordability and cost recovery. Its success was due in no small part to the existence of a social ethos which encouraged local level initiative and accountability with social responsibility. It has not been widely adopted in developing countries as yet, but is a central element in Ethiopia's land development strategy.

The success or failure of this form of tenure depends largely on the effectiveness of the local organisation. Communities opting for it may do so because they feel beleaguered and may therefore be highly motivated politically and less pragmatic to changing needs than market based systems. They are also prone to factionalism and falling levels of participation in decision making, once major objectives have been achieved. Nonetheless, for a majority of members, they represent a means of achieving a sense of community and control over their lives which would otherwise be denied them.

Rights of transfer are variable under these forms of tenure. In the 'Building Together' project in Bangkok, the land was initially developed under co-operative ownership (ibid), but once residents moved in, they received individual titles which they could dispose of as they wished. In other cases, the community may impose the right of first claim, under which residents are required to offer their property to the community and only retain the added value of improvements to the land. Other rights, such as use and development, may also be restricted by community leaders, so a strong group ethos is essential for long term harmonious development.

Communal and co-operative tenure systems provide full legal titles and clarity of rights. They are efficient in that contracts can be simple and transferability can be achieved with a balance of the enhanced value split equitably between the group and the individuals concerned. This encourages development over time and enables the group to gain access to formal channels of credit which may be denied to individual group members. Equity is achieved by reducing entry costs and distributing added value among group members. Title is also secure.

Many options are possible and most common are co-operatives with long leases, companies with shares and long leases, leases with sub-leases and condominiums.

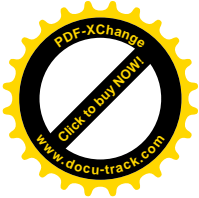
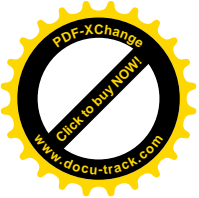
Customary ownership

The characteristics and policy implications of this form of tenure are discussed in Section V below.

Instruments for improving tenure in extra-legal settlements

Policy options for improving tenure in extra-legal settlements have received considerable attention in three recent publications. The first of these is the outcome of an international seminar on the regularisation of informal settlements organised by the French research organisation AITEC. Seminar participants, who included senior staff from international agencies, academic institutions and consultancy, agreed that "a) regularisation should not be restricted solely to security of tenure; b) obtaining land security does not necessarily imply the issuing of individual property titles; c) access to services and to credit is an integral part of regularisation programmes, in just the same way as land security" (AITEC 1995:2).

The seminar identified a wide range of innovative approaches to regularisation and recommended that "regularisation strategies should recognize the diversity of existing practices and protect vulnerable groups,



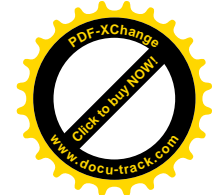
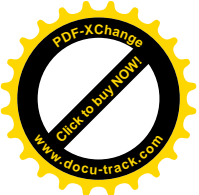
such as tenants. Rights of occupancy should be given paramountcy. Government intervention should be urban wide/market based, rather than project or settlement based. Such intervention should also be cautious and selective, rather than wholesale and dramatic until experience is obtained in the impact of initial actions. It should not be assumed that full title, inscribed in the local property registers, is an axiomatic demand of low-income communities, nor a requirement for other elements associated with regularization programmes to succeed. Adequate security of property may be provided through other means that are sensitive to local cultural and political conditions.” (ibid:94). It was also agreed that “the rigid interpretation of land law currently classifies large sectors of the urban population as illegal. In practice, rights to land and housing include a wide range of elements and exist within a regime of rights in general. Campaigns to improve housing rights can constitute a central component for recasting laws which strengthen the rights of the majority of the population”.

This pragmatic approach cautions against the imposition of any single approach, due to the diversity of tenure practices and the difficulty of distinguishing between perceived and de jure systems of title. It emphasises the need for an inclusive approach, which seeks to identify the needs of all those affected directly and indirectly in changes to tenure status. It also recognises that in practice, the level of understanding of how changes in tenure policy within extra-legal settlements impact upon the behaviour of land and housing markets is currently limited. Until more assessments have been made of tenure changes to extra-legal settlements and their impact upon urban market behaviour, such caution appears well founded.

Two important World Bank publications have also addressed tenure policy within informal settlements. Farvacque and McAuslan (1992) acknowledge that “feelings” about tenure are important and that governments ignore them at their peril. They consider that “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”.

Within this broad strategy, the authors identify two models of reform. The first involves the establishment of a national code of land law which covers the whole field of basic land relations between citizens which simplifies land management and facilitates the market for land. The second consists of a “junior”, or simplified system of statutory land tenure for low-income urban areas that runs alongside the full statutory system. For the former to operate successfully requires that the approach “will be functional in such settlements, that is, that people will begin to order their land relations in accordance with the code” (ibid:54). Where this is not considered achievable, the second option would be preferable. This would be based upon existing informal or customary systems and make the transition from the former to the latter less abrupt. Where these conditions apply, governments should “build on what exists; develop local forms of regulation rather than try to impose, however well-meaning, institutions from the centre that are modelled on English, French, or other institutions” (ibid:51). This pragmatic and inclusive approach has a great deal in common with that advocated by the AITEC seminar participants and has as much to commend it.

The authors note, (ibid:53) with Lee, (1994:31) that extra-legal settlements protect the poor from market forces which would otherwise operate against their interests by taking over well-located illegal settlements. They also acknowledge that there are arguments against a “junior” approach involving multiple systems of land tenure, even if they are statutory. “They 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 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 [which] 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” (ibid:54-55).

In assessing the merits, or otherwise, of these arguments, the authors consider that those against “junior” systems “tend to see matters from an official point of view; those in favor tend to favor the consumer”. Whilst they are sympathetic towards the long term goal of a national unified system of land tenure backed by law, they recognise that “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”. They emphasise that “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” (ibid:55).

This recognition of, and sensitivity to, local conditions is in sharp contrast to the approach recommended in the official housing sector policy paper published a year later by the World Bank (1993). Its title alone indicates the Bank’s preferences: ‘Housing: Enabling markets to work’ reveals the Bank’s faith in the ability of markets to address and resolve the problems facing the housing sector in countries benefiting from its loans. In so doing, it has also implied that markets alone are capable of realising the goals of an enabling strategy, though most United Nations publications have emphasised that successful implementation of this approach depends also on the contribution of non-governmental organisations and communities themselves.

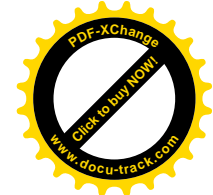
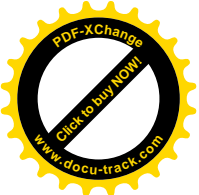
Whilst acknowledging that tenure insecurity and property rights are among the most important factors which influence demand for housing and can have a significant impact upon housing conditions (ibid:22), the Bank opts for market oriented systems of property rights (ibid:5) and the long term objective of individual full freehold titles, or private ownership (ibid:117). In some sections, the terms used are less specific, such as “proper land titles (ibid:116), or “private ownership” (ibid:49), though the thrust is the same.

The major reason for supporting a unified national system of tenure and property rights is that it is seen as offering the best means of improving access to credit and an incentive to house improvements. Yet as the box on slum upgrading programmes in India demonstrates, this faith in the merits of individual freehold tenure has not always been justified and the Bank itself accepts that an intermediate form of “relatively secure property rights” in its Bandung upgrading programme was sufficient to triple investment in sanitation facilities (ibid:32). It recognises that the regularisation of squatter settlements is a complex issue and may be seen as rewarding those who break the law and thereby encouraging further squatting. However, squatter settlements are only one form of extra-legal settlement and no mention is made of others, such as unauthorised commercial subdivisions, in which tenure status can be less clear.

A more serious reservation is that the Bank provides little evidence to justify its commitment to full, individual systems of tenure. In extra-legal settlements where a significant proportion of the population are tenants, the provision of freehold tenure to the registered “owners” may encourage them to realise the enhanced market value of their properties and raise rents, or sell out to higher income groups (See, eg Swilling, in Emdon 1993). Either way, the most vulnerable groups would be severely disadvantaged. The empirical evidence from India and Indonesia already cited, is reinforced by Shivji’s assessment of Bank interventions on land tenure in Tanzania which were based on an approach known as ITR (Individualisation, Titling and Registration). Shivji summarises the intended benefits of ITR as

- i) Increasing security of tenure;
- ii) increasing investment by improving tenure security on the one hand and facilitating inputs of credit as the title can be used as collateral;
- iii) helping in the emergence of land markets whereby land is transferred to more productive users and away from inefficient owners.

He claims that traditional tenure systems are said to be the opposite on all these counts, but that in Kenya the process of titling became the process of the powerful and more influential getting themselves registered as owners to the disadvantage of others. In addition, land registers failed to reflect reality on the ground, land markets have not emerged on the scale expected, land has been held increasingly for



speculative purposes, registration has not increased credit and titling has worked against the interests of women and children. He also claims that these failures have been verified by the Bank's own research without, apparently, making a dent in their orthodoxy (ibid:54). Andre and Platteau (1996) even claim that land titling has proved ineffective in the rural areas of Kenya and other parts of Sub-Saharan Africa. This evidence, and that from Ahmedabad (see box on India), Bhopal and Bandung, suggests that the Bank should monitor its tenure and property rights programmes carefully and accept more locally sensitive and diverse tenure systems

BOX:

Tenure regularisation in India*

Detailed studies by Mitra (1988) of the impact of tenure regularisation of informal settlements in Bhopal, India have demonstrated that whilst tenurial rights are desirable, they are not essential in promoting shelter improvement and that 'perceived security' plays a more important role. For instance, the pace of consolidation was modest in settlements which already enjoyed high de facto security before 30 year 'pattas' (land rights) were granted. Likewise, in Anna Nagar, there are no pattas, but the settlement still shows improved shelter conditions. In another settlement, Vallabh Nagar, which had been under constant threat of removal, even the provision of temporary annual tenure was enough to spark off improvements.

A similar assessment of the World Bank assisted slum upgrading programme in Ahmedabad and other cities in Gujarat, launched in the early 1980's, failed because of the insistence on tenurial rights, affordability and cost recovery. The municipal corporations were not able to give any undertakings for the slums on private lands over which they had no jurisdiction. Out of over 2,000 slum settlements in Ahmedabad, 43 were initially chosen for the World Bank project. Eventually, these were whittled down to 17, though even these could not be taken up and the venture was abandoned in the early 1990's.

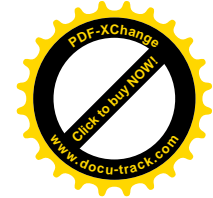
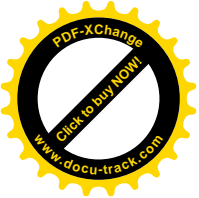
In contrast to the Bank programme, the Ahmedabad Slum Networking project, launched in 1995, has already moved to execution on site with the pilot settlements. The financing is through a combination of community resources, local industry and the municipality. There is similar flexibility with regards to tenurial rights in which the Corporation gives an undertaking of no active eviction for ten years without actually conferring ownership. The Corporation simply uses its mandate to provide sanitation and health care to the citizens to install infrastructure in all slums (whether on public or private lands). This has created sufficient security with the slum dwellers to invest their own resources. What could not be achieved by the World Bank in ten years in Ahmedabad has become possible in just one year because of a flexible approach.

* Source: Correspondence from Himanshu Parikh, Ahmedabad, mimeo, 1996

END OF BOX

Andre and Platteau advocate strengthening local capacities for management, information and dispute settlement of land tenure arrangements throughout Africa, while Silas (nd) cautions against any formalisation of land tenure on the basis that it alienates communities from the responsibility to resolve disputes among themselves. He considers that once this responsibility is placed in the hands of lawyers, officials or the police, it becomes impossible to consider the rights of all concerned and ensure the just resolution of disputes. Rather than improving the ability of the urban poor to take better advantage of the law, he recommends that laws be adjusted so that they can meet their legitimate needs for land more easily.

A similar conclusion is reached by Shivji (1995), in connection with arguments that customary tenure is not appropriate for modern conditions of urban area. In a passage which deserves to be quoted in full, he claims that "in practice, as we have seen again and again, this means expropriation of customary lands and their inclusion in statutory tenures. This makes such lands available to those who can mobilise resources and have leverage over positions of power. Delegitimation of customary land regime (sic) as backward often goes hand in hand with implicit rejection of control of land matters from below by customary owners - communities of indigenous land users. The tension between top-down administration of land and bottom-up democratic control therefore continues to be one of the nagging issues of land policy".



The tenure policy options available in practice will depend on whether an extra-legal settlement is located on public, private, or customary land. In the case of settlements on public land, the state is free to determine the tenure category to be granted and considerations will include the need to retain a long term interest in the land and recover sufficient revenue to acquire further land reserves as a hedge against future demand. As discussed above, Botswana and Zambia have given priority to certificates of use and occupancy, with varying duration (indefinite in Botswana and 30 years in Zambia). It may well prove impractical to repossess plots at the end of specified lease periods, though renewal can be made conditional on increased ground rents in line with costs.

When extra-legal settlements are located on private or customary lands, policy options will be more restricted, unless the land is acquired by the state or the occupants. Since financial constraints make this an unlikely option in all but exceptional circumstances, policy initiatives have to be directed as much towards those holding the land as to those living on it.

In many cases, there may be little the public sector can offer land-owners by way of incentives in return for improved tenure security. In others, the prospect of obtaining planning permission to develop part of their land for maximum commercial gain may secure agreement to grant rights to settlers without difficulty. (include a lost reference here). Anticipating the degree of leverage which is available at any given time and place requires a level of market sensitivity and administrative flexibility which few government agencies can currently claim to possess.

In cases where existing land-owners, (private or customary), refuse to grant tenure on terms acceptable to the settlers, the state can indicate its refusal to grant planning permission for more lucrative development or to execute any slum clearance programme in furtherance of the owners` interests. The ability to stand firm will depend, of course, on the balance of political interests involved, but there are signs that even governments committed to protecting the rights of private property ownership are now willing to take more positive action, if only because the number of settlers also creates political pressure.

BOX

Improving tenure security for informal settlers in Brazil

According to Doebele (1990), the Law of Squatter Removal and Rehousing ("Ley de Desfavelamento"), passed in Sao Paulo in 1986, provides two ways by which government is able to improve tenure security for residents in informal settlements. These vary according to the type of land on which the squatters are located.

Squatting on public land:

Problem: Squatters occupy many parcels of public land that are suitable for more intensive commercial development. The city has imposed a low density zoning on these areas (low Floor Area Ratio), but lacks funds to carry out rehousing programmes.

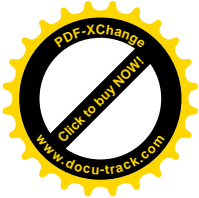
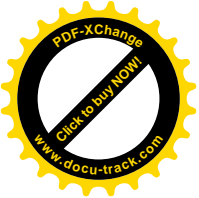
Attempted solution: A developer who wishes to develop such lands, in addition to paying the government owner for the property rights, must also receive a change in zoning (higher FAR) to realise a more intensive development. Fifty percent of the value of the increased FAR must be returned to the government, in the form of cash, land, provision of infrastructure, or the construction of houses for those displaced. The government will use the cash, land, or infrastructure to construct alternative housing, and then negotiate with the squatter community to agree to vacate all or part of the site.

Evaluation: The Sao Paulo law is a formalisation and broadening of the concept of Land Sharing which was first used in Bangkok. Its success depends on the government putting squatter areas into a low density zoning category and then making a charge for creating valuable development rights by means of a greatly increased FAR. In exchange for land or money to solve the rehousing problem, the government assumes responsibility for difficult negotiations with the squatter community.

Squatting on private land:

Problem: Squatting on private land that has a much higher potential for commercial use.

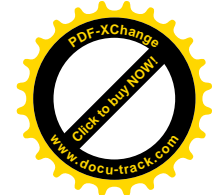
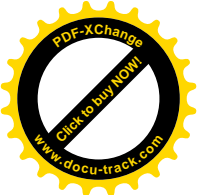
Attempted solution: In these cases, the private owner must actually provide suitable new housing before the government will grant a higher FAR and negotiate for resettlement.



Evaluation: This system helps with the fiscal cost of rehousing squatters and makes government attempts to deal with them easier because new housing is available. However, the process is a complex one, in which the government must negotiate first with the private owner about the amount of increased FAR to be given, and the type of new housing to be provided, and then negotiate with the squatter community to accept the arrangement. This could be a lengthy process.

Unfortunately, these approaches involve local authorities creating, or maintaining, unrealistic regulations which they then subvert. More transparent and efficient methods of negotiating proposals consistent with social and environmental policy objectives and the legitimate need for a developer or land-owner to achieve a reasonable return on investment are needed.

END OF BOX



V. THE IMPROVEMENT OF TRADITIONAL TENURE ARRANGEMENTS

Introduction

Because traditional forms of tenure have been in existence the longest, they have evolved into diverse and dynamic systems which are beyond the scope of this paper to describe in detail. However, all share the common characteristic that ownership is vested in the tribe, group or community. Such land is inalienable and individuals enjoy only rights over it. Within groups, individual or household access to land is determined by elaborate traditions and customs (Feder and Noronha 1987). These rights can vary considerably and relate to access, passage, use, cultivation, grazing, or development.

There are some efficiency losses in most traditional forms of tenure, since incentives for land improvement are reduced, but as long as land is abundant, this loss is small (ibid). It is also compensated by high levels of personal security. Neither of these factors may apply, however, in urban areas.

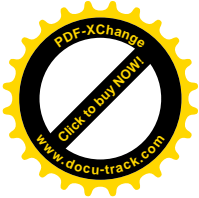
Authority over the allocation of rights may be vested in a group of elders, tribal chief, or king. However, these may be effectively constrained if they adversely affect the rights, or perceived rights, of existing members. In Papua New Guinea, for example, proposals to develop customary areas have been frequently frustrated by individual members of customary groups opposed to a scheme. Community leaders are not above exploiting such opposition in order to extract more favourable terms from government or to frustrate proposals altogether.

There is no doubt that communal systems have shown themselves to be flexible in responding to social needs within their group, and this has helped many low-income urban households to obtain land and housing on terms which they could not otherwise afford. On the other hand, this is generally at the expense of other households outside the community concerned. In some cases, compromises have been reached in which customary land has been allocated to friends of community members or to others who can gain local acceptance, but this is only a partial solution and is open to abuse.

The main limitation of traditional forms of tenure is that they cannot be used as collateral in obtaining loans. Finance for improvements therefore has to come from domestic, informal, or communal sources. Since loans cannot be secured by titles, they are invariably personal loans, secured by relatives, friends, or employers. Among the possible options are community trusts, community land banks, co-operatives, savings societies and credit unions, all of which offer local accountability, administrative efficiency and flexibility, in terms both of the collateral required and the size of loan offered. All these are expanding rapidly in many countries and in some cases they even enjoy access to formal finance, which they can then on-lend at competitive rates of interest to community members.

Another limitation of customary tenure systems is that they are less suited to urban areas, where their reduced efficiency has a more marked effect. The greater diversity of groups competing for land also means that many households are from outside the tribe or other communal group and are therefore denied access. The intense pressure on peri-urban land eventually reaches the point, however, that some form of arrangement is made whereby non-group members are permitted to occupy land, but this again is not always on terms beneficial to either the settlers or the customary group. The case for land tenure policies to recognise and resolve these anomalies is considerable.

Traditional methods of allocating land cannot, however, easily be modified without changing rights in general. Conversely, the need to avoid political conflict can easily lead to inertia and the continued overlap of different tenure systems, to the possible detriment of all. Such concerns are of particular relevance to planners and other professionals working in urban areas surrounded by land held under traditional tenure, since many professionals will not be familiar with the legal and cultural implications of traditional tenure systems. These developed within rural societies, where authority was frequently concentrated in few hands and land was abundant for group needs. Urban areas tend to be more socially dynamic, with a larger number and range of groups competing for available land, so it is difficult to combine the two successfully.



Colonial responses

As discussed on pages 5-6, colonialism often created dual systems of land tenure and rights by imposing European systems onto local ones in both rural and urban areas. This was particularly true in British colonies, where local communities were not considered sufficiently advanced to enjoy legal individual titles to land. In French territories, however, the Napoleonic code was imposed without modification, on the assumption that only individual rights to land existed, and that this could be used to integrate different communities into French society.

In their analysis of the impact of colonialism in sub-Saharan Africa, Feder and Noronha (1987) claim that the greatest impact resulted from the belief that all occupied land was held in "communal tenure". This meant that every member had mere usufruct rights over land and no power to sell or mortgage it. In areas under British control, particularly towns and cities, the authorities elevated the power of chiefs to a level of control over land- and their communities- which hitherto had been merely nominal. They claim that by this means, the colonial powers achieved the pacification of a continent, and that it was only in the twilight of colonialism that a feverish attempt was made to introduce individual land titling.

Many other examples can be found of European land tenure concepts and rights being exported to suit the interests of settlers. These were imposed on tribes and other social groups throughout the colonies, irrespective of local forms of land tenure and property rights.

In many parts of the world, colonialism established formal procedures to enable land to be taken from local systems of ownership and placed at the disposal of the colonial power. In New Zealand, customary Maori tenure land was transferred into freehold in one of two ways; voluntary cession to the State for a consideration, or the allocation of titles or certificates to all persons deemed eligible by the Maori Land Court, so that such areas became known as Maori freehold land. This created a dual land registry with Maori titles becoming a secondary register because of the large numbers that had not been transmitted or were incapable of being registered.

BOX

Colonial land tenure in Australia

In Australia, land occupied for centuries by nomadic groups of Aborigines was declared vacant and therefore suitable for alienating as State property. Some was retained by the state, whilst other parcels were sold off to settlers to fund the construction of public infrastructure, such as roads and bridges. No treaty was ever signed with the Aboriginal community and it is this that has subsequently been used as the basis for legal proceedings by Aboriginal groups seeking the restoration of their traditional rights or compensation in lieu. In 1969, a court case "decided" what had happened in 1789 and after.

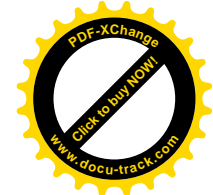
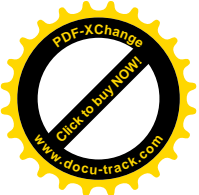
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In Africa, Osman (1987) claims that under the Uganda Agreement of 1900, Britain expropriated half of Uganda's land and removed the other half from clan ownership to the indigenous chiefs, who were therefore placed under a position of dependence upon the colonial authorities.

In Kenya, the Crown Lands Ordinance of 1915 gave Britain jurisdiction over all persons and "vacant" land. Following the de facto approach adopted in Australia, it was argued that tribal ownership of land was unknown and the best lands were given to settlers on 99 year, and later 999 year leases. Africans were crowded into native reserves and their rights restricted to occupation, cultivation and grazing. No other title was recognised. In a landmark case, it was decided that tribal reserve land be vested in the Crown and "in consequence, all native rights in such land disappear- natives in occupation therefore becoming tenants at will of the Crown", a device that was as ingenious as it was convenient!

Recent Government responses

Following independence, attitudes have evolved and new approaches been adopted. In Malawi, the thrust towards individual tenure has been tempered by registration of only family tenure in Lilongwe; in



Swaziland, the desire to return to customary tenure has not been applied to lands which were privately owned prior to independence; in Sierra Leone, the acceptance of the idea that individual tenure was conducive to economic development has not found widespread expression in land titling and registration; and in Tanzania, after attempts to re-introduce the golden era of communal tenure, the grant of long term leases to individuals is being experimented with cautiously. In only two sub-Saharan countries - Kenya and the Ivory Coast - has the prevailing philosophy been that individual tenure is essential to economic growth (Feder and Noronha (1987). According to Ault and Rutman (no date), this was partly due to the rejection of Western individualistic concepts and attempts to develop a new form of socialism by reverting to pre-colonial forms of tenure and rights.

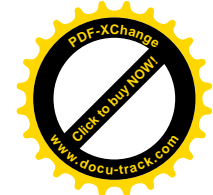
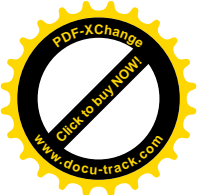
In Swaziland, however, communal tenure increased from 36-60 percent of the country's land area between 1914-1980, contrary to popular opinion and despite agro-industrial expansion, which is normally assumed to restrict it (Russell 1986). The secession of large tracts of land by the colonial administration created a dual land tenure system and local people sought to preserve as much as possible of the communal areas partly, it seems, as a means of reasserting traditional values under colonialism. At the same time, a parallel freehold market evolved which enabled entrepreneurs to operate freely. They could not do this under the communal system, but the accessibility of the communal system helped to cushion migrants moving to wage employment in urban areas by giving them somewhere to go if their enterprise failed.

According to Feder and Noronha (1987), the stultification of land tenure systems which took place under colonialism have been widely continued after independence. In some areas, this has reached the point where only usufruct rights are recognised and opportunities to mortgage and sell land are severely constrained. They point out that one consequence of this refusal in law to allow land to be sold is that the law itself becomes divorced from reality, since it does not succeed in stopping sales, but only prevents them from being enforced in a court of law. This inevitably distorts - and depresses - land values due to uncertainty.

The authors cite evidence of the extent of land markets in different countries since independence. In two Tanzanian villages, between 16-36 percent of plots had been purchased; in Lesotho, where land cannot legally be sold, the indiscriminate selling of arable land for residential and commercial sites has become "uncontrollable"; in Mali land is inalienable in theory, but sales are taking place; in Niger, land sales are increasing even though under indigenous rules it cannot be sold. Similar evidence has been found in Ghana, where Kufogbe (1996:25) reported that "there has been an increasing change from the traditional Ga communal system under which land is held in trust for allodial groups and individuals by stools and land-owning families, to a situation where land has begun to acquire market value. Consequently, large tracts of formerly communally owned land have devolved to private individuals and institutions under freehold titles". Finally, in Nigeria, a study showed that 18% of those surveyed had bought their plots. Apparently, quasi-legal documents are given in such cases and assume such value that they are even accepted by finance institutions as collateral for some types of loan (Feder and Noronha 1987).

Concern over the lack of official awareness of the social implications resulting from the registration of customary rights is raised by Simon (1995). In a study of Namibia, he states that when surveyors had delineated the boundaries of an area, no thought was given as to what that was going to mean in terms of the rights of the people in that former communal land who held rights over it, nor whether or how lost rights would be compensated or otherwise addressed. He concludes that "this issue will become politically more relevant when the people themselves appreciate just how short-changed they have been when speculative pressures increase the value of newly-proclaimed plots".

Planning standards and administrative procedures developed for urban areas during colonialism, and maintained by independent governments since, also inhibit legal transfers of land, and even the registration of plots is made difficult. The official records do not reflect reality and as a result, local government revenues based on property taxes are severely reduced. In Papua New Guinea, many rights over land are not defined spatially and hence are not surveyable, even if the right itself is clear (Dickson, no date). The legal framework, whilst technically excellent, is insufficient as the skills and even the public knowledge or inclination to use it are missing. Dickson concludes that in PNG, people are not accustomed to proceeding on the basis of sophisticated legislation. As Lea (1983) has also noted, customary owners are not clear what advantage planning may have for them. A cadastral survey of all customary lands



adjacent to urban areas was proposed, but was not undertaken in case it would "stir up a hornet's nest of conflicting land claims between tribes". Whilst ambiguity may serve sectoral interests, it cannot be beneficial to a society as a whole. Support for measures to clarify tenure arrangements can best be generated through a sustained public debate on the issues involved and the benefits to be obtained by clear, efficient and equitable procedures.

In some respects, therefore, the end of colonialism has not produced a corresponding change in the attitudes, priorities, or procedures of government agencies, creating dual, or multiple, systems of land tenure. Expanding urban towns and cities, in which various modern forms of tenure are generally dominant, therefore overlap with traditional tenure systems operating under different social, economic, cultural and even legal considerations. This has resulted in customary owners frequently refusing to collaborate in the urban planning process. The consequent lack of certainty alone may depress land values and discourage investment to a considerable, if unknown, amount and every effort is clearly needed in order to register both the existing tenure status of all urban land parcels and the details of rights held over them.

A number of governments which have customary land next to urban areas have, however, recognised the importance of addressing land tenure and property rights. Four main approaches can be distinguished from the variety of responses. These consist of the following:

Government acquisition and development.

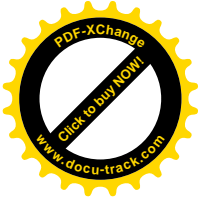
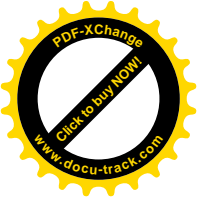
This option has been followed with particular rigour in Nigeria and Botswana. The Nigerian Land Use Decree of 1979 was intended to enable the state to increase access to land for the majority of the population. Whilst it did not prevent tribal chiefs from allocating plots of customary land, such transactions enjoyed no legal status since the land was officially under public ownership. Any area required for public use, such as roads, housing or schools, could therefore be acquired without compensation.

The main difficulty with this approach is that it places considerable strain on the institutions responsible for policy implementation and in both the Nigerian and early phases of the Botswanian cases, administrations were simply not capable of implementing the policy. This is not, of course, surprising since it is rare for public authorities in any country to adapt quickly and efficiently to changes in demand, especially of the magnitude applicable in developing countries.

Another difficulty is that tribal or other customary groups can be expected to exact a high political and economic price for their land and may not accept agreements which run counter to traditional attitudes. One reason for this can be traced back to the concept that customary land is held in trust for future generations, so that while the present generation of a group or tribe may agree to forego their rights in return for benefits such as cash, they reject the notion of future generations being deprived unless a much higher price is paid. What is therefore being sold is the community members' interest for one generation, not the whole community's interest for all time.

A more general objection to public sector acquisition of lands held under traditional tenure is that state agencies generally have a poor record in managing urban land markets. They have even less experience of managing land areas brought into modern, urban tenure systems from traditional categories and the implications which this may have for efficient administration of areas on the periphery of urban areas. Traditional land tenure systems, however, have invariably proved to be flexible in responding to changing land demands and to provide relatively high levels of personal security. Although access to formal credit systems may not be available, some form of traditional credit system often exists.

In assessing the problem of recording ownership rights under customary law in Ghana, Antwi (1995:5) considers that "it would be far easier and less expensive for land delivery institutions to devote resources to documenting these interests (especially in the urban periphery) well before compulsory acquisition. At that stage, titles under customary law, are discernible and easily recognisable without dispute". Given that conflicts over customary and formal title systems of titling have resulted in the filing of 16,000 legal claims over disputed properties which has forced land development on the fringe of Accra to a standstill (Dowall and Clarke 1991:32), and that declaration of title accounts for over 90 percent of all land suits in the



country (Hooko 1993:17), such options have much to commend them.

Development by customary owners.

The advantage of a `non-interventionist` approach is that it gets government "off the hook". This is the approach adopted more recently in many countries, including Papua New Guinea, though once again with limited success (Dickson, no date). The PNG method has been to encourage customary groups within an area scheduled for development to form corporations under the Land Groups Incorporation Act in order to develop all the land and distribute the profits. This approach has obvious merits, in that it is likely to stimulate the efficient use of land. However, it has a number of equally obvious limitations, including the following:

- It is unlikely to succeed in areas where there is any suspicion, or history of conflict, between clans.
- What happens if there is no overall profit? Where much of the land is taken up with lower-income housing, this is quite likely. Under such conditions, only the more profitable activities may be developed, leaving any unofficial residents, (probably the poorest), to their own devices. This would leave long term problems unresolved, unless communities could be motivated to form co-operatives or companies, or be organised into condominium tenure systems, with access to channels of funding which enabled them to pay full economic costs.
- What type of tenure would settlers and customary owners receive in lieu? Dickson (no date) considers that it might sensibly be left in customary systems, where these have adapted to recognise disposal of some occupation rights to outsiders, as already happens in many cases. This might not worry the land-owners initially, but it will not encourage home and environmental improvements if settlers fear eviction by the traditional land-owners. Nor will it help in cases where urban immigrants have gained confidence and banded together for security or to oppose rent demands. Once again, co-operatives, companies, or condominiums may represent viable options.

Development by private developers

According to the traditional philosophy that land is a sacred trust, its sale to strangers is abhorred by custom (Hooko 1993:6). However, the continued expansion of towns and cities into areas held under customary tenure has increased the pressure to realise the commercial potential.

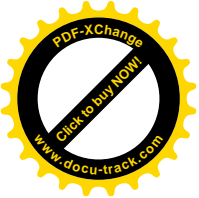
Private sector developers operating in customary owned land areas have to take a number of considerations into account. Some of these are clearly raised in a detailed study of Ghana by Kludze (1983). First, it is necessary to ascertain which statutes or authorities, if any, are applicable and their enforcement by geographical area. Having resolved these problems, it will be necessary to identify which ethnic group or groups have authority over, or interests in, the land. This is critical, since any purchase made without the authority of all those involved may render the purchase, or rights acquired, invalid.

Kludze observes that this process is clearly cumbersome and fraught with risks which discourage efficient development, especially when the land registers are not well maintained. Transfers made outside the formal procedures render the situation even more complicated and risky. Although Kludze's study is based on rural practices, this is exactly what happens in parts of Ghana and Cameroon (see Farvacque 1989c).

Public and private sector joint ventures.

These are increasingly being seen as the way forward. A wide range of options has already been developed, among which are the following:

- Lease-lease back. This arrangement is essentially a device for leasing land to third parties. Under this arrangement, a clan or tribe agrees to lease land to the government, which then leases it back under statutory laws, so that the clan or tribe can then lease through government to private individuals or groups. This overcomes the problem that clans or tribes are not allowed to alienate land to outsiders



directly.

- Guided land development. In some cases, it might be advisable to leave land under customary control and assist traditional owners to prepare a development which the authorities can then formalise with the provision of planning permission and public services. In areas which are already coming under pressure of settlement by low-income settlers, customary owners may consider the advantages of being able to develop part of their land to its full market potential sufficiently attractive to justify incorporating less profitable low-income areas into the plan, especially if government makes it clear that it will not remove such settlers. This may reduce `hope` values to realistic levels and enable less profitable elements to be incorporated into such developments.
- Enabling non-governmental organisations (NGO's) to act as the developers, intermediaries, or representatives of customary owners in negotiating development options with government agencies. Many NGO's now possess considerable professional capability and have succeeded in winning advantages for communities which have previously been unable to protect their interests. They are also receiving increasing support from international funding agencies, impressed by their local accountability, flexibility and efficiency. They are even helping to increase trust between customary owners and government agencies in Papua New Guinea (Lea 1983).

The advantage of these approaches is that customary groups would retain some, or all, of their primary rights. It would also help to reduce excessive expectations by bringing home to them the types of development, and therefore profit levels, which are likely to receive official sanction. Many customary owners have already lost effective control of their land to 'temporary' settlers, and may not be opposed to such a scheme, since it could be preferable to development without government approval or services.

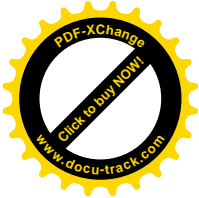
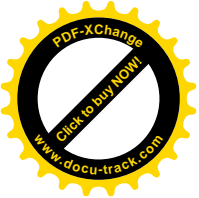
Clearly, much depends on creating a sound working relationship between government agencies and customary groups. Governments generally have a great deal to learn about the impact of changes in tenure status on land and housing prices and the extent to which these affect investment in house improvements and the security of tenants or other vulnerable groups. Acquiring the capability to negotiate agreements acceptable to all interested parties will therefore require a considerable effort on the part of all relevant government agencies.

Conclusions

As stated in section II, customary land tenure systems evolved to meet the needs of agricultural, not urban, societies. Under conditions where land is abundant for the demands being placed upon it, its relative inefficiencies were more than compensated by high levels of equity achieved for all group or tribal members.

In rapidly expanding urban areas, these advantages apply to a lesser extent, if at all. Urban land is under intense pressure from all sections of society, including those outside the group or tribe. As a result, it cannot be guaranteed that even equity objectives can be met, since benefits accorded to group members are at the expense of non-group members. Unless land registers include detailed information on lands held under customary tenure, including the full range of rights and those entitled to them, clarity of title and rights is also likely to be lacking. It is likely, therefore, that significant changes will be required in order to adapt or integrate customary tenure systems into others more suited to effective urban land management. In doing so, it will be important to retain the strong sense of cultural identity which many people associate with traditional, or customary tenure systems.

Before rushing headlong into radical changes, however, policy objectives need to be carefully defined. As Bromley and Cernea (1989) have noted, it is also important to distinguish between policy objectives, (eg improving security) and policy instruments (eg freehold). The notion that improved tenure will, in itself, improve the marketability of land or facilitate transactions, is held by Stanfield (1989) to be based on an uncritical assumption that the stimulation of the market will permit the more productive and efficient users of land to bid for and acquire it. Citing evidence from a national land titling exercise in St Lucia, he reviews the role of 'family' lands, which account for about 30% of the land area. From this, he concludes that few of



the family lands were partitioned and people preferred to continue with family land rather than individualised parcels.

This suggests that ways be found of dealing with customary tenure problems in a pragmatic and locally specific manner, rather than through the indiscriminate application of a pre-determined doctrine, however well intentioned. In the case of St Lucia, Stanfield recommends the recognition and institutionalisation of family tenure and the creation of special mechanisms for dealing with problems and resolving conflicts as they arise.

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Lesotho: Radicalising tradition

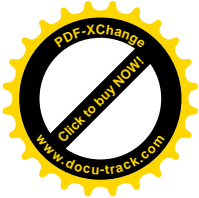
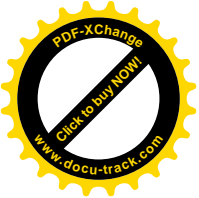
Under the Land Act of 1974, the government of Lesotho set up a Land Committee with power to grant all land allocations and with the chief remaining as chairman. This retained him as a figurehead for the people, though the Act required that the Committee make its decisions by majority vote. As Mabogunje (1990) notes, this preserved the institutional form of land allocation, while the establishment of the committee represented a radicalisation of the institution. The chiefs came to depend on special forms prepared by the State to authenticate their approval. In return for formalising customary practices, the State would then be able to allocate formal tenure titles, such as freehold or leasehold, to a larger number of people in urban and peri-urban areas.

END OF BOX

On a broader level, Mabogunje (1990), argues that the adaptive institutions which have emerged to deal with particular sets of problems, such as urban land management, must be formally and legally recognised. Secondly, they must be integrated into the normal processes of urban management and; thirdly, every effort should be made to progressively change the rules and procedures of these institutions to align them gradually with the modern urban management system being operated. This approach would retain institutions with which people are familiar, while still enabling changes to take place in their operation. Such pragmatic, incremental changes are being introduced as part of current urban development projects in Addis Ababa and Conakry, funded by the World Bank (Mabogunje 1990).

As with other tenure policy options, a pre-condition to success is to eliminate or reduce uncertainty. This involves creating a body of law which accords adequate protection to customary owners, but also provides for local trustees, such as chiefs or elders who can command the respect of public agencies. McHugh (1982) has observed that in the Maori and North American Indian contexts, this balance has not been achieved so far. In the Maori case, it appears that there is almost too much law, whilst in the Indian case, there is too much discretion given to officials, which has made it difficult for them to fulfil their twin roles. He concludes in favour of the New Zealand approach, especially as the Maori land-owner is viewed as an economic actor with special social and cultural attributes worthy of protection.

Whatever means is used to strike this balance of interests, it is paramount that legal certainty be accorded to customary owners and all those who enjoy rights over such land. This will, in itself, represent a major challenge in many countries.



VI. CONCLUSIONS

Tenure, rights and urban management

This review has sought to demonstrate that land is not just one of the important issues in the development of human settlements, but the most important one. Land management has been shown not just to present enormous technical and administrative problems at the urban level, but also a challenge to the political leadership at central government level. This is because land rights exist as part of other rights in society as a whole and changes to one cannot easily be made in practice without changes in others.

This apart, it is undoubtedly true that the increasing pressure on urban land in all countries is a major factor in stimulating demand for individual land rights and efficient ways of proving title. A major policy question is therefore to what extent this should be interpreted as promoting forms of tenure associated with free markets, such as freehold or leasehold. Undoubtedly, these offer many advantages, such as full individual rights, security and access to formal credit systems, which together maximise incentives to housing improvements. This, of course, explains why they are so widely adopted. However, as this paper has also sought to demonstrate, they have a number of negative consequences which also need to be considered before any decision is made to adopt them.

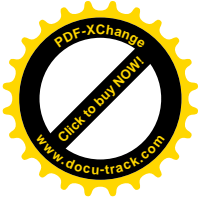
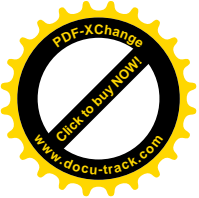
One limitation is the effect which the provision of full title can have in transforming public perceptions of previously unauthorised settlements into attractive neighbourhoods. Whilst the granting of full title may be of considerable benefit to local land-owners, investors and settlers, it may also lead to dramatic increases in rent levels which may force existing tenants out of the area. Secondly, sudden increases in land or property values may encourage some settlers to realise the enhanced value of their property and sell out to higher income groups, thereby reducing the social coherence of settlements and making it more difficult for other low income households to gain access. El-Batran (1994) cites the case of Ismailia, where the introduction of full titles and development standards led to an increase in rent levels for three room units from £2 to 24-30, in addition to £1000 key money in local currency.

There may also be a heavy indirect price to pay for the provision of full tenure, since any benefits granted to existing unauthorised settlements may well encourage the formation of others. More seriously still, the ability to make substantial profits merely from holding and transferring land, without investing in its improvement or paying taxes on its increasing market value, serves to attract even greater levels of investment. This, in turn reinforces land price inflation and diverts funds which could be put to more productive economic use. In this sense, free, or unconstrained, urban land markets may serve to inhibit, as well as facilitate, national economic development.

Tenure policies which give preference to freehold tenure or long leases, at the expense of other options, such as customary or rental tenure, whilst offering many long term advantages, may therefore have adverse short and medium term impacts on the efficiency and equity of urban land markets.

Another consideration is that even full tenure will not be a sufficient incentive to stimulate house improvements if incomes are too low to take advantage of access to credit facilities, or the capacity of finance institutions are inadequate to meet the potential demand. It will also be necessary for governments to permit finance institutions lending in the housing sector to effect foreclosures in the event of default on repayments. Unless this is agreed, land will not be regarded as an acceptable form of collateral for obtaining loans, even if the applicants possess full freehold titles. Careful consideration will be required to anticipate the balance of outcomes in a particular context.

For these reasons, this paper has advocated that, in general, careful analysis be made of existing systems of land tenure and property rights, including traditional and informal systems, before embarking on major reforms. The main reason for this is that they have frequently demonstrated that they can provide acceptable levels of security and access to credit. As noted on page 26, there is an increasing body of empirical evidence to show that full tenure is not essential to increasing levels of tenure security, investment in house improvements, or even increased property tax revenues.



This is not to deny that changes in land tenure policies and legislation are necessary, but that they should take into account the specific conditions which apply in each case. In countries like Egypt, where historical, religious and customary influences have created complex legal systems of tenure and property rights, (not to mention a range of informal tenure systems), it would be unwise to impose a single system without assessing its impact on the others. In this sense, the evolution of British tenure policy, for example, is of little relevance.

Thailand illustrates the merits of an evolutionary approach to its system of tenure and property rights in accordance with changes in demand. Botswana is another good example of an incremental approach to tenure reform; the Presidential Commission on Land Tenure of 1983 concluded that "in the final analysis... it became clear that the desires of people are not for new and radical forms of land tenure but rather for easy access to land". It also recognised that "new needs exist, but old needs persist" and concluded that "the land tenure policy which has been pursued by Government may be described as one of careful change, responding to particular needs with specific tenure innovations. The alternatives would have been a wholesale change in forms of tenure, or retention of the status quo. The approach taken by Government has much to commend it" (from UN 1991:30-31). A final observation on the benefits of incremental changes in tenure systems is that they are likely to be more cost effective in terms of government resources and easier to implement than radical changes (ibid:175). As the United Nations report concludes, "a major change which `fails' sets back the case even for incremental change".

Such concerns become particularly important in countries with multiple tenure systems, such as statutory and customary. In these cases, consideration has to be given to maintaining diversity, or integrating all forms of tenure into one clearly defined and nationally applicable system. In their consideration of this issue, Farvacque and McAuslan (1992:45) commend the approach adopted in Botswana and Indonesia, where efforts were made to establish a statutory system of land law firmly grounded in traditional principles. They conclude that there can be no universal answer to these questions and that each country should assess carefully the balance of benefits and costs of maintaining a choice of systems, or a single code. However, the guiding principle should be to opt for the approach most apt to benefit the consumer.

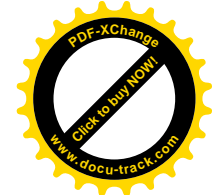
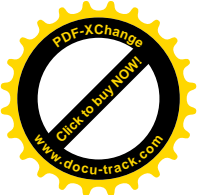
Another conclusion of this paper is that, to achieve policy objectives, it is vital that tenure policy be part of an integrated programme of action which is sensitive to the social and economic circumstances of the target groups and likely indirect consequences. One reason for this is that land tenure is a somewhat crude policy instrument in achieving broad land policy objectives. This is because titles and rights, once granted, cannot be withdrawn other than by failure to meet specified conditions, making tenure a uni-directional policy tool. It is also one in which governments have little understanding of the impact of tenure changes on land market behaviour.

Fiscal and monetary policies are, by comparison, infinitely more flexible and taxes or interest rates have long been used to regulate levels of investment and allocate resources to specific groups in ways which can be adjusted upwards or downwards according to circumstances. They can therefore be used to regulate public expectations, since most governments possess more understanding of their market impact than is so far the case with land tenure.

Policy objectives

Given the difficulties of predicting the outcome of land tenure policies at present, it is recommended that surveys be undertaken of the existing tenure status, rights and obligations to land in and on the periphery of urban areas, before proposing policy changes. Even when information is obtained, it may be advisable initially to adopt a cautious approach of incremental change until more experience is gained on the consequences of policy changes on the efficiency and equity of land markets.

Despite their limitations in achieving predictable changes in urban land market behaviour, land tenure policies can achieve a significant improvement in real and perceived levels of security and increase access to credit by lower income groups. When implemented as part of a comprehensive urban management programme, tenure policy can also contribute to the improved functioning of urban land markets.



As far as possible, such policies need to be based upon locally specific concepts of land tenure, rather than imported ones. As stated above, a useful start can be made by basing proposals on current needs and resources and regarding every step along the continuum from complete illegality to formal tenure as a step in the right direction. The Certificates of Use granted to residents in Botswana is a good example of such an incremental approach. Another consideration is that decisions based upon demands by residents are more likely to be acceptable than those based upon official priorities. It is, after all, the way in which tenure policies are perceived by the public that will determine the behaviour of land markets and those that operate in them.

With these considerations in mind, the following recommendations are offered as a basis for developing a land tenure policy consistent with other social and economic policy objectives.

Improving land market efficiency through tenure policy

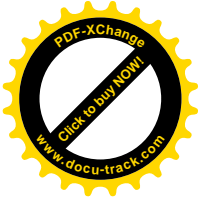
The first step will require an investigation of the existing tenure status and property rights of all land parcels within urban areas, in the form of a land information survey. Such studies will need to investigate the social, cultural, economic and political framework that, as Doebele has stated (1991), surrounds and, in many cases supports, existing tenure arrangements. As he has also noted, research in the last few years has clearly shown that in many countries there are complex economic relations involved in the acquisition of land rights. In many cities, it is a significant informal industry which provides income to a considerable number of people and, more importantly, furnishes products, (ie various types of land occupancy possibilities), with an almost infinite variety of prices and levels of security - a variety which makes it possible for low-income families to calibrate their housing supply quite closely to their income and to move up or, in some cases, down, when it is to their advantage to do so. To acquire the level of understanding required for effective policy formulation and implementation, more studies of the type undertaken by Gilbert and Ward (1985), van der Linden (1987), Varley (1987) and Benjamin (1991) are urgently needed. Such work should include both longitudinal and comparative analyses.

Land information studies must include these contextual aspects and will therefore involve anthropology type fieldwork, not a mere listing of the categories of tenure that formally exist. Normally, it takes time to build confidence among respondents and a network of contacts to gain this type of information. It is not, therefore, the type of work that can automatically be undertaken by short term outside consultants, except in relatively small cities. The work of local researchers such as Joshi (1991) and Razzaz (1991) is a good example of the type of research needed.

Secondly, it will be necessary to establish the basis for a comprehensive land register. Setting up new land registers, or extending existing ones, so that they are accurate and up-to-date, will possibly take many years in some cities, during which time the cities themselves will have expanded and changed. The magnitude of the task should therefore not be under-estimated and it may be desirable to concentrate initially on assuring tenure status in commercial, industrial and other high value areas before attempting to extend registration to other areas.

Ideally, the tenure status, rights and obligations of all interested groups and individuals in areas of land can be recorded before they come under pressure of urban growth. This could be achieved by inviting all parties with an interest in specific land areas to register it as a means of complementing formal surveys and identifying potential disputes before they become significant. Such surveys will need to be comprehensive, since any groups or persons with rights who are omitted may have a claim against future development. To undertake any changes in tenure systems where existing titles or rights are unclear will send signals to all other disputed areas and could result in actions by owners or occupiers of land which may be difficult to anticipate or control. Even well intentioned, imaginative and progressive initiatives could therefore produce outcomes which are counter-productive and therefore set back the prospects for further progress.

The judgement as to what areas or activities represent priorities in the development of an efficient land market will vary from country to country, possibly from city to city and certainly from time to time. To ensure that land registers reflect the full extent of urban development, the administrative boundaries of



urban areas, and therefore the area covered by the land register, will need to be revised regularly. Technical decisions will also need to be made regarding the types of documents concerning land that may be entered onto the registry, the system to be used, (everything on one card, or on many documents), who is to have access to the registry, what documents will be accepted as evidence of title, etc.

It will then be necessary to assess the capability of financial institutions lending in the housing sector, and the terms and conditions under which they operate, to ensure that they can respond quickly and efficiently to the scale and nature of demand for loans following tenure changes. Where necessary, these institutions should be strengthened, or new ones established, and their operating conditions adjusted as required.

Next, it will be necessary to assess the extent to which land tenure and/or property rights are a constraint upon levels of investment in house improvements. Options should then be identified for reducing the time and cost of registering land parcels with the relevant authorities.

Since registration is likely to make plot and house-holders liable for property taxes and other charges, options should be considered for deferring tax obligations, or establishing incremental tax rates, (eg based upon property values, building types, or household incomes), so that levels are affordable to all households. This would obviate the problems experienced in implementing the flat rate community charge in Great Britain in 1990.

This increased spread in the revenue base will offset any reduction in the existing level of tax charged. It will also increase the accountability of public authorities, since urban programmes will need to be related to the resources available to implement them. In Pakistan, property taxes are currently collected by provincial governments and urban projects are funded by grants. This arrangement was introduced because of revenue collection problems within the urban administrations, though the record has not improved significantly and local politicians are no longer constrained from making commitments to their constituents by a lack of resources, knowing that provincial governments can be blamed for any failure to deliver. Conversely, property taxes in Turkey's major cities are now collected directly by the local authorities and have done much to improve investment in urban infrastructure and land development. Rates of collection have also been improved, since payment can be seen to produce tangible benefits.

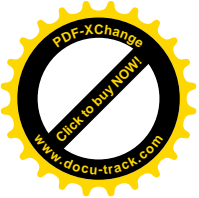
An assessment will then be required of the mechanisms for effecting transfers of land parcels and their efficiency and affordability to low-income groups. These will need to be adjusted as necessary, if market efficiency is to be improved and low-income groups are to participate and benefit from policy changes. This will require investment in increasing the institutional capability of urban development authorities responsible for land management, especially if policies are intended to encourage administrative decentralisation. The objective should be to concentrate on reducing the number of steps - and the time required - to register claims, transfer titles and resolve disputes.

Finally, the minimum level of change in tenure status and/or property rights necessary to improve land market efficiency, whilst protecting the interests of low-income groups, can then be identified. Further, more radical, changes can be made as experience in the application of tenure policy on land markets increases and institutional capability improves.

Improving equity through tenure policy

Since low-income groups are extremely vulnerable to any changes in urban policy, and land costs represent a substantial component of total housing costs, it is important, especially in the short term, to avoid any dramatic changes in tenure status, particularly in areas with a high proportion of tenants. The main priority should therefore be to improve the existing rights and levels of security to those in the lowest socio-economic strata to the extent necessary to achieve de facto security.

Secondly, it is important to ensure that all charges and costs arising out of changes to tenure status and/or property rights, such as property taxes, are affordable to all households, including the poor, and that they are seen to produce desired benefits.



Tenure policy and access to credit

A primary objective of land tenure policy is often to improve access to formal credit for low-income groups. However, this linkage may lead to confusion over objectives. If the perceived problem is the lack of the poor to credit in amounts and on terms which they find acceptable, that should be the problem addressed, with tenure seen as one of several secondary factors. To assume that full formal title is the best means of improving access to credit is to misjudge the issue and exclude other important factors, such as the impact upon land markets.

Within this framework, a number of steps will need to be taken to increase access to credit. First, it will be necessary to assess the capacity of financial institutions to respond quickly and efficiently to the anticipated scale and nature of demand for formal credit. Secondly, it will be necessary to accept the need to foreclose on loans which are in chronic default to protect the value of land as loan collateral. To soften the impact of such measures, financial institutions should be encouraged to adjust their working practices in line with the savings ability and practices of their new customers, many of whom will not have previous experience of budgeting for formal credit. Considerable efforts will be required in educating both customers and staff in loan management.

Many existing financial institutions are not presently lending for low-income housing, or are resisting a move down market because of perceived high risks and transaction costs for small loans. In such cases, options should be investigated for establishing a network of community based finance and credit institutions, such as NGO's, co-operatives, or community savings trusts, etc, linked to higher level financial institutions. Such an approach is currently being in Pakistan with support from the World Bank. The Asian Coalition of Housing Finance Institutions is another innovative example.

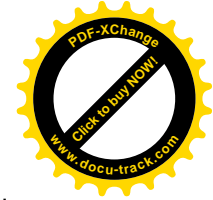
On this basis, it should be possible to establish confidence and trust in lending to low-income groups, without incurring excessive transaction costs. Such systems can even operate successfully when land titles are not available as collateral, since the locally based institution can adjust its practices to suit local needs and exert peer group pressure to protect collective interests. The Grameen Bank in Bangladesh is an outstanding example of such a system in practice, though a plethora of other organisations also offer similar arrangements. Prominent among these are the Self-Employed Women's Association (SEWA) Bank in India, Banco Sol and FIE in Bolivia and the Scotia Enterprise Bank in Guyana. The Loan Guarantee Fund initiated by Homeless International in India and other countries represents another innovative approach. These, and other initiatives, should be encouraged.

Tenure policy and administrative capability

Whichever option is considered appropriate, its successful implementation will depend in the final analysis upon administrative capability and many otherwise sound initiatives have foundered because this was lacking. It is therefore imperative that institutional and administrative constraints to effective implementation be identified and resolved in advance. This will invariably require improved inter- and intra-departmental co-ordination, strengthening land registries, training staff, simplifying administrative practices and minimising opportunities for corruption.

This in turn requires that comprehensive, detailed and accurate information is available on the tenure status and rights applicable to all areas of land within a given city. The registration of all urban land is therefore a pre-condition to the establishment of effective urban management. Even this is likely to represent a major task for many urban authorities, given the degree to which registers have failed to keep pace with developments. In cases where land registers are not operational or effective, it may, therefore, be desirable to establish land inventories which simply record claims of land ownership and property rights without the legal authority to determine them.

Whilst this is being done, urgent efforts are needed into removing as many obstacles to the development of efficient and equitable land markets as possible. Relaxing or modifying existing standards, regulations and administrative procedures - and their associated costs - would make it more attractive for owners and



residents to register their tenure and rights, assuming that they considered that this would not adversely affect their interests.

Increasing the rights of occupancy and use, to existing extra-legal tenure systems represents a realistic means of introducing change, whilst minimising unintended consequences in the efficiency and equity characteristics of urban land markets. The Occupancy Permits granted in Zambia provided increased security of tenure to settlers, without committing the State to acquisition or even long-term formalisation. Thailand has also adopted an incremental approach with considerable success.

In terms of land law, McAuslan (1989), considers that the most successful approach is to build on existing laws and practices, rather than to replace them entirely. An equally pragmatic and incremental approach is advocated by Mabogunje (1990) in terms of institutional change.

Future research and the role of international funding agencies

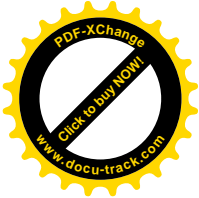
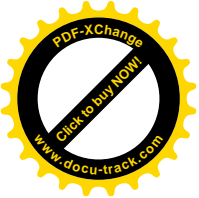
As stated above, a major difficulty confronting all professionals and administrators in the urban development sector is the lack of reliable information on the behaviour of land markets and the role of tenure and property rights within them. The literature on urban tenure is surprisingly limited, given its importance and most of the publications referred to in this paper are from the mid 1980's. A great deal of research is therefore needed in order to provide a sound conceptual framework for more informed decisions on tenure policy. A number of recommendations regarding such research have been proposed and the United Nations (UN 1984) advocates case studies on the following:

- The informal system of land supply and the practices of developers.
- The use of land by low-income groups.
- Means of measuring the degree and rate of commercialisation and monopolisation of land markets.
- The effects of granting different types of tenure on perceived levels of security and access to credit.
- Comparative research concentrating on law and administrative systems.

An additional benefit would be longitudinal studies which are able to assess the impact of policy changes over time.

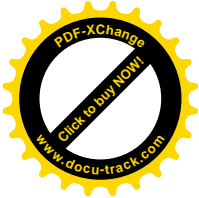
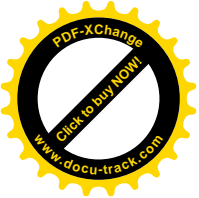
Since most of the tenure systems on which information is needed are outside the formal, legal system, innovative research methods are needed to obtain a reliable understanding, even if this cannot easily be quantified in statistically significant terms. According to Doebele (1988), the most useful research is likely to be that which supplements conventional survey techniques with methods which are able to access the main actors involved. He compares studying extra-legal tenure systems to studying speak-easies during prohibition, since everyone knew they existed, but few wanted to talk about them. The Bangkok Land Management Study (PADCO 1987) is a good example of such innovation, since it used all available information, from aerial photographs to detailed case studies and conventional surveys, to put together a picture of the problems and achievements which no amount of statistical material could have achieved even with stringent interpretation.

Another example of innovative research methods is the Kathmandu Valley Study (USAID 1985), which actually employed an experienced land sub-divider on the research team. Yet another, is the work undertaken by the team led by Hernando de Soto in Peru, which made transactions in the land market and then observed their effect. These studies have broken new ground by developing methods of research which work under conditions where formal concepts or procedures simply do not apply. More of these case studies are needed, if possible on a comparative basis and with the active involvement of local people, not just academics and practitioners. One of the most valuable contributions of such research could be to show the situation from a user's and a developer's viewpoint.



One final option for improving understanding on the range of tenure systems in a city is to undertake pilot or demonstration projects and monitor their impact on the surrounding area. As governments accept the need to move away from projects towards more strategic, but indirect forms of action, such projects could form a valuable means of effecting the change. Since projects are under increasing pressure to be self-financing, they also provide a valuable means of introducing more rigorous financial management and raising revenues for local authorities which may eventually be applied on a city-wide basis, thereby substantially increasing urban revenues and the prospects of providing low-income communities with much-needed services.

International funding agencies active in the sector are often under considerable pressure to adopt programmes which permit rapid disbursement of funds. This could conflict with the need for a cautious approach to changes in land tenure policy and sensitivity to local conditions will play a large part in achieving success.



ANNEX: AN OUTLINE TYPOLOGY OF LAND TENURE AND PROPERTY RIGHTS

CUSTOMARY RIGHTS

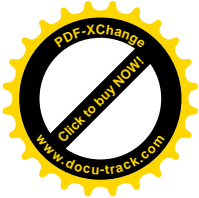
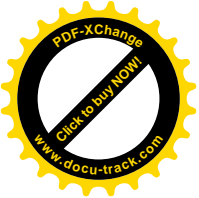
- Tribal/collective Members of the group or tribe controlling customary land may be entitled to a variety of rights, such as access, occupation, grazing and development, but not transfer; this can only be undertaken by the group as a whole, or its accepted leaders. Whilst rights can usually be inherited, land cannot be used as collateral for loans to individual group members.
 - eg stool land Allocation by chiefs of unused land near an existing settlement; common in southern Ghana. Access depends upon chief's approval; secure.
 - Ejidal land Land controlled either by a group of people, as in Mexico, or a co-operative.
- Individual In a few cases, as in Burundi and Burkina Faso, customary rights to a family plot may acquire a status akin to individual title. They normally revert to corporate status, however, on the death of the original owner.
- Ground rent (eg Hekr) The charges made for long term lease of undeveloped land, often by large land-holders, who obtained their rights through grants made under feudal concepts. It is also used for any situation in which the rent is payable on the land as distinguished from rent payable on the building. Under the Ottoman Land Law of 1858, it enabled farmers etc, to settle and develop unutilised land for the payment of a ground rent, or hekr, on registration of a claim. Secure where traditional writs still apply, but less so where active land markets operate.

PRIVATE

- Unlimited duration
 - eg Freehold, dominium, mulk Provides for full ownership of unlimited duration and the right to free enjoyment and disposal of objects providing they are not in any way contrary to laws and regulations. The only restriction is normally that of `eminent domain`, whereby the state may acquire part or all of a property, providing due process of law is observed and full compensation paid
- Finite duration
 - eg leasehold, individual Provides rights to the exclusive possession of land or property by the landlord, or lessor, to the tenant, or lessee, for a consideration or rent. Leases are normally for a specified period, which may vary from 1 week-999 years. Long leases are practically indistinguishable from freehold, while shorter leases may be renewed subject to revised terms. The assignment of a lease by a lessee is normally permitted as with freehold.
 - tribal/collective As above, though usually for shorter periods, to enable the terms and conditions to be revised in accordance with market trends.
 - condominium A form of `horizontal ownership` common in multi-storey developments. Rights may be freehold or leasehold.
 - leasehold, rent control This form of tenure accords tenants full security and restricts the freedom of the freeholder or head leaseholder to increase rents more than a specified amount over a given period. It is extensive in cities with older, high rise apartments, such as Bombay. Since rents do not generate an economic return on investment, maintenance is often poor, and both residential mobility and new supply limited. Key money may be required for properties which become available and this, in effect, restores a market value which can benefit outgoing tenants as much as the freeholder.

PUBLIC

- Crown land Originally intended to acquire for the Crown unused or unclaimed land in parts of



British, Spanish, Portuguese and other colonies. Such lands were often extensive, (eg half the land of Buganda), and were allocated to European settlers and companies with freehold or long leases.

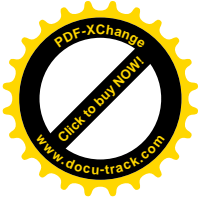
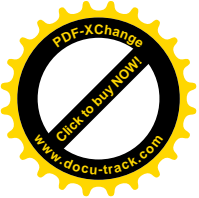
- State land This is not significantly different from Crown land. In private domain, state land may be placed on the market through the award of leases. In public domain, they are retained by the state for use by public organisations. They are widely used for forests, military camps, roads and other natural resources, but in Namibia, also apply in urban areas.
- Public land This consists of land acquired by government for public purposes. Compensation may be paid in acquiring it from other owners or those with rights and sometimes acquisition is simply to enable land to be developed and/or reallocated as freehold or leasehold.
- Occupancy certificates Also known as `certificates of rights` or `permit d`habitation`; originally introduced by colonial administrations as a device to deny local populations freehold tenure and enforce racial segregation. More recently, used by independent governments as a means of providing allottees on housing projects with security of tenure, whilst restricting the development of freehold land and property markets.
- Land record rights Memorandum of an oral agreement between a local authority and an occupant. Provides for loans to develop the site, providing the occupant pays all dues and builds in conformity to official standards. Duration normally specified.

ISLAMIC TENURE CATEGORIES

- Mulk Land owned by an individual and over which he has full ownership rights. It is most common in rural areas.
- Miri Land owned by the state and which carries tassruf, or usufruct, which can be enjoyed, sold, let, mortgaged, or even given away. A usufructuary may also transmit it to his heirs, (male or female), although the land could not be divided among them. The State retains ultimate ownership and, if there are no heirs, such land reverts to the State. Also, the State retains the right of supervising all transactions pertaining to the transfer of usufruct rights and their registration.
- Musha Land owned collectively. It originates from the tribal practice of dividing up arable land on which the tribe settles its members and takes account of variations in land quality to ensure equality. Restricted in application to under-populated tribal areas.
- Waqf Land held in perpetuity as an endowment by religious trusts and therefore "stopped for God". Originally established to ensure land availability for schools, mosques and other public buildings, it gradually became a means of keeping land away from extravagant heirs or acquisitive States. The governments of many Islamic countries even have waqf ministries.

OTHER FORMAL TENURE TYPES

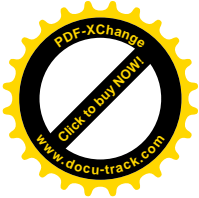
- Co-operatives In most developing countries, these are often a device to share costs, but without conforming to the international conventions on co-operatives; transfer sometimes possible.
- Shared equity/ownership Not common in developing countries: The occupant buys part of the equity (30:70, 50:50, 60:40, etc) from the freeholder and rents the remaining value. The proportion of mortgage repayments/rent can be amended at a later date, enabling the occupants to eventually acquire the freehold.
- Housing association lease Extensive in Great Britain, but not common in developing countries. Housing associations are non profit organisations which provide and manage housing primarily for lower income groups. Some also offer shared ownership. Tenancies are secure, providing rents paid and other obligations met.
- Collective, shared or joint ownership A small, but expanding form of tenure in which a group pools ownership and allocates rights of alienation and price to a self-created organisation. Well established in Ethiopia and Colombia, where it is used to combat external threats to security of tenure. A variation is the land pooling programmes of Thailand and the Philippines in which land parcels are re-subdivided to enable part of the plot to be developed in return for the settlers receiving security of tenure for an agreed



share of the land and/or property.

NON-FORMAL

- Squatter, regularised Secure, possibly with services and access to formal finance; higher entry cost than before regularisation.
- non-regularised Security depends upon local factors, such as numerical strength and political support; low entry costs and limited services provision.
- tenant Generally the most insecure of all tenure categories; also the cheapest. Contract unlikely. Minimal housing and services standards.
- Illegal subdivisions See unauthorised subdivisions
- Unauthorised subdivisions Land sub-division, without official approval, usually by commercial developers for sale to lower-income households seeking plots for house construction. May take place on public or private land. Now commonly the largest single tenure category in the urban areas of many countries. Legal status varies, but most occupants possess some form of title, such as the `hisseli tapu` or shared title, found in Turkey. Entry costs are usually modest, due to efficient land development and refusal by developers to follow official standards and procedures. Commonly legalised and serviced after a period.
- Unauthorised construction Development on land which is legally occupied, but for which the occupant does not possess official permission to build. The offence is therefore technical or procedural, but may be classified as illegal. Security can, therefore, be less than indicated by the tenure status per se.
- Unauthorised transfer Widespread in public sector projects, where original allottees transfer their rights, at a substantial profit, to another. The transfer is invariably not permitted by the allottees contract, but is effected using a secondary contract or power of attorney, which is recognised in law. It is particularly common in Delhi. Secondary allottees are very rarely removed or punished, due to legal complications. Entry costs are relatively high as the transfer is used to realise the full market value for a subsidised unit.
- Purchased customary land In areas where customary tenure is subject to urbanisation, such as southern Africa and Papua New Guinea, illegal sales of land take place to both long established residents and newcomers, usually kinsmen. Such sales do not enjoy legal or customary approval, but are increasingly accepted by all involved, providing occupants with security of tenure and even de facto rights of transfer.



GLOSSARY OF TERMS

This Glossary is intended to clarify technical terms in the sense that they are used in this paper. It is therefore not exhaustive or definitive.

absolute not conditional

adjudication the official ascertainment of rights in land

adverse possession An occupation of land inconsistent with the right of the legal owner

affordability see `ability to pay`

alienation the transfer of property to another; usually applied when a State allocates land

allocation map a map showing how land-holdings are to be set out on the ground

allodial the opposite of feudal; sometimes referred to as the `paramount`, `radical`, or `ultimate` interest

assignment a disposition or transfer, usually of a lease

assurance the legal evidence of the transfer of property

attorney a person appointed by another to act in his or her place, or as a representative; see `power of attorney`

beneficial owner a person entitled for his or her own benefit and not as a trustee

beneficiary a person for whose benefit property is held under a trust or will; the recipient of land or property in a housing project

block smallest developed area surrounded by local or higher order streets

broker an agent for the purchase and sale of goods (or land)

building lease a lease, at a rent called a ground-rent, of land on which the lessee undertakes to build and maintain a specified building which reverts to the lessor at the end of the period of the lease

building society a society which lends money to its members to assist them in obtaining shelter

cadastral map a map which shows how a locality is divided into units of ownership

cadastral survey a survey of the boundaries of the land units of a country

cadastre a public register of the quantity, value and ownership of the land of a country compiled for the purpose of taxation

capital gains tax a tax imposed on the profit made on the transfer of a capital asset

certificate of claim a document, issued in eg Malawi and Uganda, authenticating title to land

charge an interest in property held as security for a debt

civil law those systems of law based on Roman law and later on French law

communal tenure the holding of land by a community

condominium joint sovereignty; co-ownership (in the context of horizontal subdivision)

conveyance an instrument (other than a will) transferring property

co-operative society an association for supplying goods or for carrying out some economic activity, the proceeds of which are shared among the members

covenant in English law an agreement or bargain under seal; or clause of a contract

customary law unwritten law established by long usage

customary tenure land held under customary law

deed an instrument in writing which is signed, sealed and delivered

dominium absolute ownership

easement a right enjoyed by the owner of land over the land of another, eg, a right of way

eminent domain the right of a government to take private property for public purposes

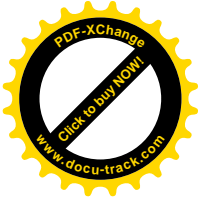
emlakci Turkish term for a land developer

equity fairness; recourse to principles of justice to correct or supplement law; net value of mortgaged property after deduction of charges

estate the quantum, or quality of the interest which a person has in property (in English common law)

fee simple a freehold estate (tenure) of inheritance, absolute and unqualified, the highest and most ample estate known to English law, out of which all other estates are derived

feudal tenure a system of land tenure whereby all land was held by a king; widespread throughout Europe



between 800AD-1600AD, though it still informs English common law
foreclosure when mortgagee claims real property because the borrower fails to make payments
freehold a fee simple estate
freeholder holder of property under freehold

ground rent paid by the lessee of a building lease to the owner

hypothecate in French and Roman civil law, a mortgage

illegal subdivision the subdivision of land without legal sanction or official permission, usually for sale
immovable property in civil law countries is real property, or land
informal outside the formal rules or procedures determined from time to time by government

land the surface of the earth, the soil and rocks beneath, the air above and all things fixed to the soil (including buildings) except where limited by law

land tenure land tenure the mode by which land is held; a set of relationships among people concerning the use of land and its products

lease a contract by which the right to the exclusive possession of land is granted for a fixed time by the landlord, or lessor, to the tenant, or lessee, for a consideration, usually a rent

leasehold land or property held under a lease

limitation the legal rule under which title to land is extinguished by `adverse possession`

`livret de loguer` a form of state lease introduced by colonial administrations **xxxxxx check with Dewes 1985**

mailo a square mile of land allotted under the Uganda Agreement of 1900, and so the tenure under which it is held

miri Islamic category of tenure under which land is held by the State and carries `tassruf` or usufruct rights which may be sold, inherited, let or mortgaged, though the State retains the right to supervise all transfers of usufruct

mortgage in English law, a conveyance of property by debtor to creditor as security for debt, with the proviso that it shall be reconveyed on payment of the debt within a certain period

mulk Islamic tenure category under which land is held by an individual and over which he has full ownership rights (equivalent of freehold)

musha Islamic tenure category under which land is held collectively

occupation licence occupation licence recognition of possession of land by issue of permit, usually by government

parcel a portion of land which can be separately identified

patta A form of land rights used in India

plot see parcel

power of attorney authority to another person to execute deeds or carry out transactions; see `attorney`

prescription the legal rule whereby a right or title is gained by lapse of time; such rights may be positive, ie long possession confers a positive title, or negative the title arises merely because the real owner has failed to pursue his interest during the time "limited" by statute.

prescriptive right a title or right acquired under the law of `prescription`

private land land owned or held by individuals, corporations or communities, as distinct from public lands

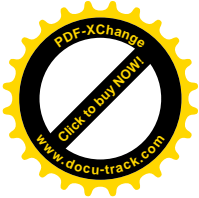
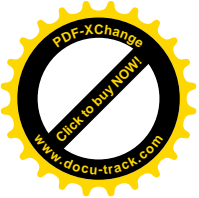
property thing capable of being owned; can be real or personal property, tangible or intangible, movable or immovable property

property owner one who owns property

property rights interest or rights people have in property; (this paper is dealing with real or land property rights)

public land land owned or held in trust for the people by government; several types eg. national parks, government use, vested lands, etc

quit rent when governments decide to allow rent to contribute to outright purchase of land



real property land and everything attached to it, eg buildings; known as immovable property in civil code or law countries

register of titles an official record of the rights in defined units of land as vested for the time in some particular person or body, and of the limitations, if any, to which these rights are subject

registry map a map which illustrates the register of title

restrictive covenant an agreement whereby one landowner for the benefit of another restricts the use of his land in a particular way

right thing (eg property) a person is "entitled" to (includes duties and privileges)

rights of occupancy recognition of right of possession (not ownership) of land sometimes for limited or unlimited duration

security of tenure degree of certainty of holding a tenure or right

security of title degree of certainty in the proving of rights to land and tenure to land

servitude in civil law, an easement under French or Roman law

squatter person who occupies land or property without the permission of the true owner

State land see public land

statutory law laws made by state legislatures of government

subdivision the process of dividing an existing parcel of land into smaller parcels

tenant one who occupies land or property under a landlord, but with rights guaranteed by law (statutory), or by agreement (contractual) for a fixed period of time

tenure the mode of holding land or office

tenure conversion the process of changing customary tenure to statutory tenure

title the evidence of a person's right to land or property

title deeds the documents and evidence confirming title to land or property

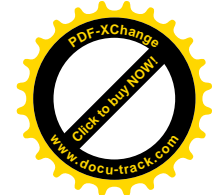
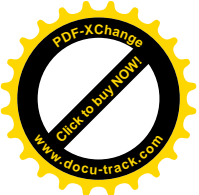
Torrens system a system of registration of title

traditional law see customary law

use rights see usufruct and lease

usufruct in civil law like a lease; the right to use and enjoy another's property, though not to destroy it

waqf an Islamic religious foundation under which land is "stopped for God" and cannot be divided or alienated.



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That Abrams still features at the beginning of many bibliographies on urban issues in developing countries has as much to do with the breadth of his vision and eye for practical detail as the fact that his name starts the alphabet. Written a quarter of a century ago, chapter three still acts as a good introduction to the land issue.

Abrams places the subject in its global and historical context and emphasises its political aspect. He then lists nine tenure categories stated to have emerged in response to increasing demand and reviews the mixed approaches adopted by governments to deal with it. The paper concludes with a statement of issues deserving urgent attention, which revolve around the vital need to ensure that a balance of interests is achieved despite the ever increasing pressures on urban land.

Acquaye, E & Associates "Study of Institutional-Legal Problems Associated with Land Delivery in Accra" Final Report, Accra Government of Ghana, UNDP/HABITAT 1989

See Antwi, A

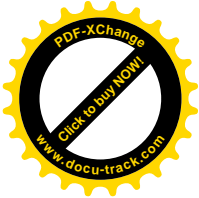
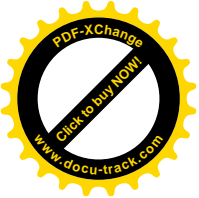
AITEC "Integration of irregular settlements: Current questions in Asia and Latin America" (Edited by Clerc, V, Durand-Lasserre, D, Luciano, F, Pajoni, R and Vidal, L). AITEC, Paris, January, 1995.

This short book contains a synthesis of the main findings of nine case studies on regularisation commissioned by AITEC as a basis for an international seminar held in Mexico City in February, 1993. The selected cities were Bangkok, Delhi, Bhopal, Cordoba, Sao Paulo, Recife, Santiago, Lima and Mexico City. The book also contains a summary of the debate and recommendations from the seminar. It is available in both English and French. A follow-up study is underway in Africa and the Arab States.

The seminar identified a wide range of innovative approaches to regularisation and recommended that "regularisation strategies should recognize the diversity of existing practices and protect vulnerable groups, such as tenants. Rights of occupancy should be given paramountcy. Government intervention should be urban wide/market based, rather than project or settlement based. Such intervention should also be cautious and selective, rather than wholesale and dramatic until experience is obtained in the impact of initial actions. It should not be assumed that full title, inscribed in the local property registers, is an axiomatic demand of low-income communities, nor a requirement for other elements associated with regularisation programmes to succeed. Adequate security of property may be provided through other means that are sensitive to local cultural and political conditions." It was also agreed that "the rigid interpretation of land law currently classifies large sectors of the urban population as illegal. In practice, rights to land and housing include a wide range of elements and exist within a regime of rights in general. Campaigns to improve housing rights can constitute a central component for recasting laws which strengthen the rights of the majority of the population".

Andre, C and Platteau, J-P "Land relations under unbearable stress: Rwanda caught in the Malthusian trap" CRED, University of Namur, February, 1996

A case study of a densely populated area in Northwest Rwanda, conducted during 1988-93, which seeks to demonstrate that acute competition for land has resulted in increasingly unequal land distribution and rapid processes of land dispossession through both the operation of the illegal land market and evolution of indigenous tenure arrangements. It also shows that the pervasive incidence of land disputes and the threat of landlessness have led to rising tensions in social relations, paving the way for disharmony and violence. It draws a connection between these conditions and the civil war which broke out in 1994.



Angel, S "Land Tenure for the Urban Poor" Paper presented to the World Congress on Land Policy, Cambridge, Massachusetts, June, 1980 pp59. Also published in Angel, S et al "Land for Housing the Poor" Select Books, Singapore 1983.

This paper examines progress in the application of what the author terms the gradual approach to urban housing and focuses on the issue of land tenure. Evidence is presented from ten countries concerning the impact of tenure on housing improvement, its limitations in the absence of other factors such as adequate incomes and personal commitment, the politics and administration of tenure changes and some of the consequences. Each section is illustrated with case studies, from which lessons are derived for analysis or action.

It is clear from the paper that tenure is an extremely complicated subject and that any proposals for change need to be based on specific cultural and political realities if they are to be effective in improving the efficiency of land markets and enable the urban poor to participate in them. Given the frequent lack of clarity in existing traditional tenure systems, and their interaction with imported systems of individual rights, the outcome of even well prepared policies is fraught with uncertainty.

Angel, S Archer, R Tanhiphat, S and Wegelin, E (eds) "Land for Housing the Poor" Select Books, Singapore 1983

This book is one of the first international assessments of experience in the subject. It is based on a conference held at Bangkok in 1982 and contains twenty four papers by academics, practitioners and senior officials. It covers problems, policies and practices and is admirably clear of technical jargon. There is an excellent paper on land tenure by Angel, which is reviewed above, and many other contributors also make extensive reference to tenure and property rights.

Antwi, A "An economic perspective of land policy implementation in a developing economy: The case of Accra, Ghana" Royal Institute of Chartered Surveyors, London, October 1995

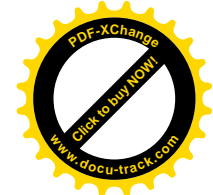
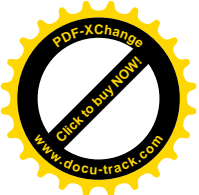
One of an excellent series on land tenure published by the RICS, this paper focuses on the economic implications of existing legislation in creating a property market. The author considers that inappropriate policy implementation strategies adopted by land title documentation and other agencies are important causes of bottlenecks, which create uncertainty about title and restrict and distort the operation of established customary systems. The recommendations focus on future research needs rather than action.

Arandel, C and Batran, El M, "The Informal Housing Development Process in Egypt" Report submitted to CRNS-PIR-Villes and presented at a conference on 'Land Management, Regularization Policies and Local Development in Africa and the Arab States' held in Abidjan, March 1995. Draft report published 1996

The impact of Ancient, Islamic, British and French legal systems on urban development in Egypt are assessed. Egypt's extensive informal settlements are considered to be the dominating feature of Egypt's urbanisation process, and the authors argue that they should not be looked on as part of the country's housing crisis, but the urban poor's contribution to its solution. Land tenure issues feature throughout the report.

Asiama, S O "Land" Government of Ghana, Ministry of Works and Housing Finance Study, Accra, 1989

A report published by one of Ghana's leading analysts of land issues and policy implications. Not widely available.



Ault, D E and Rutman, G L "The Development of Individual Rights to Property in Tribal Africa" The Journal of Law and Economics (date not known) pp163-182

This is another paper focusing on land tenure and property rights in rural Africa, but with material of relevance to urban areas. After a description of the immense variety of traditional tenure practices, the author argues that the belief by economists that they are slow to adapt to changes in economic conditions is unjustified, though increases in the demand for land inevitably make individual property rights more attractive.

The tendency for post-independence governments to revert to some form of pre-colonial communal tenure is held to have overlooked the changing relationship of demand and supply for land and to have inhibited its optimal use. Despite these problems, the author cautions against land reform which concentrates power in state hands, because of the threat of nepotism that it raises.

Barnes, G "Land Tenure Issues in the Third World" The Canadian Surveyor, Vol 39 No 4 pp437-9, 1985 pp436-440

This brief paper argues the need for more sensitivity in the analysis of tenure systems and the formulation of land tenure policies. Both rural and urban aspects are covered, especially within the African context, and intermediate options reviewed, including Botswana's Certificate of Rights.

Baross, P "The Articulation of Land Supply for Popular Settlements in Third World Cities" in **Angel, S et al** 1983 pp180-210

This paper proposes a typology of tenure types and discusses, through examples, their present and likely future contribution to land supply for the urban poor. The typology consists of three main categories; non-commercial, commercial and administrative articulations each of which has a number of sub-categories. The author is pessimistic about the ability of each system currently serving low-income groups as customary owners become more shrewd in reserving land for lucrative development, illegal developers are encouraged to move up-market to serve competing middle class needs and the logic of the market penetrates the informal systems of allocating land.

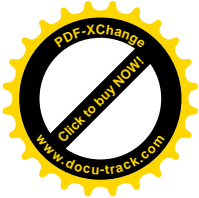
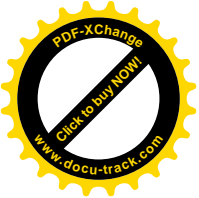
By way of an alternative, he proposes what he calls "collective" articulations based on the local organisation of low-income people.

Batran, El-M "Transforming the Role of the Private sector in Managing and Developing Urban Land for the Poor, with Special Reference to Ismailia, Egypt" Paper presented at the Second Symposium on Housing for the Urban Poor, European Network for Housing Research, Birmingham, 1994

This paper describes a survey of sites and services and slum upgrading projects in Ismailia, carried out in 1985, about six years after project implementation had begun. The study revealed that, although the projects considerably stimulated the supply of plots for housing, the imposition by government of high standards and the offer of equally high subsidies, made the area attractive to higher income groups than those intended. As a result, land prices rose dramatically and an estimated 75 percent of plots were sold by the original recipients on the informal market.

Benjamin, S "Jobs, Land and Urban Development: The Economic Success of Small Manufactures in East Delhi, India" Cambridge MA Lincoln Institute of Land Policy, 1991.

This is a short, but valuable monograph that covers, among other things, the role of the evolution of land tenure in stimulating small manufacturing, and the political process of the progressive regularisation of an unauthorised settlement in India. It emphasises the complexity, interdependence and economic importance of tenure issues and thus illustrates in specific terms many of the general propositions made in this paper.



Bromley, D W and Cernea, M "Management of Common Property Natural Resources: Overview of Bank Experience" in **Meyers, L R** (ed) op. cit. 1989

This paper challenges what the authors consider the fallacy of received doctrine about group owned natural resources in the developing world and pay particular attention to land resources. Although the paper focuses on agricultural problems, it raises key points of interest to urban planners, especially with regard to the role of public, private and communal ownership regimes. They claim, for example, that there is no compelling reason why credit cannot be extended without collateral in the form of land, since interest rates reflect the cost of money and can be used to reflect the risk of default and they claim that agricultural credit markets have existed for centuries without private ownership of land.

They also consider that another fallacy is that farmers (or urban residents?) will not invest without secure title, that is, ownership. Leases are considered to represent adequate security in many cases. Their main point is that there is considerable confusion arising from a failure to distinguish policy instruments from policy objectives, and they argue that security is the policy objective, property or ownership is the policy instrument and whilst private property rights may be one of the candidate instruments, it is certainly not the only one. Altogether, a forcefully and convincing argument and an impressive paper.

Budlender, G "Current initiatives on land tenure reform in South Africa" paper presented at the 3rd Alistair Berkley memorial Seminar, London School of Economics, May 1996

This paper documents the efforts currently being made by the Government of South Africa to redress injustices in land access and property rights by the black majority of the population. Proposals for the restitution of rights are described.

Colclough C, "Structuralism Versus Market Neo-Liberalism: An Introduction" in Colclough C and Manor J, (eds) "States or Markets: Neo-Liberalism and the Development Policy Debate" Oxford, Clarendon Press, 1991

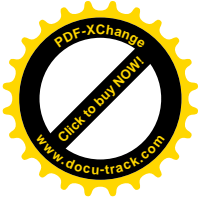
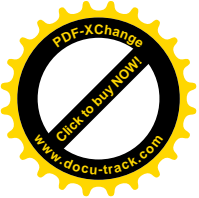
As its title suggests, this publication has a broad, strategic, developmental focus and is not directly concerned with land tenure.

de Soto, H "The Other Path: The Invisible Revolution in the Third World" I B Tauris, London, 1989 pp271

This book has attracted considerable attention for its analysis of the role of the informal sector in Peru. It describes the detrimental effect which excessively complex and unrealistic administrative procedures have on entry costs to a wide range of activities such as housing, commerce and transport and the impossibility of poor people being able to conform. Apparently it takes nearly seven years to obtain legal permission for house development and 207 steps are involved in adjudicating undeveloped state land. This explains the reason for the extensive growth of the informal sector to its present substantial economic and social role in the country, and Lima in particular.

Despite its proven advantages and achievements, de Soto does not consider the informal sector to be perfect or even desirable, so much as a rational response to an unacceptable situation. He advocates integrating the formal and informal systems by the simplification of existing procedures (to reduce entry costs to legal housing and economic activity); decentralising administration (to make local government more accountable); and de-regularisation (to increase the responsibility of the individual and reduce the power of the state). He trenchantly observes that right wing observers would probably regard Peru's mercantilist economy as inefficient and left wingers would probably consider it unjust.

His recommendations embody all the attractions- and dangers- of missionary commitment and as he does not indicate the existing entry costs of the different formal and informal options, it is impossible to estimate the impact integration would have on these. The freshness of his approach is the way it avoids the conventional left-right dogmas and develops a new approach. There is, however, nothing particularly new



in this as Turner has advocated similar views for some years. What is good is that it is now being advocated by influential people like de Soto from the Third World. Nonetheless, a note of caution needs to be sounded before his analysis is used as a basis for alternative policies.

Dewes W L "Maori Land in New Zealand" New Zealand Surveyor Vol 31 No3 August 1985 pp248-259

Maori attitudes to land and the ways by which colonialism successfully sought to undermine them are discussed in administrative detail in this paper. It also discusses how government has tried to encourage development on customary lands and the ways in which a contemporary, self confident Maori community is seeking to preserve its remaining interests.

Dickson W L "Surveys and Title in Self-Help Areas" Paper presented at Conference of Commonwealth Surveyors 1979, Paper No G1 pp6

This paper reviews the implementation of the Certificate of Rights in Botswana. Its advantages are seen as its administrative simplicity, negotiability, low cost and the degree of control which it provides. By retaining public ownership land transfers do not need to go through the complicated deed registration process, yet grantees have security of tenure and rights of transfer and appeal. Lack of administrative capability inhibited initial implementation of the scheme, but this has since been rectified.

Dickson W L "Urban Development of Customary Land: State Acquisition or Customary Land-owner Development" Mimeo, November, 1987

This paper outlines two ways of developing lands held under customary tenure in Papua New Guinea. One is Governmental acquisition of large areas of land for direct development and the other involves various ways of stimulating the customary owners to develop it themselves. The difficulties - and some of the options for overcoming them - are considered.

Dickson W L "land and Squatters in Papua New Guinea" no date. mimeo

A review of squatting processes on customary land and their implications for urban development in PNG.

Doebele W "Concepts of Urban Land Tenure" in **Dunkerley, H** (ed) "Urban Land Policy: Issues and Opportunities" Oxford University Press 1983

Doebele presents a comprehensive, concise and balanced assessment of land tenure issues. Much of the paper is concerned with developing a classification of tenure types and their interaction within urban land markets and on the basis of what he acknowledges was limited information. Given that the paper was written during the 1970's, this is understandable, though much has been written since. Doebele's distinction between formal and informal types of tenure is too simplified to explain the activities of illegal commercial developers and he also has little to say about the relationship between tenure and affordability or about tenure regularisation, both of which are central to the interests of low-income groups. Excellent use is made throughout of the case study material available at the time.

Doebele, W "The Evolution of Concepts of Urban Land Tenure in Developing Countries" Habitat International Vol 11 No 1 1987 pp7-22

Doebele has contributed as much anyone to the analysis of urban land issues and in this paper provides an overview of developments in understanding and action during the last twenty five years. His central thesis is that it is the struggle of every society to find a system of tenure that will, under the historical circumstances of the time, best optimise the contrary pulls of productivity and social justice. He notes that at a time of increasing demand and therefore prices, speculative tendencies demand stronger public



intervention in land markets, but acknowledges that all too often, governments have shown themselves to be not very good at it.

Doebele adopts a chronological approach and describes how conservative policies gradually gave way to more flexible and later positive ones. Despite this trend, demand has continued to outstrip supply and the commercialisation of land and housing is shown to have concentrated power in fewer hands, severely restricting options for future settlers. The paper describes recent innovations in tenure policy from land readjustment to community land trusts and stresses the need for further experiments.

Doebele, W "Issues Paper on Urban Land Tenure" Paper presented at the Land Management Review Workshop, World Bank, Washington, June 6-7, 1988 pp20

This paper notes the lack of reliable and detailed knowledge on urban land tenure and the need to acknowledge the dynamic continuum both between the legal and extra-legal systems and within them. The conventions by which a plot can move from an insecure title to a relatively more secure title are discussed with examples and various options for communal tenure compared. He doubts from the limited evidence available that co-ownership options are common or increasing and is one of the very few observers to recognise the needs of tenants in such discussions. This is particularly important, given the fact that they tend to be the poorest and most vulnerable of any population or tenure group. The pros and cons of Transfer Development Rights are also discussed, but thought to require greater institutional stability and support than is likely to be available in most cases. The paper concludes with recommendations for future research.

Doebele, W "Urban Land Policy: Objectives and Issues" Paper for the Urban Land Management Seminar, Annapolis, MD The World Bank December, 1989

This overview paper was written to establish the basis for discussions at a Bank staff seminar. It relates land tenure issues to policy options and their political contexts and notes that surprisingly little work has been undertaken on this subject in view of the vast sums of capital they involve and the invariably inefficient way in which they operate. He refers to the work of de Soto and Benjamin who has analysed how industrial development in Delhi was financed from land sales and cites other evidence of such an approach from Japan, USA and Korea.

Doebele, W (1991) Letter, mimeo

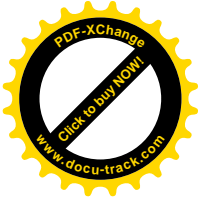
Doebele, W Land issues in Brazil Report prepared for PADCO, Washington DC (1990) mimeo

Dowall, D and Clarke, G "A Framework for Reforming Urban Land Policies in Developing Countries" Urban Management Programme Policy Paper No 7, The World Bank, Washington DC 1991.

This paper presents a series of guidelines for policy reform, which emphasise the need for government intervention to concentrate on those aspects which are most appropriate. The authors explain in clear terms why urban land policies need reform and propose five steps to achieving success. These involve undertaking land market assessments, decentralising land management authority, deregulating, curtailing public land development agencies and improving the efficiency of land market operations.

D'Souza, B "Will Bombay have a plan?" Paper presented at International Workshop on Planning and Managing Urban Development in the 1990's, held at Birmingham, UK 1989.

A lively exposure of the processes of urban management in a metropolitan city by one of the senior administrators involved.



Dunkerley, H (ed) "Urban Land Policy: Issues and Opportunities" Oxford University Press, Oxford 1983.

This book reviews a wide range of policy options for public sector intervention in urban development, though its dry tone is unlikely to attract other than specialist readers. It contains an excellent chapter, however, on land tenure by Doebele which is a model of clarity and practical advice.

Economist "A matter of title" London, 09 December 1995

A concise article summarising the merits of property ownership and drawing heavily on the work of de Soto in Peru. It accepts that titling, on its own, will not expand credit if links to the financial sector are missing.

Emdon, E "Privatisation of State Housing" Urban Forum 4.2 South Africa 1993

This book contains a chapter by Swilling which discusses the implications of wholesale tenure privatisation, especially for the substantial numbers of tenants in parts of South Africa.

Evers, H-D "Urban Landownership, Ethnicity and Class in Southeast Asian Cities"

The author provides a radical critique of these issues throughout the ASEAN countries, but particularly in Malaysia. He presents data on land ownership patterns and trends to show that there has been extensive concentration of land holdings in most urban areas, irrespective of policies to the contrary, and that this represents a major concentration of fixed capital assets and hence economic power. He concludes that under current conditions, class conflict can better be analysed through land ownership status than through any other factor.

Farvacque, C (Algeria report) 1989a.

This internal staff report recommends that a national land policy study be carried out and lists property rights and land tenure as the first item on the list of issues to consider. Given recent developments in Algeria, the report is no longer topical.

Farvacque, C (Madagascar report) 1989b. Details to be added.

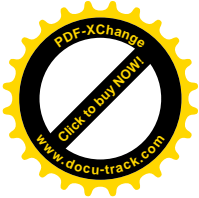
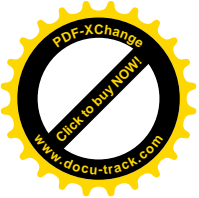
Another country staff report which noted that unauthorised settlements are a feature of urban development in Madagascar, partly because the private market was inactive. Recommendations include making the development control mechanisms more flexible and responsive.

Farvacque, C (Cameroon report) 1989c.

A further country staff report summarising land tenure issues as part of national urban land development and identifying options for World Bank support. It indicates that about 30,000 new urban plots are created annually, most of which are illegal. Disputes over land are widespread due to boundary problems, claims from the traditional community and the sale of non-registered lands.

Farvacque, C and McAuslan, P "Reforming Urban Land Policies and Institutions in Developing Countries" Urban Management Programme Policy Paper No 5 The World Bank Washington DC 1992

One of the most comprehensive and authoritative assessments of the issues and options affecting urban land development and management in developing countries produced to date. Land tenure issues are considered in great detail and illustrated with case studies from all parts of the world. The advantages and



limitations of various policy options are considered thoroughly against specified criteria, such as their equity, efficiency, flexibility and ability to encourage participation. Land registration and the regulatory framework are also considered in depth. Although the authors are from legal and planning backgrounds, the text is easily accessible to non-specialists, such as administrators and politicians. Strongly recommended and easily available, the report also contains a comprehensive bibliography.

Feder, G and Noronha, R "Land Rights Systems and Agricultural Development in sub-Saharan Africa" Report no.:ARU 64 Agriculture and Rural Development Department, World Bank, 1987

An impressive and comprehensive review of land tenure issues and their impact on social and economic development. The authors describe the indigenous tenure systems and the ways these were subverted by colonialism. It is clear that even some years after independence, many countries in the region have still not shaken off the consequences of colonial tenure arrangements, but a steady trend is perceived towards the individualising of tenure, in line with de facto markets which have developed irrespective of their illegality. Complex procedures for land registration have discouraged formal tenure transfers even where they are permitted and as a result, land records are rarely up to date. The authors consider a primary need is to strengthen the administrative capability of land institutions, so that they can manage land on a long term basis.

Feder G, Onchan T, Chalamwong Y and Hongladarom C "Land Policies and Farm Productivity in Thailand" Johns Hopkins for the World Bank 1988 pp165

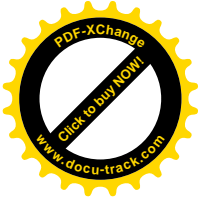
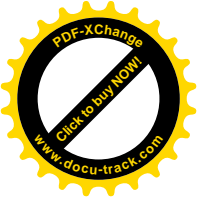
This book expands upon, and provides empirical evidence in support of, the discussion advanced in Feder and Noronha in the case of sub-Saharan Africa. There is an interesting section on the different types of tenure available in Thailand under the Land Code of 1954 and these include a "claim certificate"; a "pre-emptive certificate" granting temporary occupation; a "certificate of use" and; full, unrestricted title. Although there is no direct reference to urban aspects of land tenure, many of the points raised have a strong indirect relevance. Nowhere is this more true than in the assessment of the impact of granting improved tenure to rural squatters. The certificates of occupation granted gave usufruct rights only and did not improve access to credit. As a result, the programme was not considered successful.

Fisher, R "Tensions and Tenures in post-Apartheid South Africa" Paper presented at the Conference on International Land Tenure organised by the Royal Institution of Chartered Surveyors and the University of East London, December, 1993

The author provides a summary of the evolution of tenure policy by the African National Congress (ANC) both before and after assuming power in South Africa. It records the political pressures on the party and how it was responding to these.

Friedman, J Jimenez, E and Mayo, S K "The Demand for Tenure Security in Developing Countries" Journal of Development Economics 29(1988) pp185-198

This study uses data from a survey in Manilato estimate values for formal and squatter housing. The authors use econometric modelling to demonstrate that rental income (or costs) of an average rental squatter unit would increase by 15% if it were a formal sector unit, and values (and costs) of "owned" units would also be significantly higher. Presumably the provision of tenure on this basis would be of considerable benefit to existing owners, but of equal disbenefit to tenants or future aspiring "owners". Any policy intending to strike a balance of interests would therefore have to take both types of impact into account.



Gilbert, A and Ward, P "Housing, the State and the Poor" Cambridge University Press 1985

One of the most valuable contributions to the literature on land issues to date. It analyses the political and economic context as well as the technical and social aspects of land markets and land development in a detailed comparison of three South American cities, Mexico City, Bogota and Valencia.

Henderson, J V and Ioannides, Y M "A Model of Housing Tenure Choice" The American Economic Review Vol 73 No.1 March 1983 pp98-113

This paper provides a technically sophisticated analysis of the economic differences between the opportunity cost of renting and owning which includes ways of estimating key externalities and life cycle implications. Unfortunately, the authors restrict their attention to these two tenure options, and given the wide range of tenure options found in most cities, particularly in developing countries, the scope of the paper is likely to be too restricted to be of practical value to most professionals except econometricians.

Holstein, L "Ghana Urban Sector Study: Land Issues and Land Management" The World Bank Washington DC. Mimeo April, 1988

This aide memoire describes the actors involved in land development in the urban areas of Ghana and gives prominence to land tenure and particularly customary land tenure systems. The impact of urban growth on these systems is discussed and recommendations given for addressing them.

Holstein, L "Urban Land Management: Objectives, Issues, Framework, Some Bank Experience" Introduction Paper presented at World Bank Seminar, Annapolis, December, 1989 pp17

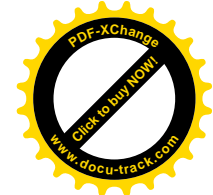
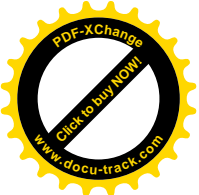
This paper sets the scene for a comprehensive discussion of urban issues and refers briefly to urban land tenure and property rights, particularly in Africa.

Hooko, D "The communal land question and accessibility to urban land in Ghana: Is land reform the palliative?" Paper presented at the Royal Institution of Chartered Surveyors (RICS) International Land Tenure Seminar, University of East London, December, 1993

Ghana has been well served by studies on land issues and tenure in particular. This paper reviews customary, colonial, post independence and contemporary issues in terms of land acquisition and documentation. It concludes that people face major problems in acquiring a plot of land, because of cumbersome, time-wasting and expensive processes, but doubts that this requires reform of the communal land holding system. Instead, it recommends improvements to the institutions responsible for land administration.

Jimenez, E "Tenure Security and Urban Squatting" The Review of Economics and Statistics published for Harvard University by North-Holland Publishing Co Vol LXVI, No 4 November 1984

This paper uses an equilibrium model, together with hedonistic price techniques, to derive the average premium on tenure security in a Filipino case study. By reducing the range of tenure types considered to two (the formal or non-squatting and the informal or squatting options) the value of this sophisticated analysis is inevitably severely limited. Any research which asks residents how much they are willing to pay for security of tenure inevitably reduces a mass of intangible, subjective and often conflicting considerations to the point where it would be dangerous to draw any conclusions with confidence.



Joshi, D A "Plotting Transformations: The illegal land subdivision process in Delhi" Thesis for Master of City Planning and Master of Science in Architecture Studies, Massachusetts Institute of Technology, June 1991.

Like Benjamin and Razzaz, this thesis demonstrates how valuable even a limited amount of field work can be in understanding the realities of informal tenure systems. It points out, for example, that in Delhi, the threat to security of occupancy ('tenure') is increasing not from public authorities, but from other private individuals as a result of 'land grabbing' or fraudulent dealing. The thesis is also valuable in describing how relationships between land-owners and 'colonisers' (developers) are rapidly evolving in India, including the interesting phenomenon of how families initially seeking land for shelter find that it also opens opportunities for small entrepreneurship. It is an excellent illustration of the kind of investigation that should be done in execution of the recommendations contained in this paper.

Kardar, S "Title to Land" Mimeo, 1991

A short analysis of land conveyancing problems in Pakistan and the difficulties of establishing clear title to land even in the formal shelter sector.

Kitay, M G "Public-Private Co-operation for the Development of Low-Income Shelter" Habitat International Vol 11 No 1 1987 pp29-36

This article discusses the need to encourage private sector developers in low-income urban housing and cites delays in clarifying and registering title as a constraint.

Kitay, M G "Land Acquisition in Developing Countries" Oelgeschlager for the Lincoln Institute of Land Policy, Boston 1985

This book does not discuss urban land tenure in any detail, though it refers to the detrimental effect on land markets caused by delays in registration of transfers.

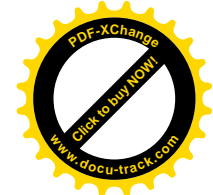
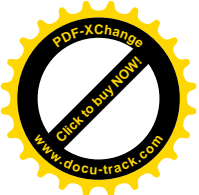
Kludze, A K P "Property Law and Rural Development in Ghana" Rural Africana 17 (Fall 1983) pp57-68

As its title suggests, this paper is concerned with the role of customary tenure in the rural areas of Ghana. It does, however, contain points of relevance to urban policy, since a significant proportion of urban land in Ghana is held under customary tenure. Variations in customary tenure practice are discussed as are the problems facing any developer, who has to ascertain the relevant statutes and authorities which may apply and identify all those groups and individuals with interests over the land, if the acquisition is to be valid in law. Despite these considerable problems, the author advises caution in implementing land reform, since any move to increase central authority brings with it the risk of nepotism.

Kufogbe, S "Urbanisation and changing patterns of land use in the peri-urban zone along the Airport-Ayimensah transect of Accra, Ghana" Royal Institute of Chartered Surveyors, London, 1996

This study reviews changing patterns of land use between 1960-88 in an expanding area of peripheral Accra. It found that the process has been responding to private as well as public demands for land and that more effective public sector intervention is required to prevent its misuse and safeguard its optimum development in the regional and national interest.

Kundu, A Letter to the author, 22.06.1990



Lea, J P "Customary Land Tenure and Urban Housing: Land Partnership and Participation in Developing Societies" in **Angel, S et al** (1983)

The author examines the problems of planned-and affordable- urban expansion in societies where the land adjacent to towns is held under customary tenure. He describes the situation in Papua New Guinea where 97% of the country's land area is in customary tenure and where the owners have come to accept various informal arrangements for settling their land, but are resistant to intervention by government, which they regard with suspicion. An innovative development undertaken by an NGO is discussed and considered to represent an approach suitable for wider application.

Lee, M "The cost of the second best: The price of land regulation in Asia" DPU Working paper No 62, University College London, April 1994

A comprehensive review of the direct and indirect costs of official regulations, standards and procedures in various Asian countries. Land tenure issues are covered briefly.

Linden, J van der "Dalalabad: An enquiry into illegal subdivision in Karachi" Mimeo, 1987

This paper focuses on the role of subdividers in making public land available to low-income households for housing development. It is claimed that the process is so well established that government is no longer able to control it.

Lufadeju, E O "Protecting and enabling the urban poor: Resources support approach to planning. The cases of Lagos and Nairobi" Paper presented at International Workshop on 'Planning and Urban Management in the 1990's', held at Birmingham, UK 1989.

A penetrating comparative analysis of the role of planning under two very different sub-Saharan African cities and implications for future urban development.

Mabogunje, Akin "Perspective on Urban Land and Urban Management Policies in Sub-Saharan Africa" (Draft) Africa Technical Infrastructure Department. Mimeo 1990.

A comprehensive and detailed analysis of land issues in the region. It reviews and assesses the historical, political, economic and social aspects of land tenure and land management. The paper offers recommendations concerning the role of technical assistance programmes in land policy.

Malpezzi, S Tipple A G, Willis K G "Costs and Benefits of Rent Control in Kumasi, Ghana" Discussion Paper, Report INU 51 The World Bank, Washington DC October 1989 pp139

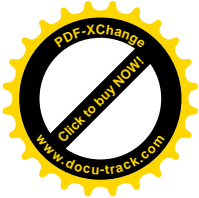
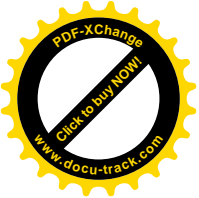
Although this paper concentrates on land tenure in a selected city, it contains brief descriptions of the prevailing land tenure systems and the operation of the traditional leasing system.

Marcuse, P "Privatization and its Discontents: Property Rights in Land and Housing in the Transition in Eastern Europe"

A penetrating analysis of the theory of privatization and its application which questions the assumption that no individual rights existed under socialism and explores the advantages and limitations of the approach.

Matras, H "Structure and Performance of the Housing Sector of the Centrally Planned Economies: USSR, Hungary, Poland, GDR and Yugoslavia" Discussion Paper, INU 53 The World Bank, Washington DC October 1989 pp44

This paper discusses housing demand and supply in the countries covered, but mentions that in



Yugoslavia, informal housing accounted for about 30 percent of all single family houses around 1976. Co-operatives also exist in some of the countries covered.

McAuslan, P "Urban Land and Shelter for the Poor" Earthscan, The International Institute for Environment and Development, London and Washington DC 1985

This book provides an excellent general introduction to urban land issues and devotes the first chapter to a review of land tenure issues. The author emphasises the need to consider cultural and historical traditions in assessing tenure options and notes that many countries still pursue approaches developed during colonial periods, despite their limited success. Neither laissez-faire nor socialisation approaches are considered to have been successful and the need to develop locally specific options which are based on notions of cultural relevance and equity.

McAuslan, P "Land Law, Tenure and Registration: Issues and Options" Paper presented to Urban Land Management Seminar, The World Bank, December, 1989

This short paper advocates caution in assimilating traditional and informal tenure systems into more "modern" systems, though the reasons cited are more to do with the need to develop appropriate institutional, professional and legal frameworks than a demonstrated superiority of such "modern" forms. The paper also begs the question as to whether more "efficient" land markets will be accessible to poorer households. It could be argued that it is their inability to operate efficiently which enables low-income households to obtain land for housing through informal means, since they could never afford the full market price of a legal plot with full tenure at the outset.

McHugh, P G "The Economic Development of Native Land: New Zealand and Canadian Law Compared" Saskatchewan Law Review Vol 47 Winter 1982 pp119-151

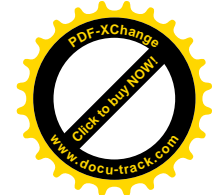
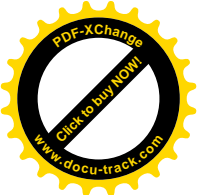
According to the author, unrest among the indigenous peoples of Australasia and North America invariably centres on land. This takes two main forms; land claims and economic development. In comparing the two legal systems relating to native tenure, he considers legal certainty vital and considers that there is more law than is necessary in the Maori case, but not enough in the Indian case. He considers the former preferable, especially as it avoids placing too much discretionary power in the hands of officials and politicians, which can confuse the functions of trusteeship and management to the detriment of both. No specific comments are made regarding urban issues.

Meyers L R, (ed) "Innovation in Resource Management" Proceedings of the Ninth Agricultural Sector Symposium, The World Bank, Washington DC, October 1989

Of the twenty or so chapters in this book, two deal directly with the issue of land tenure and property rights, albeit in a rural context. These are by **Bromley, D W, and Cernea M,** and **Migot-Adholla S, et al,** comments on which are provided under the appropriate headings.

Migot-Adholla S, Hazell P, Blarel B, and Place F, "Land Tenure Security and Agricultural Production in sub-Saharan Africa" in **Meyers L R (ed)** The World Bank, 1989

This paper casts doubt on the assumed merits of private freehold and suggests that customary tenure in Africa does not necessarily discourage long term investment or the emergence of market transactions. The authors assert that the intention of land registration is to clarify land rights, not necessarily to individualise them, though they accept that increasing population pressure and commercialisation facilitates privatisation in practice. The different forms of traditional tenure in the region are discussed and their impact on investment and access to credit evaluated. The paper concludes with a recommendation that indigenous tenure systems are generally flexible and deserve to be retained or adapted whenever possible.



The study has considerable relevance to discussions of urban tenure issues, though these are not mentioned directly.

Mitra, B "Impact of Tenure Regularisation and Environmental Upgrading Programmes on Shelter Consolidation in Squatter Settlements in Bhopal" HUDCO, New Delhi, 1988

A detailed study of the state-wide policy of granting legal tenure to urban squatters in Madhya Pradesh, India starting in 1984.. The study was carried out in 1986 and concluded that whilst tenurial rights are desirable, they are not essential in promoting shelter improvement and that 'perceived security' plays a more important role.

Mulk Raj "Administrative intervention in the urban land market"

Paper presented at the Lille International Meeting on Land Policies, November, 1989

An incisive review of the Urban Land Ceiling Act as it was implemented in Delhi, together with its consequences.

Nair, K "Transforming Traditionally: Land and Labour Use in Agriculture in Asia and Africa" Perspectives on Asian and African Development No 1. Riverdale, Maryland 1984.

Chapter 10 provides a short, but useful review of land tenure issues, especially in Kenya.

Ollenu, N A Principles of customary land law in Ghana Sweet and Maxwell, London 1961

A comprehensive, but now dated, assessment of the subject.

Osman, D S el din "The Impact of Land Tenure Systems on Women Farmers in Eastern Africa" Mimeo, Land Tenure Center, University of Wisconsin, Madison, Washington DC March 1987

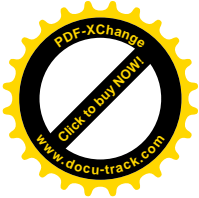
An impressive indictment of the impact that land tenure policies and practices have had on women in rural areas of the region. Under traditional tenure systems, women frequently had specified and accepted rights, but under colonialism, these were extensively eroded and it became ever more difficult for women to assert what few rights they retained. The situation since independence appears not to have improved in any significant way, since land registration and titles are invariably awarded to male heads of household, despite the high proportion of female headed households, and inhibitions in dealing with (invariably male) outsiders increases their difficulties in safeguarding their interests. Despite this scenario, the author gives several examples of policy options to improve the situation.

PADCO "The land and housing markets of Bangkok: Strategies for public sector participation" PADCO, Washington DC 1987

The most comprehensive study so far undertaken of a single city. It describes the role of the private sector in meeting the needs of a wide range of income groups.

PADCO "Assessment of the Community Mortgage Program" USAID, Main report 1993

A progress report on this innovative approach, highlighting the bureaucratic constraints to effective implementation.



Payne, G "The Gecekondus of Ankara" in **Ward, P** "Self-Help Housing: A Critique" Mansell, 1982.

A study of the nature and evolution of squatter settlements in Ankara and their commercialisation under the pressure of urban growth and increasing competition between different income groups. It describes how the traditional processes of squatting on public land was gradually replaced by illegal subdivisions and the responses of state agencies.

Payne, G K (ed) "Low-Income Housing in the Developing World: The Role of Sites and Services and Settlement Upgrading" John Wiley, Chichester 1984

This book concentrates on specific public sector approaches to housing provision and improvement, but contains a chapter by **Zetter**, on land issues, which is reviewed below.

Payne, G "Informal Housing and Land Subdivisions in Third World Cities: A Review of the Literature" Prepared for the Overseas Development Administration by the Centre for Development and Environmental Planning, Oxford Polytechnic (now Oxford Brookes University) 1989 pp68

This review of the literature concentrates upon the informal private sector systems by which land is brought into residential use at prices which low-income groups can afford. The commercial developers who operate these semi-legal practices are shown to have achieved the twin objectives of affordability and replicability which motivated the less successful public sector sites and services schemes. This is invariably done by reducing standards of initial provision and offering forms of land tenure which are sufficient to attract purchasers, but insufficient to attract higher income speculators. Many different forms of land tenure are adopted and a single plot may go through several stages in a short period of time before its occupiers obtain security of tenure and virtually full title.

Platteau, J-P "Behind the Market Stage Where Real Societies Exist" The Journal of Development Studies Vol 30 No 3 1994

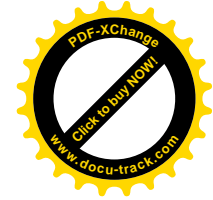
An examination of the social conditions upon which the viability and efficiency of the market system rest. It focuses upon issues of trust and morality to argue that in countries where norms of limited-group, rather than generalised morality prevail, economic development is difficult to achieve. Tenure and property rights are considered within this developmental framework.

Russell, M "Why Urban Land Tenure Survives in Swaziland" Ceres 119, 1986, pp30-34

This paper is concerned with rural land issues, though there are important implications for urban areas. Contrary to popular opinion, it appears that communal land tenure increased in Swaziland from 36-60% of the country's land area between 1914-80, despite agro-industrial expansion- the factors normally thought to cause its decline. The colonial ceding of tracts for cattle grazing created a dual land tenure structure. Local people sought to retain as much of what remained as possible, whilst a parallel freehold market enabled entrepreneurs to operate freely, something that was not possible under the communal system. Finally, the retention of rural rights helps to cushion wage earners in the urban areas, demonstrating a link between the two.

Shivji, I G "Problems of Land Tenure in Tanzania: A Review and Appraisal of the Report of the Presidential Commission of Inquiry in Land Matters, 1992" Paper presented at the National Land Policy Workshop held in Arusha, January, 1995

This authoritative review by a professor of law provides an independent view of the evolution of land policy from colonial times to the present. It pulls no punches in commenting on various policy approaches, reviews the response to earlier recommendations and offers an informed basis for public discussion on the



subject.

Silas, J "Housing the Poor in Surabaya" in **Angel et al** 1983 pp211-233

This case study provides an opportunity to test some of the general issues discussed elsewhere in this book. It confirms the views of other contributors regarding the complexity of tenure systems and the tendency for a combination of market forces, selective access to financial credit and loss of community control to reduce options for lower-income groups, even in a city which enjoys considerable land reserves.

Silas, J "Spatial structure, housing delivery, land tenure and the urban poor in Surabaya, Indonesia" mimeo, no date

This paper contains a section on the dual and tenure system of Surabaya and the impact these have had on the Kampung Improvement Programme undertaken throughout the city and surrounding villages. It records that payment of land taxes is regarded by most households as an acceptable certificate of ownership, though recent trends favour more formal processes.

Simon, D "Land, Environment and Development in Post Independence Namibia" Royal Institute of Chartered Surveyors, London November, 1995.

A broad overview of mainly rural and peri-urban land issues, but with a brief discussion of urban land reform and tenure.

Simpson, S R "Land Law and Registration" Cambridge University Press 1976

The standard text on the subject, it provides a comprehensive and authoritative assessment of all concepts and systems of land administration throughout the world. It is still invaluable especially for its discussion of the nature of English.

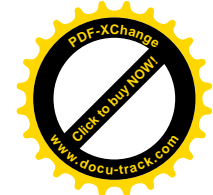
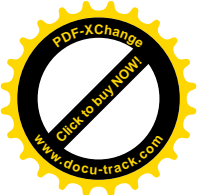
Stanfield, P G "Land Registration and Security of Land Ownership in St Lucia" Paper presented to the Latin American Studies Association Congress, San Juan, Puerto Rico, 21-23 September 1989 pp28

This paper examines the reasons behind, and progress in implementing, the Land Registration and Titling programme in St Lucia. It notes that much of the country is held as "family lands" under which a number of co-owners share a parcel, but without any physical subdivision. The programme's objectives include the alienation of parcels into individual plots, but the advocates of the programme are considered to have been uncritical in assuming that the land market would permit more productive and efficient users of the land to bid for and acquire it. The author noted the positive aspects of the family lands system and concludes that institutional means be found to deal with tenure problems in this system as they arise, rather than struggle to eliminate or fatally weaken it.

Struyk, R Hoffman, M and Katsura, H "The Market for Shelter in Indonesian Cities" The Urban Institute Press, Washington DC 1990.

A comprehensive assessment of the operation of urban land markets in Indonesia, with a particularly useful and concise methodology for assessing housing needs.

Thirkell, A "The informal land market in Cebu City, the Philippines: Accessibility, settlement development"



and residential segregation" PhD thesis, London School of Economics, mimeo 1994

A detailed study of the historical and contemporary development of the land market in a major provincial Asian city based on extensive fieldwork. The author seeks to redress a situation in which little research has been undertaken as to the nature of land rights in the city, even though data show that up to 58% of the city's population live in informal settlements.

Thirkell, A "Players in Urban Informal Land Markets: Who Wins? Who Loses? A Case Study of Cebu City, the Philippines" Environment and Urbanization, Vol 8 No 2, October 1996

This paper shows that informal land developments, more typically associated with the urban poor, are increasingly attracting middle-income households in cities such as Cebu City. It also reveals that the conditions which lead people to sell and the bargaining strategies of wealthier groups suggest that lower income households may not fully realise the "market" value of their plots. The study offers insights into the changing role of informal settlements in expanding cities.

United Nations, "Urban Land : Problems and Policies" Bulletin No 7, New York, 1953 pp182

This must stand as the first international assessment of urban land issues. As such, it is inevitably dated in many respects, such as its claim on page one that "governments have the necessary powers to deal with problems of urban land use and that they are applying them". This may have been true of the European case studies cited, but hardly applies to developing countries. Although much of the evidence cited is anecdotal, the breadth of Charles Abrams' learning makes it fascinating reading.

United Nations, "Urban Land Policies and Land-Use control Measures" Department of Economic and Social Affairs, United Nations, New York 1973 7 Volumes

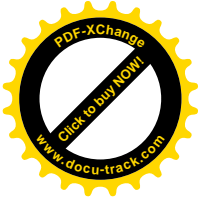
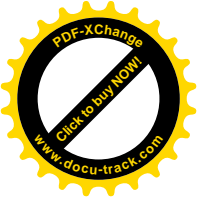
This was one of the first comprehensive reviews of urban land issues to be carried out. It describes traditional/customary, colonial and religious factors in the development of various national land tenure and development control systems, with each volume concentrating on a different region. A number of recommendations are offered, though these inevitably appear dated, such as a touching faith in land nationalisation as a means of facilitating land use planning and administration.

United Nations "Land for Housing the Poor" Proceedings of UN Seminar of Experts, Tallberg, Sweden, March, 1983 pp100

This short book presents recommendations on most major aspects concerning urban land acquisition, development, transfer, use and control. It suggests ways in which public sector agencies can increase their influence over complex land markets and is therefore a useful reference work. However, its universality inevitably reduces its value in dealing with specific issues under specific conditions and little attention is given to the issues of land tenure or property rights that is not covered elsewhere in greater detail.

United Nations, "Land for Human Settlements" United Nations Centre for Human Settlements (Habitat), Nairobi, 1984 pp57.

A comprehensive review of urban land issues as they affect low-income residential development. It considers land to be the major obstacle to improving living conditions and identifies the main types of tenure (from Baross 1983). Whilst acknowledging that governments play limited roles in providing land, it also considers that informal (commercial and non-commercial) options are in decline as land markets strengthen their grip and exclude the poor. Options for improving land supply are identified, including suggestions for increasing security of tenure. Future research needs are also discussed.



United Nations (UNDP) Urban Management Program "Overview of Program Activities" UNDP, Nairobi February, 1989 pp14

This report on progress with the joint UNDP, UNCHS and World Bank Urban Management Program mentions work in hand on land tenure and the lists the benefits of secure tenure. Countries where projects with a land tenure component are being undertaken include Cameroon, Ghana, Madagascar and the Philippines.

United Nations (UNDP) Urban Management Programme "Institutional/Legal Options for Administration of Land Development" January 1991

A major review of the development of urban law and administration, with a focus on African cases (Botswana, Lesotho, Nigeria, Ghana, Tanzania and Zambia). The report provides an overview of the legal and institutional framework for urban development, an analysis of options for incremental and radical reform and recommendations for policy implementation. Land tenure systems, issues and options are mentioned in several chapters.

USAID "Kathmandu Valley Urban Land Policy Study" Washington DC

A detailed study of the methods of land conversion in Kathmandu. It shows how brokers who are familiar with laws and regulations, and who maintain good relations with senior officials, identify, develop and manage suitable sites. The study proposes five measures to encourage, improve and support these informal processes by government agencies.

Varley, A "The relationship between tenure legislation and housing improvement: Evidence from Mexico City" Development and Change Vol 18 Sage 1987.

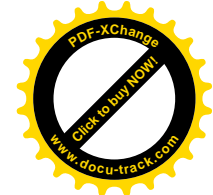
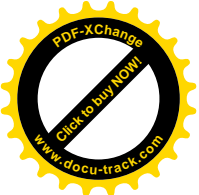
This paper describes the relationship between tenure legislation for illegal settlements and housing improvements by the residents. The author concludes that land tenure legislation, despite its influence, cannot be claimed as a sine qua non of housing improvements and settlement consolidation and that the efficiency of this instrument should be assessed in context with other policy instruments, such as the installation of infrastructure.

Wegelin, E and Chanond, C "Home Improvement, Housing Finance and Security of Tenure in Bangkok Slums" in Angel S et al 1983

One of the central issues in assessing the importance of land tenure in the willingness or otherwise of households to invest in home improvements is the perceptions of settlers regarding their level of security and the degree of access which they enjoy to housing finance. This paper concentrates on these factors and shows that although levels of investment increase with perceived increases in tenure security, twice as many households who did not invest significantly cited lack of access to formal finance mechanisms rather than the fear of eviction. The authors also conclude that the tenure issue is likely to prove more difficult to resolve and recommend the wider application of land sharing schemes.

Willcox, D "The Legitimacy Nobody Needs" Mimeo 1991

A short, but incisive assessment of attitudes of poor urban households in Pakistan towards land titles which suggests that only a foolhardy mortgage banker would make a loan on the basis of any set of papers relating to title.



World Bank "FY89 Sector Review: Urban Operations- Reaching the Poor through Urban Operations"
World Bank, Washington DC November 1989 p58

This review of Bank activities in the urban sector during 1989 refers to projects in Cameroon, Rwanda and Zimbabwe which have a significant land tenure component and lists the objectives of research programmes intended to document options and experiences in improving formal, informal and customary tenure, particularly in the African context.

World Bank "World Development Report" The World Bank, Washington DC 1989.

The report contains a section discussing the role of informal land and financing processes and options for supporting them.

Zetter, R "Land Issues in Low-Income Housing" in **Payne, G K** (ed) "Low-Income Housing in the Developing World" John Wiley 1984 pp221-231

This paper considers land in urban areas to present two types of problem; the structural problems of land ownership and the procedural or managerial ones of land taxes and title registration, etc. It emphasises the need to get away from European concepts of tenure and reviews experience to date with land banking and land readjustment.