

**HANDBOOK ON  
BEST PRACTICES,  
SECURITY OF TENURE  
AND ACCESS TO LAND**

**IMPLEMENTATION OF THE HABITAT AGENDA**



**UN-HABITAT**

**UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME**

## Unedited version:

The text of this document has not been officially edited by UN-HABITAT. The findings, interpretations and conclusions expressed here are those of the author and do not necessarily represent the views of UN-HABITAT.

## Acknowledgements:

This handbook reviews material produced by UN-HABITAT partners up to, and including, 1999, in terms of the implementation of the Habitat Agenda. An earlier draft of this handbook was used by UN-HABITAT for internal purposes to strengthen its land management/ administration normative guidelines and for inputs into programme design.

It is being published now because it remains the most comprehensive global overview to date of progress made in countries towards achieving the Habitat Agenda in the area of land tenure and land management/administration. Some of the information it contains is being used in key global reports currently being published, such as the UN-HABITAT Global Report on Human Settlements 'The Challenge of Slums' (to be published in 2003); and the Background Paper of the Millennium Project Task Force 8 'Improving the Lives of Slum Dwellers' (to be published in 2003).

A few of the examples given in the Handbook are no longer current, as there have been new developments undertaken by Member States. However, many of the examples are current and remain a Best Practice, and the general trends identified remain cutting edge at the global level, hence the reason for publication.

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## ACRONYMS

CALS	Centre for Applied Legal Studies (South Africa)
CBO	Community Based Organisation
COHRE	Centre on Housing Rights and Evictions
COR	Certificate of Rights (Botswana)
CLT	Community Land Trust
FIG	Federation of International Surveyors
GIS	Geographic Information System
GPS	Global Positioning System
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Co-operation)
HDA	Hyderabad Development Authority (Pakistan)
HIC	Habitat International Coalition
IRGLUS	International Research Group on Law and Urban Space
KKB	Khuda-Ki-Basti development scheme (Pakistan)
LIM	Land Information Management
LIS	Land Information System
NGO	Non Government Organisation
PPP	Public Private Partnerships
SEWA	Self-Employed Women's Association Bank (India)
TDR	Transfer Development Rights (India)
UN	United Nations
UNCHS	United Nations Center for Human Settlement
UNECA	United Nations Economic Commission for Africa
UPNS	Unique premises numbering system
WAT	Women's Advancement Trust

## FOREWORD

Abject poverty is the plight of so many of our fellow humans. One in five spends their life in urban slums. One in two lacks basic sanitation. Governments around the world have formally recognised universal rights to adequate housing and living standards. Yet increasing numbers only manage to trade rural for urban destitution. This is because institutional frameworks deny them the opportunities to which we are all entitled.

Lack of access to land, and fear of eviction, epitomise a more pervasive exclusion from mainstream social, economic and civic opportunities, especially for women. Precarious conditions generate poverty as people have no future in which to invest. As their numbers keep mounting, the prospects for our collective sustainable urban development look bleak.

The urban poor need safer grounds on which to leverage a future and this is what UN-HABITAT is looking to achieve with its Campaign for Secure Tenure. Since its launch in 1999, a number of countries have joined the 10-year campaign and agreed to implement at local level a set of recognised universal principles.

This Handbook is designed to help all the stakeholders actively involved in the campaign, including multilateral institutions, central and local government, non-governmental organisations, the private sector and grassroots action groups. It seeks to provide them with the information they need in their own efforts to implement national strategies, and outlines specific action plans for every category.

This Handbook is unique in that it brings together the wisdom and the lessons learned by UN-HABITAT, other organisations and over 100 academic experts in the intricate areas of land legislation and management all over the world. It includes many instances of successful grassroots initiatives in a wide variety of countries. These gems of best practice will hopefully encourage and stimulate further, innovative efforts to provide more inclusive land access and security of tenure for the urban poor.

The breadth and depth of information in the Handbook allows for better adaptation to specific local conditions as well as for better co-ordination between the various participants. These are critical factors in the success of the decentralised approach to land governance favoured by the campaign. In fact, this inclusive, stakeholder-based methodology provides for the checks and balances that are a defining feature of good governance.

In this, as in other respects, the Campaign for Secure Tenure complements UN-HABITAT's ongoing Campaign on Urban Governance. Both aim to deliver on the commitments made at the 2000 UN Millennium Summit and the 2002 World Summit on Sustainable Development. Both promote a vision of an urban future based on inclusion, social and economic development - a future based on human opportunity and on hope.

I trust users of this UN-HABITAT Handbook will find it an effective tool in our collective endeavour to promote universal housing rights.



Mrs. Anna Kajumulo Tibaijuka  
Executive Director  
UN-HABITAT

## CHAPTER 1 - SECURITY OF TENURE FOR ALL SEGMENTS OF SOCIETY

### 1.1 Land a strategic prerequisite for shelter provision

Legal access to land is a strategic prerequisite for the provision of adequate shelter for all and for the development of sustainable human settlement affecting both urban and rural areas. *The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty.* It is also the cause of increased living costs, the occupation of hazard-prone land, environmental degradation and the increased vulnerability of urban and rural habitats, affecting all people, especially disadvantaged and vulnerable groups, people living in poverty and low-income people (Habitat Agenda:1997a: no.75).

By the year 2020 the current 30 percent level of urban poverty in the world could reach 45 to 50 percent of the total population living in cities, that is 381 to 455 million households (as estimated by UN-HABITAT in 2003 in terms of a rather moderate scenario.) In most cities of the developing world, up to one half of the urban population lives in informal slum or squatter settlements that are not legally recognized by the city authorities. The informal parts of the city do not enjoy many of the benefits of urban life, including secure tenure (UNCHS:1999a).

### 1.2 Instances of best practice

#### 1.2.1 Background

Any analysis of security of tenure and rights to land needs to take into account that firstly, there are a range of land rights in most countries which occupy a continuum, with a number of such rights occurring on the same site or plot. Secondly, it is not possible to separate the different types of land rights into those that are legal and those that are illegal. *Rather there is a range of informal-formal (illegal-legal) types along a continuum, with some settlements being more illegal in comparison to others.* The type of characteristics which are generally used to distinguish informality, and subdivisions may be illegal on several counts, and these relate to whether the:-

- Land has been invaded against the owner's permission;
- Land has been sold by the landowner/developer with defective title/deed (Payne:1997:31);
- Settlement conforms to local authority land use controls (Payne:1997:31);
- Land was adjudicated by the state;
- Housing conforms to building regulations (Payne:1997:31).

#### The nature of secure tenure

Security of tenure for all will require a range of tenure types. The most common tenures, and the extent to which they can be utilized by the poor, is discussed below. An attempt is made to generalize the tenure types as there is great international variation, with each country having different conditions of title/deed. (Title/deeds refer not only to registered rights but also certificates of occupation, etc). Security of tenure however can come not only from formal legal forms, but also other aspects and instruments.

Tenure security is defined as, "...(i) protection against eviction; (ii) the possibility of selling, and transferring rights through inheritance; (iii) the possibility... (of having a)... mortgage, and access



to credit under certain conditions” (FIG/UNCHS:1998:18). In terms of the bundle of rights, the weakest tenures, as far as low-income individuals are concerned, are discussed first and the strongest last.

### ***1.2.2 Inclusive cities do not marginalise the poor***

Fernandes and Varley, Azuela and Duhau, Varley, and Mitullah and Kibwana, when analyzing Brazil, Mexico and Kenya, show that squatter and slum settlements have been marginalized and excluded from the city as a whole, largely *because they have not been seen to be adding value*. It is now being argued that, rather than these informal settlements only being a product of poverty, in fact they are a result of urban law (geared to the middle classes and often of colonial origin), policy and their application by government officials. *It is being suggested that ‘inclusive’ approaches should instead be adopted, whereby informal settlement residents should be seen to have a ‘right to the city’* (Fernandes and Varley:1998; HIC:1997). That is, “(g)overnment intervention should be city-wide... rather than project- or settlement-based” (Payne:1997:34). This approach is best illustrated by using the Slum Networking experience in Indore, India, where city-wide planning was done, upgrading the infrastructure of the whole city by using the network of slum settlements as a starting point (see box below).

#### **Need for a new ‘social contract’**

Fernandes and Varley state that a new updated ‘social contract’ should be developed defining new conditions for the exercise of citizenship in contemporary societies. “In Brazil... the latest (1990) version of the Urban Policy bill introduced the notion of a ‘right to the city’ to be guaranteed by the formulation and enforcement of a national urban policy, comprising measures to improve urban living standards through spatial planning and access to collective infrastructure, services and amenities by the inhabitants of the city.” (1998:8). The United Nations Commission on Human Settlements has taken *the approach that the transformation of cities into inclusive and integrated cities is critical for shelter for all* (UN:1999:4).

#### **Need for fresh attitudes**

Changing official and social attitudes and mindsets about informal settlement residents having a ‘right to the city’ would be a major step into giving these residents some form of tenure security. Their security would be greatly strengthened if the policies and law were made congruent with such an attitude change. In some countries this could be more easily achieved than in others. The alteration of urban law, policy, instruments and procedures, dealt with below (see section 2.2.5), would probably take a long time to effect.

### ***1.2.3 Incremental approaches to tenure change***

FIG/UNCHS state that the trend today is away from the idea that individual land rights are the ultimate goal when undertaking the regularization of informal settlements. Rather, today the trend is *towards the creation of “...flexible legal formulae for guaranteeing security of tenure...”* (1998:21). A review of freehold title/deeds and why it is not considered as a universally useful tool for delivering tenure security for low-income groups is discussed below (see 1.2.14 below).

### India: Slum networking: Using Slums to Save Cities

Slum Networking is an integrated upgrading of the entire city using slums, not as isolated islands, but as an urban net. The spatial spread of slums over a city, together with contiguity between slum settlements, gives an opportunity to strengthen city level infrastructure networks. The project indicates that the slum fabric can be used effectively to move from community scale to city level. It also demonstrated that complex and large-scale urban renewal programmes can be sensitively executed. The key to the success of the project was the slum dwellers themselves, who showed that they were willing to mobilize resources despite their poverty. They were partnered by government agencies, including local government, NGOs, including women's NGOs and local professionals. Slum Networking is an initiative driven primarily through community control.

On the other hand Payne, in his review of land tenure, suggests that a step by step approach should be adopted to tenure improvements. In this way cost recovery can be introduced making it possible for the approach to be replicated and for the sustainability of land development policies. Such an approach is easier to implement as government resources are always limited (1997:29,47-9). Also, by following this approach it is possible to make functional adaptations for the specific context and in accordance with the particular needs of informal settlements (FIG/UNCHS:1998:21). This approach is superior to one where there is a wholesale change in the forms of tenure in the country, or where the *status quo* is retained. Payne suggests that, when making such incremental changes, the minimum level of change should be undertaken which improves land market efficiency, whilst protecting the interests of low income groups (1997:29,47-9).

#### Dangers of sweeping reform

Large scale and rapid tenure reform, even where government has the best of intentions, can lead to a loss of security of tenure through:-

- Causing titles/deeds to become even more cloudy or ambiguous. If a range of contradictory land legislation is created it makes it even more difficult to clean up cloudy title/deeds to undertake formal land delivery;
- Putting pressure on already weak administrations to carry out tasks for which they do not have the human and/or financial capacity. Often the result is that nothing is done as the task is just too great. Marcos' reforms in the Philippines (Santiago:1998a:113-4) suffered from this, and other, problems;
- An underestimation of the record-keeping requirements needed to implement reforms. Often utopian plans are put forward for the creation and maintenance of record systems, which are required to underpin the reforms, without sufficient understanding of the issues and problems associated with such systems (Ansari:1998 -India; Santiago:1998b -Philippines; Tiits:1998 -Estonia; Harris and Land:1998 -Eastern Europe).

#### Need for an incremental approach

*An incremental approach allows government to build technical and administrative procedures over time and within their own resource capacity, thus ensuring the institutionalization of the new approaches.* An incremental approach to tenure, using the block system and starter titles/deeds is

discussed below (see section 1.2.10). The incremental development approach, whereby an informal settlement obtains infrastructure over time, will be discussed below under regularization (see 2.2.3).

#### 1.2.4 Perceived tenure security

Perceived or *de facto* security of tenure can be based on a number of things such as:-

- The illegal occupation of a dwelling, since a court order is required before inhabited buildings can be demolished and the backlog of such cases provides effective security of tenure (Turkey –Payne:1997:31);
- The provision of basic services to the area by a local authority, such as access roads, water and electricity. In some situations this later leads to some form of *de jure* tenure (e.g. Karachi) but in some cases residents have been forcibly relocated (e.g. New Delhi) (Payne:1997:31);
- Support from a local politician. This can often give sufficient *de facto* tenure security for people to invest in housing (Payne:1997:31; Banerjee:1999a,b -India). However, this generally only happens when a large proportion of any city are informal settlers (Payne:1997:31);
- Customary rituals (Razzaz:1998:73 –Jordan; UNCHS:1999b –Francophone Africa);
- The experience of the community concerned (FIG/UNCHS:1998:20) with both legal and informal instruments;
- When land is under litigation, settlements are known to remain undisturbed as long as the court case is not settled, sometimes for decades (Banerjee:1999a,b);
- When land is not required for any other purpose it is often perceived as secure. However, this land is often unsuitable for human habitation such as steep slopes, railway margins, etc. (Banerjee:1999a,b);
- Where NGOs and grass roots movements have confronted the government repeatedly thereby limiting evictions (Banerjee:1999a,b);
- When a religious structure is built in a prominent place in the hope that the authorities will be reluctant to demolish such a structure. In this way the surrounding areas hopefully acquire immunity (Banerjee:1999a,b);
- Ration cards for the public distribution system, identity cards, letters addressed to the family, tax receipts, electricity bills (Banerjee:1999a,b).

#### Pros and cons of perceived tenure

People with perceived tenure have no individualized legal rights, although they might be protected under anti-eviction laws (see 1.2.5 below). Although they might be secure for decades this security is based on circumstances and not on individually secured rights and they are often subject to evictions. If they remain in possession long enough, they may acquire the land under adverse possession laws (see 1.2.6 below) but this can be a costly procedure.

Payne states that perceived *de facto* tenures are an important option for low-income households who cannot afford any other form of tenure. “(F)or many they represent a first step on the road to... formal home ownership.” He goes on to add that a useful strategy for policy makers might well be to see “...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.” (1997:29,31).

### 1.2.5 Anti-eviction laws

A dominant trend that has been observed in most countries studied is the adoption of anti-eviction laws for the protection of informal settlement residents (FIG/UNCHS:1998:19). Some of the key characteristics and issues associated with these laws, gathered from experience by Habitat International Coalition (1999), Center on Housing Rights and Evictions (1999), in Brazil (Junior:1999), South Africa (Xaba and Beukman:1999), the Philippines (Santiago:1998a) and India (Banerjee:1999a,b) are the following:-

- These laws provide rules to govern the relationship between landowners (public and/or private) and occupiers in respect of the eviction of people from the land and/or house they occupy. Landowners must fulfil required procedures over a specified length of time. This usually includes giving the occupants due notice as to their intentions (South Africa, India);
- Landowners cannot arbitrarily evict illegal occupiers from their land and homes. That is, there can be no eviction without negotiation (FIG/UNCHS:1998; Banerjee:1999a,b);
- Eviction is not sanctioned without an option of the relocation of the occupants (Philippines, South Africa, India);
- Minimum periods of occupation are required, or cut-off dates are set, for falling under the protection of anti-eviction laws (South Africa, India);
- Protection can be in terms of the countries' constitution (e.g. Brazil) and/or based on a specific law (India, South Africa);
- Even where there are anti-eviction laws in place, often people who have been evicted cannot get legal redress because they cannot afford to take the landowner to court and there is no accessible and cheap legal aid (Brazil, Philippines, COHRE). Also, people have lost cases against landowners because they do not have the required proof of occupation (Brazil -Junior:1999);
- Financial and other forms of assistance need to be supplied when squatters relocate, either voluntarily or involuntarily (Santiago:1998a:119).

#### Pros and cons of anti-eviction laws

A number of these characteristics are illustrated in India where under the draft national slum policy (January, 1999) slum clearance is ruled out, except under strict guidelines set down for resettlement and rehabilitation in respect of notified slums located on untenable land situations. A slum/informal settlement can be declared untenable only when its existence on the site entails undue risk to the safety, health or life of the residents themselves or where such sites are considered contrary to public interest by the competent authority. Tenure shall be granted to all residents on all the tenable land sites owned or acquired by the government. Private land on which tenable slums exist is proposed to be acquired by the local body (within 6 months) and then individual tenure granted (Banerjee:1999a,b).

#### Anti-eviction laws and individual security

Anti-eviction laws are a form of security of tenure at a general level. However, in regard to the protection of individuals where landowners arbitrarily evict occupiers in defiance of the anti-eviction laws, these laws do not provide sufficient protection for the poor, unless legal aid is cheap and accessible and/or special zones for low-income families are declared (see section 1.2.10 below). Alternatively a well-organized campaign by NGOs can also prevent eviction, and/or assist people with resettlement if they have already been evicted (COHRE:1999 and HIC:1999) (see box below).

### Rehabilitating an Evicted Community: Bhabrakar Nagar, Mumbai -India

A slum in Mumbai was razed to the ground. 12,842 households were displaced making 65,000 people homeless. The slum covered an area of 40 hectares. The demolition violated the State Government's Slum Redevelopment Scheme that promised housing to all slum residents with proof of residence before 1.1.1995. Many of the residents had been in occupation well before that time. A number of NGOs, including women's groups, collaborated to put pressure on government. A strategy was adopted which involved:

- The compilation of information and maps, with the communities' participation, to supply proof of residence of those who had been evicted;
- Drawing in international NGOs;
- Drawing in professionals;
- Holding public hearings and a press conference;
- Political lobbying;
- Petitioning the National Human Rights Commission (NHRC);

Government agreed to resettle evicted people who could show proof of residence. One of the successes was that the National Human Rights Commission for the first time investigated the violation of housing rights as a denial of human rights.

It is also important to have some form of record to prove occupancy. Similarly, where the state takes responsibility for the relocation of occupants who have been evicted, by moving them to state-owned land, it becomes necessary for the state to maintain records of who acquires this land in order to limit professional squatting.

#### Scope for evolution

FIG/UNCHS states that under certain conditions anti-eviction laws could be taken a step further whereby the residents acquire additional rights and increase their tenure security. In many countries informal settlements develop on land with the agreement of the owners but in defiance of the local authority's land use plans (1998:19). For example, most of Sub-Saharan Africa has customary landowners, who often allocate land to urban residents (Payne:1997:15-6). Also, in many countries landowners subdivide their land and sell it without the requisite public sector approvals (Payne:1997:6-7; El-Batran:1999a,b – Egypt; Banerjee:1999a,b -India). FIG/UNCHS states that under these conditions negotiations among the stakeholders should make it possible for "...a new form of 'ownership,'..." with the conditions of title/deed being a right to build on the land, a right to access urban services and infrastructure, for a limited fixed period of time, with easy renewal (1998:19). This form of tenure would be considered to be a form of lease, which is discussed below (see 1.2.11).

#### Barriers to evolution

To move from tenure security based on anti-eviction laws, however, to one where the site or plot is secured under some form of lease arrangement with the landowner is not a straightforward exercise. As indicated above, the minimum requirements for achieving some degree of tenure security for individuals or groups includes information about where the land is (object of the right) and the identity of the person (or persons) who will hold the rights. In regard to the first, customary landowners usually occupy publicly-owned property. This would mean that a government agency would have to

agree to such a lease agreement and it is not always clear which agency has responsibility for the land (see example from Brazil in 1.2.6 below). Also, with respect to privately-owned land, this could work only if it is easy to establish who owns the land and the title/deed is not cloudy because of a deceased estate for example (see example from Brazil in 1.2.6 below). In regard to the second issue, that is, the identity of the persons who have occupancy rights, it is not always easy to do this (de Castro:1999b –Brazil), because the state generally does not have good enough records of identity, marriages and births, and/or local forms of identification are not sufficiently formalized. Group occupancy rights rather than individual rights would possibly be easier to establish.

### ***1.2.6 Adverse possession***

Adverse possession refers to the acquisition of property rights, through occupation of the land without any opposition, for a period prescribed by law. Adverse possession applies to both private and public property (Imparato:1999; Dale:1976). Adverse possession is also known as ‘squatters’ rights.’ Fernandes and Rolnik describe adverse possession in Brazil where squatters can obtain rights over private land after 5 years of peaceful occupation, of landholdings up to 250 square metres. They state that a change in the Brazilian constitution in 1988 made this possible and it was a major breakthrough, as it applied to probably over half the informal settlements in Brazil. They state further that “...the recognition of the rights of millions of *favela* residents to remain on the land they occupy certainly constitutes a remarkable change of outlook: it the first step towards their recognition as citizens... (of the city).” (1998:147).

#### **Problems with adverse possession**

Imparato however states that despite the Brazilian Constitutional support for security of tenure for squatters, the way adverse possession has been implemented, meant that it did not substantially change the tenure security of the squatters. Firstly, no special procedures were set up within government to implement this form of adverse possession. This meant that procedures in existence for other forms of adverse possession were used. This in turn meant that costly court procedures were followed, which took years in court, required the advertising of the possession to establish legal claimants to the land, involved the use of lawyers, and was dealt with case by case. Imparato presents two cases to illustrate this. In the first case of public land it was not clear whether the land vested in central or regional government. This ambiguity was because of a lack of records dating back hundreds of years. It took years and numerous court hearings to try and establish which level of government was responsible for the land. In the second case of private property, the courts could not finalize their decision because of an unresolved deceased estate. Trying to resolve this, and other issues, took years and was extremely costly (1999).

#### **Preliminary conclusions**

Preliminary conclusions to be drawn from the evidence are that adverse possession:-

- Can be a very useful tool that signals to the nation that informal settlement residents are ‘part of the city’ and have a right to land. It might be sufficient to give informal settlements a degree of security of tenure over and above that given by national anti-eviction laws, but it will not necessarily on its own give large numbers of individuals and families sufficient security to enable them to legally transfer their rights (inheritance or sales);
- Is not a tool on its own, but has to be supported by special regulations and procedures that are



not costly for low-income people. This means that government would have to subsidize land professionals to clean up cloudy titles/deeds, and sort out disputes –both public and private sector. This could be a costly exercise whether it was done by the public sector or outsourced;

- Could be strengthened by allowing class actions to go to court rather than individual cases, where the same property and/or informal settlement was involved (Junior:1999 –Brazil);
- Could be strengthened by a justice system which allowed para-legals trained in property and inheritance to supply legal aid to low-income groups (see box below);
- Cannot be done easily without good records, including a land inventory of public lands, and an efficient estates office and inheritance laws.

In general it could be concluded that where there are extensive cloudy titles/deeds, a weak administration and no subsidy of legal aid, adverse possession only serves to give large numbers of low- income people a strong form of perceived security of tenure.

#### **Citizen action for justice and democracy -Chile**

In Chile people from low-income communities are being trained to become para-legals (*operadores de justicia*). A number of national NGOs, central and local government agencies, including the Justice Department, and young professionals are involved in the programme. The main focus is to develop information and train para-legals from low-income communities. These para-legals then supply legal aid to their communities. Part of the programme includes the development of instructive guides for socio-legal action in the areas of Family, Property, Inheritance, Work, Social Security, Social Politics, and Citizens and Community Justice. A number of community leaders have been trained and converted into Community Legal Leaders. Under the umbrella of the Community Association of Legal Leaders, these para-legals become socialization agents in their communities. Their knowledge of their own environments and the socio-legal aspirations of the poor make it possible for them to introduce new ways of approaching conflict.

#### **1.2.7 Nationalization**

This is where a whole country's assets are nationalized and all private freehold ownership is extinguished. This happened in 20 out of 40 countries in sub-Saharan Africa just after they became independent from the colonial powers (Payne:1997:11). This was also done throughout the former Soviet era countries. Payne finds that, public land-ownership on a large scale, where administrations are weak, is not able to guarantee either efficiency or effectiveness in the land market (1997:12). This form of land-ownership is particularly susceptible to poor records. Generally land rights records are only created when public land is alienated for the first time to private ownership. Consequently, where the state owns all the land, very few records exist and it becomes even more difficult to allocate rights. The transitional economies have also suffered from this problem. Those countries that had extensive private land-ownership prior to nationalization by the former Soviet era countries are better off in terms of records than those who had a small history of private land-ownership (Tiits:1998 –Estonia). In this situation occupants must rely for their security of tenure largely on local social land tenure rules and good neighbourliness and hope that their land will not be allocated by the state to someone else (see 1.2.8 below).

### ***1.2.8 Central government allocations over-ride local occupancy rights***

A common problem, especially where the land has been nationalized, is where the state allocates land and/or land use rights to developers even though the land is already occupied, often by low-income people. Mekvichai states that in Thailand unregistered state land in the urban areas is often encroached on by leading business families, who appear to have collaborated with the provincial officials. Several cases have been brought to court in Chiang Mai against wealthy encroachers who have built hotels, restaurants, and homes along the Ping River flowing through the city (1998:263). Besides corrupt practices, one of the major reasons for this type of allocation is poor records. As Perdomo and Bolivar indicate, when discussing Caracas (Venezuela), "...city plans have failed to record the existence of the *barrios* (informal settlements). The area in question would appear as vacant land." (1998:127). That is, neither the land rights nor the land use of informal settlers is kept on official records. Those officials allocating public land are therefore not held responsible for allocating land already occupied.

#### **The way forward**

The way forward is to place information on record about informal settlements, both their land rights (*de facto*) and land use, and for these records to be consulted prior to planning and/or before the allocation of land. Short of this, residents in these areas will lose their *de facto* tenure security and might well find themselves evicted by the new landowner. This approach is being adopted in Mozambique, but only for rural properties.

### ***1.2.9 Customary lands***

There is extensive evidence to indicate that in customary areas adjacent to urban areas, land tenure takes on urban forms. For example, it is privatized and sold, densification takes place through the sub-division of the land into small residential sites, it is transferred to outsiders and urban forms of governance affect the area (Payne:1997:15 referring to Ghana, the South Pacific, Philippines and Papua New Guinea; Jordan -Razzaz:1998; UNCHS:1999b -Francophone Africa).

#### **Adverse official attitudes**

People acquiring land from customary 'owners', are often considered by the central authorities to be in unlawful occupation, even when the residents themselves follow customary law (Payne:1997:6 –Turkey and UNCHS:1999b -Francophone Africa). This is often because the settlement is contrary to local authority land use plans and/or there is no urban plan for the area, as it has not been incorporated into the city. The residents of such areas find their customary tenure security decreases when the state allocates land to urban and other developers, thereby over-riding the local occupants' rights, as indicated in 1.2.8 above. Nafantcham-na and Borges (1998) indicate that this problem also occurs in relation to village land in Guinea-Bissau.

Some countries consider customary leaders to be outside of the formal and legal governance structures, and in some situations even competing with the elected leadership. The tenure security of occupants of these areas in this situation is decreased as the ambiguity over land administration roles and land allocation rights increases (Zevenbergen:1998:142). Also, often the title/deed to the customary land is held at national level, and there is reluctance by these authorities to allow the land to be held at local authority level (UNCHS:1999b –Francophone Africa). This debate – coming on top of issues surrounding customary law, which is generally over-ridden by statutory law, – is addressed below (see section 2.2.5 and 2.2.4). However, what has been found is that dealing in



customary land for urban development and the extension of cities cannot be done without involving a range of stakeholders, namely:- the tribal leaders and customary occupants, the title/deed holders who are usually at central government level, the local authority, as well as all the more conventional stakeholders involved in urban development (see section 2.2.5 below).

### From customary to freehold

Some countries have given individual freehold titles/deeds to occupants when customary areas have become urbanized. Nafantcham-na and Borges, based on work in Guinea-Bissau, state that any form of registered right, like freehold, is not viable because the traditional concept of land tenure does not include the individualization of the land sites or plots, as the tenure rights are not concentrated in the person cultivating the site or plot. Rather, the head of the extended family and/or the village headman can also have some sovereign rights in the site or plot. The authors above also indicate that the illiteracy of many of the landholders means that requiring a formal application for land or transfers is a huge obstacle for village people (1998). Van der Molen shows that the cadastre, individual land rights and indigenous tenures do not fit well together, by referring to experience in Africa (Nigeria, Ethiopia, Tanzania, Kenya and South Africa), New Zealand, Papua New Guinea and Canadian Inuit systems (1998:90-1).

### Freehold and its drawbacks

For these reasons, and those discussed under 1.2.14 below, freehold and rigidly individualized title/deed for occupants of customary land is not a recommended approach. Joint ventures between public sector and customary groups might produce more sustainable options for low-income groups in these areas (UNCHS:1999b; Payne:1997:15-16). This is discussed further under land-sharing approaches (see section 2.2.4 below). Nafantcham-na and Borges (1998) suggest that a form of communal and village ownership is the best way of giving security of tenure to Guinea-Bissau villagers and this is discussed below (see section 1.2.10).

#### **1.2.10 Legalization/Regularization**

Legalization in Mexico, with regard to informal settlements, means the formal transmission of ownership to the settlers (Azuela and Duhua:1998:160). These authors go further to state that often this takes place at the same time as services are supplied to the settlers, and sometimes services are supplied after such legalization. Sometimes legalized settlers never receive services (Azuela and Duhua:1998:160). Also, as indicated above (see section 1.2.4), sometimes informal settlements receive services without any legalization, and in this situation residents only have perceived or *de facto* tenure. Thus, there is a complex relationship between tenure security and different forms of regularization which have implications on both effectiveness and cost (Azuela and Duhua:1998:160-168).

### Group/block titles/deeds

A further issue is that legalization not only implies individual titles/deeds, but could also imply a form of group tenure for a settlement such as a village (Nafantcham-na and Borges: 1998) or dense informal settlement (FIG/UNCHS:1998:21). The pros and cons of legalization giving individual titles/deeds will be addressed below (see section 1.2.14) as that of tenure regularization with/without services (see section 2.2.3). The issue under discussion here is legalization without individual titles/deeds or services and/or before servicing.

FIG/UNCHS give an example from Namibia of an incremental approach to tenure legalization using the block system. In Namibia a tenure system is being put in place that has three types of tenure. Firstly, there is a ‘starter title’ evidenced by a certificate. The conditions of title/deed include perpetual right of occupation of a site within a block and the right to transfer the site subject to customary or group restrictions. This right has no spatial extent except relative to the block. This type of title/deed can satisfy low order tenure security needs, protect people from eviction and give occupants secure inheritance rights. This certificate could be upgraded to a ‘landhold title’ also evidenced by a certificate, but for rights in perpetuity for a specific site and with most of the rights of freehold. This could be upgraded to freehold (1998:21).

### Block titles/deeds: practicalities

Such a block system is considered a useful legal instrument (Durand Lasserre: 1998:240 and Jeyanandan and Williamson:1990:5-6) for the initial structuring of urban development. With respect to this, Jeyanandan and Williamson state that the basic land unit for the purpose of the land record system should be aggregates of land sites or plots. The delineation of blocks, which should contain about one hundred sites or plots, should be based on use, availability of infrastructure facilities, development requirements, value and stakeholder needs. Where possible, state land should be separate blocks from privately-owned land. Land records and maps should be prepared by recording the block boundaries on available large-scale topographic maps, or maps derived from unrectified enlargements of aerial photographs, or ground survey methods. All land records, land and building tax rolls, and planning and development data, should be rearranged to accord with the blocks. Each block should be assigned a unique identifier. Every land site or plot in a block, and its corresponding records, should be referenced to the block identifier. Such an approach would allow local forms of subdivision to take place within each controlled framework (Jeyanandan and Williamson:1990:5-6). The type of ‘starter title’ envisaged by the Namibian government (FIG/UNCHS:1998) could be awarded within these blocks. This approach also conforms to the village boundary suggested by Nafantcham-na and Borges (1998) for Guinea-Bissau, where the land is owned by the group or a village authority.

### Government role

As discussed in much more detail below (see section 2.2.3.2), before the block boundary is recorded, government must be satisfied about the safety of the area for its residents, in a similar fashion to that being contemplated in India (Banerjee:1999a,b). Secondly, if the area is public land, the relevant government department must agree to its designation as urban residential/village (Nafantcham-na and Borges:1998). If the area is private land, the land would have first to be acquired by government, as is being suggested for India (Banerjee:1999a,b) or some other arrangement made with the landowner (see section 2.2.3.2 below). However, in areas where informal settlements are on cloudy title/deed land, which is a common occurrence, such acquisition might be problematic.

### Local authorities’ role

In the Namibian case, records of residents within the block would be created and stored with a local authority. These records would identify who had rights within the block. Residents would have secure tenure in perpetuity within the block, but not necessarily within their specific site, as individuals might have to move when the area was serviced. Such legalization could be done quickly and cheaply for public land. No planning or servicing accompanies this legalization. In Namibia it is intended that ‘starter titles’ will facilitate upgrading, but only when accompanied by the planning

and servicing of the area using the *de facto* layout of the informal settlement as a starting point. The management of the group rights within these blocks is discussed below (see section 1.2.12).

This approach can also be used by local authorities, to develop vacant sites for low-income families (FIG/UNCHS:1998:11). In Pakistan under the Khuda-Ki-Basti scheme, publicly-owned land was made available by a government agency for informal settlers to settle on, with no services or housing in place ([www.bestpractices.org](http://www.bestpractices.org)) (see box below). Records were kept of the people in the scheme and a form of land administration was also instituted. To be able to allocate land like this, the government agency first had to have the land identified, check that it was publicly-owned land and safe for occupation, then obtain permission to have the area's land use designated urban residential. As far as the residents were concerned, the scheme started with tenure security and the other aspects followed. This approach was also successfully undertaken in Hyderabad where it was known as the 'Incremental Development Scheme' (Payne:1989:41).

### Special zones

Legalization for groups using blocks, starting either with vacant land and facilitating occupation, or upgrading existing informal settlements in this manner, could be used effectively with the development of special zones in the city for low-income families (Durand Lasserre:1998). Santiago describes how under Philippines legislation "...urban land reform zones and areas for priority development... (have been created)... to increase low-income families' access to housing" (1998a:110). Junior describes the special interest zones in Brazil. These are urban areas primarily destined for social housing. They already contain informal settlements, collectives, illegal subdivisions and vacant and under-utilized urban areas. Further criteria for their designation is that they have a high number of land/housing ownership conflicts, which will result in forced evictions of low-income people. Junior states that these zones have been an efficient tool in giving security of tenure to informal residents, as they are very successful at combating forced evictions (1999).

#### **Khuda-Ki-Basti: Innovation and success in sheltering the Poor –Pakistan**

In an attempt to reach the lowest income groups, the Hyderabad Development Authority (HDA) launched an incremental development scheme, Khuda-Ki-Basti (KKB). It is based on the idea that people should settle on the land before infrastructure and houses are constructed. Once they are settled they can develop their housing and the infrastructure incrementally, as and when they have the resources. The KKB scheme provides plots and tankered water. The full cost of the plot is USD30. The results of the first three years of the scheme are encouraging as 2800 families have settled in KKB and many have constructed semi-permanent houses. For the success of the scheme the population has to be organized at the block level. They make regular payments into the block account for infrastructure. In blocks with strong community organization a water supply, sewer system and electricity are already in place. Other blocks have not been able to develop any infrastructure because of a lack of leadership. Therefore, for success, existing low-income communities should be prioritised as settlers.

The municipal designation of an area as a special zone gives legal recognition that the area is designated for low-income people. Using this legal tool, the judiciary can assess the eviction and removal requests before the courts from this area. Such a designation also helps to establish a process of negotiation

between the public or private owner of the area, and the residents and the government agencies responsible for servicing the area. “Some municipalities such as Recife, Diadema, Porto Alegre, Santos and Santo Andre have used this tool to guarantee security of tenure in informal settlements” (Junior:1999).

Blocks, super blocks containing blocks, and special zones, when linked to a form of group rights, leases and local land record systems structured around the blocks, are considered to be some of the most useful approaches for the legalization of informal settlements and villages.

### 1.2.11 Leases (rentals)

Leases, leasehold and rental are different terms used for a similar bundle of rights. In this handbook ‘lease’ will be used to cover all these terms, and it involves the rental of land or property under contract or statutory conditions for a specified time period. It may be created by the state, corporations, or individuals. Lease conditions vary considerably and may not be enforced, especially in public leasehold systems. “Development and use rights are likely to be restricted by the lessor” (Payne:1997:18,19,38). There are both legal and illegal leases, both for land and houses. Long-term leases are often registered in sophisticated centralized systems and will be dealt with under freehold (see section 1.2.14 below).

#### A variety of forms

Leasing takes many different forms in different countries. Some examples are given to demonstrate the range:-

- In Turkey, landowners *lease land unofficially*, although it remains officially vacant. Such practices often include the provision of water and electricity. This approach is also common in Thailand, “...where both public and private owners rent land, whilst ensuring that tenants do not build permanent structures on the land.” In some cases the lease agreements may take the form of an oral agreement or, more often, are written rental contracts ranging from one to three years. Even when the contract expires, people remain in occupation and the rent is collected for long periods of time (Payne:1997:7-9);
- In Burkino Faso, there is a *range of specific government leases*, for housing, temporary use, permanent use, industrial and commercial use, public offices, and non-economic activities such as a church (Bagre:1999);
- In Botswana, a *Certificate of Rights (COR)*, has been introduced. The rights are held in perpetuity and can be inherited. Only the improvements on the site can be sold and not the land itself. It cannot be mortgaged but a building materials loan is available. A service charge is paid to the local authority. The land administration linked to the management of these rights is simple and done by the local authority in an affordable fashion (Payne:1997:9,33). Botswana also has two other types of lease, a Temporary Occupation Permit, which is a very weak form of lease and a Fixed Period State Grant, the strongest form of lease, which requires surveying (Mosha:1999). A similar system to Botswana’s COR exists in Zambia where thirty-year occupancy licenses are granted for sites and customary and community leaders are used for dispute resolution. Swedish cities used the same approach linked to land banking (Payne:1997:9,33);
- In India, ‘*pattas*’ or leases are issued. Provisional *pattas* are issued prior to housing followed by a house site *patta*. The house site *patta* is given after 5 years of occupation if the area is considered by government to be safe, is not required for other purposes and is not under a court dispute. There is an income qualification so that low-income families benefit. There are numerous title/deed conditions

such as:- any exemption from zoning or other regulations applicable to the site has to be sought by the applicant and is not a condition of regularization, the *patta* is in the name of the woman of the house (they are considered less likely to sell), the site can be inherited but cannot be sold, the government can take back the land without any compensation if it is required, the site can be used only for residential purposes, if the land is sold, government can re-possess, the *patta* can be withdrawn without compensation if it is found that there was a misrepresentation of facts in claiming eligibility (Banerjee:1999b:25). Leases are for thirty years, unless the government requires the land, where one year leases are issued. A small ground rental has to be paid (Ansari:1998:83). The restriction on sales is not adhered to and over 50 percent of *pattas* have been sold illegally in Delhi (Risbud:1999);

- In Brazil, a lease termed '*Concession of Right to Real Use*' (*sic*) exists for public lands. The contract is between the local authority and the residents on the land, for the use of land in order to construct a house, for a specified period of time (Alfonsin:1999:4). The lease gives rights to use the land to live on and eventually to develop some commercial uses on the same property. The right can be transferred with the agreement of the local authority (Pinho:1999:7);
- In Papua New Guinea, where all vacant land adjacent to urban areas is held under customary tenure, there are *illegal lease arrangements* between the owners and migrants to the area. "This 'tenancy on sufferance' is further complicated by the dis-aggregation of settlers into their tribal groupings" (Payne:1997:9);
- In South Africa, informal settlers rent sites from private landowners, under a *site renting contract* between landlord and tenant. The tenant is responsible for erecting the house and removing it. Evictions are commonplace where tenants cannot pay the site rental for a substantial period of time. No services are made available either by the landowner or the local authority (Cross:1999:13);
- In Ghana there is a *traditional leasing system* and over 100 chiefs in the city allocate land rights, irrespective of the official plans (Payne:1989:10);
- In Egypt, land can be *leased from the state* on a long-term basis to the occupants. "Squatters may be granted this status, if they make a request to the Governorate. Land which remains permanently under a leasing status and cannot be sold is known as *Hekr* land. Other leased lands can be converted from public to private ownership following the end of the leasing period" (El-Batran:1999a:6);
- *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" (Payne:1997:43).

### Common features

As indicated above, the conditions of title/deed of a lease can vary tremendously both within a country and between countries. The key characteristic of a lease is that the ownership right is not transferred, but all and any other right can be transferred. Land leases that contain most of the rights, aside from ownership, are generally registered and require the inputs of professionals such as surveyors and lawyers. Land leases that include only a few of the bundle of rights are often administered by local authorities and at the local level, using non professionals both to create the land sites or plots and to administer them.

### Administration and security

Leases for houses are usually administered by local authorities and their agencies for government owned housing, and through private contracts for privately-owned housing. The former Soviet era countries can be an exception to this as they move from state-owned and registered housing to privately-

owned housing (Kazarsky:1998 -Bulgaria; Tiits:1998 -Estonia; Rydval:1998 -Czech Republic). The tenure security attached to each type of lease, some of these being more critical for land than house leases, depends on the:-

- Legal status of the person/body awarding the rights;
- Degree of technical proficiency and/or knowledge and honesty of those creating and maintaining the records;
- Ability of the lessor to inspect and enforce lease conditions;
- Security of the records over time;
- Conditions of title/deed attached to the lease, including the ability to inherit and transfer the lease to third parties;
- Length of time of the lease;
- Success rate of the dispute resolution mechanisms in place.

### FIG/UNCHS principles

A lease should (FIG/UNCHS:1998):-

- Make it possible for individuals to build on the land and have access to the services of the city;
- Specify a time period;
- Give protection from eviction;
- Allow inheritance;
- Allow transfers through sales;
- Be easily renewed;
- Facilitate credit and finance.

### Mortgage finance

While leases that allow mortgages from financial institutions exist, these leases are generally more sophisticated and registered in centralized systems. There is often a trade-off between basic and more complex leases and the ability to obtain a mortgage from a conventional financial institution.

### The superior benefits of leases

Payne states that “(f)or individual occupants, leasehold has generally been found to provide a sufficient sense of security to stimulate investment. The long-term interests of the lessor, whether public or private, are also protected.” Leasehold has been shown to meet the needs of residents, landowners, developers and local authorities and is becoming an increasingly popular option in ‘extra-legal settlements.’” (1997:19). In a summary of the findings of the Expert Group Meeting of South East Asian Surveyors, Williamson states that, “...a common concern was the identification of rights in land, especially rights of occupancy and use.” (1998:119). Finally, local authority leases, while giving basic tenure security to residents, are generally more affordable and can be more transparent and accessible than freehold (see section 1.2.14 below). Leases also give a local authority more flexibility in the medium to long term to manage land development and land use changes in the city (see section 2.2.3.2 below).

#### **1.2.12 Group tenure arrangements**

Group tenure arrangements radically diminish the number of registration units and thereby also the survey and registration costs and the public land administration costs. Rights of occupancy or leases to individuals within the group arrangement can be handled in an uncomplicated manner,



perhaps by oral agreement according to customary rules, or by simple recording within the group. Such records may be successively improved. The important thing is that the system keeps initial investment costs low, while at the same time allowing for future improvements (Larsson: 1991:124-126). The unit of group registration can be the land site or plot (block), a building/land (belonging to a housing cooperative) or the area belonging to a customary group or sub-group. This can be registered in freehold or a lease.

### Practical problems

Group tenure arrangements, while giving tenure security to the group, require specific land administration methods to ensure affordable tenure security for individuals and households within the group, and to protect them from encroachment by neighbours. The tenure security of individuals and households is eroded by a number of factors, namely:-

- It is difficult to determine who is, and who is not, a member of the group. In practice this is extremely difficult as a person may 'belong' by a number of criteria to various groups and all criteria are negotiable and dependent on others (Larsson: 1991:124-126);
- It is even more difficult to determine what rights each member has. For example, the rights and obligations of a male head of household, an orphan, a wife, a son-in-law, a gang leader, an absent sister, a talented builder, a refugee and various other statuses, differ greatly, even though all may be 'members' of the same group. It is not possible to retain the notion that all members of a land holding group are equal (Larsson: 1991:124-126).

### Solutions

A range of land administration approaches has been developed to deal with these issues. Often, but not always, the registered land/housing is held by a juristic body such as a cooperative, community land trust or housing association. Sometimes it is just as complex to register the juristic body as it is to register the land. The registered group takes responsibility for creating the land administration rules within the unit. Larsson states that the group tends to grant the rights of use in the form of occupation rights, leases and other subsidiary rights to individuals or sub-groups. Typical rules would include the regulation of lease length and conditions, heredity, whether or not rights can be granted to individuals outside the group or to absent members of the group, whether unused land should revert to the group, maximum area etc. (1991). This approach fits well with the incremental approach of the block system outlined above (see section 1.2.10).

### A varied experience

Against this background, different countries have developed different ways of supplying an internal land administration structure, with varying degrees of success, namely:-

- *Customary land administration structures* of the existing community have been used to make the rules and undertake dispute resolution (Nafantcham-na and Borges: 1998 –Guinea-Bissau). This often breaks down under urbanization as more and more strangers take up residence in the area (Payne:1997) and/or the group can be hostile to strangers residing in the area, thereby limiting urban development;
- The *social cohesion* within a community is considered to be critical (www.bestpractices:1999 Pakistan/KKB) when undertaking the regularization of blocks. Coherent informal settler groups include in their leadership can be a critical factor in successful urban development, as they can take

responsibility for their own internal land administration. Where blocks had no social cohesion it was not possible to develop service infrastructure;

- Australian aborigines run their own *Housing Association on leased land*, known as the Tangentyere Council, on the former town camp land outside of Alice Springs, using the social capital from their own culture to manage conflicts. The internal rules are run separately from, but not in opposition to, those of the state (www.bestpractices:1999);
- In Tanzania, in the town of Voi, "...a *Community Land Trust* was implemented, which combines community ownership and control of land with individual ownership of improvements on the land. Individuals have a number of well-defined rights including the right to bequeath user rights to the property and build improvements upon the land; the community retains the right to make decisions on the admissible use of land and control of alienation of land" (FIG/UNCHS:1998:21; UNCHS:1997a:16-17). Although this was a useful experiment, a complex legal process, involving a range of laws, had to be followed to create the CLT, making duplication problematic and/or unaffordable to communities;
- Payne found that *cooperatives* provided an effective form of tenure. He describes this as where each member receives a share of the benefits and costs involved. "This presumes a strong sense of community and the existence of a well-organized community organization 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 cooperatives or companies can easily be excluded in practice" (1997:19);
- In Egypt, *cooperative associations* with *NGO status*, have been using members' funds and low interest loans to build a range of different housing units and have "...played an important role in middle income families with housing" (El-Batran:1999b:13);
- In India, government "...is encouraging the formation of cooperatives before resettling squatters and involving NGOs in the process,... the latest policy on regularization of unauthorized colonies envisages formation of *residents' cooperatives* that would make regularization proposals and manage settlement development" (Risbud:1999:33);
- In India, *cooperatives are being used with land-sharing agreements* (see section 2.2.4 below) to provide low-income people with land. Land that is under informal occupation is transformed into cooperative housing on the one hand, and commercial development by the land-owner on the other hand, with the intervention and technical know-how of an NGO (see box below). Internal titles/deeds are held jointly between husband and wife. After the slum has been rehabilitated, an elected management committee of tenement occupants runs the tenements in partnership with the local authority (bestpractices:1999);
- In Namibia, it is intended that *blocks of existing informal settlement groups* will be created, with a form of individualized right, known as '*starter title*,' which is kept as a record in the local authority (FIG/UNCHS:1998). The land administration of the area will be shared by the community and the local authority, and use a trained community member as a local land administrator employed by the local authority (Fourie and Davies:1999).

### Housing associations

Group tenure arrangements can also take the form of housing associations involving large amounts of land and housing stock under one agency. Such an agency would take responsibility for the



land administration involved. This approach requires both financial and human capacity and seems to be quite effective:-

- In the United Kingdom, specialized housing associations for minority ethnic groups have been created to manage homes for the minority outside of the existing local authority structures and association structures (see box below) ([www.bestpractices.org](http://www.bestpractices.org):1999);
- France imports social capital, in the form of the Department of Social Work, to supply the land administration necessary to run the group tenure arrangements of housing associations. Querrien states that this approach undermines the ability of residents to take responsibility for their lives and ownership of their surroundings (Querrien:1999).

### Condominiums

Another approach is that of condominium ownership linked to strata title. Whereas cooperative ownership tends to be based on shares and group tenure rules for the entire building, condominium ownership linked to strata title is based on individual ownership of the residential units and common ownership of the shared areas, such as corridors and lifts (Moshia:1999, Dale and McLaughlin:1988). Land professionals are generally also involved in the creation of the individual residential unit strata titles. This makes it a more expensive option than cooperatives, where the land professionals tend only to be involved in the registration of the total land site or plot. Condominium ownership associated with strata titles can often be mortgaged.

### UN-HABITAT recommendations

Given that there is a vast number of people living under group forms of tenure, both family and wider group, and that the individualization of titles/deeds often breaks down the social cohesion of the group, group forms of tenure are taking on more importance in many parts of the world (Payne:1997). UN-HABITAT recommends that community, collective, or cooperative land-ownership is adopted as it can provide a permanent or intermediate form of secure tenure. “Within such community-controlled and managed land, a range of tenure arrangements suitable to community needs can be accommodated including rental, short and long-term tenure.” (UNCHS:1996b:8).

### Administrative requirements

As noted earlier, while group tenure is much more affordable than individual, it requires specialized land administration approaches to secure the rights of individuals. Examples given above indicate that this land administration generally involves partnerships between the community, the local authority, NGOs who supply the technical know-how, landowners and housing associations, to work successfully. Finally, an important advantage of group tenure is that the group might be able to access channels of finance as a group, which they could not do as individuals (Payne:1997:34).

#### ***1.2.13 Provisional, conditional and/or qualified titles/deeds***

Provisional, conditional and/or qualified title/deed is a title/deed registered subject to certain restrictions or limitations (Dale:1976). The occupant only obtains the final freehold title/deed at the end of a specified period and/or when they have complied with specific conditions. The advantage of these titles/deeds is that they can be used in the short term to deliver individual private land-ownership much more quickly than freehold (Sweden, Australia, South Africa, Malaysia), largely because they limit the number of registration steps in the short term. The disadvantage is that they require land

administration systems with as much capacity as the conventional freehold, or lease, in the medium to long term, to upgrade to final title/deed and to manage the titles/deeds. Also, often there must be sufficient capacity in the administrative system to undertake inspections and enforce decisions.

#### **People's Participation Programme (PPP): Accessing land and shelter in Mumbai –India**

The NGO PPP is involved in mobilizing the slum dwellers to claim their housing rights. PPP also supplies the technical know-how so that the slum dwellers know which procedures to follow to claim their rights, create a cooperative association, obtain approval of the redevelopment scheme for the rehabilitation of the slum area, pay their annual lease and the claim of tenement ownership.

#### **Manningham Housing Association –United Kingdom**

The Manningham Housing Association was created to look after housing for the ethnic minorities in the city. Among other things, special housing needs such as larger houses for extended families were needed. It was created through partnerships with the City Council, the National Housing Association Trust, and a Tenants Advisory Group which was also created once the Association started. Partnerships between the different ethnic groups that make up the minority are also critical to its success.

If there is not sufficient land administration capacity, conditional owners behave as if they are full owners or title/deed holders from the outset, and the conditionality, becomes an additional burden on an already weak system (Payne:1997:18). While offering secure individual tenure, the freehold titles/deeds also have all the drawbacks of freehold outlined below (see section 1.2.14).

#### **1.2.14 Freehold titles/deeds**

Freehold, or full ownership, typically contains all the rights to the land, including '*dominium*' or the essence of ownership, aside from those rights which have been excluded by statute. An example of rights excluded by statute are land use rights, whereby the state prescribes what land uses will be allowed on the property. Thus, freehold allows a full range of transactions, from the most simple to the most sophisticated, and is therefore the preferred tenure of business and high income clients. Long term registered leases are considered here to be similar to freehold, aside from the fact that the owner of the property retains the '*dominium* right' in the bundle, while leasing all the other rights in the bundle to the registered lessee. When discussing freehold below, long term leasehold is automatically included, unless otherwise indicated. Most freehold tenure is individual title/deed; group titles/deeds have not been addressed here but above (see section 1.2.12).

#### **Registration**

In most countries, freehold rights are registered either in a title or deeds registry or within a private system run by property lawyers, also known as solicitors or conveyancers. In a title registry, the legal evidence of ownership is the information in the registry and the state often guarantees the owner's rights. In a deeds registry system, the legal evidence is created at the time of transfer. The solicitors witnessing the transfer, in some countries, guarantee the land rights based on the fact that they witnessed the transfer. Where private conveyancing is done, the reputation of the solicitor is the only guarantee of

tenure security for the owner. The security of tenure of the owner rests on the quality of legal evidence created by this procedure, as in the case of a dispute this legal evidence will be utilized to support his/her case in court.

### Mixed benefits

Freehold is generally the most expensive legal tenure type because it uses professionals to create the right, transfer it and maintain the registration records over time. It also often takes the longest to register. This is because firstly, there is a lack of human and financial capacity, especially of public sector professionals (Williamson:1998). Secondly, underlying title/deed ambiguities have to be solved first, e.g. for obtaining the correct land use permissions, sorting out any deceased estate issues, establishing whether there are any other claimants to the land. As a result of the length of time it takes, and the lack of human and financial capacity in government, most countries do not have universal coverage, and in fact in most developing countries only ten percent of land sites or plots are documented (UNCHS:1991). As freehold systems are dominated by professionals and centralized records, access is limited (see section 2.2.6 below for further discussion). Freehold in most, but not all countries, can be mortgaged. Finally, it is also a powerful political tool used by politicians (Azuela and Duhua:1998:160-4 -Mexico; Payne:1997:18).

### Two major problems

Whereas business and middle class people are generally satisfied with freehold, the experience of other stakeholders is not always so positive. While not all individual titling is freehold, all individual freehold involves individual titling. Therefore the problems associated with freehold are twofold. Firstly, there are problems associated with individualizing the rights. Secondly, there are problems solely related to freehold, such as the fact that freehold titles/deeds add enormous value to land. Both types of problems are described below. Stakeholder problems with freehold for low-income groups are as follows.

### Problems with individualized rights

- It is not necessary to give individual titles/deeds in order to *deliver services* to an informal settlement (Azuela and Duhua:1998:160 -Mexico);
- Individual tenure rights do not fit well with *customary forms* of tenure (Nafantcham-na and Borges:1998) (see section 1.2.9 above);
- In customary areas freehold creates a class of those with land rights and a *landless class* (Payne:1997:18) as it cannot accommodate extended family and group rights easily;
- Where there are numerous tenants in an informal settlement or customary area, freehold often forces existing *low-income tenants out* of an area, as they can no longer afford the rents, which rise dramatically after titling (Payne:1997:46);
- Individual titling of customary land in Kenya was *beneficial to the rich* and powerful and not the poor, as “...land registers failed to reflect reality on the ground, land markets have not emerged on the scale expected, land has been increasingly held for speculative purposes, registration has not increased credit, and titling has worked against the interests of women and children” (Payne:1997:36);
- *Women’s land rights* tend to be nested in the land rights of the family. By individualizing the rights when titling takes place, women can become landless. Moreover, when the rights are initially created, women, and especially widows, can lose their land rights to male members of the family/household who tend to be recorded as the head of household;
- The provision of freehold to informal settlements *encourages squatting* as a way of obtaining land

- rights eventually (Azuela and Duhua:1998:160 -Mexico);
- Payne found that 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 undertaken by *professional squatters*. This reinforces land price inflation (1997: 46);
  - Huchzermeyer found that low-income people transfer their freehold land informally (1999:20 -South Africa). While governments quite often subsidize the initial land delivery that includes the individualized title/deed, they seldom subsidize the subsequent transfers of the land. Informal transfers are undertaken because low-income groups cannot afford the transfer costs and/or are not familiar with the corporate culture of the land professionals. *Illegal transfers* mean that the buyer of the property has no legal tenure security and the property registration system itself is not sustainable if large numbers of informal transfers become routine (Durand Lasserre:1998:252);
  - Freehold will not make it automatically possible for households to *obtain a mortgage*. If household incomes are too low, financial institutions can be discouraged from lending, even if the applicant has freehold title/deed. In some countries the capacity of the financial institutions is not enough to meet demand. Also, unless government allows foreclosure in the event of default, financial institutions will not be interested (Payne:1997:46). Local group rights can be so strong that even though the property is in freehold, it is not possible for the financial institution to take possession and transfer it to someone else. In this situation financial institutions are reluctant to lend money;
  - According to Payne, there is an increasing body of empirical evidence to show that *freehold* "...is not essential to increasing levels of tenure security, investment in house improvements, or even increased property tax revenues (1997:47).

#### Problems caused by the very nature of freehold

- With a market-based approach, freehold titles/deeds make the land attractive to *speculators* who hold the land as an investment and a hedge against inflation (FIG/UNCHS:1998:20; Azuela and Duhua:1998:163 -Mexico; Huchzermeyer:1999:20 -South Africa). This has the effect of displacing the low-income population and creating unutilized vacant land where densification was planned;
- From another angle, *public money is misdirected* when subsidies are used to enable low-income groups to obtain freehold title/deed, as there is widespread evidence of 'downward raiding' as occupants realize the true market value by selling to higher income groups (Payne:1997:18). Where resources are scarce, public money would be better spent on developments for low-income groups where they would obtain long term use from the subsidy;
- Only a *small proportion of households* can afford even the subsidized cost of a site with a title/deed (FIG/UNCHS:1998:20). Therefore freehold cannot serve low-income groups to any great extent;
- Durand Lasserre finds that freehold for all is not always a possibility because of the *lack of financial and human capacity* (1998:244) in governments;
- Often the *de facto* land tenure in an informal settlement does not match the *legal record* (FIG/UNCHS:1998:17).

#### Freehold not the best option for low-income groups

It can be concluded that for low-income groups, freehold is not the best option in most circumstances. The chief reasons are that:-

- It is *too costly* for most people, both in terms of entry and for subsequent transactions;

- While it offers a range of services, many of these are *not required* by low-income groups and merely add to the costs;
- While it offers secure tenure, other, *lesser forms of tenure* also offer secure tenure;
- The system is *not accessible* to low-income groups;
- Countries *lack the capacity* to issue freehold to the whole population (see section 2.2.6 below). In this situation, and unless other forms of secure tenure are developed for low-income groups, large numbers of the latter will remain outside the formal land rights system.

### Too much emphasis on freehold as only option

A number of countries are focusing resources on trying to make it possible for the majority of their populations to have freehold and/or registered individual rights, and this is especially true of the former Soviet era countries (Czech Republic, Latvia, Poland, Slovenia, the Slovak Republic –Ericsson and Eriksson:1998 and Estonia –Tiits:1998, Bulgaria –Katzarsky:1998) and countries where the World Bank is involved in land market reform (World Bank:1993; Payne:1997; Jones:1999, Egypt, Cambodia and Indonesia –Ericsson and Eriksson:1998). However, what is being suggested here is that other approaches also need to be developed at the same time, which can better accommodate low-income groups, such as local leases and group tenure approaches, as well as other forms of recording these approaches (see section 2.2.6 below).

#### ***1.2.15 Promoting enabling practices regarding women's equal rights to security of tenure and the equal inheritance of women to land (housing)***

Women in both urban and rural areas experience routine discrimination in relation to land (housing). They experience tenure insecurity and do not have equal access because of discriminatory regulatory frameworks, both in terms of law and administrative practices, and inheritance systems. The discrimination against women and their resultant tenure insecurity is linked to both their economic and political disempowerment. Their empowerment is a prerequisite for economic development as a whole. Discrimination leads to unsustainable land management practices, as women are forced into informal settlement (Habitat Agenda: 1997a:no.s 27, 40, 46).

### Women's critical conditions

Nearly one third of households in the whole world are headed by women (Qvist:1998:201). The percentage of women-headed urban households in poverty differs greatly across regions, reflecting different social structures. In the cities of developed countries, female-headed households have over twice the incidence of poverty. In almost every city, there is a considerably higher proportion of female-headed households in poverty, since these are often single-parent households on welfare. In Africa 45.8 percent of households are poor and headed by women, and in Latin and Central America 38 percent, with an average of 33 percent for all cities throughout the world (UNCHS:1999a:17-18).

According to United Nations estimates (UNCHS:1999c), 70 to 80 percent of refugees, returnees and internally displaced people are women and children. The burden of rebuilding often falls on women whose male relatives are either dead or are absent fighting in wars. However, because of discriminatory customary laws, many returnee women find that they have little access to land or property left behind by male members of the family. Tradition and custom further sideline them, especially when it comes to restitution of land and property. This means they cannot grow food and they are rendered homeless, as they have no claim on the property left behind by their husbands

or fathers. Both statutory and customary laws in most countries do not specifically address the issue of women's land and property rights in situations of conflict and reconstruction. Displaced populations who have no 'traditional rights' to settle and have no title deeds thus find themselves rendered homeless. Establishment of sound land management systems is crucial for successful repatriation programmes and for maintaining peace and stability (UNCHS:1999c:2-3).

Finally, land and property ownership for women is an area where many countries have either no laws or no clear guidelines for dealing with traditional discrimination against women (Qvist:1998:209 quoting Habitat:1994).

### Adverse inheritance rules

Instances of discrimination abound, and the following two have to do with inheritance. In Burundi, a woman who has lost her husband cannot return to her original habitation because her surviving brothers-in-law have already taken over the land she used to cultivate. Because the woman does not inherit from her father, her brothers and sisters-in-law will not welcome her back to the natal home (Anonymous:1998:7). Another instance emanates from Palestine. "In Palestinian society it is the gender, marital status, kin relation and the presence of contending heirs which determine inheritance rights. Most Palestinians are Muslims and according to Islamic law, a widow is entitled to a fixed share of one-eighth of her late husband's estate if he had children (not necessarily by her) and one-quarter if there are no children. If a man dies without leaving sons, a considerable part of the estate goes to the male relatives, usually his brothers. There is great pressure on women to follow the traditions. Many women waive their rights of inheritance to their brothers." (Anonymous:1998:9).

### International policy

A range of international policies has been developed to deal with the situation, which have an impact on women's tenure security and access to land. The Universal Declaration of Human Rights of 1948 (article XXV, item 1.) recognizes that the right to housing is an international human right (Junior:1999:2). The right to housing implies a right to land as there can be no housing without land (UNCHS:1997a:5).

Issues around discrimination against women are raised in the Elimination of All Forms of Discrimination Against Women of 1979 (article 14.2, item h) (Junior:1999:2). A resolution adopted at the Fourth World Conference on Women, held in Beijing, China, in 1995, stated that "men and women should have equal access to economic resources, including the right to inheritance and ownership of land and property (para. 63(b) (UNCHS:1997a:8).

The New Delhi Declaration considered the land question in its totality, laying down founding principles for tenure security and access to land (UNCHS:1997a:7. In regard to women the declaration states, among other things, that:-

- A guiding principle should be to create an *enabling environment* at the national level which ensures that women and men have equal access to land and property rights;
- A guiding principle should be to review, modify and clarify existing legislation in relation to women;
- Local government policies should aim for *social and gender equity*, which implies preferential access for women;



- The processing of *land records* at the local level should facilitate access to land by women;
- Men and women should be *treated equally* whether they live alone or are members of a family;
- Customary and legal *restrictions on women to own* land and buildings should be eradicated;
- Priority should be given to *women who are heads of households* in programmes and projects which allocate, or enhance, the benefits of land rights;
- The legal rights to land and property for women should be reformed so that they have *equal access to land* and they receive the benefits of steps to *improve tenure*;
- Access to *credit* for women, especially those heading households, should be increased and simplified;
- The rights of women and children in the management of land resources in *public-private partnerships* should be ensured by generating value-added benefits especially for them, ensuring their access to land through appropriate financial and credit mechanisms, and creating appropriate forms of tenure (UNCHS:1996b).

### The Habitat Agenda

Further resolutions were passed at Habitat II and became part of the Habitat Agenda, namely:-

- To “support *inter alia*, community projects, policies and programmes that aim to *remove all barriers to women’s access* to affordable housing, land and property ownership, economic resources, infrastructure and social services, and ensure the full participation of women in all decision-making processes” (UNCHS:1997a:8, Habitat Agenda, No 78b);
- “Integrating gender perspectives in human settlements-related legislation, policies, programmes and projects through the application of *gender-sensitive analysis*” (UNCHS:1996a:29, No 46a);
- “Developing conceptual and practical *methodologies* for incorporating gender perspectives in human settlements planning, development and evaluation, including the development of indicators” (UNCHS:1996a:29, No 46b);
- “Collecting, analyzing and disseminating *gender-disaggregated data* and information on human settlement issues... for use in policy and programme planning and implementation” (UNCHS:1996a:29, No 46c);
- “Formulating and strengthening policies and practices to promote the *full and equal participation of women* in human settlements planning and decision-making.” (UNCHS:1996a:29, No 46e);
- “Providing *legal security and equal access to land for all* people, including women and those living in poverty; and undertaking legislative administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies (UNCHS:1996a: No. 40b).”

### Further policy instruments

In 1997 a United Nations resolution was passed entitled ‘Women and the Right to Adequate Housing and to Land and Property.’ This resolution (E/CN.4/Sub.2/1997/L11/Add.1.) was issued by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The resolution deals with *forced evictions and displacement*, stating that women and children suffer disproportionately from the practice of forced evictions and that women bear the brunt of traumatized and dislocated communities. It goes on to state that the violation of women’s right to adequate housing results in the violation of other civil, cultural, economic, political and social rights (Anonymous:1998:20).

At a Kigali Inter-regional consultation, a global recommendation was that “women should have *adequate and secure rights* to land and property. These rights must be equal to those of men, and a woman should not be dependent upon a man in order to secure or enjoy these rights” (Anonymous:1998:23). Finally, the Meeting of Officials on Land Administration (MOLA) was set up by the Economic Commission for Europe. It has identified as one of the key issues in developing efficient land markets, the “*mainstreaming of the gender perspective*, for which the development of legislation which gives women equal rights to buy, inherit, own and possess land is an important issue” (Onsrud:1998:15).

### Innovative practice

A range of innovative practices to bring about women’s equal rights to access and tenure security have been put in place, or are under development:-

- In Rwanda, the Ministry for the Promotion of Women has proposed a bill on *inheritance and marital regimes*. The principal innovations were to permit a daughter to inherit property from her parents, and for a woman to participate in the management of her husband’s inheritance, and to inherit the property of her deceased husband. The Ministry of Justice is now considering the document and if the legislation is passed, women will have to be sensitized and trained in the law and how to use it to defend their rights (Anonymous:1998:7);
- In countries that have undergone recent political change such as Eritrea, South Africa and Guatemala, legislation regarding the *rights of women to land and property has improved*. However, implementation of the legislation has been much slower. In Eritrea in many instances, the internalized informal code is more powerful than the formal law (Anonymous:1998:15-16);
- Guatemalan refugee women’s organizations were able to *demand access to become co-owners of the land*, with their husbands, families and communities, as part of an affirmation to their rights in general claimed while in exile (Anonymous:1998:19-20);
- The 1997 United Nations resolution (see above) was used by the Human Rights Committee, who requested two African states to *remove from their Constitution* those provisions which discriminate against women in the context of traditional practices in relation to access to land (Anonymous:1998:21);
- In the Philippines, an act was passed promoting *the Integration of Women as Full and Equal Partners of Men in Development and Nation Building*. The act focused on gender sensitizing the decision-makers on matters such as housing and urban development. In addition to this, because of the increased sensitivity to gender issues of decision-makers and other stakeholders in the Philippines, land management has become more holistic. Further impetus came through a constitutional mandate which directs that working women be provided with “... such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation.” A Four-Year Philippines *Development Plan for Women* was prepared jointly by NGOs and government, which underscores the importance of a systematic and accurate appraisal of the housing needs of women. For instance, one problem which has been identified is the shortage of precise, easily available gender-specific data for decision making (Santiago:1998b:178-9, 193);
- In the Philippines it is being suggested that the urban poor and women can be better assisted to access housing if they participated more in the design, implementation, management and maintenance of housing projects. Their organizations should also be encouraged to be more involved in housing programmes such as the *Community Mortgage Programme and the Social Mortgage Window*, particularly in networking for the purpose of efficient collection and repayment of housing loans. “Credit eligibility requirements should be liberalized by adopting terms and conditions for loans



that suit the needs of the low-income groups (see box below). Collection methods may also be simplified such as the direct collection of payments on a daily or weekly basis made at their place of habitation or work” (Santiago:1998b:198);

- In India, the *inheritance law* for Hindu women was changed in 1956 to allow the mother, widow and the daughter to be entitled to the same share as the son. However, women do not have equal rights of inheritance to ancestral property, only self-acquired property (Qvist:1998:205);

### India –Self-Employed Women’s Association (SEWA) Bank

Initially the bank was a part labour movement, part cooperative and part women’s movements with 4000 members who were all poor self-employed women, who needed credit at reasonable interest rates. Initially they borrowed money to make loans, but now with 51,000 members the bank no longer does this, and only uses members’ deposits. It is professionally run and has a Board and all members are shareholders. It provides all financially linked supportive schemes to its members and this also includes the funding of housing schemes. They do not make a loan to the woman of the house unless the title to the land is in her name. SEWA also recovers mortgaged agricultural land of the family and puts it in the woman’s name. The bank was a catalyst in that it proved that poor women could manage banking, and other equivalent banks have started in the same way.

- In Uganda, in order to make the gender concept more widely understood and to bring women, who have been marginalized, into focus, the government has created the *Ministry of Gender and Community Development*. This came in response to the need for an institutional framework, as customary perceptions deny women access to land, and also erode their ability to purchase land. Only nine percent of women have title to the land they farm. As they are not able to provide collateral, their ability to secure loans through the formal banking system is limited. To overcome this problem the government has implemented two schemes that specifically extend credit to women. The enormous need of women for land and shelter is also being recognized by the Ministry of Lands, Housing and Physical Planning. It assists women to get secure titles/deeds and affordable shelter. The Uganda Women’s Lawyers’ Association is creating legal awareness among the communities on their rights and obligations under the law. It puts special emphasis on women and children, and provides free legal advice and rural legal education (Qvist:1998:205);
- In Jordan, areas that had been specially designated for open spaces were being used for solid waste disposal, instead of green areas and playgrounds. It had been expected that these areas would be used by women. Therefore, in a partnership between the local authority and a local NGO, *women were involved in participatory planning* of the area. Regular meetings were held, site inspections undertaken, the Master Plan adapted, and community based initiatives encouraged, so that open spaces could be used by the community, and specifically women. Two women’s NGOs remained active in working in this area (www.bestpractices.org:1999);
- One effective administrative practice, where the law can be adapted, is to accept *women as heads of households* when “tenure, titles and rights to land are being allocated” (Payne:1997:23), that is when land is adjudicated;
- In India, when residential cooperatives are created, spouses are given *joint titles*; and when land is leased, the title is in the name of the woman as she is less likely to sell the right (Banerjee:1999c);
- In India, during city-wide regularization, women were seen to play a more mature role in reaching

consensus and resolving differences which arise in the community during regularization. They also show a greater degree of responsibility in managing money and making repayments. Special care is therefore taken to encourage the majority representation of women in *Neighbourhood Committees*, both in terms of numbers and positions (Diacon:1997:21);

- Recently a controversy arose in Tanzania over the new Land Act which stated that women have the right to own land through purchase or inheritance, unless it is *clan land*. Clan land forms by far the largest proportion of land in the country. Women's land rights would hardly exist at all if this bill was passed by parliament. The Women's Advancement Trust (WAT) is campaigning to have the bill changed. A huge protest march was organized, comprising both women and men, although mainly women. Pamphlets were distributed explaining why women should have equal access to land, and also to educate women on their legal rights to land and property, and what steps they could take in the case of a dispute (UNCHS:1997a:25);
- In Tanzania, a women's NGO became involved during *regularization* and succeeded in getting the Master plan adapted to suit the community better and in making sure that when sites were allocated, women obtained as many sites as men did (HIC:1997:109).

### The Kigali action plan

To conclude, a list of global actions was drawn up in Kigali which could be used internationally to improve women's rights in relation to land (Anonymous:1998). These actions would:-

- Deploy practical schemes to inform women and enable them to exercise their rights to land and property;
- Transform identifiable rights into 'demandable' rights, i.e. judicial rights which can be enforced at the local, national, regional and international levels;
- Use pressure from *women's popular movements*;
- Develop an *inventory of positive steps forward* regarding women's land and housing rights;
- Demand *credit for and technical assistance* to women's organizations for buying land, housing and production;
- Ensure that *international organizations*, such as donors and financial institutions, condition their programmes of access to land and property to securing the equal rights of women;
- Investigate the different *types of land tenure* to assess which type would be the most useful, individual ownership, joint title, collective property, cooperative ownership;
- Exchange information about policy options that have already been developed;
- *Create awareness* through popular education, legal aid clinics, and/or media campaigns on women's access to land and property.

### 1.3 Lessons learned and the way forward

*Informal settlement is on the increase and has become one of the most common forms of land delivery in the majority of developing countries. Informal settlements can no longer be marginalized or regularized only on an ad hoc basis as this approach is threatening the environmental sustainability of cities and is being found increasingly to be politically unwise. The sheer scale of informal settlement globally, and within urban areas, means that informal settlers need to be treated as having a 'right to the city.'*

### Reassessing conventional instruments

Instruments that have conventionally been utilized to supply tenure security need to be re-assessed, used in more innovative ways, and new and more appropriate instruments created. This has to be

done very quickly to avert even more serious problems. Rights such as freehold and registered leasehold, and the conventional cadastral and land registration systems (paper or digital), and the way they are presently structured, cannot supply security of tenure to the vast majority of the low-income groups and/or deal quickly enough with the scale of urban problems, so innovative approaches need to be developed (see section 2.2.6 below).

### Perceived tenure

While secure legal tenure for all segments of society is the aim, it is likely that there will always be people who cannot afford any form of legal tenure. These people need to be able to start with a perceived form of tenure security and work their way up the tenure ladder in incremental steps. *Perceived tenure* can be based on a number of things and these can be used constructively by local authorities, NGOs and others to manage urban areas better and supply a form of temporary tenure security.

### Anti-eviction laws

*Anti-eviction laws* have been very successful in giving millions of people tenure security in general. However, if the land is required, anti-eviction laws are often ignored by land-owners, local authorities and others. NGOs play a critical role in explaining to people their rights when they are being evicted, mobilizing support, including international and political support, and assisting those who have been evicted to prove their occupation rights. The lack of records about occupation hampers those who have been evicted from proving their rights. The lack of knowledge of occupants about their rights, the lack of community-based para-legals to assist people as well as problematic justice systems, make occupants vulnerable to eviction and exploitation. *Anti-eviction laws should be passed by all countries to protect low-income groups*, who should also be given training in their rights (city, housing, land, non-eviction). Capacity should be built in NGOs to supply technical assistance to people who have been evicted and to train communities about their rights. Simple record keeping of those in occupation should be undertaken at community and/or local authority level, and training done in this area. It is within the interests of the local authority to maintain such records both in terms of urban planning, as well as to protect itself from professional squatters, and a partnership between the community and local authority should be the way forward.

### Adverse possession

Adverse possession does not deliver in time or to scale for the poor when only individual applications are made. That is, having a prescriptive right does not easily become a secure property right. Applicants also need legal aid assistance to obtain a secure property right, but even when this is available it does not deliver in time or to scale. *Adverse possession rights, if the community knows they have them, are a valuable perceived secure tenure*. However, it is critical that residents can prove their occupation in the area for the correct length of time. Again, the role of NGOs in educating people about their rights and simple record keeping, describing those in occupation, undertaken by the community in partnership with the local authority, is critical. Also class actions linked to adverse possession claims might well be a way forward which should supply secure tenure more effectively, especially when used with other legal instruments such as special interest zones and land readjustment.

### Nationalization

Nationalization of land and the public ownership of all land does not give tenure security to low-income groups as, if no records are kept, it is not clear who has rights. Centralized land record systems, such as

those in countries where land was previously nationalized, cause tenure insecurity for customary and other occupants. Their land is often planned and allocated by the centralized system without checking to see if anyone is in occupation, and they have little protection from the encroachment of neighbours. Records of occupation rights to give tenure security are critical for any kind of politico-economic system. However, to date land record systems have been based on the privatization of rights. A way forward is to create records and land information for a range of purposes such as negotiation, disputed occupation, temporary occupation, for regularization, and short and long term rights recordal, where different partners have different responsibilities for the creation and maintenance of the information.

### Customary law

Customary areas adjacent to urban areas often supply tenure security to low-income groups and facilitate the extension of the urban area, albeit informally. Partnerships between local authorities and traditional leaders, instead of competition, facilitates the regularization of these customary areas and their incorporation into the urban area. Such partnerships help to strengthen weak administrative systems. To do this, national regulatory frameworks have to be adjusted to merge customary and statutory law, and traditional forms of land administration have to be allowed. Customary areas do not respond well to freehold and/or individualized titles/deeds, because of group-based relationships and the lack of financial capacity. Locally administered group-based leases are a much more useful tool, linked to innovative land readjustment mechanisms (see section 2.2.4 below).

### Legalizing informal settlements

The *legalization of informal settlements* can take many forms, but it has generally been done by giving individual freehold titles/deeds and been accompanied by individual servicing of the sites. This has led to problems of middle class down-raiding, lack of affordability (especially when legalization is accompanied by service provision) and slow centralized delivery approaches. The move now is away from individual titles/deeds towards a form of group title/deed, with individual rights administered by the group themselves, sometimes in partnership with the local authority. This approach can be used both when settling vacant land and for regularizing informal settlements. Titles/deeds can be upgraded incrementally if so desired. Group titles/deeds and the identification of special zones in the city for low-income people, are complementary land delivery instruments. Special zones also work well with anti-eviction laws as they allow the local authority to intervene in areas of land conflict.

### Qualified titles/deeds

*Qualified titles/deeds* are often considered as a way forward to deliver titles/deeds quickly and they have been used at certain times in a country's history very effectively. However, if a country has *a weak administrative system, qualified titles/deeds, which have to be upgraded administratively at some future point, will not solve the problems of large-scale informal settlement.*

### Leases are the best solution

It is not possible for the majority of the population, and especially low-income groups, to have tenure security by using centrally registered rights such as freehold. Instead alternative approaches need to be considered. Given the bundle of rights associated with land and the different types of leases and rights available in different countries, it is suggested that:-

- Leases become the *instrument of choice* for publicly-owned land and especially local authority

land, rather than freehold. That is, in urban and peri-urban areas the state should preferably not transfer the land in freehold to occupants;

- Leases with *various conditions of title* should be utilized depending on the human and financial capital of the country, the urban area and the residents. The lease should be as simple to administer as possible, while giving the maximum tenure security required for the purpose intended. All leases should not automatically be designed for the purpose of mortgages, as this tends to increase the costs of land delivery and the time taken to deliver;
- Basic leases should be used along with *group tenure arrangements*, whereby the block is registered in freehold, or under a strong lease agreement to the group or a local authority. The tenure security of the occupants is a result of the group right and their own internal land administration agreements. This approach probably still needs some technical development in relation to low-income groups, especially as most countries' legislation is not set up to accommodate this approach in an affordable manner;
- Wherever possible, lease contracts between a local authority and occupiers should be *linked to land records* kept by the local authority and/or community. The record keeping should be a partnership between the local authority together with the community to ensure currency of the records as well as accessibility and transparency to the community (see section 2.2.6 below);
- Private land-owners should be encouraged to set up *lease contracts with occupiers* which protect all parties, and *dispute mechanisms* should be developed which can be afforded by low-income groups;
- *Capacity is built in NGOs* to assist people in:- assessing and negotiating their lease conditions, setting up cooperatives associated with group tenure, assisting people in creating land administration rules for their group tenure and in sorting out their group tenure land disputes, and building social cohesion.

### Leases and low-income groups

When comparing freehold and local leases, *leases are better for mass delivery for low-income people for a number of reasons*; typically:-

- Leases are *much cheaper* than freehold title/deeds;
- Leases can be *delivered faster* than freehold title/deeds;
- Leases are *more flexible* as they do not necessarily fall under the national laws of the country and can be negotiated by the parties;
- Not only are delivery costs cheaper, but more importantly *transfer costs are cheaper*. Governments often subsidize land delivery but seldom subsidize transfers;
- Freehold requires a *full adjudication and settlement* of rights. Conflicting rights cannot be held on the registry record. Lease agreements can be made with occupiers of land still under dispute (UNCHS:1996b);
- There are *many types of leases*, and a *range of costs* are associated with their creation, and they can be upgraded incrementally as and when required. There is often only one type of freehold in a country;
- Both freehold and leases are amenable to *information and communication* technology. However, the technology system to handle leases can be much *cheaper and simpler* to use than a system for freehold.

### Improve lessor-lessee relationship

The reason many people want freehold is to protect themselves from the capricious behavior of landowners. Leases are only useful if the lessor is acceptable to the lessees. Partnerships, a user-friendly justice system, and the role of well-informed NGOs are critical in the creation of *good lessor-lessee relationships*.

Without well-balanced lessor-lessee relationships, people will continue to demand freehold, no matter how unobtainable and unaffordable it is.

### Women

With respect to promoting enabling practices regarding women's equal rights to security of tenure and the equal inheritance of women to land (housing), the *regulatory frameworks* of the country should be reviewed as a priority. This review should be gender-sensitive and be done in terms of the range of *international resolutions* that have been passed, to establish women's equality and limit discrimination. One of the first steps in the review should include the development of a policy on women and land for the country, taking *international resolutions into account as well as local* conditions. Part of the process of policy development should also include research into *best practices in other countries* and these should be adapted to local conditions. Changing the laws of countries is necessary but however has not been sufficient to bring change to poor women, so campaigns, both to promote issues and to educate women, have to be conducted. Finally, women have shown themselves to be vital in participatory planning processes, especially in the resolution of conflict, and in generating the savings necessary to undertake regularization.



## CHAPTER 2 - AN ADEQUATE SUPPLY OF LAND FOR ALL SEGMENTS OF SOCIETY

### 2.1 Supply of serviceable land is ineffective and inefficient

The supply of serviceable land is ineffective and inefficient. This is because of centralized decision-making and top-down delivery procedures, inefficient use of urban space, impractical land readjustment mechanisms and public sector dominated approaches, rather than the involvement of all stakeholders. The lack of land inventories of public land and information in general also slows down the supply of serviceable land (Habitat Agenda:1997a: no.76). Inefficient land markets cause delays in the delivery of formal land, which in turn encourages informal settlement development and environmental degradation. This inefficiency can be traced to rigid and costly regulatory frameworks, poor land record systems, and centralized systems with an emphasis on public sector responsibility excluding the private sector (Habitat Agenda:1997a: no.77).

### 2.2 Instances of best practice

#### 2.2.1 Recognizing and legitimizing the diversity of land delivery mechanisms

*A diversity of land delivery systems and land development actors, including those that are informal, should be recognized as an asset, not as a liability* (UNCHS:1996b:6). India illustrates how this is done. Risbud states that since 1998 there has been a major shift in government policy. Government now accepts the contribution of private “colonisers and builders” in supplying land and housing in Delhi. The public sector monopoly of the supply of land has come to an end and guidelines have now been issued for involving the private sector in the assembly and development of land and the construction of houses. “Several lessons have been learnt during these four decades of implementation, which have prompted corrective measures. Informal settlements have been recognized and policies of regularization have been adopted. Regularization measures *include legalizing (previously extra-legal) land transfers on power of attorney...*, regularizing unauthorized construction in formal development and extending infrastructure to squatter settlements... Recognition of informal settlements has required changes in planning standards to those which are more responsive to the needs of the poor. Reduction of plot size from 67 sq.m. to 15 sq.m. is a case in point” (1999:24,31). That is, *the whole range of land delivery mechanisms should be recognized and facilitated by government through the creation of appropriate regulatory frameworks* (see section 2.2.5 below), the innovative interpretation of existing regulations (Diacon:1997), and by supplying service infrastructure networks throughout the urban area, including areas of different legal status (see section 2.2.3.2 below).

#### 2.2.2 Decentralizing land management responsibilities: Local Authorities’ role in tenure regularization

Nearly all countries are in the process of decentralizing and redefining the role of the state, partly due to the fact that so many central land management policies have not met expectations. Decentralization entails a devolution of powers, functions and administrative programmes from central government to regional/local authorities and even to lower tiers at community level (UNCHS:1996b).

Countries such as Benin, Burkino Faso, Cameroon, Côte d’Ivoire, Guinea-Bissau, Lesotho, Mali, Nigeria and Zimbabwe in Africa; Bolivia, Ecuador and Paraguay in Latin America; as well as Bhutan, Pakistan and the Philippines in Asia, have undertaken reviews of land delivery systems,

and embarked on programmes to decentralize land management responsibilities. These efforts were matched by local capacity building (UNCHS:1997a:4).

### Central government role

Central government should define and formulate national policies and provide institutional and *legal frameworks for decentralization*. The roles and functions that are decentralized should be formally identified, perhaps even in legislation. Local government has to be given the powers and financial resources that correspond with their new responsibilities (see box below). *Decentralization should allow the creation of better vertical coordination between 'bottom up' information and local interest, and 'top down' information and policy guidance, which can harmonize overall national development policy with local programmes. By giving power to the local authorities, decentralization enables the empowerment of communities* (UNCHS:1996b).

### The role and benefits of decentralization

Greater decentralization will overcome obstacles to action arising from the political preoccupations of central government, and weak political will at national level. It should permit the use of *procedures that are more sensitive to local conditions, more accountable, and more transparent because they are more open to public scrutiny and amendment*. (UNCHS:1996b).

### What local authorities should do

The decentralization of land management, functions, resources and powers will improve access to land and assist in solving land disputes. Local government is the most appropriate level of government to handle land management that favors the local populations. Local authorities should (UNCHS:1996b):-

- Play a major role in land regularization;
- Have the power to appropriate land;
- Develop land policies to anticipate future development, in order to carry out long-term strategies. They should estimate the demand and supply of land and indicate mechanisms by which available land can be accessed;
- Establish land-delivery mechanisms, including the establishment of communal land reserves;
- Develop land-use guidelines and building regulations, taking into account the diversity of land uses;
- Process land records, as this will facilitate access to land by the poor, especially women. Local authorities should make information on land more accessible by setting up and managing a system of land records which is open to the public (see section 2.2.6 below);
- Give priority to social and gender equity. People's participation should be encouraged to empower the poor and the weaker segments of society;
- Take advantage of contractual relations with government, community-based organizations (CBOs) and non-governmental organizations (NGOs), as well as other public and private stakeholders to help provide infrastructure and services;
- Use land taxation to provide finance for land development and for the provision of local services;
- Take advantage of the potential for multilateral and bilateral support;
- Together with national government, manage public lands for the good of all segments of society;
- Together with national government, work out what new role can be played by customary and traditional authorities in decentralized land management (FIG/UNCHS:1998:2);



- Ensure combined activities which incorporate both the formal and informal channels of land development and management (FIG/UNCHS:1998:2).

#### **Participatory planning for improved local government, Province of Guimaras –Philippines**

When land management functions were decentralized after legislation was passed, local government found overnight that it had the responsibility and no human and financial capacity. Local government therefore started out by finding out from the community what they needed so that the local authority knew where to build their capacity. They did this through holding multi-stakeholder workshops. Management structures were created which included community representatives, and which had a large contingent of women.

Where local governments lack capacity, personnel in charge of land management should be given urgent training, and additional capacity should be sought from national governments and the private sector (UNCHS:1996b:6).

### ***2.2.3 Developing regularization programmes for both tenure and/or services***

#### **2.2.3.1 Introduction**

The regularization of informal settlements involves a range of different *components, which have to be managed over time. Some of these are: -legalization (tenure), planning, services and infrastructure, information, land administration, dispute resolution, community participation, community capacity building, funding and cost recovery, and housing.* The way the matrix of components has been approached varies in different projects, and in different countries, with for example some countries undertaking legalization and servicing at the same time (Huchzermeyer:1999- South Africa), while other countries service without legalization (Banerjee:1999a,b –India). Some of the diverse approaches to these different components will be outlined below to assess their comparative advantages and disadvantages.

#### **2.2.3.2 Legalization**

A number of different ways of giving tenure security in informal settlements and villages have been tried, or are under consideration. A common approach, *when regularizing informal settlements*, has been to award freehold rights or registered long leases in individual title/deed to the settlers (Azuela and Duhua:1998:160; Varley:1999 –Mexico; Huchzermeyer: 1999 –South Africa; Payne:1997). *Freehold and registered long leases administered by central government are not useful as individual titles/deeds for the poor. They lead to land price increases, middle class down raiding, the targeted low income groups moving to other more affordable areas, the destruction of social relationships within the community and unaffordable, non user-friendly, transfer costs and procedures, that destroy the currency of the record system* (see section 1.2.14 above).

#### **Individual surveyed titles/deeds**

An alternative approach consists in awarding *individual surveyed titles/deeds*, with surveys conducted by local surveyors and the records being kept by the local authority. This is under consideration in Namibia (FIG/UNCHS:1998). Although this option would undoubtedly strengthen individual tenure security, it also has its own shortcomings. Individualization of tenure often negatively impacts both

family and group social relationships and undermines the social capital of the community. Some countries would not have the capacity to survey the individual titles/deeds of informal settlements in any timely sort of way (UNCHS:1999b). Individual surveyed titles/deeds undertaken with local resources for informal settlement regularization, is being considered by Namibia as the last rather than the first stage in tenure security (FIG/UNCHS:1998) because of costs, delays in delivery and inadequate capacity.

### The block system

An approach based on the *block system* is considered to be effective (see section 1.2.10) both for cost-effective development of vacant land and for regularization of informal settlements (Namibia –FIG/UNCHS:1998:11; UNCHS:1996b:8). It also complements other legal tools such as special zones for low-income groups in cities (see section 1.2.10 above) as well as land readjustment and land sharing (see section 2.2.4 below). The block/(s) can be created prior to planning and servicing and do not require internal surveyed boundaries, which lifts major conventional obstacles to land development.

### Legalization and immediate security of tenure

Legalization by blocks *also goes a long way towards providing immediate security of tenure to occupiers*, even if no records of their individual rights exist. The block method can certainly be used to provide tenure security in villages (Nafantcham-na and Borges: 1998) and a *starting point to an urban upgrade, but then information about occupiers of the blocks should be collected as soon as possible, effectively creating a land record for occupants. Such a record would both increase the tenure security of individuals and families in the block, and supply the local authority with information to assist in the regularization process* (Davies and Fourie:1999) (see section 2.2.6 below). In areas where customary relationships did not protect all occupiers, lease agreements between the local authority and occupiers should also be set up as part of the land record, along the lines outlined above (see section 1.2.11). The conditions of title should include a specified period of time, - but preferably a perpetual right, - of occupation of a site within a block, though not necessarily the existing site, and the right to transfer the site subject to customary or group restrictions.

### The benefits of legalization

As noted earlier (see section 1.2.10 above) legalization has come to mean many things. Suggestions are that most legalization is at its greatest effectiveness when involving blocks owned by the local authority, with individual lease agreements between the local authority and occupiers of the block. It is more affordable for all parties as no planning, services, surveying, or central government titling are required from individuals. It is quicker, more straightforward and gets away from the need to co-ordinate central government departments, utilities, etc., for every site (Fourie:1998).

In some countries, servicing does not necessarily go hand in hand with legal tenure security, of any kind (India –Banerjee:1999a,b). Instead, municipal authorities provide assurances that the informal settlement will not be moved during the next ten years. This gives the settlers perceived tenure security. To some extent this approach could be seen as similar to the block method, with the information about blocks being maintained on the land record system to ensure that there are no dealings in that land. However, under this type of arrangement, the settlers would have less tenure security and the local authority would have weaker control over the area.

### Sorting informal rights

Prior to legalization of informal *settlements*, *the underlying properties must be sorted out*. This factor is a most serious hindrance to regularization and will be considered in some detail. Before informal settlements, either singly or city-wide, can be considered for regularization, a land audit needs to be undertaken, to assess the legal status of the land that is occupied by informal settlements (Diacon:1997; de Castro:1999b, Payne:1997:27,48). It has to be ascertained whether the land is in public or private ownership, or both. If it is publicly-owned land, it has to be ascertained which government authority and/or agency, holds the land. In some countries this is unclear or in dispute (Brazil –Imparato:1999 and Francophone Africa –UNCHS:1999b). Systems must be put into place to make it possible to identify any given site or plot of land (through creation of a city-wide land inventory), and then allocate it to the proper government body, preferably the local authority, so that it can make the site or plot available for legal residential occupation.

### Need for innovation

Delays in such designation are commonplace (Imparato:1999 –Brazil; Banerjee:1999a,b –India) and innovative approaches must be developed to overcome these delays:-

- *Dispute resolution and coordination mechanisms* must be set up to settle inter-governmental disputes over the allocation of land use rights and the vesting (holding) of land rights by the different government agencies (see section 2.2.5 below);
- If there is good will between the different government levels and agencies, the implementing agency can set up lease agreements with the occupiers even before the site or plot is allocated to the relevant authority. Once such allocation is completed, then final lease agreements can be put in place (Banerjee:1999a,b –India);
- A para-statal development agency/board can be created to hold the land rights, with government and other stakeholders as board members. It is then up to the board, to allocate the land (UNCHS:1999b).

### Title/deed ambiguity

Innovative techniques are similarly required to accommodate any informal land uses already in place on public land (see below). In general, *it is much easier and quicker to regularize informal settlements on public land, especially land held by a local authority*, than it is to regularize privately-owned properties (Banerjee:1999a,b, Diacon:1997). Titles/deeds to private land can be much more complex and all the land sites or plots involved need to be assessed to ascertain legal status in relation to a number of issues. Title/deeds can be ambiguous (cloudy) for any of the following reasons:-

- There are long delays in sorting out *deceased estates* (Imparato:1999 –Brazil; Banerjee:1999a,b - India), especially where the owner has died without a will. This is made worse where there are no, or poor, land records;
- In many countries it is not possible to deal in the land when *title conditions* have not been met. That is, owners have applied to undertake subdivisions but official requirements with respect to land use are so high that the owners have not been able to comply. This means that the land is in an administrative limbo;
- Owners have subdivided their land without adhering to the *land use controls* (Payne:1997; Banerjee:1999a,b –India; El-Batran -Egypt:1999a,b);

- There are *no public records* and/or there are a number of *claimants* to the land (Imparato:1999 – Brazil);
- The *judiciary is not efficient* (de Castro:1999b), (and this may include the estates office);
- The official system *does not accommodate women's rights to land*, although they often are the major users of the land (Anonymous:1998).

### Negotiating with owners

Once the specifics and legal status of the privately-owned land and its owner(s) is ascertained, which requires a land records system (see section 2.2.6 below), *negotiations must be entered into with the owner(s), in order to regularize the informal settlement on their land. Such negotiations would not only be with the landowners, but also the government agencies involved in allocating land use and servicing the areas. A number of legal and administrative instruments have been developed to assist in these negotiations, which can be broken down into five broad categories:-*

#### *-Leveraging land management*

- *Land sharing, land readjustment*, including customary owners, and the transfer of development rights (see section 2.2.4 below);
- *Land swapping*, where private landowners are given the equivalent public land in return for giving up their privately-owned land (Durand Lasserre:1998);
- *Compulsory land acquisition*. This is a critical instrument but is often underutilized because of a shortage of government, and especially local government, funds to pay compensation at market value, and because it can be politically sensitive (Banerjee:1999a,b –India; Payne:1997);
- *Pre-emption rights*. This “...is a variation on the public acquisition of land and allows 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 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 proceed” (Payne:1997:9);
- *Quieting of title* (Ferguson:1998 -Bahamas). A court decision as to who is the rightful owner, when there are a number of ‘owners’ claiming the land, can clear the title/deed and make it available for the market. However, this is a long and expensive process;
- Local authorities can install *essential services* on private land without the landowners’ permission (El-Batran:1999a,b –Egypt, Risbud:1999 -India) (see box below);
- *Special administrative procedures* can be instituted to set aside Master Plans and inappropriate conditions of title related to land use, through the creation of a dedicated advisory board (Xaba and Beukman:1999 –South Africa). Mining, tourism and other concessions, as well as the development of major national roads, also have to be assessed by such a board to ensure that there is no overlapping allocation of land use (Mekvichai:1998 –Thailand).

#### *- Use of leases*

- The *local authority* can set up *lease agreements* with informal settlers on private land even before the local authority has acquired the land. Land acquisition for regularization often takes a long time, because it is being held up in court over discussions around cloudy titles/deeds and/or the compensation amounts associated with expropriation are unacceptable to the landowner (Pinho:1999 -Brazil);
- Lease agreements can be reached between the *occupiers and the local authority*, without the

local authority giving up the right to sue the landowner, who undertook the illegal subdivisions (Alfonsin:1999 –Brazil);

- Lease agreements can be set up between the local authority and occupiers without the local authority approving of the informal land use in existence. This can be an important clause in the lease as in some countries industries move into areas where land use regulations have been relaxed to avoid control, and displace the occupiers who were meant to benefit from the altered regulations (Risbud:1999 –India);
- If the local authority only puts in the infrastructure networks and does not become involved in individual connections, it is possible, especially in customary land, *to avoid some disputes over land 'ownership'* (Durand Lasserre:1998:242).

#### - *Leveraging adverse possession and anti-eviction laws*

- *Adverse possession*. If much of the land has occupants with provable adverse possession claims, class actions could be submitted to court which cover the whole area (Junior:1999; Fernandes and Rolnik:1998:149 –Brazil) and/or legal aid given to individual applicants. Local authority records such as aerial photographs, electricity bills, voters rolls could be used to substantiate these claims;
- Stringent enforcement of *anti-eviction laws* (Diacon:1997).

#### **Slum networking –Ahmedabad, India**

The Ahmedabad Municipal Corporation has used its statutory power to provide health and sanitation facilities (essential services) to execute the infrastructure networks in the informal settlements on private land in the city. It has also assured the slum dwellers in these areas that it will not support any eviction attempts by the private owners. As most of the private lands with slums have long arrears of municipal taxes, the municipality is using this as a leverage to persuade the private owners to sell the land at below market price to the individual families.

#### - *Leveraging taxation*

This can be achieved by:-

- The creative use of *outstanding land taxes* from landowners with slums/informal settlements on their property (Diacon:1997);
- Using *land taxes to force private landowners* to sell land occupied by informal settlements;
- Using *tax concessions* to encourage landowners to regularize their land (Payne:1997:19);
- *Slum rehabilitation* at government expense, with the agreement of landowners, on condition that owners retain their ownership but government is allowed to lease out the property as social housing to low-income groups (bestpractices:1999) (see box below).

#### - *Leveraging land use controls*

- Conventionally, prior to regularization local authorities have to agree to supply an area with services, through a 'bulk service certificate.' This often causes delays and blockages. By upgrading the whole infrastructure network of the city as the core component of the regularization programme, the bulk supplies are automatically planned for the city at scale (Diacon:1997);
- By offering *planning permission* to owners so that they can develop part of their land for maximum commercial gain or alternatively refusing to grant planning permission to the landowner unless and

- until regularization is part of the development (Payne:1997:38);
- Government should allow private developers to acquire privately held *agricultural land* on the fringe of cities and convert it to urban land uses. That is, such acquisition and conversion of land should not be a public sector role. This avoids lengthy public sector land acquisition procedures (Ansari:1998:71);
  - Legislation can supersede *building control regulations* for residential developments of 50 sq.m or less (Banerjee:1999a,b –India);
  - *Areas of special social interest* can be set up which protect occupants from being evicted and alter the land use controls for the specific area (Junior:1999; Pinho:1999 -Brazil);
  - The private sector must be able to undertake large-scale *land assembly* and this right should not be reserved for the public sector (Ansari:1998:95);
  - The *floor space index* can be increased in order better to accommodate existing informal layouts along with any new developments undertaken by the landowners, which would act as an incentive for the landowners under the regularization scheme (Banerjee:1999a,b -India);
  - Local authorities can install *essential services* on private land without the landowners' permission (El-Batran:1999a,b –Egypt, Risbud:1999 -India) (see box below).

### 2.2.3.3 Planning

A number of different planning methods have been tried for informal settlement regularization, or are under consideration. Firstly, the conventional approach to planning, known as the rational approach, is one where “the technocrat planner, fully informed, produc(es) objective analyses and assessments of alternative courses of action for the ultimate political decision making level” (Sliuzas:1999:2). However, Sliuzas reckons that the “...legacy of planners who assume to know and act in the ‘public interest’ with minimum provision for consultation with the target population may well be a long one but it seems to be drawing to an end” (Sliuzas:1999:2).

#### An integrated programme on housing rehabilitation for social purposes - Spain

The programme was strategically designed to undertake integrated housing rehabilitation, the main objective being to make flats accessible to a disadvantaged sector. The programme is run by the local authority and involves the Departments of Social Services, Economic Development, and Urban Planning. It is based on a contractual agreement made with the owners of abandoned flats and buildings in the downtown area. In exchange for the local authority paying for the rehabilitation of the flat, the owners rent out their flats to those people selected by the Department of Social Services, for a given time period and rent. To fulfil the agreement, the local authority is expected to bring the flats up to the standard required by present housing regulations, with adequate structure and function. After the predetermined time period, the flats are returned to the owners in perfect condition.

#### The rational approach: Shortcomings

The rational approach has not been found to be useful for informal settlement regularization for a variety of reasons:-

- It is seen as an imposed *top-down exercise by centralized authorities* (Farvacque and McAuslan: 1992:63-4);
- Central government institutions have lacked the human capacity to implement the plans at *local level* (UNCHS:1999b);



- Sometimes different government departments have different plans for the same area leading to *overlapping allocations* of land use and ambiguity on the ground (Mekvichai:1998:247-257 - Thailand);
- It does not take into account the *de facto* situation *on the ground* (UNCHS:1990; Farvacque and McAuslan:1992:xi), often because there is no information available at central level (Perez and Bolivar:1998:127 -Venezuela);
- *Land use or planning decisions take an enormously long time* (Farvacque and McAuslan:1992:6-12);
- Collection of comprehensive and accurate information is *extremely costly* (Farvacque and McAuslan:1992:66-7);
- It is *not sustainable* as the people on the ground are unlikely to adhere to plans that do not facilitate their own survival, or they lack the financial capacity to abide by the plans, or if they do not understand the rationale behind the plans (Farvacque and McAuslan:1999:263-4);
- If a plan is not adhered to, the government structure putting it into place is discredited and *this undermines good governance* in general (UNCHS:1997a:20).

### Exclusion effects

Most importantly, the conventional approach creates a Master Plan, based on laid-down site sizes, road widths, specified land uses, etc. When these plans are imposed on an informal settlement, the local informal layout and land uses generally do not match those in the Master Plan for the area. This leads to the *situation where an informal settlement is considered illegal and unauthorized because it does not conform to the plan*. Also, the settlement cannot be upgraded *in situ* to conform, because the local informal layout incorporates aspects such as site sizes, or floor ratios, which are illegal according to the planning laws (de Castro :1999b –Brazil).

### Regularization through redevelopment

As a result of this problem, informal settlement regularization has often taken the form of redevelopment schemes, whereby all dwellings and structures are cleared after moving the residents to an interim camp. Shelter and a layout that match the Master Plan (and planning laws) are then built and the people returned to the area. This approach is expensive, has high maintenance costs and there is a high incidence of the resale of the dwellings and the destruction of the community structure (Diacon:1997:5). In terms of conventional planning approaches, *the regularization of an informal settlement in situ, requires firstly, that the planning laws and regulations have to be altered to accommodate such things as typical informal settlement site sizes and floor rations*. Alternatively, special zones have to be created, where different site sizes, etc. are allowed and the Master Plan and the planning laws of the country are set aside (Brazil –Alfonsin:1999).

### A participatory approach to planning

Conventional planning approaches need to be revised to fit a situation where most shelter in the developing world is being supplied through informal land development. A new planning approach is being developed as *planners become aware that they need to move away from a prescriptive approach to one of participation*. This participation needs to take place at the lowest possible level and involve all stakeholders in the decision making process (UNCHS:1996b:6-8). *Participatory approaches should involve all stakeholders such as the communities themselves, the utilities, local authorities, NGOs, central government agencies, professionals, for profit private sector, donors, researchers* (Diacon:1997:50-1,5).

### The benefits of participation

Involvement of the community, and especially women, will:-

- Lead to *clear and more relevant objectives* (UNCHS:1996b:6-8);
- Create a feeling of *ownership by the community of policies and strategies* (UNCHS:1996b:6-8), which is important for long term maintenance in the area (Diacon:1997);
- Leverage *people's extensive knowledge of their own conditions* (UNCHS:1996b:6-8);
- Encourage *affordable systems*, self-funding and cost recovery (Diacon:1997:63);
- Promote public awareness which will help strengthen and enforce political determination, which will in turn generate initiatives and encourage people to exercise their citizen's rights (UNCHS:1996b:6-8);
- Promote transparency and accountability in the planning and implementation of policies and programmes (UNCHS:1996b:6-8).

### The practicalities of participatory planning

In a planning context, a participatory approach means setting aside the Master Plan for an area, or only using it as a starting point, or not waiting for one to be created by a central government agency, and instead using the existing local layout as the basic plan for the area. This means that only a minimal number of informal settlers will need to be resettled. However, it also means that compromises will have to be made, such as between retaining existing sites/houses and the creation of straight-line service corridors, if the informal local layout becomes a key planning instrument. The straighter the service corridor, the cheaper it is to service an area, as each corner turned for a water or sewerage pipe increases costs.

In other planning decisions, which have to do with the choice of services, stakeholder participation, and especially community participation - including women's participation - is of critical importance. Service affordability by the community and local authority ability to recover costs should feature prominently among planners' designs, rather than national planning rules and standards (Diacon:1997). The community may well prefer to have concrete footpaths as an access to every house, and agree to prevent vehicles using those footpaths, instead of facing the cost of upgrading the settlement to allow expensive vehicle access to every house.

From another angle, typically, the planning of informal settlement regularization has taken place on an *ad hoc*, settlement by settlement basis. The best approach, however, is a city-wide approach and this has successfully been done with three Indian cities, including one with a population of over one million (Diacon:1997) (see box below). *Instead of focusing on individual settlements or on the city limits as the area for planning, the focus should be on the primary infrastructure networks, such as the water mains, road networks and/or sewerage system of the urban area.*

### Slum networking –Indore, India

In Indore, the slums were located on the water-courses of the city. The new infrastructure provided in the slums and linked to the rest of the city made it possible to clean up a river, as all the slum gutters were discharging into the river. The whole city did not have an underground sewerage system and by putting infrastructure down for the whole city, including the slums, meant that the whole city benefited. Cross subsidies for the network then became possible. By providing decent roads within, and on the perimeter of slum areas, it became possible to complete linkages within the city's road network which substantially improved traffic flows (Deacon:1997:10).

#### City-wide infrastructure planning: Principles

Urban planning should create a holistic infrastructure supply, which facilitates individual household connections as and when they can afford it. This combines "...three forms of intervention: the production of primary infrastructure network, the incorporation of informal sub-dividers into the production process, and the progressive servicing of areas that are already occupied, with plenty of scope for community mobilization and self-help... The population contributes directly to the provision and management of infrastructure and services. Such approaches also favour a less centralized form of urban management, promoting community organization at the settlement and block level" (Durand Lasserre:1998:241-2).

#### City-wide infrastructure planning: Lessons learned

As far as implementation of city-wide approaches is concerned, a number of lessons were learned (Diacon:1997:6-8):-

- Infrastructure networks must be designed to ensure that basic *services reach the entire population* in an equitable manner;
- Infrastructure networks must be *easy to maintain, repair and upgrade*;
- Avoid wasteful *overlaps and uncoordinated* services by using an integrated and holistic approach to design;
- Ensure that the design makes provision for *future growth and expansion of the informal settlements*;
- *Do not resort to short term* measures to save money;
- Provide *flexibility* so that the informal settlement dwellers can connect to the network as and when they can afford it;
- Develop city-wide *information on the informal settlements* before planning;
- *High professional standards* are required in all aspects of the work carried out, since informal settlement upgrading is more complex to plan and implement than conventional projects;
- *Costs of infrastructure* systems need to be assessed on the basis of both the capital costs and continuing maintenance;
- *Large-scale projects* allow solutions which are uneconomic at local level.

#### Well-informed planning

Information is a vital prerequisite for effective planning. The planner should acquire this information through the participatory planning processes which involves all stakeholders, and especially the community. The community being upgraded is a key element in the supply of information and a structured information system should be set up as soon as possible to facilitate the flow of

information between the professionals and the communities (see section 2.2.6 below). Such a system should supply information to all stakeholders, including the community, (Davies and Fourie:1999) for:-

- The identification of stakeholders and local leaders;
- The identification of who has *de facto* land *use rights* and of what type;
- Ascertaining what *services* are already in place;
- Large-scale planning and ongoing *maintenance*;
- Building local knowledge about land development procedures and servicing issues;
- Enhancing the ‘right to the city’ of *informal settlers*.

Finally, planning is tied to servicing, but is not necessary for security of tenure, especially when no services are planned. However, countries often prefer to link planning, services and security of tenure because of central government approaches to effectiveness and for political reasons (Azuela and Duhua:1998 –Mexico; Huchzermeyer:1999 –South Africa).

#### 2.2.3.4 Services

##### Servicing informal settlements can be approached in a variety of ways

Some approaches are the following:-

- In some situations and countries, *full service* is provided, including electricity, water, sewerage, roads and community facilities (El-Batran:1999a,b –Egypt). In others, only electricity and water are supplied;
- *Service standards vary* from long drops to underground sewers, from overhead to underground power cabling, from water trucks to water mains, with roads of different surfaces and widths;
- Most *informal settlements* are serviced on an *ad hoc*, settlement by settlement basis, where central government reacts to problems and needs as they arise (Azuela and Duhua:1998 and Varley:1999 – Mexico; and El-Batran:1999a,b –Egypt). However, some informal settlements are serviced through the development of infrastructure networks for the whole city (Durand Lasserre:1998:241 and Diacon:1997), where the local authority supplies the infrastructure network, and individuals take responsibility for their own connections (see below);
- *Individual site servicing* is often undertaken through specific projects either by central (Azuela and Duhua:1998 and Varley:1999 –Mexico) or local governments (de Castro:1999a –Brazil). Sometimes the servicing is carried out by the community once the area has been legalized (www.bestpractices:1999), including both infrastructure and/or individual connections;
- Servicing can take place *without legalization* (Banerjee:1999a,b -India), *before legalization* (Azuela and Duhua:1998 –Mexico), or *at the same time* as legalization (Huchzermeyer:1999 –South Africa). Governments can experience problems when servicing private land in the absence of any legalization process. In many countries, government is barred from servicing private land with informal settlements as, by law, government cannot add value to private owners’ property. A way around this is where central government makes provision of vital services compulsory by law for (El-Batran:1999a:1 –Egypt; Diacon:1997:56 -India), thereby limiting private property rights and allowing government to add value to private land under prescribed circumstances;
- Too often services have been supplied as part of regularization *without any thought about ongoing maintenance and/or affordability*. This has led to situations *where services have collapsed some time after introduction, or the settlers have sold the properties and moved to more affordable accommodation* (El-Batran:1999a,b –Egypt; Diacon:1997 -India);

- Various approaches have been adopted with regard to *payment for services*, including for capital costs, ongoing maintenance and user charges. Approaches include central authority funding (Varley:1999), local authority funding (de Castro:1999b –Brazil), donor funding (El-Batran:1999a –Egypt, www.bestpractices:1999 –GTZ/Senegal), full-cost recovery (El-Batran:1999a –Egypt), loans (bestpractices:1999 –Voi, Tanzania), self financing (bestpractices:1999 –SEWA/India), funding through cross-subsidization (Diacon:1997 –India, Huchzermeyer:1999 –South Africa) and partnerships including NGOs (Diacon:1997). *Instances of best practice for project completion and sustainable regularization include partnerships between local authorities, communities and NGOs, self-financing of individual connections, and community involvement in maintenance* (Diacon:1997 and bestpractices:1999 –Pakistan/KKB), together with cross-subsidies for infrastructure networks (Diacon:1997). For these approaches to work, communities must have been fully involved in *the choice of services, so that community ownership guarantees affordability and sustainability* (see below).

### Ensuring service sustainability: a practical example

Ensuring sustainability calls for a different approach to service design. As far as non- conventional approaches are concerned, Indore, India (Diacon:1997) is a case in point. Using the infrastructure network approach outlined above, the design for the sewer system was made affordable through deliberate conjunction of innovative practices. The whole city of Indore had no underground sewers. Providing underground sewers for the whole city solved the problem for both the informal settlement and the city as a whole. As the conurbation benefited as a whole, cross-subsidisation was a natural thing to do. One of the most expensive problems associated with underground sewers is the cleaning out of bottlenecks. This typically requires that special inspection chambers be built into the sewerage system, which can only increase capital costs. Moreover, inspections must be carried out by local authority officials, as must the bottleneck clearance. This also increases maintenance costs and user charges.

At Indore, the system was designed so that each individual house was responsible for its own connection to the sewer network, as and when they could afford it. This connection included a gully trap at the front door of the house, where any bottlenecks produced by the house would be caught. In this way the house residents were responsible for sorting out their own bottlenecks. This meant that much fewer blockages entered the main underground sewerage system, making it much less costly to maintain and therefore affordable to the users. However, it would not be possible to introduce such a system effectively without extensive community capacity building around the maintenance of services (Diacon:1997).

### Leveraging and stabilising communities

This is just one instance, from Indore, of innovative service design linked to community capacity. It provides a good illustration of the link between community participation on the one hand, and planning, servicing and affordability on the other hand (see box below for another example). It also shows how adequate community participation and capacity building can be leveraged and brought to bear on the ongoing maintenance and sustainability of basic services. The design of the service network can be undertaken by government or a para-statal development company (FIG/UNCHS:1998:11). *Finally, a low level of services, coupled with basic forms of tenure, will not encourage middle class down-raiding, and a low-income community is more likely to remain in the area* (Durand Lasserre:1998:241).

### 2.2.3.5 Land administration

*Land administration, and the security of tenure it underpins, is relevant to sustainable regularization of informal settlements in a number of ways, namely:-*

- The land administration functions of transfer of land rights, land use controls, information management, enforcement, taxation, and dispute resolution;
- Community/labour-based servicing and service maintenance (Diacon:1997);
- Social capital or community cohesion (bestpractices:1999 –Pakistan/KKB);
- Formal land administration structures such as local authorities, central government agencies, and dedicated government agencies (Junior:1999 –Brazil; Santiago:1998a,b –Philippines; UNCHS:1999b –Francophone Africa);
- The roles of NGOs, CBOs and customary leadership structures and those of partnerships (Nafantchamna and Borges: 1998 –Guinea–Bissau; Razzaz:1998 –Jordan);
- The role of unacceptable social elements within a particular society – warlords (Huchzermeyer: 1999 –South Africa), violent armed criminals (de Castro:1999b –Brazil), fundamentalists (El-Batran:1999a, b –Egypt).

#### **Institutionalizing Community-Based Development – the Ivory Coast**

In Abidjan the Mayor mobilized neighbourhood committees to engage the energies and resources of local communities and channel efforts towards improving their living conditions and economic situation. Committee activities range from environmental improvements that provide a sanitary setting for housing, to the building and operation of community facilities and services. The Committees are involved in many different activities including street cleaning and garbage collection; security services; and operating commercial enterprises. They also undertake some infrastructure improvements such as road maintenance, cleaning of drains and street lighting.

Traditionally land administration in relation to land rights, land use, land tax, land information management and enforcement is located at central government level. Land administration delivery of these functions has generally not been efficient. Some of these functions have been decentralized to local government level. Decentralization of land records to local authority level, especially to improve use and transparency, is being suggested (UNCHS:1996b, UNCHS:1997a and see section 2.2.6 below).

#### **Fresh approaches to land administration**

Fresh approaches also involve NGOs, CBOs, and customary leaders taking greater responsibility for land administration functions, as follows:-

- In Tanzania, people originally trained in land use planning for villagization are involved in *designing practical informal layouts for informal urban settlements* (Sliuzas:1999);
- In Jordan, *land transfer and dispute resolution for informal areas* are undertaken according to customary rules (Razzaz:1998);
- In South Africa, the generation of *information about the rights and use of individuals*, for the planning and management of the informal settlement, by the community itself, is being suggested by a local authority (Davies and Fourie:1999) (see further in section 2.2.6 below);



- In Venezuela, informal settlers trust *local 'lawyers' in the community* to protect and transfer their land rights, even when professional advice is available (Perdomo and Bolivar:1998:135);
- In parts of Francophone Africa, customary leaders are involved in partnerships with government in *land readjustment schemes* to manage urban area expansion (UNCHS:1999b);
- In India, NGOs are taking responsibility for *community savings and credit schemes* for urban development (bestpractices:1999 -SEWA);
- In Guinea-Bissau, it is suggested that the traditional village structure take responsibility for *all land administration functions* within a designated block or concession (Nafantcham-na and Borges: 1998).

### Fresh approaches to services

Civil society's role in land administration as well as servicing and maintenance is critical to the sustainability of regularization. Involvement of the community and its leadership in the administration of tenure and services makes these more affordable, user-friendly, accessible and gives both leaders and the community ownership and local responsibility for the functions. This also ensures sustainability.

### Success factors

Effective civil society participation requires:-

- *Local social capital and social cohesion*, either at settlement or block level (discussed in section 1.2.12. above) or at housing association level;
- Community knowledge about their rights (human, housing, land) and responsibilities (UNCHS:1996b);
- The presence of *NGOs*, through a strong human rights movement focused on creating inclusive cities (Fernandes and Varley:1998), but without the NGOs becoming mere gatekeepers to the development (Huchzermeyer:1999 –South Africa);
- *Partnerships with the local authority*, which needs to be involved in building community capacity by the transferring of project ownership and the appropriate land development and service maintenance knowledge (Diacon:1997 -India; Davies and Fourie:1999 –South Africa);
- The *training of local people* in land administration functions so that they can keep local land information records, resolve disputes, advise the community, transfer knowledge to the professionals about community needs, assist with land development in the area and be part of the system which supplies tenure security in the area (Davies and Fourie:1999 –South Africa);
- An acceptance of *customary leaders as partners* in the process by central government (Oloude:1999 – Benin; UNCHS:1999b);
- A reliance on local social capital for the purposes of *governance*, instead of reliance on governmental social capital - such as the Department of Social Work (Querrien:1999 –France) – which takes responsibility away from people.

### Partnerships with local authorities

It is not possible for the informal settlement communities to undertake the entire regularization process themselves and on their own. They *need local authorities for partners* because:-

- Sustainable services for cities require *networked city-wide infrastructure*, not just individual house or settlement upgrades (Diacon:1997);
- *Professional know-how*, both in relation to security of tenure and servicing, is critical to success, as upgrades are harder to design and implement than the development of vacant land (Diacon:1997);

- The *financial burden of regularization* requires the management of savings and the leveraging of finance from other sources (Diacon:1997);
- Gaining security of tenure on private land often requires *pressure from the local authorities* (Brazil – Junior:1999) and sometimes this pressure requires unconventional interpretations of the law (Diacon:1997 -India) and professional accountability (see box below);
- *Land records* for the city, informal settlements, land and services need to be managed (Davies and Fourie:1999 –South Africa) over long periods of time;
- Local authorities can follow a different and *innovative political agenda* compared to central government and remove barriers to informal settlement regularization (Varley:1999).

#### Casa Facil Easy Housing: Facilitating Building Processes to the Poor -Brazil

Engineers and architects were required to sign off on completion of a building. This led to many irregularities as many buildings infringed the law. This would also cause problems with inheritance. The relevant professional associations made a few adjustments to the regulations whereby, for buildings less than 70 sq.m., no sign-off was required, provided the engineers/architects owned the land or had permission from the landowner. Professionals working for the local authority were authorised to transfer the responsibility for the construction to the owner of the house.

#### Unacceptable leaders - conflicts and disputes

In some informal settlements the community leadership is unacceptable to the authorities. Warlords (Huchzermeyer: 1999 –South Africa), violent armed criminals (de Castro:1999b –Brazil) and fundamentalists (El-Batran:1999a,b –Egypt) dominate some informal settlements and any government attempts at regularization are either negated or subverted. This aspect is extremely critical and governments must develop methods to address these circumstances, as part of the regularization process, in order to *return settlements to the rules of civil society* (de Castro:1999b). Finally, a central issue in land development, service delivery and regularization for the urban poor is *conflict management and dispute resolution* and this is a critical aspect of land administration where new approaches are required (see below).

#### 2.2.3.6 Funding/cost recovery

A number of approaches have been taken in relation to the funding of regularization projects and the subsequent cost recovery:-

- *Donor funding* is commonplace (bestpractices:1999). Donors tend to fund the initial provision of the tenure and services, including the capital costs, and not the ongoing maintenance of the services and the land records. If the original design created unaffordable maintenance and user costs, sustainability can be compromised;
- *Central government funding* is commonplace for *ad hoc* settlement by settlement regularization (Azuela and Duhua:1998 –Mexico and El-Batran:1999a,b –Egypt). City-wide coverage with full regularization is rarely, if ever achieved, even in the largest regularization programmes in the world (Azuela and Duhua:1998 –Mexico). This is largely because they are so costly (Durand Lasserre:1998:240). Cost recovery from those being regularized is often not successful (Banerjee:1999a,b –India);
- Local authorities rarely have a large enough tax base to undertake the task on their own.

*Partnerships have enabled local authorities* to address extensive regularization effectively (Diacon:1997; Banerjee:1999a,b);

- In some countries, regularization has included an arrangement whereby the informal settlers could take out loans from an *external formal financial institution* (Voi – www.bestpractices.org:1999). This has not always proved effective because of problems with the repayment of the loans after regularization. Approaches whereby *the community save* towards the project, before development, appears to work better (see box below). This is especially true where *women* are involved in the project. Communities have shown the capacity to mobilise money for regularization quicker than the local authority (Diacon:1997);
- Projects where all households have to become involved and pay for service installation at the same time (Huchzermeyer:1999 –South Africa) are not as successful as projects which allow *households to choose when and if*, they wish to acquire individual connections (Diacon:1997). That is, individual connection to services rather than mass servicing is more affordable for poorer households;

#### Improved Plot Project: Affordable Land and Housing in Senegal

Prior to implementing the regularization project, an awareness campaign was undertaken, together with setting up savings associations to enable people to purchase improved plots. Extension workers were used to set up these associations and they were based on neighbourhood and/or professional chapters. A range of financing mechanisms were used with regard to the larger scheme, but the self-financing people using the savings associations were the most able to benefit from the scheme.

- Regularization is often *subsidized* (Huchzermeyer:1999 –South Africa; El-Batran:1999a,b -Egypt), while the maintenance of the area is often on a cost-recovery basis (El-Batran:1999a,b -Egypt). Best practice centres on cross-subsidisation for the creation of infrastructure networks, but individual household connections should be effected with self-funding or community funding (Diacon:1997 and bestpractices:1999 –Pakistan/KKB). In this way households take responsibility for the maintenance of the services and are more likely to pay user charges;
- The *cost of design of the services* is critical to the affordability of the services, ongoing maintenance and sustainability. *Community participation* is crucial to the design and maintenance of affordable services (see above);
- When designing affordable services, *community/labour based inputs* into the maintenance of the services and the cost thereof is critical to whether a local authority is willing and can afford to get involved in the regularization of informal settlements (Diacon:1997). This is especially true in relation to roads and underground sewers (de Castro:1999b), which can be very costly to build and maintain;
- For cost recovery, either of capital costs, maintenance and/or user charges, a *land record system is required* showing the identity of the individual, the land/house and the services of the area. That is, *cost recovery cannot be undertaken on a routine basis without some form of land information system* which is both useful to the local authority and the community (Davies and Fourie:1999).

Informal settlement regularization funding has generally focused on service provision and delivery of titles/deeds. However, for the sake of sustainability, funding requirements must be seen in terms of capital costs and maintenance costs, as well as affordability and recoverable user charges. Finally, *lack of funding* is one of the most significant barriers to regularization of informal settlements (UNCHS:1999b).

### 2.2.3.7 Housing

In informal settlements, people have developed their own shelter. Regularization of tenure and/or services has led to shelter consolidation and improvement in former informal settlement areas (Payne:1997; Banerjee:1999a,b; Risbud:1999; Diacon:1997). That is, *regularization contributes directly to the supply of adequate shelter for all.*

### 2.2.4 Innovative land assembly and development

#### Reasons for previous failures

Urban land management has often relied on land assembly methods based on compulsory acquisition to supply land for development. This approach is often inadequate for a number of reasons:-

- *Bureaucratic delays* in the acquisition and development process (Payne:1989:52; Banerjee:1999a,b);
- *Litigation over compensation* amounts (Banerjee:1999b:10-12; Islam:1998:52);
- Problems related to *disputes over the ownership* and boundaries, often because of poor records (Banerjee:1999b:10-12);
- A lack of *financial capacity* to pay for the land (Banerjee:1999b:10-12; Ansari:1998:68-69);
- Disputes over the interpretation of '*public purposes*' (Banerjee:1999b:10-12);
- *Tension* between government and customary land holders in the peri-urban fringe (UNCHS:1999b – Francophone Africa);
- The fact that it is becoming increasingly *unacceptable to evict* occupiers from the land (Ansari and von Einsiedel:1998:21-22).

#### Private sector roles

Priority has now moved to *facilitating private markets rather than relying on the public servicing of land* (Banerjee:1999:10-12 -India; Lee:1998 -Korea; Oetomo and Kusbiantoro:1998 -Indonesia). The private sector can make a major input to the supply of serviced urban land through utilizing land readjustment approaches.

#### Land readjustment and housing: Objectives and scope

Land readjustment (consolidation) is an approach whereby land-ownership and land use is re-arranged, in order to provide land for development purposes, for the protection of natural resources and for increasing environmental quality. Intermediate objectives include (i) upgrading slum residential areas, (ii) orderly development of rapidly growing existing and new areas, (iii) the planned development of relatively vacant areas expected to turn into residential areas (Oetomo and Kusbiantoro:1998:111 –Indonesia), and (iv) rationalization of the use of residential space (FIG/UNCHS:1998:5). Essentially it involves the readjustment of adjoining sites or plots held in fragmented ownership. The fragmented sites or plots are first consolidated, then the area is developed and partitioned into serviced sites or plots in a rational and planned sort of way. Often the original landowners contribute some portion of their land to finance the basic infrastructure as well as other development costs (Lee:1998:145 -Korea).

#### Four steps, two phases

Munro–Faure (1998:226-7) finds that land readjustment (consolidation) typically follows four steps:-

- An *inventory of rights* on the land affected and a *valuation* of the land affected;

- The drafting and confirmation of a *reallocation plan* specifying new land rights and owners. In urban areas this would be linked to the development of a *structure plan* for the area;
- *Implementation* of the reallocation and/or structure plans;
- *Financial* arrangements.

Land readjustment projects are divided into two phases. In the first phase, *alternative development approaches* to the readjustment are considered and discussed with those who are affected, such as the landowners and the occupants of the land. This is also when public support for the measures should be developed with landowners, occupiers and other users of the land (Rosman and Sonnenberg:1998:233). The second phase involves the effective *reallocation process*.

### Value, not just size

Some of the critical issues which need to be addressed throughout the readjustment relate to the *value of the land, rather than just the size* (Lee:1998 –Korea). That is, the designing of the general layout of the sites or plots should also go hand in hand with the design of a value allocation plan (Rosman and Sonnenberg:1998:234). If values are not mapped and taken into account, landowners are unlikely to be happy with the outcome of the readjustment. Any reallocation should be based on value rather than just size, especially in dense urban areas. Finally, Thomas (1998:250) notes that *one of the major purposes of land readjustment is to solve conflicts over land*.

### Effective land readjustment: Examples

Experience suggests that land readjustment can be a very useful tool in urban land management. Different elements are used in different situations but the bulk of the features outlined above can be found (including informally) in the situations described below. That is, *land readjustment is taken here also to include land sharing, land pooling, re-blocking and the transfer of development rights*.

It is difficult to acquire private land in India and *land sharing*, as coordinated by the local authority, has emerged as a *successful alternative to compulsory acquisition*. Land sharing is particularly successful where community organization is strong. Private land-owners have been encouraged to build apartments for slum dwellers residing on their land, but only on a portion of the land. As an incentive, the landowner is allowed to develop the remaining portion more intensively than permitted under development control rules. Success rates have been much lower where land is owned by central government, as it has proved very difficult to get central government to allocate land for low-income residential development. (Banerjee:1999b:17-20).

In India, land sharing on private land can be held back by litigation over the identification of the legitimate owners. A way around this is to allow the development of that portion of the land that is already occupied by low-income residents and which is targeted for re-development to their benefit, but to do so *before* the final completion of the court cases (Ansari:1998:86). Leases would be a useful instrument in this situation.

Again in India, another approach to land sharing has involved *slum lands* owned by government and earmarked for rehabilitation. These are leased out to developers for 30 years and for a nominal amount. A condition of title of the lease is an increased Floor Space Index. The developers are required to build subsidized tenements for members of registered slum or pavement dwellers'



cooperatives on a portion of the land. The crux of the project is *the use of land and development rights as leverage to encourage the private market to become involved in housing for the poor*. A special organization was also set up to manage the scheme, particularly to facilitate the negotiation process between the different stakeholders. The regulatory framework had to be adapted for this method to be implemented. NGO and CBO involvement has been critical to success (Banerjee:1999b:20).

Still in India, one land readjustment method is known as *land pooling*. In a typical land-pooling project, a public-sector agency would select an urban fringe area suitable for development. The agency would engage the separate landowners in the pooling area in a compulsory partnership for the design and servicing of their land as a single estate. The agency would prepare a land servicing and subdivision plan for the area, together with a financial plan and a re-allocation plan, showing how project costs and benefits would be shared between the landowners in the project area. The land-pooling agency would then raise a short-term loan to provide working capital and then carry out the development. The agency would sell some of the redeveloped sites or plots to recover its expenditure and pass the remnant of the sites or plots to the landowners in proportion to their actual holdings. This approach simplifies procedures and limits disputes over compensation (Ansari:1998:70-1).

In Thailand, seven *land-sharing* projects were undertaken between 1982 and 1994, whereby on average 47 percent of the land in each scheme was made available for low-income housing. Under the favoured approach, landowners and land occupiers (squatters and tenants) reached an agreement whereby the landowner developed the economically attractive portion of the land and occupiers built houses on the other part, with full or limited land-ownership rights. In Bangkok, this approach was very effective as most low-income residents already had some form of temporary lease agreement with the landowner (Ansari and Einsiedel:1998:21-22).

In Germany, land readjustment is carried out for *villages*. “So-called village development procedures are carried out, when it is necessary to solve functional and structural problems comprehensively.” The objective is (i) to re-shape and re-design the external appearance of the village relative to the natural scenery, (ii) to eliminate structural and functional problems in the village, (iii) to improve the production and working conditions for local industries, and (iv) to promote improved environmental use of the land (Thomas:1998:252).

In Indonesia, land readjustment (consolidation) involves a range of government agencies at a number of levels as well as the landowners. The rule is that 85 per cent of landowners in a designated area, involving 85 per cent of the land, must agree to the readjustment. *Government* acts as a facilitator and the *private sector* undertakes all the development (Ansari and Einsiedel:1998:17).

In some areas of India, land adjustment involves the use of *Transfer Development Rights* (TDR) incentives. The procedure works as follows: instead of being compensated in cash, the owner is issued a certificate of transfer development rights equal to a floor area derived from the value of the property on a *pro rata* basis. The owner can either use the TDR to purchase equivalent floor space in the original area after development/redevelopment, or the owner can cash in the TDR by selling it to a developer. The developer in turn would use the TDR to build equal floor area over and above the limits permitted by the ruling floor space index. To facilitate implementation of TDR schemes, the local authority designates zones within which TDRs can be traded (Ansari:1998:72).



In Brazil, the upgrading of the *favelas* frequently involves the *re-blocking* of such informal settlements (see box below). The internal divisions of the sites or plots of land are often extremely unbalanced, which generates inequality. Some sites or plots are less than 10 sq.m., while others are fifty times larger, because of the way the land invasion took place. Agreement is sought from the community and the collective interest promoted so that a re-division of the land can be undertaken, with a view to taking better advantage of the space and improving the conditions of the area for all its residents. It is also nearly always necessary to remove some families, and generally about 15 per cent of the population of the area has to leave their homes for a variety of practical reasons: widening roads, laying on infrastructure, reducing population density, or because an area is prone to flooding or landslides. “What normally happens is that the community creates a directive that resolves this... through the re-division of space within blocks of land and the construction of new homes which are usually blocks of flats. When this is not possible, land near the *favela* is used so that neighbour and working relationships between families are not broken” (Bede:1999:5).

#### Organized residents make improvements to the Enrique Smith neighbourhood – Nicaragua

This neighbourhood improvement initiative took place in a context where sustained investment in infrastructure improvements in low-income neighbourhoods did not exist and more than half of urban areas were made up of poor neighbourhoods. The lack of basic infrastructure created environmental degradation and the development of various illnesses. The project focused on the physical and legal consolidation of the neighbourhood and strengthening community management. The physical consolidation included providing a sanitation sewage system for the neighbourhood that eliminates sewage drains on the streets and thus contributes to neighbourhood sanitation. The process also includes the re-planning of the neighbourhood to create an adequate layout and clearly mark property limits for each lot that would make it easier to legalize the property.

In Francophone Africa, land readjustment has been used in relation to customary land on urban fringes. The method has had its share of success and failure. The most difficult problem has been a lack of access to finance, and often it has not been possible to put in place the structure plan that is part of the readjustment process.

In many of the Francophone African countries, *public-private sector partnerships* have made it possible to overcome the traditional tension between the government and the customary authorities and to pave the way for regularization and readjustment. Innovative approaches have been developed, including the creation of dedicated agencies consisting of partnerships between central and local government, customary leaders and professionals, to undertake the land readjustment (Senegal, Cameroon, Ivory Coast –UNCHS:1999b). In Senegal, partnership-driven Settlement Upgrading Zones were created (UNCHS:1999b).

In Benin, government intervenes *post-hoc* in areas where land is subdivided by customary authorities. Government steps in once the land has been sold, but before it is settled and developed. This entails a land readjustment process, where formal subdivision occurs within a particular settlement, and formal tenure is transferred to the informal rights holder. An occupation permit is awarded giving secure tenure rights. This method is beneficial for government authorities as it spares them

two politically sensitive and technically complex types of decision, namely, allocation of land and upgrading to real rights land that has been informally acquired (UNCHS:1999b).

Traditionally local authorities have had to *negotiate for land with customary* authorities and there have been no set procedures. In the Mbanga-Japoma project in Cameroon, customary ‘owners’ have been involved in negotiations about the release of customary land for urban development; they have also been involved in discussions over the tenure regularization process, including the planning and servicing of the area. Plans have been made for the development of primary and access road networks that allow for the subdivision of land into super-blocks, which in turn are to be subdivided into smaller blocks and sites or plots in a detailed structure plan at a later stage. These subsequent subdivisions and development of the land can be undertaken by a variety of developers, public or private sector, formal or informal (UNCHS:1999b).

Land readjustment schemes have been and still are one of *the main instruments for urban land development* in Japan, Korea and Taiwan (Lee:1998:145). Korea has been undertaking land readjustment since 1934 and it is the dominant mode of supplying urban land. The approach has proved to be very effective during spells of rapid urbanization, when land readjustment secured up to 95 percent of all land delivery (Lee:1998:145-153).

In Korea, land readjustment projects are carried out by *cooperatives of landowners and developers*. Frequently local authorities are involved as facilitating agencies. The main attraction for landowners is that the value of their property is enhanced through the servicing of the land. Local authorities stand to benefit as well since the amount of urban serviced land is increased at little cost to themselves. Development costs are recovered through the contributions landowners make as a result of the reduction in site or plot sizes. Every landowner gives up a portion of his land in proportion to the increase in the value of land. The rate of reduction varies from site/plot to site/plot according to the specifics of the site as well as the assigned land use. The contributions landowners make through the reduction in site or plot size are then divided into two portions: one for the provision of public utilities, and the other for sale in the market to finance the construction costs. This latter portion is known as the ‘cost-equivalent land’. Initially, the benefits of land readjustment schemes went to landowners. However, from the mid-1980s new land readjustment approaches were adopted which also benefited low-income groups (Lee:1998:145-153).

Also, in Korea it was decided that part of the cost-equivalent land could be used for low-income residents. This allowed for a fair amount of *cross-subsidization*. Plots or sites designated for local commercial sites, and which therefore commanded higher values, were sold at market price; at the same time, land for low-income housing construction was provided to local or central housing authorities at subsidized rates. It was then for housing authorities to build multi-family dwelling units for needy households. This approach has been only partially successful, as it has met with strong resistance from landowners who balked at the diminished amount of land they would receive back after readjustment (Lee:1998:145-153).

With the cost of land continually escalating in Korea, landowners nowadays prefer to retain their land for speculative purposes rather than make it available for readjustment. For this reason a *new approach* was developed where *government purchases* a portion of the land in the project area and

participates as landowner in the readjustment. This reduces the financial burden on the government while at the same time facilitating the development of public facilities. This method also gives government more leverage to increase the pace of building activity and to ensure that the poor are catered for in the project (Lee:1998:145-153).

Korea's local authorities supervise and coordinate the entire development process and also help the participating landowners in resolving the various conflicts that may arise during implementation of the projects. Most readjustment schemes take over eight years to complete, and this is before any housing is built (Lee:1998:145-153).

### Land sharing: prerequisites

In addition to these country examples, experience has shown that:-

- A number of prerequisites are associated with effective *land-sharing agreements*. One of the more prominent concerns the *availability of land*. If the land involved is too small or is very densely populated, the only way of readjusting it is by developing multi-story buildings. These are more expensive to develop and are not popular with low-income groups. Another problem has to do with the degree of community cohesion among the slum dwellers, which must be adequate since any effective readjustment requires a considerable amount of *negotiation*. *Land sharing is both complex and time-consuming because of community involvement and the fact that negotiation is required throughout the process* (Ansari and von Einsiedel:1998:22);
- Land-sharing success rates are increased if the community is under *threat of eviction*. In the absence of any such threat they do not feel there is any need to change. Moreover, land-sharing is much more successful when an NGO is involved and provides technical assistance to the low-income community (Ansari and von Einsiedel:1998:22);
- Sustainable land readjustment requires adequate *land records*, as well as a sophisticated *valuation profession*, as without these landowners refuse to become involved in the scheme, and litigation increases (Lee:1998:153 –Korea);
- Procedures which require the allocation of special land uses, to be altered after reaching agreement for readjustment, such as the Transfer of Development Rights, are easily open to abuse in weak local authorities (Payne:1989);
- Readjustment schemes generally require the mobilization of *substantial financial resources* (subsidies, loan capital), know-how, technical and administrative management, and a satisfactory organization of the population. These constraints make it *impossible to carry out large-scale projects in the poorer countries* (FIG/UNCHS:1998:5).

### The benefits of land readjustment

Viewed against the range of approaches outlined above, *land readjustment* is considered to be a very effective way of improving the amount of serviced land available, for the following reasons:-

- It involves a range of *new and additional partners* in the land delivery process, such as the private sector, the informal sector, customary authorities and landowners, all of them working with the public sector;
- Land readjustment cannot be done without *partnerships*. These overcome conventional dividing

lines such as local-customary authority, public-private sector. Partnerships also allow the local authority to become involved in the servicing of private land;

- As a land delivery instrument, it *complements regularization* (see section 2.2.3 above) and works well with special *zones for low-income* groups (see section 1.2.10 above);
- Francophone Africa's experience shows that land readjustment and *service infrastructure networks* can be effectively combined;
- Land readjustment is a *sustainable approach* that alleviates the *financial burden* on local authorities, as these are spared the cost of buying the land before they service it and can often share servicing costs with landowners;
- It is a locally driven process allowing local options to be developed;
- In most, though not all countries, the occupiers of the land *participate* extensively in the decision-making process over readjustment;
- Informal occupiers of the land can obtain *tenure security and services* through the process, if it is carried out in a way that benefits low-income groups.

Land readjustment is extremely critical for Asian countries and mega-cities with very dense settlement patterns. Poorer countries could implement some of the approaches outlined above, but would need some capacity building before they could adopt them all.

#### Land-banking: Too many drawbacks

Finally, while land readjustment is considered to be effective, *land banking* is no longer considered to be the way forward. Payne states that one should be cautious about the acquisition of land in advance by government agencies. "To be successful, land banking requires administrative capabilities which many municipal governments in the Third World countries do not have... Land purchases also presuppose ample funds at low interest rates. Just the opposite is ...(often)... the case. There are also the uncertainties of advance planning, land management and price setting, not to mention the increased risk of squatter invasions which can be resisted only at some political cost." Land banking also tends to exclude the poorer households, as in practice there are extensive delays in completing the acquisition process and the development of the land and "...there is a tendency to realize the full commercial value of the sites acquired, rendering the approach irrelevant to the needs of the urban majority..." (1989:53-2).

#### 2.2.5 Laws, rules and procedures: from exclusive/costly to inclusive and affordable

Introduction. Regulatory frameworks currently in place in most countries do not facilitate *access to land* for all segments of society. Adverse features found:-

- Land management functions are largely *centralized* instead of being decentralized to local authorities with the correct functions, powers and resources (Ansari and von Einsiedel:1998:11-13; UNCHS:1996b);
- There is a *lack of coordination* between government departments (Ansari and von Einsiedel:1998:11-13; de Azvedo:1998:269; Mekvichai:1998:247,257);
- *Master plans* either do not exist (Islam:1998:39) and/or are ineffective because they place too much emphasis on detailed layouts and the zoning of proposed future land uses, do not offer guidance on implementation, ignore costs, and *seldom consider the dynamics of the city's real economic development* (Ansari and von Einsiedel:1998:11-13; Azuelo and Duhua:1998:199);

- *Building codes*, such as the restriction on floor area ratios and the use of affordable housing, contribute to the limitation of access to land in cities (Ansari and von Einsiedel:1998:11-13; Mitullah and Kibwana:1998:209);
- *Standards are inappropriate* and inflexible (Ansari and von Einsiedel:1998:11-13; de Azvedo:1998:260);
- *Complex rules and ineffective enforcement* (Ansari and von Einsiedel:1998:11-13; El-Batran:1999a:18);
- Formal land delivery takes an inordinate amount of *time* under existing frameworks (Munro-Faure:1998:229).

Analyzing recent trends, Durand Lasserre concludes that “(i)n most cities, the control of urban growth by conventional planning norms and regulations is becoming less and less effective. *A radical change of perspective is needed*, one that allows for the servicing and improvement of areas that are already occupied. Studies reviewing policies for the regularization and servicing of illegal settlements suggest such a change is already underway” (1998:239).

### The New Delhi Declaration

The New Delhi Declaration sets out the vision for the review of regulatory frameworks. “The regulatory framework, through norms, standards and controls, should be guided by the *enabling shelter strategy* with its accent on realistic needs and resource limitations. It should aim to be simple, equitable, efficient, flexible and at the same time transparent. The review of norms should adopt a participatory approach. *The regulatory regime should adequately respond to emerging dynamic changes. The outmoded, archaic specification driven approach should give way to multi-functional performance orientation*, integration of house-cum-work areas, with positive mixed-use development. The planning standards, development-control rules, building regulations and codes should provide for innovative planning/design and incremental approaches... and efficient and optimum utilization of land” (UNCHS:1996b:11).

Existing procedures and regulations often inhibit the implementation of initiatives designed to increase access to land. “These impediments should be removed and procedures for land titling/registration should be reformulated to provide increasing access to land and security of tenure. Further, the *existing lack of financial access by low-income households, due to lack of formal security of land tenure and to unaffordability*, needs to be addressed... Innovative financing strategies for the acquisition/development of land should be introduced, keeping in mind equity and viability”(UNCHS:1996b:11).

### An agenda for regulatory review

A regulatory review process should involve a number of aspects, including:-

#### - *Assessing the framework*

- The development of an understanding of how the existing regulatory frameworks operate, so that they can be *adapted or re-engineered* (Onsrud:1998:12-13; Williamson:1998:120) and made more simple and transparent and less complex (de Castro:1999a:2,13 and UNCHS:1996b:8-9);
- *Policy development* with respect to land, land information, women’s land rights and inheritance (UNCHS:1996b:11; Qvist:1998:205; Ferguson:1998:612). Policy development should be used as a step on the way towards correlating the numerous pieces of legislation which directly or indirectly have an impact on urban development (Ansari and von Einsiedel:1998:19);
- Policy development to pave the way for a *rationalization of agencies* involved in urban



development, as there are often agencies with overlapping jurisdictions (Ansari:1998:79; Mekvichai:1998:247,257). This should involve establishing a clearing house, or one-stop shop, for planning approvals, in order to tighten co-ordination across government departments (Santiago:1998b:197, de Azevedo:1998:268-9).

#### - *Need for a more balanced framework*

- Laws and legal instruments need to be developed which facilitate the social and territorial *inclusion of informal settlements into the city*. Discriminatory rules have increased the social and territorial inequality of cities, given that the established norms are often in conflict with the needs and interests of the population that live in the informal city. (Junior:1999:1; UNCHS:1996b:8);
- “The present land and building *regulatory framework*, which serves the needs of minorities in the population, *needs to be made relevant to the majority’s needs*; customary and legal restrictions on women and other minority groups to own land and buildings should be eradicated” (UNCHS:1996b:8);
- Design and implementation of *laws to reduce homelessness* need to be improved, as does access to land through a variety of tenure arrangements; this should go hand in hand with *reform of the overall statutory legislation* on property rights and on obligations and contract. Specific legislation on land and housing derives its authority from, and has its legal basis in, the general statutory book (Santiago:1998a:119). Attention should be given to the protection of different levels of rights and interests such as ownership, long- and short-term leaseholds, easements, shares in real properties, group rights, rights to apartments, rights to jointly owned facilities, strata, cluster and community titles/deeds (Österberg:1998:154-5);
- Government should engage in *urban land reform* to correct the imbalances in land where there has been a history of exclusion-prone land-holding (UNCHS:1996b:8).

#### - *Land management*

- Local authorities must be able to undertake land management. Therefore land management functions, resources and powers must be decentralized from central government to local government. Decentralization of land management functions must be recognised in legislation (UNCHS:1996b:4-5), as local agencies are often frustrated in their efforts by national agencies (Ansari:1998:78);
- *Unrealistic legal restrictions* on land use must be thoroughly reviewed. Sweeping amendments are required if illegal land use must be reduced in future, and if tenure in existing informal settlements is to be regularized. This should include the reduction of legal restrictions arising from land policies which determine the amounts of land for particular uses and intensities of use, which fix their locations, and which prohibit multiple uses (UNCHS:1996b:7,11);
- *Flexible and varied land delivery* channels must be developed, so that land resources can be leveraged regardless of differences in legal status (UNCHS:1996b:11);
- *Bureaucratic procedures* required by land regulation systems must be curbed. On top of the price of the land they add the significant cost of official and illegal payments, *thereby removing the land from markets* in which low-income households participate (UNCHS:1996b:11; El-Batran:1999a);
- Reforming inefficient, slow and expensive cadastral, *land registration and land information* systems (Österberg:1998:154; Roic:1998:506 –Croatia; Harcombe and Williamson: 1998:575 – Australia; Harris and Land:1998:627 –E. Europe; Kaufmann and Steudler:1998:58; Mohamed, Tong and Seok:1998:23 -Malaysia) (see below). *Inefficient land markets* have constricted land supplies, reducing access to land. *Confused and unrecorded claims to rights of use are a major cause of poor tenure security* (UNCHS: 1996b:11; Islam:1998:36; Ansari:1998:62; Munro-Faure:1998:229; Oloude:1999:3).



### - *Enabling a more inclusive framework*

Actions to be taken include:-

- Reviewing the legal rights to land and property for *women*, to ensure that they have equal access to land. Customary and legal restrictions on women's ability to own land should be removed (UNCHS:1996b:12). Particular attention needs to be paid to adjudication issues (Österberg:1998:154), especially in relation to women's rights;
- Drawing the *customary law and procedures and the statutory laws closer* together and eliminating inappropriate colonial relics in legislation (UNCHS:1999b –Francophone Africa, Mekvichai:1998:251 –Thailand, United Nations:1997; Mitullah and Kibwana:1998:191 –Kenya; Mosha:1999:3 -Botswana). Bringing the different regulatory frameworks together into a single set of procedures is especially important for former Soviet era countries (Tiits:1998). Legal devices should be set up which act as bridges between the different systems and allow the systems to articulate with each other (Durand Lasserre:1998:249);
- Creating an enabling environment for *financial institutions* to improve access to credit and develop strategies for integrating subsidies, incentives, and cooperative financing, in order to support the disadvantaged and special target groups (UNCHS:1996b:12);
- *Facilitating private sector* initiatives through an appropriate policy framework, rather than the public sector directly involving itself in project implementation. Effective partnerships between government, private business, and land-owning sectors need to be fostered (UNCHS:1996b:9; UNCHS:1999b);
- The development of more flexible and transparent approaches for *conversion of agricultural to urban* land (Santiago:1998b:192; Azuelo and Duhua:1998:159);
- Specific legal procedures are required for urban land tenure *regularization*, including creation of specialized branches of the *judiciary* to handle urban land issues. Special external mechanisms should also be established for the public control of the judiciary (UNCHS:1996b:12).

### FIG/UNCHS recommendations

FIG/UNCHS state that standards must be lowered in order to *reduce the production costs* of habitable serviced land for housing, to avoid rendering informal land and housing production processes illegal, and to *reduce procedures* which have discriminatory or segregationary effects. The amount of regulation relative to land development should be reduced. Emphasis should be laid on the design of minimum standards and the supply of guidelines in relation to the level of urban infrastructure, services and urban layouts. All this should be at minimum initial cost, while allowing for subsequent incremental improvements (1998:13).

FIG/UNCHS also state that a variety of factors combine to make any revision in standards difficult, with the strongest resistance to change typically found in public administrations, professionals, urban management technicians and a large section of the middle class (1998:13). This is why all stakeholders should be involved when a national regulatory framework comes under scrutiny and subsequent reforms come up for implementation and coordination. Stakeholders include interest groups and/or dependent groups, i.e. categories of people or institutions who share a common interest in a piece of land, be it an individual site or plot, the territory of a community, a natural conservation area, a region or a country.

### Need for a national Stakeholders' Forum

Some form of national Stakeholders' Forum, complete with adequate political support (Fernandes and Rolnik:1998:145), should be instituted, with the primary objective of reviewing national regulatory frameworks in relation to security of tenure and access to land for all segments of

society. Any such forum should be inclusive and refrain from keeping out certain stakeholders, otherwise it will not be possible to reach decisions that facilitate sustainable development, given the amount of conflict which surrounds land issues.

### Who is a Stakeholder?

*Stakeholders* to be involved in any national forum include:-

- *The public sector* – government *departments* (and/or their regional representatives) including Finance, Lands, Urban Planning, Transport, Justice, Local Government, Housing, Environmental Affairs, Public Works, Planning; *agencies*, including Central Statistics, Deeds/Titles Registry or Record Office, Valuation Office, Surveys, Mapping, National Land Information System; and *public utilities* (Santiago:1999a,b; Katzarsky:1998; UNCHS:1999b);
- All *local authorities* and their representatives in the city (UNCHS:1996b; UNCHS:1999b);
- Representatives of *traditional authorities* (formal or non formal) (UNCHS:1996b:8; UNCHS:1999b);
- Representatives of *informal settlements* (UNCHS:1996b; de Castro:1999a,b);
- Representatives of *religious institutions*, where they have a land management role (UNECA:1998);
- *The private sector* – including utilities, developers – both formal and informal; surveyors’, planners’ and lawyers’ professional associations; and financial institutions (UNCHS:1999b);
- Representatives of *NGOs and CBOs*, including *women’s groups* (UNCHS:1999b; Banerjee: 1999a,b).

### Regulatory review: Challenge and opportunity

In conclusion, McAuslan states that a thorough review of urban land law needs to be made, to assess how it is implemented and how it impacts the lives of the poor (1998). Santiago calls this ‘action research’ and suggests that it should involve both law-makers and beneficiaries (Santiago:1998a:119). Santiago goes further to add that “...legal drafting teams should include a multi-disciplinary group conversant with the socio-cultural and economic characteristics of the urban poor” (1998:120). However, Durand Lasserre cautions that given the length of time such reviews take, it is better simply to adapt the law wherever possible so that any changes can be enacted in short order (1998:248-50). This adaptive approach met with a fair amount of success in India (Deacon:1997). Moreover, many instances of best practice (1999) suggest that *changing the regulatory framework* is a most challenging task.

From another angle, a review of cadastral and land registration systems brings Zevenbergen to reflect that “...good administrative practices sometimes repair a theoretical flaw of the laws and regulations. The success of a system seem(s) to depend very much on organizational aspects. *The way the necessary functions are distributed amongst organizations, and the level of cooperation between these organizations*, seems to be the paramount factor in determining the success of a system of land registration. This factor is of greater importance than the precise level of technical or legal sophistication.” (1998:145).

### Need for parallel approaches

The various elements reviewed above suggest that *parallel approaches* to regulatory reform could prove effective. On the one hand, attention should be focused at national level, through some kind of Stakeholders’ Forum, with a view to adapting the regulatory frameworks (legal, technical, planning, etc.) of the country. A priority area of focus of the forum should be on the organizational and co-ordination aspects of the various institutions and systems involved. On the other hand, and at the same time, local authorities, communities, NGOs and the private sector should strive for

innovative uses of the existing framework, in order to enact land delivery as quickly as possible. This will be easier in some countries than in others, and it will also depend upon which aspects of the regulatory framework are adapted promptly in the respective countries. Finally, as statutes are changed, secondary legislation and regulations need to be laid down in their own right, along with administrative procedures. It is no use having new laws without the rules for implementation (Payne:1997:32).

### **2.2.6 Enhancing tenure security through innovative land management**

Appropriate cadastral and land registration systems must be implemented along with effective land information and record systems to supply information on land rights and use, land transactions, as well as current and planned land use. The need therefore is to explore innovative arrangements to enhance tenure security through simplified procedures and to promote transparent, accessible, user- friendly and accountable land administration.

These functions are all dealt with together because they are typically inter-linked. Cadastral systems existing on their own provide land information. In some countries both cadastral and specialized Land Information Systems (LIS) can be found. Land record systems, as are often found in local authorities and/or tax offices, are in use in some countries where they also provide land information. In some countries such land records are linked to Geographic Information Systems (GIS). LIS and GIS systems are similar in technical methods; LIS focuses more closely on the holding of legal evidence, but the two approaches are merging.

#### **Current land information: Shortcomings**

The range of problems affecting present land registration, cadastral and associated land information systems (LIS/GIS) interfere with effective land delivery. These systems are generally:-

- *Centralized and expensive* (UNCHS:1996b; Alberts *et.al.*:1995);
- Designed for use by the *middle-class and educated* segments and/or previous settler population (Mitullah and Kibwana:1998:207; Junior:1999:6; FIG/UNCHS:1998:13);
- Serviced exclusively by *professionals* who are usually expensive and whose culture is at odds with the urban poor (de Castro:1999a);
- Only capable of recording *legal land sites or plots* (FIG/UNCHS:1998:5) and *not the illegal land sites or plots that make up between 30 and 80 per cent of (urban) land* (UNCHS:1996b:4);
- Based on *colonial laws* in regard to family law, inheritance, forms of evidence, administrative procedures, etc. (United Nations:1997:4; UNCHS:1999b –Francophone Africa, Mekvichai:1998:251 –Thailand; Mitullah and Kibwana:1998:191 –Kenya; Mosha:1999:3 -Botswana);
- Based on *individual rights and fail to accommodate group rights and family rights* (Österberg:1998:157; van der Molen:1998:90-91);
- Not transparent nor *user-friendly* (UNCHS:1996b);
- Not designed to give *legal advice to poor* people who cannot afford to pay for professional legal services (de Castro:1999a; Alberts *et.al.*:1995).

#### **Current information systems: Negative import**

Such centralized land registration systems result in various *land management problems*, including:-

- The abuse of third-party rights of those in occupation of the land (Nafantcham-na and Borges:1998);

- A *protracted approval* process and bureaucratic delays (UNCHS:1991:8-9; UNCHS:1990; Munro-Faure:1998:229; Ansari:1998:86);
- A lack of property rights and responsibilities *awareness* by those who have been excluded from the system (de Castro:1999a; Chile: Citizen action for justice and democracy [www.bestpractices.org](http://www.bestpractices.org));
- A lack of record *currency and information*, which hinders land readjustment, regularization and service provision (Davies and Fourie:1999; Fourie:1999).

### Some problem countries

A review of national cadastre systems shows that many countries throughout the world are experiencing *problems*, suggesting that low-income groups in those countries are not being adequately serviced. Some of the countries experiencing problems include: the Czech Republic, Latvia, Poland, Slovenia, the Slovak Republic (Ericsson and Eriksson:1998), Estonia (Tiits:1998), Bulgaria (Katzarsky:1998), Egypt, Cambodia, Albania (Jones:1999), Malaysia (Mohamed, Chia and Chan:1998; G.B.Lee:1998:165), Papua New Guinea (van der Molen:1998), Indonesia (Zevenbergen:1998), Francophone Africa (UNCHS:1999b), Croatia (Roic:1998), Bahamas (Ferguson:1998), Brazil (Fernandes and Varley:1998; de Castro:1999a,b), India (Banerjee:1999a,b), Guinea-Bissau (Nafantcham-na and Borges), Bangladesh (Islam), Zambia (Mulolwa:1998), Israel (Fradkin and Doytsher:1998), Burkino Faso (Bagre:1999), Greece (Potsiou and Ioannidis:1998), Thailand (Mevichai:1998), Turkey (Yonder:1998), Sri Lanka (Mendis:1998), Botswana (Moshia:1999), Benin (Oloude:1999), the Philippines (Santiago:1998b), Tanzania (Sliuzas:1999).

### Improving land market mechanisms

The ability of cadastral, land registration and land information systems to *provide clear title, formally defined sites/plots and land information* needs to be improved if impediments to efficient market operation must be removed. Reform of inappropriate, inefficient, slow and expensive cadastral, land registration and information systems *is essential to well-functioning land markets and to the provision of secure tenure*. Inefficient land markets have constricted the supply side, thereby reducing access to land (UNCHS:1996b:11).

#### 2.2.6.1 Local land record and information systems

Analyzing the conventional land delivery (technical) processes, Fourie (1998) concludes that given present structures, resorting to conventional processes is probably not feasible for low-value land that is already occupied, such as informal settlements. An alternative way forward for low value land would be to set up *alternative land delivery processes*, which should:-

- Make it easier to arrive at compromises between local communities and individuals working with local government structures;
- Avoid involvement of people from outside the local area - such as land professionals and higher levels of government;
- Avoid the need for government records (registry, land use plans) that are not available at the local level or cannot be understood at the local level;
- Not rely on routine co-ordination and linkages between higher levels of government (Fourie:1999).

### Alternative delivery techniques

Instead, alternative techniques (land delivery, transfers, etc.) should be developed that can be *used by low-income people to enhance tenure security*. Such technical processes, should be built on:-

- *Local-level registries/record systems*, possibly attached to local government structures (UNCHS:1996b);
- *Local para-legals* and/or land administrators attached to the local government (see below);
- *Land information held at the local level in such a way that it is transparent and accessible to ordinary people* (see below);
- *Blocks* (outside boundaries) registered at central level, with social land tenure options dominating within the outside boundaries (see section 1.2.12 above);
- *Strong local government* with capacity in the area of managing planning and land development, as well as record keeping;
- Sound *institutional linkages* between local government and other government institutions (Fourie:1999).

With respect to local land management, Durand Lasserre finds that it is “...being presented as both more effective (since it allows less complex procedures to be used, making it easier to keep registers up to date) and less arbitrary (it is less anonymous, and local officials do not find it so easy to evade accountability as their central government counterparts)” (1998:252).

#### FIG/UNCHS on local land records

FIG/UNCHS states that the production and management of land information should preferably be carried out by local bodies, especially in the case of regularization projects. Such bodies are in the best position to (i) provide a framework for negotiations between the different stakeholders involved, (ii) guarantee public access to land registers (records), and (iii) update information. The key to long-term success of cadastral databases lies in their *maintenance* and this can only be done effectively at local level (1998:4).

FIG/UNCHS (1998:4) also states that land information systems (LIS/GIS) are critically important when *innovative urban land policies* are implemented in developing countries as they are required to:-

- Identify the *legal status* of the land being occupied illegally;
- Determine the *existing layout*, site or plot size and levels of existing infrastructure and services;
- Identify the *owners and occupiers* of these settlements, as a preliminary step towards the identification of households eligible for tenure regularization;
- Evaluate the amount of *charges and contributions* occupiers will have to pay and, where appropriate, the amount of compensation to be paid to owners of the land or dwelling units.

#### Implementing LIS/GIS

The diversity of land systems should not be considered as an obstacle to LIS/GIS implementation, as both are effective in areas where land tenure systems are based on different rights. Against this background, a major issue is to get the proposed LIS/GIS accepted by a majority of stakeholders. Bottlenecks of a political nature can easily cause failure, whereas technical problems can be overcome. Various LIS/GIS solutions can be used, ranging from a multi-purpose cadastre/information system to very basic land survey registers/records, where only part of the land-related information is recorded and processed. The main purpose should be to identify occupants and locate their sites or plots. Delineation does not necessarily require the same degree of accuracy as a legal LIS or cadastre (FIG/UNCHS:1998:5; UNCHS:1997a:12).

#### How to record informal settlements

Against this background, Davies and Fourie (1999) have developed a detailed approach for the *creation of land records for informal settlements*, to make it possible to manage and regularize



these areas. Local authorities generally do not have the required ways and means to acquire, maintain or use land tenure data in informal settlements, since by definition informal settlements are outside the scope of the cadastre and of the conventional land information system. Instead, local authorities need to *develop innovative land record arrangements* along the lines suggested below.

- *Community-based land records*: should be created where the procedures are based on existing community land management processes for the collection and maintenance of land record data. The data collected should be used by both the community and the local authority, for ongoing development and regularization projects. The method should recognize and accommodate the differences between formal and community land management approaches. The former are regulated by statute and policy, whereas the latter are derived from social, political and economic factors within the community. The approach should encourage people to record all land transactions and allocations, even if they contravene existing legislation. To undertake this a participatory approach should be developed that builds a partnership between the community and the local authority (Davies and Fourie:1999).

- *Negotiations between the community and the local authority*: should address all aspects of the rationale behind the land record request. An agreement, complete with a non-cancellation clause, should be signed by all stakeholders. It should include a clause that legally binds the parties to the agreement, and specify penalties should a party withdraw. This can be a key factor in ensuring the ongoing existence of such a partnership. Durability is a critical aspect for land records as they need to be managed over long periods of time. Such a partnership should ensure the creation and maintenance of land records (Davies and Fourie:1999). One good way of implementing this is to establish an LIS-based local-level land record (UNCHS:1996b).

- *Staffing*: A professional land manager, and one who would be acceptable to the community, should be appointed by the local authority to manage the technical, operational and social components of the system. A local resident should be trained and employed as a local land administrator to work under the supervision of the land manager (Davies and Fourie:1999). Functions along these lines would be critical to the creation of land records in informal areas, especially on *city fringes*, where it would be *necessary to merge customary/informal tenures with the urban management system*. The land administrator would need to be someone who (UNCHS:1997a:14-15):-

- Could fit into the local *social scene and introduce* and manage change at the local level;
- Has effective social skills (conflict management, needs assessment, communication);
- Technical capacity (para-legal, spatial, planning).

- *The local leadership*: should be held responsible for ensuring that newcomers to the area are integrated into the system, and that the local land administrator maintains the local records to the satisfaction of the land manager and the community. This would give land managers and the community a sense of ownership of the system and should not undermine or threaten their existing power-base. In addition, such a system should build capacity among local leaders to make land-related decisions and give them an understanding of formal land management procedures (Davies and Fourie:1999).



### Objectives of the proposed alternative

This land management approach should contribute towards the following objectives (Davies and Fourie:1999):-

- Protecting the interests of the *poor, the weak and women*, thanks to an accessible and transparent system (UNCHS 1996b);
- Providing a first step towards *security of tenure*, as the proposed scheme will give evidence of occupation over time;
- Strengthening the position of the *local community* during negotiations;
- Providing the local authority with a *resource base* for the service planning usually associated with regularization of tenure, and facilitating *rapid delivery* during regularization. This would be welcome with fiscally-pressured developing country local authorities;
- Making it possible to create land information records that are affordable for low-income segments and local authorities with poor financial capacity (UNCHS:1997a:14-15).

Apart from the approach outlined above, a range of innovative cadastral and land information system practices are being used or developed. In most countries, as noted earlier, cadastral systems cause problems and land information is either not available at all, or not on time, or is irrelevant. The need for valid, relevant land information is frequently raised where urban management problems are discussed. This is the case in Sri Lanka (Mendis:1998), Thailand (Mekchivai:1998:261-2), Bangladesh (Islam:1998:49-50), India (Ansari:1998:62-3, Risbud:1999:22), Indonesia (Oetomo and Kusbianto:1998:115), Malaysia (G.B.Lee:1998:165), the Philippines (Santiago:1999b), Benin (Oloude:1999:5) and more generally the world at large (FIG/UNCHS:1998; Payne:1989:54, 1997; Ansari and von Einsiedel:1998:14).

### Need for innovative approaches

Since current conventional approaches fail to provide adequate land information and tenure security, especially for low-income people, new and innovative approaches must be envisaged. A wide and diverse range of innovative practical suggestions have been put forward, including:-

#### Local land registers

- *Locally recorded leases* instead of centrally registered freehold (see section 1.2.11 above);
- *Cities must become responsible* for their own cadastres (Katzarsky:1998:517), instead of the cadastral function for the whole country being held at national level;
- Establishing locally driven development planning commissions in charge of land development objectives, and independent tribunals with extensive powers to facilitate development (FIG/UNCHS:1998:10);
- In future the separation between ‘maps’ and ‘registers’ will be abolished (Kaufmann and Steudler:1998:55). This will take place more easily if record keeping is done at the local level.

#### Central-local links

- A more effective allocation of responsibilities between the national and the district level must be sought through *performance contracts* (Selhofer and Steudler:1998:599);
- In Austria, a system is in place whereby district offices can *access digital data from the central data base* (Hoeflinger:1998:307). In Malaysia, a system under construction will make central databases

accessible to District Surveyors' Offices (Mohamed, Chia and Chan:1998:21). Bulgaria is planning cadastral bureaus in cities where regional courts and notaries are already in place, in an effort to bring land services closer to users of cadastral information and to reduce costs (Katzarsky:1998:522);

- A *seamless land information* face needs to be created for the public with a 'one-stop information shop'. This is already being put in place in Australia, Canada, Denmark, Finland, Ireland, the Netherlands, Spain, Sweden and the United Kingdom (van der Molen:1998:92-3).

### More inclusive registers

- Consigning a *diversity of land information* to the system, including informal and customary (UNCHS:1997a:14-15). *Recognition of informal tenures is a key cadastral issue* (Williamson:1998:119);
- An appropriate cadastral system is one that provides "...a continuum of forms of cadastre ranging from the very simple to the very sophisticated. Such flexibility allows *cadastres to record a continuum of land tenure arrangements from private and individual land rights through to communal land rights, as well as having the ability to accommodate traditional or customary land rights*" (Williamson:1998:118);
- A *legalization approach* (see section 1.2.10 above), where professionals focus on blocks, which consist of a number of sites or plots, rather than individual sites or plots. Under this sort of scheme, local land administrators take responsibility for the sites or plots in the block. Combining the block approach with partnerships between professionals and local record keepers, the capacity of the whole system can be augmented and deliver both affordable serviced land and tenure;
- "...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." (Payne:1997:48).

### Parallel land registration

- "*Parallel registration systems* are... needed to meet different requirements with different degrees of formality at different scales and in the interests of different stakeholders. The aim should be to ensure *compatibility between such parallel systems, leaving open the option of moving towards the creation of a single, formal, registration system* should the necessary resources become available" (Durand Lasserre:1998:246; FIG/UNCHS:1998:4-5 and Alberts *et.al.*1995). A similar approach is one where there are "different stages of land tenure/rights that relate to the stage of planning, demarcating the extent of a whole squatter camp and removing that portion of land from the land register, further registration of individual dwellings on that land by some lesser form of registration procedure, to take local traditions and conditions into account" (Ericsson and Eriksson:1998:170).

### Digital/online access

- The Land Registry converting its paper-based information to *digital information* and making it available on-line (Parker, Ramm and Fennell:1998:299);
- 'Online' conveyancing and land administration, demarcation/re-establishment of cadastral boundaries, for more simple and cost-effective procedures (Harcombe and Williamson: 1998:574).

### Better public access/awareness

- Malaysia's National Land Code enables *anyone* to obtain Land Office information *on any land title* (Mohamed, Tong, Seok:1998:21). Austria's land information is *available to the public directly* (Hoeflinger:1998:309);
- Land information is increasingly being made *available to the public on a cost-recovery basis* (Österberg:1998:161);
- *Public relations and awareness* campaigns are increasingly becoming part of cadastral reform (Österberg:1998:151).

### Privatized services

- Most countries are moving away from public sector-dominated cadastral systems to private sector-dominated systems, with *public-private partnerships* (Kaufmann and Steudler: 1998:57);
- Privatization of conventional public sector *surveying functions*, accompanied by an increased Quality Assurance development of the private sector (Parker, Ramm and Fennell:1998:294).

### Simplified recording: General

- Land information systems should be simplified where they are found to be *unaffordable* in relation to the cost of keeping them up to date (Harris and Land:1998:627);
- Provisional *acceptance of simplified records* by the Surveyor General (Pesl:1998:493), prior to final surveys;
- Cadastral reform nowadays often features testing simplified *procedures for customary and informal tenures*, and involvement of traditional and local *community leaders* (Österberg:1998:151);
- Delimitation of a village as a concession, using *Participatory Rural Appraisal* techniques for the adjudication of the area (Nafantcham-na and Borges:1998:745-53);
- Acceptance of *aerial photographs and photogrammetry* for cadastral mapping and surveying (Österberg:1998:151), rather than insisting on ground surveys for accurately beacons boundaries, is cost-effective.

### Simplified recording: Alternative techniques

- Instead of beginning with the accurate delineation of a parcel or plot, *geo-codes* against the site or *'dots on plots'* could be used (FIG/UNCHS:1998:4);
- It is cost-effective to connect boundaries with *photogrammetrically* derived dimensions, to existing cadastral boundaries, instead of using ground survey methods (Parker, Ramm and Fennell:1998:298);
- The use of *visualization* instead of relying on an accurate survey (Mosha:1999:12; Nafantcham-na and Borges:1998:755; UNECA:1998);
- Often it is not necessary to have an accurate delineation of the site or plot; all that is required is mapping and a unique parcel number. A *Unique Premises Numbering System (UPNS)* can be used which is based on remote sensing technology, where the number is generated through the creation of unique coordinates for every site or plot on the ground. UPNS is a useful tool for innovative tax mapping procedures since it provides a comprehensive list of all properties and associated site or plot numbers (Ansari:1998:87).

### Simplified recording: GPS

- A combination of *aerial photography and GPS* is very cost effective (Ericsson and Eriksson:1998:170; Parker, Ramm and Fennell:1998:300);
- Using GPS and *geo-referenced* satellite images (Panchromatic Spot) to delimit villages

(Nafantcham-na and Borges:1998:745-55), is very useful for countries with a lack of human capacity;

- Using low-accuracy (2-5 metres) *GPS receivers* to make village area delimitation affordable (Nafantcham-na and Borges:1998:745-55).

#### Simplified recording: Practical experience

- In Yugoslavia two methods have been adopted to make information available for peri-urban development. The temporary (fast) solution is by *scanning* existing cadastral plans and connecting them to *automated databases* of the cadastre and land register. The permanent (but slower) and more accurate solution involves cadastre, updating cadastral plans and connecting to *user databases* (Joksic and Gostovic:1998:380);
- In the rural areas of India, “*patwaris*” – the *local revenue department* functionaries, keep up-to-date record(s) of ownership pattern(s) of village land in a traditional manner in the form of a map known as ‘*Shajira*’.” (Ansari:1998:61-62). Other areas could benefit from this type of technique;
- In Central America, UN-HABITAT has assisted in the development of a low-cost, user-friendly *computer application* requiring minimal computer equipment, for the use of property registers, particularly in poorer municipalities (UNCHS:1997a:15).

#### Reviewing systems: Methods and objectives

Finally, land registration/recordal and land information systems are critical to *sound urban land management for low-income groups*. It is clear that existing systems are not providing sufficient land information in a timely sort of way, and that new, innovative approaches must be adopted, especially at local authority level. Land Information Management systems (LIM), - of which a land information, GIS, LIS and cadastral systems are a critical part - should be reviewed. The review should:-

- Bring together *specialists*, such as surveyors, GIS specialists, and computer specialists with other *practitioners* (see above). A major objective should be the transfer of knowledge between measurement experts and other professions, between all professions and other decision-makers, and between technical experts and decision-makers at the center and those at the provincial and local levels (UNCHS:1990). Part of this process should include *building stakeholder capacity* (Davies and Fourie:1999). This should be done to build up a knowledge base on land management amongst the stakeholders, so that *information acquisition and dissemination is not solely a technical process but is interactive*;
- *Assess the existing LIM, GIS/LIS and cadastral systems*, including a cost/benefit analysis (Grant and Robertson:1998), in relation to land delivery and affordability of the system/s by the urban poor;
- Advise on how to develop and evaluate, and where necessary, promote the *regulatory environment* necessary for the LIM system to function;
- Identify and advise government on *reducing overlapping* responsibilities across government departments in relation to information flows and/or the technical procedures associated with land. This should restrict duplication and improve *coordination* between the various departments along with *facilitating land delivery* (FIG/UNCHS:1998:4; Zevenbergen:1998). Land delivery should also be improved through the *sharing* of existing data sets (van der Molen:1998:92-4);
- Address the twin issues of *centralization and institutional fragmentation*. This should be done, among other things, through effective partnerships between different institutions both vertically and horizontally, which would pave the way for LIM systems with vertical and horizontal linkages (UNCHS:1990; Joksic and Gostovic:1998:380-1; Zevenbergen:1998; Mevichai-1998:259);

- Create a LIM system that is *decentralized* and uses *local knowledge* (Davies and Fourie:1999; Fourie:1998; UNCHS:1997:14-15). A people-centered process of decision-making at the local level requires that community-based knowledge and action take precedence over any new knowledge and technology from outside (UNCHS:1996b);
- Undertake a *gender-sensitive* analysis of the LIM system/s and design any future changes in a gender-sensitive way (UNCHS:1997a:8; Qvist:1998);
- Build a system that is *transparent*, both in terms of process and information, *and serves all* stakeholders and the market (UNCHS:1996b);
- Develop an *integrated information and mapping* system. In most countries there are usually no policies for the provision of mapping, nor for the supply of land information and maintenance thereof. In many cases there is usually no designated agency for urban information (UNCHS:1990). Urban mapping using a common base map should be encouraged. The creation of a public land inventory should be a priority (UNCHS:1996a);
- Undertake an assessment of *user requirements at a very early* stage, so that they have been clearly and comprehensively identified prior to any discussion about technology (Smith and Puddicombe:1998:408-410).

Any review of the land information and cadastral systems should also be undertaken by some sort of *Stakeholders' Forum* organised along the lines suggested above (see section 2.2.5).

### **2.2.7 Supporting NGO/CBO land management roles**

Special attention needs to be paid to two specific aspects of contemporary urban management. To start with, *cities are more and more often managed at sub-municipal or neighbourhood level. Secondly, civil society associations are becoming essential partners in land management*, especially when organized at neighbourhood or settlement level. NGOs play important roles in a variety of ways, during different phases of land development and allocation process as well as when informal settlements are being regularized (FIG/UNCHS:1998:24).

NGOs and CBOs have a number of roles to play:-

#### **Building bridges**

- NGOs should be used as links between local authorities and the community with respect to the dissemination of land-related information, mobilization of resources and participation in the planning and urban management process (UNCHS:1996b:9; Banerjee:1999a:32);
- Local community groups are critical for any interaction between neighbourhoods and the local authorities, land-owners, etc. (UNCHS:1996b:9 and HIC:1997:47);
- NGOs should be encouraged to play an important role in assisting neighbourhoods to create community groups, as well as assisting them in their negotiations with the authorities (UNCHS:1996b:9);
- Effective mediation by NGOs can help bridge the interests of community, government and the private sector. NGO involvement in articulating positions for negotiation in public-private partnership arrangements is vital (UNCHS:1996b:10; Banerjee:1999a,b);
- NGOs can also act as effective intermediaries between community organizations and international and bilateral cooperation organizations (technical advisors, search for funding, loan guarantees, etc.) (FIG/UNCHS:1998:22);



- Because of the multi-dimensional role of urban poverty, there is a wide range of NGOs, including traditional grass-roots types, networked NGOs and umbrella organizations (HIC:1997:54-5).

#### Public awareness and campaigns

- NGOs promote public awareness, which can help strengthen and enforce political determination, and generate local initiatives and mobilization which enable the citizenry to exercise their rights (UNCHS:1996b; Banerjee:1999a:32). Campaigns can be a crucial factor when legislation is being recast with a view to enhance the rights of the majority of the population (Payne:1998:34). NGOs are often involved in demonstrations against demolition activity and the protection of the tenure rights of the urban poor (Pimple and John:1999:14). Banerjee describes how grass-roots movements and NGOs repeatedly confronted the authorities over forced evictions in some Indian cities, thereby obliging government to take positive policy measures, and in the meantime guaranteeing immunity from displacement. Out of these confrontations a new trend of dialogue and negotiation has emerged, with all parties willing to find solutions to existing problems (1999a:25).

#### NGOs as pressure groups

- In some countries NGOs focus mainly on *influencing government* policies and programmes (HIC:197:49; Pimple and John:1999:14);
- NGOs are also often involved in capacity-building to enable the poor to *negotiate resettlement* projects with government authorities (Pimple and John:1999:14).

#### Technical advice

- NGOs have a critical role to play in the management of group tenure arrangements, such as cooperative societies, both in their formation and in the ongoing land administration (Risbud:1999:26; Pimple and John:1999:19) (see box below);
- With the entry of professionals in the NGO sector, there has been an increasing emphasis on NGOs acting as technical advisors on a variety of matters such as community mobilization, assistance in the setting up of specific organizations, developing new government programmes and the development of new management systems (HIC:1997:48);
- NGOs can also play a very useful role in setting up fact-finding missions, compiling maps, using their skills to undertake research and collect documents, and drawing up proposals (Pimple and John:1999:16-19).

#### NGOs as partners

- In some countries, NGOs focus on small savings groups operating at neighbourhood level, and are often linked to national and/or international NGOs (Pimple and John:1999:21), which is extremely critical for regularization (Diacon:1997);
- A new role for NGOs is in assisting government agencies in institutionalizing planning and delivery systems that are more participatory in nature. “While (some)... cases suggest institutionalization within regular delivery systems, the other cases ...suggest the setting up of new and parallel delivery systems” (HIC:1997:51-2);
- NGOs are critical partners in informal settlement *regularization* projects (Diacon:1997).

With specific regard to *regularization*, CBOs and NGOs should be involved in three major ways:-

- Assisting in a *bottom-up approach* to deregulation, identifying the controls that are essential for the



pursuit of set objectives (UNCHS:1996b:12);

- Helping direct the extension of *appropriate services* for which people pay, and reaching agreement on the acceptable standards of provision, in ways which respond realistically to demands for land and people's ability to pay (UNCHS:1996b:12).

### Governments and NGO/CBO awareness

Efforts should be launched by government, possibly with the involvement of associations/federations of private sector bodies, to enhance the awareness of CBOs and NGOs, in relation to the processes, practices and procedures of effective partnerships in urban land management (UNCHS:1996b:10). To facilitate enhanced CBO role, institutional strengthening and technical assistance should be provided in ways that do not compromise their independence as advocates of communities.

### NGO/CBO capacity requirements

#### People's Square Housing and Infrastructure Development - Windhoek

In Namibia, a women-dominated NGO known as Saamstaan undertook their own land development using cooperative groups. They first obtained land, and as single plots were too expensive, members decided to apply for a block of land, where they would subdivide the plots themselves and also install the water and sewer reticulation. The land negotiations took two years and they had first to register as a welfare organization to meet local authority requirements. They had to buy the land for cash, and this was done through a revolving fund. Members developed their own layout and house plans with technical input from volunteers. During a workshop, the rules and regulation for land administration were developed. This was drawn up as a contract for the land rights of the individuals, which could be transferred to other members or which could be inherited.

NGOs are a critical factor for sustainable urban management. Given the complex technical nature of such management, capacity-building is of the essence if NGOs are to play their role. They need to be trained in the following:-

#### General legal knowledge

- Have working knowledge of the *land rights of communities* (de Castro:1999a), both in terms of international instruments as well as national and local legislation;
- Have a basic working knowledge of the *property, family and inheritance law* in their region of operation.

#### Government regulations and structures

- Be aware of the *regulatory frameworks* in the country and how they are contributing to urban poverty, and how these need to be *changed*, so that NGOs can even more usefully participate in policy-making with a view to changing detrimental regulations (HIC:1997:59);
- Identify which *government* institutions are responsible for undertaking the *servicing and regularization* of their areas.

### Legal recourse and conflicts

- Be aware of available *appeal channels* with regard both to the judiciary and public administration, and know where to obtain *legal aid*;
- Be aware of the legal and administrative instruments that can be used to persuade *private land-owners* to come to the negotiating table;
- Assist people who are/have been *evicted*;
- Manage land-related conflict and undertake dispute *resolution*.

### Land management knowledge

- Basic understanding of how land *management and land administration* work so that NGOs can inform communities, and are in a position to detect where *injustice and corruption* is taking place;
- Be aware of the forms of *land readjustment* that are available, or could be made available, in the country;
- Understand the procedures associated with *regularization*, so that NGOs can assist those communities whose informal settlements are being regularized.

### Land information

- Set up and maintain *land record systems*, from the more basic to a full GIS/LIS, and for a variety of purposes: producing evidence prior to eviction, adverse land possession claims, effective partnerships with local authorities, regularization of informal settlements, along with ongoing cost recovery and servicing (see section 2.2.6 above).

### Land servicing

- Be aware of the various *types* of services and the *costs* associated with them, so that NGOs can negotiate for more affordable services.

### Working with communities

- Organize communities to improve *social cohesion*, to pave the way for affordable *group registration* approaches, such as residential cooperatives, and organize the *servicing* of their areas;
- Explain to communities why freehold is not the way forward;
- Understand the conditions of title of *leases*, and be able to assist communities in *negotiating* favourable lease conditions with land-owners and local authorities.

### Campaigns

- Collect any *evidence* required to support anti-eviction campaigns, and know how to *run* such a campaign (bestpractices:1999 -India);
- Be aware of *gender issues* in the land property area, to be in a better position to encourage gender sensitivity.

Some, though not all, of this training should also be made available to CBOs. It is likely that the complexity of the processes involved would limit the knowledge transfer not only to NGOs, but even more so to CBOs. Moreover, many local authority staff would require capacity building in some of the areas identified above.

### 2.2.8 Encouraging dialogue and partnerships for land development

A key to making land development more efficient is by *facilitating community participation together with public-private partnerships*. This should increase both the efficiency and the scope of the land market, as it will increase the amount of land developed. Community participation in land management is a vital instrument in achieving sustainable shelter for the urban poor and landless. The overall aim of community participation should be to facilitate increased access by all citizens, especially the urban poor, to affordable and appropriately located land with security of tenure and development rights. All those living within communities should be recognized as eligible for local participation, regardless of their formal status, and including tenants and squatters (UNCHS:1996b:7-8).

#### Community input

Community planning of land use, infrastructure upgrading and maintenance should be encouraged as components of community land management. These activities should also have inputs into broader planning activities that impact upon them, such as the city-wide provision of infrastructure and services. To achieve this, the organizational and technical capability of the community needs to be enhanced by training and technical assistance. Government should not only facilitate the community land management process by providing the appropriate statutory and institutional environment, but also ensure that it actually takes place. Traditional systems of community land management should be encouraged to facilitate the convergence of equitable traditional land allocation processes with land market mechanisms. Community involvement in informal land development should be recognized (UNCHS:1996b:8; UNCHS:1999b).

The active participation of communities can be encouraged by (FIG/UNCHS:1998:22):-

- The creation of *special bodies* with a real coordinating capacity, decision-making power, and a certain degree of financial autonomy;
- The existence of *stable and legitimate community organizations*, that are capable of negotiating with all types of urban actors, if necessary;
- The existence of ‘third’ parties, typically *NGOs*, acting as intermediaries.

#### Partnerships for urban reform

With regard to public-private partnerships, governments have demonstrated capacity for implementing only particular components of land policy. It seems that their greatest strength may lie in an enabling role, to facilitate action by other *stakeholders*. *Partnerships at the local level, possibly coordinated by local authorities, appear to be the most appropriate vehicle for implementing urban land reform* (UNCHS:1997:6) (see box below). Public-private partnerships based on principles of equity, cost-effectiveness, efficiency, flexibility and participation can lead to better land management and greater access to land and security of tenure. Effective partnerships between government, private business, and land-owning sectors must be fostered through easier access to land and its development for these groups (UNCHS:1996b:9-10). In regard to private sector partnerships, the ‘formal private sector’ is not a homogeneous group, but includes the private business sector, the community-based private sector (such as cooperatives) and the land-owning sector (such as customary land-owners in Africa). Likewise ‘partnerships’ include private-public partnerships and private-public joint ventures in relation to development programmes, rather than individual private purchases on the open market (UNCHS:1996b:9-10).

The government sector should foster within itself attitudes conducive to supporting private-public partnerships and awareness of making choices through:-

- Retraining public servants and raising their awareness and that of their political masters so that they will *favour pro-active approaches* which activate and inspire the private and community sectors, as well as various levels of government, as an alternative to the *essentially passive approach of land use regulation* (UNCHS:1996b:10);
- Acquiring a knowledge of land markets which is adequate to negotiate successful participation of the private sector in land development which satisfies the public interest (UNCHS:1996b:10);
- Efforts should be launched by government to enhance awareness of the private business sector in relation to the processes, practices and procedures of effective partnerships in urban land management; and to educate firms about good urban land management and, sometimes, about good subdivision and layout practices, so that they may more effectively and responsibly take part in land development (UNCHS:1996b:10);
- Acknowledging the *diversity of the private sector*. There should be differentiated approaches to private-public partnerships, as well as clarity on the relative positions of different private sector actors *vis-à-vis* Governments. In particular, different actors affecting urban land should be guided and stimulated with appropriate information, advice, financial and land incentives, and regulated through differentiated partnership arrangements or contracts. Whenever a selection has to be made between private business and the community-based private sector, priority should be given to the latter (UNCHS:1996b:10);
- There should be *clarity of responsibilities and transparency* in relationships in private-public partnerships so as to create a conducive framework and conditions for efficient private sector participation, as well as for improving access to land for the disadvantaged and for public facilities (UNCHS:1996b:10).

In order to ensure the *primacy of the public good*, mechanisms for formal private sector participations should be designed to ensure that they include access to land for the urban poor and other disadvantaged groups. Public-private partnerships should also be aware of any impediments affecting women or specific segments of the population. In particular (UNCHS: 1996b:10):-

- Provision of some *low-cost sites or plots* should be negotiated with landowners and companies seeking permission to build or subdivide. Small but significant supplies of land to the sub-markets of the poorer households are being achieved in this way;
- Government partnerships with the private and community sectors should be used to *cross-subsidize* the provision of affordable sites or plots;
- The rights of *women and children* in the management of land resources in public-private partnerships should be recognised by generating value-added benefits especially for them, ensuring their access to land through appropriate financial and credit mechanisms, and creating appropriate forms of tenure;
- The contribution of *service infrastructure* by public authorities should be used as a means to negotiate or motivate actions which are in the public interest by residents, land-owners, and companies.

In situations where land markets are not fully developed or the private sector's role is not fully articulated, the emergence and growth of private sector institutions, such as real estate developers and cooperatives as partners, should be encouraged by facilitating their access to land and to other inputs on terms that promote the provision of affordable shelter (UNCHS:1996b:10).

With respect to public-private sector partnerships in surveying, *the cadastral area has long been dominated by the public sector. However, the private sector is slowly becoming more dominant and it is likely that the future of the cadastre will be based firmly on public-private partnership* (Kaufmann and Steudler:1998:56-57). It is expected that the public sector, as a general rule, will ultimately focus on overarching supervisory and regulatory roles (Grant and Robertson:1998:73). In the Czech Republic, not only was the land privatized after 1989, but part of the Geodetic (Surveying) Department was also privatized. Government-controlled joint-stock companies were set up initially but soon were entirely privatized and the Czech Office for Surveying, Mapping and Cadastre “...became (a) partner to the private sector.” The result was a split of surveying activities, some of which came under the sole government, others under the sole, newly created private sector, with some activities shared as a public-private partnership (Rydval:1998:387-391).

### ***2.2.9 Encouraging inclusive dispute and appeal procedures***

A central issue to land development, service delivery and regularization for the urban poor is *conflict management and dispute resolution* (UNCHS:1996b:13). Security of tenure, and access to land for the poor are both seriously undermined where land dispute resolution systems are ineffective and cannot be used by the poor. Situations like inheritance disputes, cloudy titles/deeds over deceased estates, unauthorised land uses, etc., make it difficult to deal with land and service properties (Brazil – Imperato:1999). The resolution of land disputes requires new approaches (UNCHS:1997a:25):-

- *New forms of the judiciary* need to be developed. In many countries at present there is a “...more or less clandestine system side-by-side with an abandoned official system of control which is harmful to development.” (UNCHS:1997a:25). The range of Forums being used by the poor, either formal, legal, informal and/or illegal (Razzaz:1998 -Jordan) have to be given legitimacy;
- The resolution of land disputes should be *prompt, clear and simplified*. The conflicts should be resolved first at the community level through land tribunals or other such special legal bodies, to speed up dispute settlement. Specific legal procedures should be established for urban land tenure regularization through specialized branches of the judiciary, to handle urban land issues when cases move beyond community-level bodies for conflict resolution. Every individual should have the right to appeal to an appropriate legal institution. Mechanisms should make sure that associations and collective organizations should have a right of appeal, so that social interests can be safeguarded (UNCHS:1996b:6-12);
- *Legal aid* systems need to be put in place and/or better funded, especially for land-related conflict management (de Castro:1999a,b; Imperato:1999; Junior:1999:6; bestpractices:1999 -Chile);
- *Para-legals* need to be trained to deal with land, property and family issues;
- *Local authorities* must play a role in conflict resolution between stakeholders (Junior:1999 –Brazil) and in building capacity for the transfer of local knowledge to professionals and professional knowledge to communities (Davies and Fourie:1999 –South Africa);
- Dispute resolution needs to take place at the local level not only during the regularization exercise, but as an ongoing approach to *ensure sustainability* (Davies and Fourie:1999 –South Africa and Diacon:1997–India);
- “In view of the variety of motivations that drive the actions of various players in land markets, *effective mediation by NGOs*, development consultants, etc. can help in bridging the interests of the community, government and private sector actors. In particular:- the involvement of intermediaries (such as NGOs) in articulating positions for negotiation in public-private partnership arrangements should be promoted...” (UNCHS:1996b);



- Mechanisms need to be set up to manage *conflict between government agencies* over land use (Mekvichai:1998 –Thailand) and land rights allocations (Banerjee:1999a,b-India; UNCHS:1999b – Francophone Africa; Imparato:1999 –Brazil);
- The functions of, and links between, various *levels of the judiciary* must be carefully structured, in order better to protect the land rights of the poor, who cannot afford lawyers or lengthy court cases, and are not familiar with the legal culture (de Castro:1999b);
- *Land audits* carried out ahead of regularization (de Castro:1999b; Diacon:1997; Payne:1997:27,48), should be linked to the creation of appropriate legal and administrative mechanisms and forums for the resolution of the more commonplace types of dispute, in order to clean up cloudy or ambiguous titles/deeds (de Castro:1999a,b);
- FIG/UNCHS states that *recognition of customary arbitration* bodies is an important contribution to land claim arbitration and land dispute resolution. In some cases, the jurisdiction and appropriate procedures involving customary leaders in the decision- making process are already there. In other cases, intervention by customary leaders is not formally recognized. Nevertheless, their advice and approval are sought before any land-related venture is carried out in the area they control (1998:22).

### Vital role of grassroots groups

FIG/UNCHS states that grassroots community organizations play a vital role in land dispute resolution. They are responsible for channelling claims; they are powerful negotiators, mediators and representatives of the community. Other arbitration bodies such as local authorities are better at arbitrating land disputes than central government institutions. However, this is an area of responsibility which public administrations are unwilling to relinquish, except when the situation appears to be out of control (1998:23). FIG/UNCHS also finds that prevention of land disputes is critical to the integration of informal settlements. Such prevention involves a range of conditions such as:- an acceptable social and economic policy; a land registration/recordal system; transparent, accessible procedures; a system of democratic representation at local level; and recognition of customary/traditional practices in the arbitration of land disputes, especially where no other body is able to carry out this function (FIG/UNCHS:1998:23).

### Leases preferred over freehold

Finally, an effective way of facilitating *dispute resolution would be the introduction of leases rather than freehold rights as the main form of mass title/deed delivery*. This, together with a wider understanding of land tenure as a bundle of rights, with rights on the same property being allocated to different owners for different purposes, would create a larger space for negotiation between different parties.

## 2.3 Lessons learned and the way forward

### - Lessons learned

At a general level, a number of lessons have been learned about what kind of approaches hinder rather than facilitate access to land by all segments of society, namely:-

#### - *Centralized systems deny access and security*

- A firm belief that formal land delivery and land registration systems can keep pace with demand has been proven incorrect. Instead, *these systems contribute to hindering land delivery to low-income groups* who cannot afford them. *Informal rather than formal systems are delivering most of the land in the developing countries' cities*. A diversity of land delivery mechanisms should



be recognized to ensure that all segments of society have access to land;

- Centralized land management approaches *restrict access to land* as central governments are often focused on political issues and/or are too weak to intervene effectively at scale at the local level. Land management functions, powers and responsibilities need to be decentralized, to enable local authorities to take responsibility for land management. *Local authorities are more responsive to local demand and are more transparent* as they are not at a distance from the communities;
- Centralized top-down regularization on an *ad hoc* settlement by settlement basis, where regulations are temporarily adapted to accommodate individual settlements, leads to *more informal settlement as people are displaced through middle class down-raiding and as people invade land in the hope it will be regularized*. City-wide regularization programmes should be undertaken using affordable approaches;
- *Centralized top-down planning generates informal settlement both by setting up rules which are unaffordable to low-income groups, and also by planning areas which are already occupied without taking into account existing layouts*. The way forward is to start with the existing layout and through *participatory planning, negotiate a final layout which is acceptable and affordable* to current residents.

#### - *Current systems are exclusive, not inclusive*

- Too often planning and servicing standards have created *unaffordable services* when areas are regularized. This leads to non-payment for services, middle-class down-raiding as low-income people leave the area, poor maintenance of the services and no sustainability. The way forward is through participatory planning and the careful design of affordable services;
- With centrally driven regularization projects, the community has been left out of the land administration of the project. This has meant that the *sustainability of the project* has been jeopardized, as weak central administrations have not had the capacity to remain involved in the area. In many informal settlements, people are taking informal land administration and servicing into their own hands. This capacity should be leveraged and further developed when *regularizing informal settlements, in order to ensure sustainability*.

#### - *Current systems are expensive and inefficient*

- Land delivery, regularization, land record and service maintenance together with land administration, have tended to involve government agencies without bringing the community into the process. *Governments have struggled to provide* these functions at scale, and especially to a majority of low-income people. The way forward to ensure sustainability is to develop partnerships with CBOs and NGOs. Capacity must be further developed, especially in NGOs, to facilitate regularization and sustainable management.

#### - *Current systems generate conflict*

- Conflict is endemic in most countries in regard to land, especially in urban and fringe areas. *Conventional approaches are not solving the disputes rapidly enough and/or are too expensive* for low-income groups. New, simplified dispute resolution procedures need to be developed and put in place at local level. One way of bringing this about is to build legal capacity at local level;
- *Conflict among government departments* over the allocation of land and land use is endemic. *Coordinating mechanisms* must be put in place.

- *Current systems do not promote access*

- Regularization has tended to involve the allocation of *freehold and/or individual registered leases*. Mass-scale use of local authority leases, rather than freehold, could facilitate affordable dispute resolution, especially at local level;
- The *legal instruments* available for the acquisition of land for regularization are too often *ineffective*. This situation combines with a lack of political determination and poor financial capacity to hinder land acquisition in a very serious way. Privately-owned land is especially problematic, with large portions of some cities being held under private ownership, often for speculation. *Legal instruments need to be reviewed, adapted, given political backing and enforced, and new instruments developed where necessary*. Land readjustment is an important legal instrument to supply serviced land in the cities. It brings competing stakeholders together in partnerships (public-private, NGOs and for-profit private) and is a locally driven approach. *Various approaches are available for land readjustment*, only some of which are useful in supplying serviced land to low-income groups. Governments often have to subsidize some aspect of the readjustment (such as, becoming part land-owners or financing the servicing) if low-income groups are to benefit from this approach. Land readjustment works well with a number of other elements such as special zones for low-income people, regularization, the development of networks of infrastructure and the legalization of blocks;
- *Land readjustment might not be possible for very poor countries*. However, in an adapted form it could assist with the extension of urban areas into customary land, provided there is capacity for planning and installation of the infrastructure network. Land readjustment is critical in Asia and densely settled cities.

- **The way forward**

Based on the framework developed in Chapter 2 above, this section outlines an approach for the regularization of informal settlements, both city-wide and at scale. Methods of regularization will vary across countries. However, the instances of best practice identified in this handbook suggest that any regularization scheme should abide by a number of broad guidelines, which take into account:-

- The immediate needs of communities for tenure security;
- Sound planning principles;
- The long-term needs of the public sector custodians of the land record systems;
- Financial and cost recovery issues;
- The needs of local authorities in relation to service provision;
- The need for individuals to upgrade their service provision, houses and land rights in their own time, as and when they can afford it;
- Long-term sustainability.

## **Phase 1**

The first phase includes four major types of activity:-

### **Identifying major stakeholders**

All the major stakeholders in the city should be identified and brought together in a forum (see section 2.2.5 above), to develop a vision of how to regularize the city's informal settlements and develop an inclusive city for all its citizens.

### **Preliminary land audit**

Before informal settlements, either singly or city-wide, can be considered for regularization, a land audit needs to be undertaken, to assess the legal status of the land that is occupied by informal settlements (Diacon:1997; de Castro:1999b, Payne:1997:27,48). It has to be ascertained whether the land is in public or private ownership, or both (see section 2.2.3.2 above) and the legal status of the ownership.

### **Identifying instruments and processes**

Prior to regularization, an assessment must be made as to which combination of instruments (see section 2.2.3.2 above) can be used to sort out cloudy titles/deeds and persuade landowners to become involved in regularization. The administrative processes should be put in place to be able to carry out the procedures (Banerjee:1999b:17). These will vary from country to country and city to city. The affected communities and NGOs can also strengthen the local authorities' hand by putting pressure on landowners to come to the negotiating table.

### **Identifying available resources**

An assessment of the resources of the stakeholders and partners involved in the process should be made to establish the extent of their human and financial capacity to undertake the regularization. Plans should be put in place to increase this capacity where necessary.

## **Phase 2**

A set of seven incremental steps is recommended:-

### **Designating special zones**

A Stakeholders' Forum, with the low-income communities and NGOs setting the pace, must identify and assign special zones for low-income people throughout the city. Such zones should already contain the informal settlements that have been identified for regularization and/or vacant land where people can be relocated/resettled from over-crowded or unsafe areas.

### **Creating zones**

These special zones should be large areas or blocks (and super-blocks containing a number of blocks – UNCHS:1999b). If large areas, they should also be broken down into blocks (and super-blocks) to improve social cohesion and management.

### **Negotiating boundaries**

The boundaries of these areas, special zones, blocks and super-blocks, should be negotiated among the stakeholders, especially the low-income people living in the area. Every attempt should be made to

include public and privately-owned land in the designated areas, and to enable the infrastructure network to be coordinated throughout the city, using the range of legal and administrative instruments outlined above to ensure city-wide coverage and economies of scale.

### Recording boundaries

Block boundaries should be recorded in all the national and regional land record system(s), with clear warnings that no dealings or land use allocations can be undertaken in these areas without consulting the local authority and its partners in the regularization. This should give immediate security of tenure to occupiers *vis-à-vis* government, which can no longer allocate this land to other people. It would also mean that private landowners could not evict people easily, especially where anti-eviction laws were in place. Similarly it would mean that the land-owners could not change the land use of the area, thereby reinforcing the existing low-income land use arrangements. However, this approach is unlikely to give occupiers the degree of tenure security required to obtain a mortgage either for individual sites or the whole block. Occupiers would not have security *vis-à-vis* other individuals bent on forcibly removing them from their land.

Individual security would only be obtained once a local land record system had been created. Such a system would need to identify occupants and their land use, though not their spatial extent. It should be tied to a 'starter title' issued by the local authority. The title/deed would grant the holder short-term or perpetual lease rights to a site within the block, though not necessarily the site presently occupied. This sort of title/deed, or some other form of group title/deed such as those used by housing associations, would enhance individual tenure security of individuals without breaking down the social cohesion of the group.

### Minimum planning requirements

Up to this point, the only planning required is to identify informal settlement areas that would not be regularized along with potential vacant land for resettlement, prior to making a rough plan for infrastructure networks. At this stage, there is no need for detailed planning (or surveying) of infrastructure networks, settlements, or sites to give informal settlement occupiers security of tenure.

### Need for capacity building

The land administration of the blocks is extremely critical in this phase. Processes should be put in place to build capacity in the informal settlement areas, so that knowledge transfer can take place between the community and professionals/local authorities. Such knowledge will relate to land information, land development requirements, servicing options as well as building social cohesion and leadership. Para-legals and local land administrators should be trained in the community (Banerjee:1999b); community awareness must be raised with regard to a range of relevant rights (human, land, housing) (de Castro:1999b), and dispute resolution mechanisms should be set up, both within the community and for the stakeholders and partners.

Land administration should also include the creation of a land information system, to be shared by the community and the local authority. The twin objective is to enhance individual security of tenure and to collect information for the purposes of planning and community servicing. Housing consolidation is not advised in this phase, as no planning has been undertaken. Indeed such

consolidation should be actively discouraged until infrastructure networks are in place, for the sake both of cost-effectiveness and conflict management.

### **Phase 3**

Planning the detailed infrastructure network of the city, with informal settlements as the major focus, is in order at this stage. Planning must rely on land and other information gathered from the communities which must, as much as possible, be based on the existing informal layouts, site sizes and floor ratios of the informal settlements. Planning must also be based on the Master Plan if any, though not as the key instrument for planning. On this basis, Phase three consists of 17 major steps.

#### **Defining the infrastructure network**

The design should allow for individual, self-funded, incremental service connections and affordable capital, maintenance and user costs for services. The infrastructure network must be planned to extend outside of the city limits, in order to assist in the management of peri-urban growth. By planning at city level the bulk supply of services should be done automatically and at city level scale.

#### **Participatory planning**

Planning should take place in a participatory sort of way, including Stakeholders' Forums, with a view to involve the community and NGOs in servicing options. These may, for instance, include whether to have cheap, straight-line service corridors, which will involve the relocation of existing houses. The affordability of the various options, relative to the responsibility of the community in the upkeep of the services, must also be negotiated as part of the planning exercise. Professional expertise is another crucial input, as plans for regularized settlements are more complex than those for vacant land developments.

#### **Sources of funding**

Funding must be found for infrastructure networks (sewerage, roads, electricity and water), with individual households taking financial responsibility for their own connections. Donor funding, cross-subsidies, central and/or local government taxes, community funding and various other types of funding should be harnessed through infrastructure network partnerships. Communities tend to respond better to calls for saving *before* completion than to *ex-post* cost-recovery by either government or formal financial institutions.

#### **Relocation, connections and costs**

Building/laying on the infrastructure networks to planned layouts may involve the relocation of some individual households, either within the block or to vacant land in another block. Such relocation should be carried out as a partnership between the communities, NGOs and the local authority. This partnership should also be responsible for ensuring that communities know how to make individual connections to the networks and how to maintain the systems – i.e. both the service and the land information systems. The local land information system put in place in the second phase should also enable the local authority to recover costs through user charges.

### Upgrading tenure

Once the planned layout has been put in place, it would be possible to upgrade the tenure security of individual households through more individualized titles/deeds, as sites could be surveyed and specific sites or plots of land leased in perpetuity. Any individual title/deed upgrades should be self-funded and would have to be approved by a majority of the group. Consolidation of housing by individual households should be encouraged as soon as the planned layout and services are put in place.

### An incremental process

Finally, under the proposed approach, regularization is an ongoing process, as individual connections to services, housing consolidation and the upgrading of tenure to individual rights take place incrementally. This process would also involve the gradual servicing of informal settlements in the city and in expanding peri-urban areas. In addition, this form of regularization relies on community involvement for the sake of sustainability during both the development and the ongoing maintenance of services and land records. This ongoing process would alter conventional approaches to city governance.

### Vacant/customary land

This approach could also be brought to bear on vacant land, or land that was only scarcely occupied such as customary land. In short, once the service network was completed, blocks of land could be delineated by the primary and secondary networks and then sold, rented or leased to other public or private developers (whether formal or informal). These people would then proceed with the details of the sale to individuals and/or the subdivisions and individual connections (FIG/UNCHS:1998:11).

### Amending centralised frameworks

Aside from the detailed regularization approach outlined above, another vital area that needs to be addressed has to do with the national regulatory frameworks, including the land registry, cadastre and the land information system. Instead of promoting access to land, regulatory frameworks have in effect restricted access to land and contributed to hindering market mechanisms. The reason is that they have created centralized structures with poor government coordination, inappropriate and unaffordable master plans and building codes, inflexible and costly standards, regulatory complexity, ineffective enforcement and long delivery times. Regulatory frameworks must be reviewed and made more simple, efficient, flexible, transparent and participatory. Standards should also be lowered so that low-income areas can take their fair share in the collective life of the city and no longer be excluded.

### Reviewing all frameworks

A critical step is made with the launch of a sweeping review of all regulatory frameworks associated with land markets, such as planning, building, the judiciary, cadastre and land registration, finance and urban laws, complete with a gender-sensitive analysis. The respective roles of various institutions and their functions must also be reviewed to facilitate decentralization and the coordination of different government departments and levels of government. Moreover, many countries have more than one set of laws in place (statutory and customary) or more than one regulatory framework (some former Soviet era countries), and these must be drawn together to arrive at straightforward land development guidelines. Regulatory frameworks also need to be adjusted to allow the private sector – i.e. both the community and the ‘for profit’ private sector (informal and formal) – to become involved in land development through public-private partnerships.



### Reform and adaptation

Experience shows that land development should not wait for completion of the review and effective adjustment of regulatory frameworks, as they can take years. A two-pronged approach is suggested whereby, through some form of stakeholders' forum at national level, participants develop an understanding of the existing regulatory framework in place and begin to reform it. At the same time, local authorities and partners should adapt the regulations wherever possible in order to facilitate land delivery; they should also focus on improving links and coordination between the various institutions involved in land delivery.

### Re-focusing land information

The land registration, cadastral and land information systems act as a major hindrance to land delivery. Yet at the same time, they are seen to be critical for land. Cadastral, land registration and land information systems are overly centralized and expensive; they are not geared to the urban poor who are the majority, because procedures are unaffordable, often based on colonial approaches, complex and lacking in transparency. Countries all over the world, including South America, Eastern Europe, Asia and Africa are struggling to improve national land registries, cadastres and land information systems. Few can claim to be at the point where their systems are good enough to service the majority of the urban poor.

The way forward is to focus land records, land information and land management at the local level and restrict high-level coordination and intervention requirements. In this way land information can be made available at local level to facilitate regularization of informal settlements and the subsequent maintenance of the area. Local authorities generally have no land information about informal settlements as they are outside of the cadastre. Therefore a land record system must be developed where the community and the local authority are partners. This should also include the training of community members as land administrators to create and maintain the local records.

### Putting land records to good use

Once local systems are in place, the community can use land records to negotiate with other stakeholders in the area. Records can also be used by the local authority to regularize the area and to maintain it, including cost-recovery. This approach facilitates sustainability. Such a land record system should be set up to increase the tenure security of those in occupation; it could also provide evidence of occupation in eviction cases.

### Inclusive innovative practice

A further range of innovative practices make it possible to alter, improve and extend the cadastre and land registration system. Some include the adaptation of technology, so that information and tenure security can be created in a more affordable fashion. Others relate to the development of more straightforward legal and institutional procedures, including more decentralized forms of land administration. Some involve functional overhaul of government structures for better efficiency, including the re-structuring of information flows.

### Information management reform

Any general national review and reform of regulatory frameworks should also focus specifically on the cadastral and land information systems of the country. Stakeholders' forums should also address this

issue. Serious problems have arisen with land information records and management, as well as with land information flows both within government and with the public and the market. This issue needs to be addressed as a matter of urgency. Technical and non-technical people must be brought together around a comprehensive agenda: reviewing the existing system, assessing its affordability and gender sensitivity, reducing overlaps in government responsibility, finding ways to decentralize land information flows, improving the information and the mapping system, and undertaking a user's requirement analysis to re-orient the system.

### Reckoning with land delivery variety

Finally, land delivery is hindered rather than facilitated by the fact that it is a public sector monopoly. The private sector, including the community sector, has traditionally not been considered as part of the land delivery process. Yet nowadays most urban land delivery in developing countries is undertaken by the private sector, albeit informally. The way forward is for governments to accept a diversity of approaches to land delivery, including informal and/or customary. Therefore governments must adapt relevant rules and regulations so that the formal and informal approaches can merge. They must also facilitate private sector land delivery, through the creation of public-private partnerships. In short, the focus of government attention should be on the facilitation of the private sector's variety of land delivery approaches, rather than on the supply of land through public sector delivery mechanisms.

### Critical role for private sector/NGOs

The time-honoured public sector focus on land delivery has also effectively sidelined maintenance issues. The public sector has not been able to deliver land to scale, let alone deliver land record and service maintenance to scale. As evidenced by community involvement, in the supply of land and the subsequent maintenance of the records and services, the private sector is critical to the sustainability of low-income areas. That is, an efficient, sustainable land market for all segments of society requires community involvement and the opening up of land-delivery opportunities to a range of private sector actors. In this process, NGOs have a manifold, critical role to play, including: acting as mediators between different stakeholders, supplying technical assistance to communities, building social cohesion, enhancing rights awareness, and facilitating public participation in the regularization and maintenance process.

## CHAPTER 3 – LESSONS AND ACTION PLANS

### 3.1 What experience is telling us

Regarding access to land and security of tenure for low-income urban groups, a number of lessons, also as to the way forward, have been learned in various areas:-

#### The role of central government

- Governments should not focus on public housing and land delivery. They should instead facilitate land and housing delivery by the private sector (formal, informal, community, customary). A number of countries have adopted public-private sector approaches in relation to land delivery, and with a fair amount of success;
- Centralized systems for planning, conflict management and land administration are not delivering secure tenure or serviced land to the majority of urban people in developing countries. These functions should be decentralized, together with the powers and resources that will enable them to be undertaken. Such powers and resources are often left out of decentralization programmes;
- Regulatory frameworks designed for the middle class and the commercial sector are excluding the majority of urban dwellers. Adaptation of regulatory frameworks is a slow process, often with no apparent outcome. Resources and pressure need to be brought to bear in these situations;
- Countries with weak civil/public services will also typically feature complex and contradictory legislation, often left over from the colonial period. This acts as a major hindrance to formal land delivery and an encouragement to informal land delivery. Regulatory frameworks in these countries need to be reviewed and simplified, but this has not always proved easy.

#### Participatory planning and the community

- Centralized planning has failed to deliver adequate access to land and security of tenure. A number of countries have adopted participatory planning approaches and these have proved successful;
- Public land delivery systems often do without involvement from the community. Now more and more countries are involving the community in order to make development more sustainable, affordable and beneficial to low-income groups;
- Focusing on individual informal settlements has not made it possible to solve the problem of informality, either city-wide or globally. Moreover, *ad hoc* approaches do not foster inclusive cities. Fresh approaches that lower standards, spread resources and are designed to scale have been developed, paving the way for inclusive cities.

#### Gender discrimination makes things worse

- Much effort has gone into granting women equal rights with regard to land and inheritance. Some legislative success has ensued. Apart from that, there have been positive instances where poor women at the local level have been able to overcome discrimination under either formal law and/or custom in connection with land and/or inheritance. One area of success has been with cooperative savings.

### NGOs need more expertise

- There are too few NGOs with adequate technical awareness of urban property affairs. Where such expertise does exist, NGOs have demonstrated the critical impact they can have on land delivery to low-income groups. NGOs need to build capacity if they are to facilitate sustainable urban land management.

### Local authority leases are better than freehold

- It has not been possible to deliver freehold and/or registered leasehold rights to the majority of people in the developing world. Therefore local authority leases are the way forward;
- Individual titling is costly, time-consuming and often not sustainable for low-income groups, as the procedure involves full surveying and registration. A way forward is to use group registration, blocks and some form of individualized lease rights managed by groups in conjunction with local authorities;
- Adverse possession laws do not deliver to scale on their own, but require legal aid and/or resort to class actions if they are to be efficient;
- Anti-eviction laws have provided millions with some tenure security, but are a long way from affording complete security. NGOs have played a critical role in fighting eviction in many countries;
- Compulsory land acquisition by government is not delivering to scale, especially in relation to urban encroachments on agricultural areas. Public-private partnerships and innovative use of legal instruments with regard to cloudy title/deed on private land have been found to be more efficient in a number of countries.

### Designing affordable services

- Service design is critical for affordability and cost recovery. Too often the focus has been on full servicing and titling, without taking into account maintenance and user costs.

### Reforming land registration/information systems

- Land registry systems are not coping with demand throughout the developing world. Appropriate land information systems and local land record schemes are under development in a number of countries;
- Most local authorities have not been able to regularize and manage informal settlements because of over-reliance on land register information. A number of local authorities are using alternative sources to land registry, such as sketch maps, to regularize these areas;
- Where there are no land records and land has been nationalized, central government will often allocate land/land use to developers, even when the land is occupied. Land information systems are under development, which include all land information, including formal, informal and customary.

### Capacity-building

- While a lack of human capacity remains a major problem, capacity building through stakeholder forums has enabled a degree of technical transfer, as has the formal training of staff.

### **3.2 Further implementation of the Habitat Agenda on Land Tenure and Land Management issues: Key recommendations**

The main channels for implementation of the Habitat Agenda are national and local action partner plans and the support programmes of multi-lateral and bilateral cooperation agencies. Recommendations for each of these respective constituencies are as follows.

#### **3.2.1 National action plans**

Recommendations for national action plans are:-

##### **Central government role**

- Governments' major responsibility for shelter should be in creating mechanisms whereby the private sector (including the 'for profit' sector, both formal and informal) and community sector can provide housing. Enabling legislation, infrastructure networks and technical assistance to the private sector and NGOs, among other things, should be a major focus of government action;
- Improving coordination between government departments and devolved authorities should be a first step, specifically with regard to land delivery, information flows and land use planning;
- Government should undertake land policy development, especially as far as urban areas are concerned.

##### **Statutory reform**

- Land delivery legislation should be assessed in terms for relevance to the urban poor, and new laws and/or regulations drafted with the urban poor as main focus;
- Anti-eviction laws should be passed to protect people from eviction without relocation options, along with legislation enabling local authorities to establish special zones for low-income people in urban areas;
- Laws enabling partnerships between the public and private sectors should be passed;
- National contract law should be reviewed and amended;
- Legal instruments should be developed to facilitate registration of group forms of tenure;
- The land readjustment instruments available in any country should be reviewed. Instruments that deliver land, and benefit the poor, should be developed by statutory and/or regulatory means. The private sector should be a partner in this process;
- All land development instruments should be reviewed to find the best way of regularizing privately-owned land that is occupied by low-income segments of the population.

##### **Gender issues**

- All regulatory frameworks should be reviewed in terms of gender sensitivity;

- Gender issues should be a priority for regulatory framework review and drafting of new statutes and/or regulations, especially with regard to women's rights to land and property and the inheritance laws of the country. Women should participate fully in any stakeholders' forum. Fairness should also be affirmed in any new female-friendly piece of legislation, especially in connection with customary tenure. Any changes to regulatory frameworks should go hand in hand with public awareness campaigns.

#### Need for an inclusive national review process

- Some form of inclusive stakeholders' forum should be instituted to review national statutory and regulatory frameworks and act as a change agent. The aim would be to make the legal system as a whole more straightforward and more affordable, thereby paving the way for more inclusive urban societies. Any such forum should have a number of roles, many of which are highlighted above (*Legislative reform*) and below;
- The role of NGOs should be facilitated through enabling legislation, participation in stakeholders' forums, and ensuring that they have any technical (including documentary) assistance that they may require;
- Further avenues for regulatory framework development should be put together into a database in order to facilitate adaptation and knowledge transfer;
- A diversity of land delivery approaches and stakeholders should be supported. Any forum should bring together a wide range of stakeholders, including informal and/or customary, whose specific points of view should be merged with the more conventional land delivery approaches as part of the regulatory framework review.

#### Need for a decentralised approach

- Land management should be decentralized and local authorities granted adequate resources and power to carry out their missions;
- Centralized planning should take place only at a high level, with day-to-day planning and land use management decentralized to local authorities;
- Land administration (allocation, transfers, site/plot delimitation, adjudication and registration/recordal, information management, enforcement) should be decentralized to local authority level.

#### Need for efficient land information systems

- Attention should be given to the development of efficient land information systems to supply geo-information to decision-makers. In some countries this could be based on the cadastre, but in many others, alternative approaches must be considered. Urban mapping should be a priority;
- Land information should not be confined to cadastral or tax information, but should also include informal and/or customary land information and records;
- A cadastral (LIS) and land registration system should be developed with poverty alleviation and the supply of tenure security and land to the poor as major priorities. This would involve reviewing existing



technical processes and procedures, decentralization and the development of records for locally held lease agreements, rather than centrally registered freehold. Central government partnerships with local authorities should be arranged to facilitate the decentralizing of records and lease issuance;

- A first step for government is to set up a public land asset register or land inventory detailing which departments hold which sites or plots of land, and wherever possible assigning land to local authorities. Priority should be given to public land already occupied by low-income groups.

#### Reforming the Judiciary

- Legal aid systems should be reviewed and/or legal aid granted to the poor;
- The judiciary and appeal system should be reviewed and local forms of conflict resolution developed in relation to land, and/or special mechanisms created to resolve land disputes efficiently.

#### Training and education

- Capacity should be developed to set out regulations and administrative procedures for land development;
- Higher education tuition and training curricula should be reviewed and special areas of focus (geographically and/or per institution) set out, in order to educate people to deal with tenure, servicing, land administration and legal issues in a way that is appropriate for low-income groups at scale.

### 3.2.2 Local action plans

Recommendations with regard to local action plans are as follows:-

#### The role of local authorities

- Local authorities have a major responsibility with regard to shelter, and more specifically for enacting mechanisms whereby the private sector (including the ‘for profit’ sector, both formal and informal, and the community/voluntary sector) is in a position to supply housing;
- Regularization should be carried out through city-wide planning and servicing, rather than on a ‘settlement by settlement’ basis involving full titling and servicing. The main focus should be on enabling private sector housing development through adequate infrastructure and technical assistance, as well as readiness to endorse lower standards;
- Data regarding the performance of local regulatory frameworks should be centralised, in order to facilitate both adjustments to the frameworks and knowledge transfers within stakeholders’ forums;
- Attention should be given to improving co-ordination of government departments at local level and with higher levels of government;
- Attention should be given to capacity-building for decentralized land management functions, and to ensuring that resources and adequate jurisdiction are available to fulfil these functions;
- Partnerships with the private and community sector and NGOs should be developed to improve local land management and extend its scope.

### The role of local public-private Stakeholders' Forums

- All-inclusive, city-wide stakeholders' forums should be set up under one form or another to manage the regularization of claims on urban land and pave the way for an inclusive city through regulatory framework adaptation wherever possible. The private sector (formal, informal and customary) should play a major role. Women should participate to the full. The forum should play a number of roles, some of which are highlighted below;
- Prior to the development of layouts, participatory planning should be made the rule, including sharing of knowledge by the community and professionals. Formal layouts should take as their starting point the existing layout on the ground. Layouts should take as their lynchpin the development of infrastructure networks serving the entire city, including peri-urban areas, and the creation of blocks;
- Gender-sensitive analysis of local authority land-delivery procedures should be undertaken, and any necessary amendments introduced and enforced.

### Need for local public-private land information systems

- Land records and land administration should be undertaken locally through partnerships between the local authority and the community. By the same token, land information should not be confined to cadastral or tax information, where available, but should also include informal and/or customary land information and records, so that a local authority has a most comprehensive picture of any given city. This would prevent the allocation of land rights and land use to developers for areas already occupied; it would also help both regularization and management;
- Land audits should be undertaken to identify the legal status of any site or plot that is occupied illegally, and negotiations undertaken with relevant government departments and private owners holding the land. This cannot wait for the comprehensive development of full cadastral or land information systems, and instead should be started using paper maps, a cardex file and local knowledge.

### Local authority use of legal instruments

- Local authorities should review the legal instruments available, such as land readjustment, special zones for low-income groups and anti-eviction laws, and use them in a way that facilitates private sector land-delivery for low-income groups, and especially of areas already occupied. Local authorities should also enter into negotiations with other government departments to have land assigned to the local level;
- Lease agreements should be negotiated between local authorities and anyone occupying their land, with some specific standard conditions to protect lessor and lessee;
- Conflict management mechanisms should be created through partnerships between the local authority, NGOs and the communities. Issues that need to be resolved include occupation of private and public land, unsafe land, relocation, affordability of services and user cost recovery.

### Capacity building – local authorities

- Local authorities should improve their capacity to undertake any community development that may be associated with regularization, with community-local authority partnerships in general, as well as with land records and service maintenance;
- Local authorities should develop technical staff ability to undertake city-wide planning and servicing;
- Local authorities should develop their capacity to create and maintain land record systems, and to do this along a continuum ranging from sketch maps through to individual surveyed parcels, whatever is appropriate.

### Capacity building – NGOs and the community

- Capacity to run group-based tenure arrangements should be built in NGOs, communities and local authorities;
- Local communities should build capacity to run local land records and to undertake land administration;
- The development of NGOs should be encouraged and capacity should be built so that they can give technical assistance with respect to the fostering social cohesion and dealing with such diverse issues as land administration, land record-keeping, servicing and service maintenance, better understanding of rights, participatory planning, leases, eviction, gender issues and the management of group tenure arrangements;
- Para-legals and land administrators from the community should be trained to assist with land administration, legal advice and regularization as well as ongoing maintenance.

### **3.2.3 Action plan for Partners**

Recommendations for partners and their in-country Member Associations are as follows:-

#### Participation in framework review

- Partners in member countries should participate in the national and/or local stakeholders' forums in charge of reviewing regulatory frameworks;
- Where appropriate, partners should contribute to member countries' efforts to build knowledge of national regulatory frameworks.

#### Developing adequate expertise

- Where appropriate, partners should develop generic legal, technical, land information and planning solutions for supplying secure tenure and land access for low-income groups, and make them widely available in a form that is easily understood, so that they can be adapted to local needs. For this purpose they should support appropriate research and detailed documentation of existing best practice;
- Where appropriate, partners should ensure that member countries abide by internationally accepted rules and standards with regard to evictions, and that they support local NGOs as well as displaced persons, gender relations, etc.;

- Where appropriate and upon request, partners should supply technical assistance to both member countries and to UN-HABITAT, either at a generic level such as policy reviews, or in discussions over individual countries.

#### Capacity building

- Partners should develop staff capacities in central and local government, the private sector, NGOs and CBOs, and do so by way of a range of appropriate forums. Technical, legal, land administration, rules formulation and planning skills are critically short in many countries, as are community development skills;
- Partners should assist in the creation and support of NGOs dealing with urban land issues in member countries.

#### 3.2.4 Multilateral and bilateral agency support programmes

Recommendations are that multilateral and bilateral cooperation agencies should:-

##### Shift strategic focus

- Intervene directly at *city level*, and not just at country level;
- Encourage governments to adopt new regulatory frameworks for urban land that are simple, transparent, equitable, inclusive and gender-friendly, starting with the creation of a stakeholders' forum;
- Encourage governments to move away from public-sector to private-sector land delivery, thereby paving the way for a diverse range of land-delivery mechanisms;
- Encourage governments to adopt decentralized land management approaches.

##### Support decentralized partnerships

- Support gender programmes, both financially and through promotion, enabling women to obtain and inherit land;
- Encourage partnerships between NGOs, local authorities and CBOs in connection with any project they support.

##### Provide suitable assistance

- Provide appropriate technical assistance to develop land information systems. Such assistance should be based mainly on an understanding of the member state's regulatory framework and technical capacity, and adaptation and development of new technical approaches with partners. Emphasis should be on human capacity building and only later technical capacity building in the relevant country. Direct import of inappropriate technologies and techniques from developed countries should be avoided;
- Provide appropriate legal assistance to develop legislation, regulations, para-legals, a responsive judiciary and enhance due process throughout the administrative system, in connection with urban land for low-income groups;

- Support NGOs involved with urban land delivery and/or capacity building in this area, as well as those who fight the eviction of informal settlement residents without relocation options;
- Provide financial and technical support to get national and/or city level stakeholders' forums off the ground;
- Assist with capacity building in the areas of technical, legal and para-legal services, land administration, planning, land records and community development;
- Undertake capacity building in regulation design, administrative procedures and in the re-training of government officials on the job;
- Alongside local partners, provide financial support for the development of city-wide infrastructure networks and the regularization of cities, rather than focusing on one or two informal settlements and supplying capital for full titling and servicing;
- Assist in the development of national capacity to settle land-related conflicts;
- Provide human and financial support to developing countries' higher education institutions for appropriate re-training and curriculum development in the areas related to urban land delivery;
- Support research into generic legal and technical solutions that better supply secure urban land for low-income groups and assist in the dissemination of innovative solutions. Such solutions may include group tenure arrangements, more appropriate cadastral/LIS systems, better adjudication approaches, sound international legal opinion, and leases for women whose rights are nested within families.

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