

HOUSING THE URBAN POOR IN DEVELOPING COUNTRIES: SELECTED LEGAL ISSUES IN THE PROVISION OF SERVICED LAND AND SHELTER*

I. INTRODUCTION

The unprecedented urbanization currently transforming the developing world is difficult to comprehend. In 1974, the urban population in developing countries was approximately 770 million.¹ By 2000, nearly one billion additional persons will inhabit cities in the developing world.² Although rates of urbanization and of popu-

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¹ UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *WORLD POPULATION TRENDS AND POLICIES, 1977 MONITORING REPORT: POPULATION TRENDS* 113, U.N. Doc. ST/ESA/SER.A/ 62 (1979) [hereinafter cited as UN, *POPULATION TRENDS*]. The following table, which defines global urbanization trends, is taken from the 1979 U.N. report:

Urban Population and Percentage of Urban in Total
Population, the World, the More Developed and
the Less Developed Regions, 1950-1975

	1950	1960	1970	1975
	<u>Urban population (millions)</u>			
World total	719	1011	1354	1560
More developed regions	460	590	724	790
Less developed regions	259	421	630	771
	<u>Percentage urban in total population</u>			
World total	28.7	33.9	37.5	39.3
More developed regions	53.6	60.5	66.8	69.8
Less developed regions	15.8	21.0	24.9	27.2

Id. at 113 (Table 29).

² U.S. AGENCY FOR INT'L DEV., OFFICE OF HOUSING, *PREPARING A NATIONAL HOUSING POLICY* (1977) [hereinafter cited as USAID, *HOUSING POLICY*]. Several criteria are used for distinguishing urban areas, including:

1. administrative—areas under a municipal form of local government;
2. ecological—areas having at least a certain population size or density; or

lation increase vary among regions³ and countries, most authorities estimate that about half of the current urbanization is caused by rural to urban migration, while the remainder is due to natural increases of population.⁴ Accompanying this staggering growth of overall urban population has been the continual increase of concentration in the "primate cities"⁵ of the developing world. As major centers for economic and political activity,⁶ primate cities exert a powerful gravitational pull, principally in the migrant's

3. economic—areas with a predominately non-agricultural work force.

UN, POPULATION TRENDS, *supra* note 1, at 111. See *Statistical Definitions of Urban Population and Their Uses in Applied Demography*, in UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, DEMOGRAPHIC YEARBOOK, 1972, at 5-12, U.N. Doc. ST/STAT/SER.R/1 (1972).

³ For example, Latin America, which had an urban population of about 20% in 1900, is now more than 50% urbanized and is projected to have 80% of its population living in urban areas by 2000. Southeast Asia is only about one-quarter urbanized. WORLD BANK, WORLD DEVELOPMENT REPORT, 1979, at 72 (1979). Differences among regions in level and rate of urbanization are indicated in the following table:

Urban Population, Percentage Urban of Total Population,
and Annual Rates of Urban Growth, 1970-1975

	Urban population (millions)		Percentage Urban in total population		1970-1975 Annual Urban Growth Rate (Percentage)
	1970	1975	1970	1975	
Developing Regions	630.0	770.7	24.9	27.2	4.0
South Asia ^a	199.8	244.9	19.5	21.1	4.1
East Asia ^b	189.5	224.4	23.0	25.1	3.4
Latin America ^c	132.5	164.2	53.7	57.6	4.3
Northern Africa and Western South Asia	61.5	77.6	37.9	41.7	4.7
Africa ^d	46.1	58.6	17.3	19.3	4.8
Developed Regions ^e	724.2	789.6	66.8	69.8	1.7

Note: Because of rounding, figures do not always balance.

^a Excluding Western South Asia

^b Excluding Japan

^c Excluding Temperate South America

^d Excluding Northern Africa

^e Excluding the USSR

UN, POPULATION TRENDS, *supra* note 1, at 114 (Tables 30 and 31).

⁴ WORLD BANK, URBANIZATION 3, 9-10 (Sector Working Paper 1972); US AGENCY FOR INT'L DEV., DEVELOPMENT COORDINATOR'S COMMITTEE REPORT 147 (1979).

⁵ Primate cities dominate a country's economic, social and political functions. These metropolises are the center of national government and usually receive priority in terms of investment resources.

⁶ Bangkok is perhaps the classic example of a primate city. With a population of about five million people, it is more than fifty times larger than Chiang Mai, Thailand's next most populous city.

perception of better employment possibilities and the opportunities for higher income. Additional forces are the push factors of rural stagnation and deprivation. Due to the sheer magnitude of their population growth,⁷ primate cities experience special difficulties in their efforts to cope with the problems of urbanization, including the land and housing policies that serve as the focus of this Note.

Probably the most visible results of the rapid urbanization in developing countries in recent decades are the conditions in which low-income families exist. Slums and squatter settlements are the products of complex and interrelated factors. They lack basic and essential services, yet serve as homes for a growing percentage of urban poor, ranging from twenty to more than fifty percent of the total population of many cities.⁸ Not only do squatter areas already comprise a significant percentage of housing stock in most cities but, in many cases, such areas are growing even more rapidly than the cities themselves. For example, while Metropolitan Manila's overall growth rate was approximately 6% during the period 1950-1970, squatter areas, which totalled about 25% of the population, were increasing at an annual rate of 12%.⁹ Unable to compete in the chaotic formal land and housing markets, the poor resort to whatever means and whatever areas are available to provide themselves with shelter. The result is overcrowded slums at the city's core and sprawling shanty towns located on the periphery of the metropolis and at scattered locations unsuitable for other purposes.¹⁰ Typically, the occupants of squatter settle-

⁷ Striking examples of the rapid urbanization of primate cities include Manila, Karachi and Bogota, which increased by 2.8, 3.3 and 3.7 times, respectively, during the period 1950-1970, less than one generation. Crooke, *Housing and Settlement*, in *PLANNING FOR GROWING POPULATIONS* 103 (R. Cassen & M. Wolfson eds. 1978).

⁸ O. GRIMES, *HOUSING FOR LOW-INCOME URBAN FAMILIES* 116-117 (Table A1) (1976).

⁹ Magavern, *Law and Illegal Urban Settlement in Manila*, in *Law and the City* 46 (East-West Center/Open Grants Paper No. 3, 1975); Yeh & Laquian, *Policy Trends and Prospects*, in *HOUSING ASIA'S MILLIONS* 181, 182 (S. Yeh & A. Laquian eds. 1979).

¹⁰ Squatter settlements can be classified in three broad categories:

1. spontaneous settlements—areas that gradually evolve into low income communities after the initial success of a few occupants;
2. land invasions—organized group action to occupy an area, often carried out at night; and
3. clandestine subdivision—established by landowners who sell cheap lots to poor families without providing the infrastructural services required by regulation.

A. PORTES & J. WALTON, *URBAN LATIN AMERICA* 58-59 (1976). While living conditions in slum and squatter areas are grossly inadequate, settlements in and around the city center have one crucial advantage over settlements on the urban fringe—access to employment opportunities.

ments build their own shelter from any available materials, usually second-hand, and either do without basic amenities or acquire them through the popular sector, usually at much higher prices than those paid by middle-income neighborhoods serviced by the government.¹¹ Since most squatter settlements are unlawful—the occupants live on public or private land and pay little or no rent—authorities traditionally have refused to provide public services to the areas for fear of encouraging more migration.

Underlying the proliferation of squatter and slum areas is a fundamental urban land crisis. Lack of effective planning; domination of the land market and of land use patterns by the private sector; emphasis by the construction industry on high profit luxury housing; zoning and subdivision controls that do not reflect the needs of the entire population; overall scarcity of urban land;¹² and rampant land speculation,¹³ among other factors, have led to a housing and land market which excludes the poor and forces them to resort to slums and squatter settlements. Consequences of this urban land crisis extend beyond the denial of the needs of low-income groups. Related problems with broad implications include inefficient land use patterns for the city as a whole¹⁴ and the additional burden on local government to acquire land for public purpose at fair rates of compensation.

¹¹ An example of this problem occurs in low income neighborhoods which are not serviced by public water systems. Vendor-supplied water, although often unsanitary, is several times more expensive than publicly supplied water, even when the latter is not subsidized. See note 38, *infra*.

¹² Although in theory urban land supply is elastic, since cities can continue to expand outward, this is not the case in developing country cities, due to the severe financial constraints on the efforts of public authorities to urbanize new land by making requisite infrastructural investments.

¹³ Land speculation has become increasingly widespread in developing cities, for various social and economic reasons, including: lack of alternative investments in productive enterprises; a tremendous rate of return due to continually escalating land values; and low risks in land investment. PORTES & WALTON, *supra* note 10, at 28. Examples of the tremendous return potential of land investment include Cairo, where land values rose about 50% per year during the mid-1970's; Manila, where investments in some areas of the city yield 30% annual returns; and Mexico City, where land on the periphery returns 15-50% annually. ARAB REPUBLIC OF EGYPT, MINISTRY OF HOUSING AND RECONSTRUCTION, MINISTRY OF PLANNING, *with* U.S. AGENCY FOR INT'L DEV., OFFICE OF HOUSING, REPORT OF THE JOINT LAND POLICY TEAM: URBAN LAND USE IN EGYPT 30 (1977) [hereinafter cited as URBAN LAND USE IN EGYPT]; H. DARIN-DRABKIN, LAND FOR HUMAN SETTLEMENTS 47, U.N. Doc. ST/ESA/69 (1977); Cornelius, *The Impact of Cityward Migration on Urban Land and Housing Markets*, in THE CITY IN COMPARATIVE PERSPECTIVE 261 (J. Walton & L. Masotti eds. 1976).

¹⁴ An example of the inefficiency resulting from speculation in urban land is the phenomenon of "leap frog" development, where central city land that is needed for development remains underutilized because the owner expects a larger profit by waiting to sell or

This Note analyzes various policy options available to developing countries to deal with the needs of the urban poor for adequate space, shelter and services. Housing is viewed in the broader context of the total living environment, including land, infrastructure and amenities, community services, and access, as well as the actual shelter structure. The examination of government responses to the housing problem begins with a description and evaluation of various policies to provide low income housing and to make land available for all of the needs of each segment of the population. The discussion then focuses on the legal framework underlying these government policies and analyzes some suggested reforms for improving the impact of the response. An attempt will be made to analyze the potential and actual impact of various policy instruments currently being used in the developing world or suggested by scholars. Throughout the discussion it should be apparent that the variety of systems of land tenure and the relative strengths of government authorities and the private sector are major factors in the formulation and implementation of a country's housing and land policies.

II. CONVENTIONAL POLICY RESPONSES TO HOUSING NEEDS

Traditional responses of public authorities in the developing world to the space and shelter needs of the urban poor have varied from attitudes of benign neglect and inaction to misguided attempts at heavily subsidized public housing programs. Although housing usually has been relegated to low priority budgetary status, the extreme visibility of the growing squatter and slum areas has catalyzed most governments into at least token action against what is often simplistically termed the "housing problem." Typically this approach has resulted in policies that go more toward soothing the aesthetic sensibilities of the higher income groups than toward providing meaningful solutions to the needs of lower income families. Although the growing indications of a new, more responsive approach to these needs serve as the major focus of this Note, it is instructive first to examine the reasons for the lack of success of traditional approaches.

develop the plot. Several developing cities demonstrate this problem. Sixty-four percent of the land in metropolitan Manila was defined as underdeveloped open land. U.S. AGENCY FOR INT'L DEV., OFFICE OF HOUSING, 1 PHILIPPINES SHELTER SECTOR ASSESSMENT 86 (1978) [hereinafter cited as USAID, PHILIPPINES SECTOR ASSESSMENT]. About 40% of the land in metropolitan Bangkok is vacant or underdeveloped. See Chayachinda, Hirikul & Pekanbaru, *Overview of Housing Conditions and Housing Needs*, in HOUSING IN THAILAND 4 (W. Nathalang ed.).

Squatting and slum-dwelling traditionally have been viewed as a problem which can be remedied by eradicating low income settlements and relocating the inhabitants elsewhere. The result of such action is a further depletion of the city's already acute shortage of housing stock and, in many cases, the low income population eventually has resettled in the cleared area.¹⁵ Similar failures have been encountered by most governments which have relied on the heavily subsidized public housing approach. Public sector house building generally has not had a significant impact on the availability of housing for the urban poor, due to several reasons. Most governments do not have the financial resources to provide enough conventional or standardized housing for everyone.¹⁶ Rigid design standards are based more on upper and middle class values¹⁷ than on either the priorities or ability of the target population to pay.¹⁸ Finally, inflexibility of zoning and building control

¹⁵ Such was the case in the ill-fated attempt by the Manila government in the 1960's to resettle the residents of the center city slum, Intramuros, and of the Tondo Foreshore squatter settlement, to Sapang Palay, a site 30 miles from the center of the city. Like many other similar slum clearance/relocation schemes, inadequate planning and coordination among authorities resulted in the lack of infrastructure and basic services. Another major problem was the inaccessibility of the peripheral location to transportation facilities, markets and sources of income. About two-thirds of the settlers eventually abandoned Sapang Palay and returned to land in the city center to resume squatting. Magavern, *supra* note 9, at 46-50.

¹⁶ For example, consider the following statement by Mr. Enrique Penalosa, of the United Nations Center for Housing Building and Planning:

Let me use the example of India. In that country some years ago, a United Nations team working with Indian officials designed a basic housing unit for a family of five that would be used as a target for a government housing program arising at satisfying the most minimum needs. But, simple arithmetic showed that more than two-thirds of the people in the country lived in conditions below to so set minimum and bringing all Indians' housing up to such a minimum would cost several times the entire government budget for several years. In short, it was an impossibility.

Statement to the Seminar on Land Use Policies, at 8, in Stockholm, Sweden (1978).

¹⁷ There are numerous examples of subsidized, high standard public housing projects serving a small portion of the population, while the majority of the poor live in unlawful slum and squatter settlements. One case is that of Lusaka, Zambia, where the city council-built houses "consisting mostly of four or five habitable rooms, living room, kitchen/dining room, two or three bedrooms, a WC, shower and electricity." Martin, *Housing Options, Lusaka, Zambia*, 44 EKISTICS 89 (Aug. 1977). This standard of public housing was followed during a period in which the city built only 7,000 houses while its estimated housing need was for 57,000 units.

¹⁸ While some building regulations are necessary, unrealistically high standards often aggravate the housing situation by widening the gap between rents and ability to pay. "Every regulation that raises costs, unless compensated for by a rise in real income or subsidies, removes another segment of the population from the group which can afford to own a house." Courtney, *Urban Land Use Regulation*, in II URBAN LAND POLICY ISSUES AND

instruments are based more on Western notions of proper physical appearance than on the social and economic needs of the poor who are to inhabit the projects.¹⁹

These misguided government efforts have produced effects that have fallen far short of expectations and needs. In many cases, rather than alleviating the housing shortage or making significant progress in the situation, the exact opposite has occurred. Two examples can be seen in the cases of Manila and Bangkok. From 1948 to 1972, the Philippine government's public housing program built only 13,500 units while the same authorities demolished existing housing stock in squatter areas. Meanwhile, the urban poor in the city were increasing at a rate of approximately 12% per year.²⁰ Bangkok's public housing program was even less effective in terms of output. Between 1940 and 1973, the Royal Thai Government completed only 8,700 heavily subsidized, high standard units.²¹ The principal beneficiaries of publicly subsidized, high standard housing often have been middle-income groups with official or military connections, while the lower-income families have continued to exist in settlements far below even minimal standards. Throughout the developing world, public housing has consistently failed to provide for the low income groups for whom it was intended. In Manila, for example, even with a significant government subsidy the cheapest official housing units were not affordable by households in the lower half of the income distribution.²² In Bogota, the cheapest available housing unit is unaffordable to 47% of the population,²³ while in Mexico City the lowest

OPPORTUNITIES 141 (World Bank Staff Working Paper No. 283, 1978). Many developing cities have borrowed housing codes directly from Western cities without taking into account fundamental differences in climatic, social, and economic factors. For example, a city in Turkey attempted to borrow a German building code, "which was abused, ignored, and eventually proved worthless." *Id.* at 140. A 1952 building sanitation code in Colombia was almost an exact copy of a United States code. Penalosa, *supra* note 16, at 9.

¹⁹ This type of approach restrains the ability of the poor to earn a living in the informal sector, such as cottage industry or street hawking. An example is found in Bombay, where the building code prohibits the use of any part of a building intended for human habitation as a "godown, warehouse, work shop, work place, factory, stable or a motor garage." Bombay Municipal Corporation Act § 347 B (1888) (1976 ed.).

²⁰ See note 10, *supra*. See also USAID, PHILIPPINES SHELTER SECTOR ASSESSMENT, *supra* note 14, at 75.

²¹ U.S. AGENCY FOR INT'L DEV., OFFICE OF HOUSING, REVIEW OF THE POLICIES, PROGRAM AND STRATEGIES OF THE NATIONAL HOUSING AUTHORITY OF THAILAND 5 (1978) [hereinafter cited as USAID, REVIEW OF THAILAND POLICIES, 1978].

²² J. LINN, POLICIES FOR EFFICIENT AND EQUITABLE GROWTH OF CITIES IN DEVELOPING COUNTRIES 232 (World Bank Staff Working Paper No. 343, 1979).

²³ GRIMES, *supra* note 8, at 70.

40% of the population cannot afford the cheapest government-provided low-income housing.²⁴

One of the major reasons for the failure of many government policies is the tendency of authorities to view housing needs strictly in terms of shelter structure, an attitude that is reflected in the demolition/relocation/mass public housing syndrome that has characterized many developing countries' strategies in the past. The exclusive emphasis on shelter diverts attention from concerns more crucial to a family's entry into the urban community, particularly the concern of location. Access to markets, schools, public transportation, and sources of income are often much more important to a newly-arrived migrant family than are the physical comforts of its dwelling. Thus, public housing projects located on the metropolitan periphery and not integrated with social and economic opportunities may be far less beneficial to low income groups than the slum and squatter settlements closer to the center city. This view of housing problems in isolation from land policy issues is also reflected in the inability of most governments in the developing world to control effectively the patterns of urban land use. Although there are recent indications of change in some countries, most government urban land policies have not dealt successfully with the mounting problems of speculation, rapid increases in value, and land use patterns that reflect only the interest of the private sector elites at the expense of general social needs.

Many factors account for the failure of governmental attempts to make the urban land situation both more efficient and more equitable. Chief among them is the misguided adoption of Western models of planning and control, which are grounded on fundamentally different assumptions than those which currently are true of the exploding primate cities of the developing world. For example, Western-based models are predicated on a fairly stable level of population growth, far from the dynamic context of developing cities, which are doubling in size every ten to fifteen years.²⁵ With few exceptions,²⁶ most developing cities lack not only the ad-

²⁴ Cornelius, *supra* note 13, at 260. Only 6% of Mexico City's inhabitants live in public housing, while nearly one-half of the population live in slums and squatter settlements. *Id.* See also Grimes, *supra* note 8, at 118.

²⁵ See note 9, *supra*.

²⁶ Planned new cities, such as Brasilia, and the two Southeast Asian metropolises of Hong Kong and Singapore, provide major exceptions to the general experience of ineffective governmental attempts to control land use in a mixed economy. The obvious distinction in the case of the new cities is the fact that they are planned from their inception, while

ministrative capacity to accurately plan for rapid urban growth, but also the institutional ability and political will to implement meaningfully the prepared plans. Thus, instead of achieving the stated objectives of land policy, the inevitable result is the chaotic land use patterns found in most developing cities today. Similar institutional and political constraints traditionally have hampered governmental efforts to curb speculation through taxation policies²⁷ and to participate actively in urban land markets to achieve social objectives.²⁸

Beyond the fact of the generally ineffectual attempts by governments to supply shelter to the urban poor, it can be argued that these efforts actually have harmed the low income groups intended to be benefitted. Obviously, squatters who are displaced by eradication policies are harmed if not provided with adequate substitute accommodations. Often no alternative is provided, a policy which merely moves the problem elsewhere while aggravating the overall depletion of housing stock. Even where governments do seek to provide relocation housing, policies usually reflect the priorities and prejudices of their middle class formulators rather than the preferences of the urban poor. Housing projects traditionally have emphasized shelter and utilities while ignoring the elements of location (e.g., access to urban amenities and opportuni-

authorities in the primate cities of the developing world have to contend with tremendous population pressures on established, private sector dominated land and housing situations. Rivkin, *Some Perspectives on Urban Land Use Regulation and Control*, in II URBAN LAND POLICY ISSUES AND OPPORTUNITIES 114 (World Bank Staff Working Paper No. 283, 1978).

While both Hong Kong and Singapore have extremely successful land and housing policies, both are fundamentally different in some crucial respects from other developing cities. In addition to relatively high per capita income, both cities have highly trained and dedicated administrative staffs to implement government programs. This contrasts sharply with the under-financed, under-trained municipal operations in most developing cities. Furthermore, the central role of government in shaping land use patterns is generally accepted by the populace, including the landholding establishment. This political willingness to promote a high degree of social control over land probably is due in part to the British heritage of both cities, and the corresponding acceptance of traditional forms of master planning as a control device. In addition, the objective scarcity of potentially urbanizable land contributes to the consensus regarding the necessity of a significant governmental presence in the urban land situation. *Id.* at 102. The governments of Hong Kong and Singapore can provide other countries with strategic insights, particularly on the issues of accessibility of low income shelter to urban facilities; realism in the physical design process; and the encouragement of small-scale industry in housing projects. However, their solutions are by no means directly transferable to other developing cities without allowing for institutional, economic and political differences. *Id.* See Linn, *supra* note 22, at 68.

²⁷ See text at IV(A)(3), *infra*. See generally Shoup, *Land Taxation and Government Participation in Urban Land Markets*, in I. URBAN LAND POLICY ISSUES AND OPPORTUNITIES 54 (World Bank Staff Working Paper No. 283, 1978).

²⁸ See text at IV, *infra*.

ties) and of space (e.g., expansion of the structure, income producing activities, and replication of some aspects of rural life, particularly family gardening and animal raising).²⁹ One recent study described housing priorities among various levels of the low income population as follows:

The poorest (e.g., fresh migrants) are mainly interested in location. Being near job markets saves on transport costs. In their initial uncertainty, the only security they are interested in is job security. Their meager income only allows for food consumption and other bare essentials in a kind of lexicographic ordering. The only amenity they need is space for sleeping. The next group, with a reasonably stable income but still not well-off, is interested in security of tenure. This group is willing to trade location for security of tenure. A temporary job loss or other economic misfortune does not then mean displacement of residence as well. They are also more interested in space than amenity and are willing to pay for it. Finally, the richest income group is more interested in amenity, having a stable income and subsistence essentials. Electricity, plumbing, well-designed houses, and recreation then become important and will be demanded by this group.³⁰

The disparity between the needs of the urban poor for a living environment and the shelter provided by authorities helps explain some of the negative effects of the traditional approach.

In addition to harming low income groups, traditional methods tend to enrich primarily middle and upper income groups. Systematic repression of the informal sector through demolition, unrealistic building and subdivision regulations, and rigid zoning controls bolsters the formal sector, i.e., the construction and building materials industries, which rarely are responsive to the needs of low income groups. Reliance on the public and formal private sectors for house building and the corresponding discouragement of the popular sector has contributed directly to the greatly inadequate supply of legal housing units available for low income groups. Private construction companies tend to concentrate on more profitable high income housing and avoid the low income housing market, which is further depressed by unrealistically high building standards far beyond the means of the poor. Other

²⁹ LINN, *supra* note 22, at 208.

³⁰ Mohan, *Urban Land Policy, Income Distribution and the Urban Poor*, in *INCOME DISTRIBUTION AND GROWTH IN THE LESS-DEVELOPED COUNTRIES* 446 (C. Frank & R. Webb eds. 1977), cited in LINN, *supra* note 22, at 208.

adverse effects of the emphasis on these low yielding sectors to supply low income housing include the bidding up of building material costs and the failure to fully utilize a vastly under-emphasized labor pool, the residents of low income settlements themselves.³¹ Furthermore, the inability or unwillingness of authorities to control land use patterns or to recapture a portion of the largely socially created increase in value that accrues to speculators favors only increasingly concentrated landholding groups while aggravating the plight of growing numbers of landless poor. Thus, in many countries, traditional housing policies have not only proved ineffective, they have exacerbated the situation by harming the urban poor while benefiting higher income groups.

III. NEW DIRECTIONS IN HOUSING POLICY

Within the past decade, policy makers have begun to realize the futility of traditional efforts and have started to search for more effective alternatives. Throughout the developing world, governments are utilizing new approaches to deal with the housing needs of the urban poor. The overriding theme of the recent trends involves a re-examination by the public sector of its proper function in the provision of housing for low income groups. Rather than merely transplanting Western notions of highly standardized and subsidized public housing projects, while simultaneously destroying existing housing stock, some governments are reassessing the allocation of their scarce financial resources available for housing. New directions in housing policy focus on the performance of informal sector construction activities. Some governments have begun to encourage these efforts, rather than destroy them, by initiating programs that provide security of tenure for squatters while introducing infrastructure, utilities and community services into existing communities.³² This strategy attempts to reach even

³¹ LINN, *supra* note 22, at 261.

³² Two of the earliest programs of this type to impact substantially on living conditions in low income areas where the Bustee Improvement Program in Calcutta, begun in the early 1960's and the Kampung Improvement Program in Jakarta, which originated in 1969. Both projects began with the assumptions that the city could not provide publicly built housing for all of its poor and that the only way of reaching a significant number of families was to provide essential utilities and services, at admittedly reduced levels, to low income neighborhoods. The success of these projects foreshadowed the directions that emerged in the 1970's. Since 1969, Jakarta has extended services to about two-thirds of its low income settlements through the Kampung Improvement Program. WORLD BANK, WORLD DEVELOPMENT REPORT, 1979, *supra* note 3, at 81. The initial target for Calcutta's Bustee Improvement Program was just over one-half the low income population, but political fluctuations in India prevented the achievement of that objective. D. DWYER, PEOPLE AND HOUSING IN THIRD WORLD CITIES 220 (1975).

the lowest income groups³³ in ways which are sensitive to their priorities and ability to pay.³⁴

One way of understanding the new approach is that of redefinition of the housing problem itself. Instead of the traditional view of slum and squatter settlements as an ugly blight on the landscape that should be removed when feasible and neglected when not feasible, the more recent view emphasizes the attributes of these communities that benefit the residents and stresses the enormous potential of individual construction initiative. Authorities are beginning to recognize the fact that squatters themselves have provided their own solution to their shelter needs at rudimentary levels, even in the face of the heavy constraints placed upon them by traditional policies. The problem for authorities, viewed in this light, becomes one of developing policy instruments that can fully harness the potential of the popular sector in its provision of shelter.

Rather than housing policies based on government subsidized shelter provision, the emphasis has shifted to sites and services projects and slum and squatter upgrading programs. "Sites and services" is a phrase which covers a variety of specific applications of a general concept: the assembly by public authorities of raw land for low-income settlements, government provision of basic infrastructure and service systems which are capable of be-

³³ This is in contrast to the actual beneficiaries of traditional mass-housing approaches—usually middle income groups, often with official connections. WORLD BANK, WORLD DEVELOPMENT REPORT, 1979, *supra* note 3, at 81.

³⁴ The recent rethinking of housing policy is an important corollary to the "basic needs" strategy advanced by the World Bank and other institutions as an overall approach to the alleviation of absolute poverty. USAID, the World Bank, regional development banks, the United Nations, and other international organizations have embraced the recent concepts of dealing with urban housing problems. The United Nations Conference on Human Settlements (HABITAT), held in Vancouver in May and June, 1976, served as a forum for discussion and resulted in a detailed set of 64 recommendations unanimously adopted by representatives of 132 nations. The HABITAT Conference clearly demonstrated the enthusiasm of the developing world in calling for recognition of urban land as a natural resource subject to greater public control than other economic commodities; and a greater role of government in the provision of land, infrastructure and services for the urban poor and in assisting the development of the informal sector construction industry, with a corresponding promotion of indigenous building materials and techniques. UNITED NATIONS, REPORT OF HABITAT: UNITED NATIONS CONFERENCE ON HUMAN SETTLEMENTS, U.N. Doc. A/Conf/70/15 (1976) [hereinafter cited as REPORT OF HABITAT]. Less clearly demonstrated is the existence of the political will to follow through on the recommendations of the HABITAT Conference at the national and local levels. There is no doubt, however, about the impact of the conference in generating interest and directing attention toward the vast and increasing housing needs of the urban poor and in providing goals towards which developing nations can strive.

ing expanded and improved over time, and the provision of technical and other assistance to the settlers in constructing their own shelter structures. In practice, the phrase has been applied to such diverse projects as public assembly of raw land alone and to the provision of core housing units, with most programs falling somewhere within this broad range of policy responses.³⁵

Squatter and slum upgrading programs seek to improve existing low income settlements. Upgrading programs introduce varying levels of infrastructural services, depending on local need and financial capacity, to low income settlements and provides the residents with some level of secure tenure. Official commitment toward visibly upgrading the living conditions of urban poor in accordance with their actual priorities has been shown to encourage higher levels of private initiative in improving individual shelter structures. The shift in thinking is clear; instead of destroying existing housing stock under the pretext of "urban renewal," the policy has become one of legitimizing and expanding the role of the informal sector in providing low income shelter. "The objective is twofold: to bring these areas up to minimal public health standards and to provide the infrastructure base that will permit the residents themselves to reconstruct neighborhoods over time. Long term planning efforts now accept many of these existing settlements as given and restorable."³⁶ Due to their affordability to lower income groups than on the many sites and services projects, neighborhood upgrading programs will probably have the greatest impact in the years ahead.

Both approaches use public funds not to repress the house building activities of the urban poor but to complement and support them. The government's role is seen as assembling the elements of housing that require public provision—land, basic utilities and community services. Both approaches are grounded on the premise that the quality of the total residential environment is at least as important as the quality of the shelter structure itself. More members of low income groups are likely to benefit meaningfully by overall improvements to their neighborhood such as electricity, safe water supply, adequate sewage disposal facilities, roads and footpaths, and increased provision of community facilities such as schools, markets and recreation space.³⁷

³⁵ See generally WORLD BANK, SITES AND SERVICES (1974).

³⁶ M. Rivkin, Land Use Issues: The Significance of Housing. Paper presented at Shelter Training Workshop, USAID, Office of Housing, in Washington, D.C. (Nov. 5-30, 1979).

³⁷ See generally CROOKE, *supra* note 7, at 116; USAID, HOUSING POLICY, *supra* note 2.

The level of services provided in a sites or services or an upgrading project is a function of several factors: the existing level of services; the financial resources of residents and of the public authorities; and the priorities of residents. In many cases, effective demand for a low level of service is demonstrated by the existence of costly alternatives. For example, low income families may pay more for low quality water, hand-carried by vendor, than a piped-in supply would cost, a clear indication of effective demand for a service which could be provided by public officials on a more efficient but expensive basis.³⁸ Many water supply projects now seek to replace the inadequate and costly system of purchasing from private vendors with communal standpipes shared by several households. Individual connections are considered for the future, depending on the rise in income and the ordering of priorities of the residents.³⁹

In other cases, such as sewerage, alternatives to public provision of services may be non-existent or totally inadequate. In Jakarta, for example, before the massive Kampung Improvement Program originated, a large majority of the low income population had no facilities for sewage disposal other than canals and rivers. Construction of public toilet and washing areas, although lacking in privacy due to use by many families, was a significant improvement.⁴⁰ With sewerage, as well as other components of infrastructure, the crucial element is flexibility of design, which facilitates gradual improvement of standards as they become affordable.⁴¹

In determining the proper level of services, the guiding principle is the initial provision of the most essential services, however rudimentary, followed by gradual improvement and expansion as determined by the residents' desires and ability to pay. Acceptance of lower infrastructure standards in these programs usually is accompanied by official tolerance of lower shelter standards. Again, the major premise of the approach is that house building is a dynamic process that reflects the changing income and priorities of the residents; these factors might result in relatively low standards of construction, particularly in the initial stages.

³⁸ Shoup, *supra* note 27, at 23.

³⁹ LINN, *supra* note 22, at 251-252.

⁴⁰ II HABITAT ASIA: ISSUES AND RESPONSES, INDONESIA AND THE PHILIPPINES 60 (R. Misra gen. ed. 1979).

⁴¹ Upgrading and sites and services projects cannot concentrate solely on provision of physical infrastructure, a concept illustrated by the following statement on Jakarta's squatter upgrading program:

The need to provide security requisite for development requires that a Kampung

Access to economic opportunities and community services is a crucial component of an effective sites and services or settlement upgrading project. Many programs actively encourage income producing activities within the project, such as shelter construction by residents,⁴² rental of extra rooms and development of small scale industrial and commercial pursuits.⁴³ Equally important is the location of sites and services projects near industrial areas, since industrial enterprises require both skilled and unskilled workers. However, this requires a high level of institutional coordination.⁴⁴ A significant advantage of the mixed-development concept is the financing technique of cross-subsidization. The cost of providing services for low income residential areas is reduced incrementally once major infrastructures such as roads and water systems are installed to service large industrial and commercial developments. The experience of Manila serves as a good illustration of the potential of cross-subsidization. In the Tondo Fore-

Improvement Program be viewed not as the provision of physical services alone — services such as roads or drainage — but as a comprehensive program which also deals with social and economic needs. The goal is to liberate the resources of the individual by allowing him a development foundation. Thus education, health care and security of land tenure may be more important than the mere provision of asphalt roads or foot paths.

FOUNDATION FOR COOPERATIVE HOUSING AND PLANNING AND DEVELOPMENT COLLABORATIVE INTERNATIONAL, TOWARD A NATIONAL POLICY FOR A KAMPUNG IMPROVEMENT PROGRAM, 10 (1976) [hereinafter cited as NATIONAL KAMPUNG IMPROVEMENT POLICY].

⁴² Emphasis on self-help and popular sector shelter construction activities and the encouragement of indigenous building material has two important effects: (1) The balance of payments is not negatively affected, whereas attempts at expensive technology and materials require large levels of imports, often 30-50% of total construction requirements; and (2) the massive unskilled labor force is utilized rather than the conventional emphasis on capital-intensive technologies. USAID, HOUSING POLICY, *supra* note 2, at 4.

⁴³ One of the most important lessons learned from the successful housing programs of Singapore and Hong Kong was their recognition of the residents' needs for access to economic opportunities. This resulted in the planning of housing projects near industrial estates and in the utilization of space within the projects for flatted factories, important generators of income. In Calcutta, almost ten percent of all rooms in bustees are wholly or partially places of work. DWYER, *supra* note 32, at 219. The Manila Slum Improvement and Resettlement Program Plans include training programs and loans for small scale business and cottage industries within the project area. USAID, PHILIPPINES SHELTER SECTOR ASSESSMENT, *supra* note 14, at 79.

⁴⁴ Evidence from many countries indicates that success of such developments depends on adequate planning to ensure a mix of socio-economic groups and, thus, various levels of skill within the labor force. DARIN-DRABKIN, *supra* note 13, at 88. An illustration of such an attempt is the development of "metrovilles" in Karachi. Each metrovillage is designed to house approximately 50,000 persons with standards appropriate to all income levels. Social integration within the project will be accomplished by offering three levels of accommodation: flats with basic communal infrastructure; sites with individual water connections and additional utilities; and standard single and multi-family houses. J. HERBERT, URBAN DEVELOPMENT IN THE THIRD WORLD 126-127 (1979).

shore area, even with high upgrading standards such as individual sinks and toilets, over half of the costs was expected to be paid by industrial and commercial enterprises occupying about 16% of the land.⁴⁵ In Thailand, the National Housing Authority plans to increase its activities in profit-making enterprises, such as shopping centers, within the projects. Recovery of market-based rents from commercial lessees will allow an indirect subsidization of low income services and shelter.⁴⁶ Another variation of the cross-subsidy involves charging premium rates for highly desirable lots, such as corner sites, as well as for lots intended for commercial and industrial use. The effects are twofold: promotion of integration among socioeconomic groups and increased ability of families in low income groups to bid for lots. In Morocco, this type of cross-subsidization made it possible for 90% of the residents in a project area to afford to participate in upgrading, whereas, without such an approach, only 70% could have afforded to participate.⁴⁷

Adequate arrangement of tenure rights is vital to the success of an upgrading or sites and services project. Security of tenure is a prerequisite to a scheme designed to encourage private initiative in general settlement improvement activities and in the construction of permanent dwellings. Without it, the threat of destruction is a formidable deterrent to long-term investment. Uncertain tenure rights can lead to periods of unproductivity, until the residents' perception of security rises to a level where they are willing to invest their labor and capital into housing which is as permanent as they can afford.⁴⁸ A comparison of the squatter settlements on either side of a major highway in Davao, the Philippines, demonstrates the significance of tenure standardization to the success of an upgrading program. On one side, title was awarded to occupants of the land; on the other side, it was not. On the former side, lot lines are regular, access is available to the public, streets and houses are of solid construction and are under constant improvement. On the latter side, "homes are flimsy and squeezed together in a helter-skelter fashion, with access only by meandering passageways."⁴⁹ Bogota's upgrading program also demonstrates

⁴⁵ 3 THE URBAN EDGE 3 (July 1979).

⁴⁶ NATIONAL HOUSING AUTHORITY (THAILAND) MINISTRY OF INTERIOR, POLICY AND DEVELOPMENT PLAN, 1978-1982 (DRAFT) 3 [hereinafter cited as NHA (THAILAND) DEVELOPMENT PLAN (DRAFT)].

⁴⁷ LINN, *supra* note 22, at 284.

⁴⁸ Doebele, *Selected Issues in Urban Land Tenure*, in I URBAN LAND POLICY ISSUES AND OPPORTUNITIES 125 (World Bank Staff Working Paper No. 283, 1978).

⁴⁹ Magavern, *supra* note 9, at 55-56.

the positive results that often follow commitments by authorities. Before the upgrading programs, about 80% of the houses were built of temporary materials. A few years later, 80% were constructed with permanent components.⁵⁰

Where low income settlements are located on privately held property, failure to confront the tenure issue can lead to the ironic result of the net value of the upgrading process accruing to the absentee landowner rather than to the intended low income beneficiaries. Should this occur, the absentee landowner then could evict the tenants and reap the rewards of the possibly substantial increase in value due to public investment in services and infrastructure. Thailand's National Housing Authority, aware of this problem, decided only to upgrade settlements where absentee landowners agree to give tenants twenty-year leases. However, the policy allows renegotiation of rents after five years; thus, the ultimate benefit still may accrue to the landowners. Recognizing the deficiency of such an approach, the NHA presently is seeking to gain the right of eminent domain for housing projects, but expects political and financial limitations to be a major constraint on its activities.⁵¹ Clearly, the ultimate incidence of benefits of a low income settlement program will depend largely on tenure arrangements in the project area.⁵²

The precise form of the legal interest granted the residents probably is not as important as their perception of security. However, public officials should be aware of the potential to control land use for social benefit through restrictions that can be attached to whatever tenure rights are granted the residents. The exact nature of the property interest held by the residents—freehold, leasehold or some combination of possessory interests—will depend on numerous factors, particularly traditional tenure arrangements in the country, the degree of security historically afforded holders of property rights, and political pressures. Most significant to the residents and to the city as a whole, however, are the elements of perception of security from removal and of retention of social control over land. In the modern context of the rapidly expanding primate cities, it often is necessary for low-density use of urban land to be transformed into higher densities.

⁵⁰ Crooke, *supra* note 7, at 122.

⁵¹ USAID, REVIEW OF THAILAND POLICIES, 1978, *supra* note 21, at 15-16. For a broader examination of problems associated with expropriation, see text at IV(B)(1), *infra*.

⁵² Shoup, *supra* note 27, at 21-22, 70.

⁵³ Doebele, *supra* note 48, at 125; see also text at IV(C), *infra*.

Tenure arrangements and infrastructure provisions in low income settlement prospects should be designed to facilitate these changes. Instruments granting tenure can, for instance, require commitments of specified levels of investment in housing or provide for future subdivision of plots once it is determined that a higher density use of the land is desirable. A careful balance in tenure arrangements must be reached, however, to ensure both adequate social control over land which may be needed later for public use and sufficient perception of security to stimulate private investment in the settlement upgrading process. In general, the residents should perceive a system within which, if they perform in specified and reasonable ways, they will not be removed without payment of compensation.⁵³

Whatever the return obligations demanded of the residents, governments should in turn ensure their non-removal, in order to maximize the potential of the popular sector in upgrading low income settlements. A successful low income settlement strategy requires the involvement of the residents themselves in the planning and implementation of the project. The participation of the groups to be served is a central concern of the new approach to housing policy. One of its ultimate goals is to reduce the gap between planner and resident in striving for policies that respond to real needs, rather than often inaccurate preconceived notions.⁵⁴

The trends of the past decade probably will become the orthodoxy of future low income settlement policies. The principles of the HABITAT movement, well-established for the last several years among the major lending institutions, now provide the basis for many housing strategies used throughout the developing world. Examples of commitment to the recent movement include

⁵⁴ To encourage community participation in the decisions of Lusaka's squatter upgrading program, leaders are elected, trained and assigned sections consisting of 25-100 houses. One report describes the planning process as follows:

With the assistance of the project staff, which includes community development workers, engineers and architects, the leaders take neighborhood walking tours to explore the potential location and direction of roads and other infrastructures. Decisions are not reached until the residents have had a chance to discuss the proposals and make recommendations for change. Particular attention is paid to the objections and concerns of people whose houses are affected by the proposals. If necessary, those not wishing to move may exchange their houses with less reluctant neighbors. Various incentives are provided to those willing to move, particularly the opportunity to build a bigger and better house. Each section is given about one hectares, which participants may use as they wish. While technical advice is available, the planning process is perceived as the responsibility of residents, including deciding on the proportions of land to be used for roads, playgrounds, community facilities, etc.

Upgrading in Lusaka, 3 THE URBAN EDGE 6 (July 1979).

Thailand, the Philippines, Indonesia and India.⁵⁵ While preferable to the unresponsive and under-financed attempts of the recent past, the new approach should not be regarded as a total abandonment of those techniques. For example, relocation may be inevitable, due to topographical factors, or when certain settlements impede national urban development. Some provisions of subsidized, publicly constructed shelter units may be necessary in a nation's overall urban housing policy.⁵⁶ But the principles of the HABITAT movement of the 1970's should be followed closely and the mistakes of the past avoided. Official sensitivity to the real needs of the urban poor, such as access to amenities, basic services and flexibility of design, should extend to the portions of settlement policy that retain traditional techniques.

Although properly conceived and implemented programs can help attain social and economic goals, as well as raise physical

⁵⁵ In Thailand, even with a 1975 declaration by a new government that housing for the poor was to be a top priority issue and an ambitious five-year plan to build 120,000 high standard, heavily subsidized units, the Thai government completed only 6,482 units by 1978, with about 24,000 additional units under construction. Realizing the failure of this program, the new housing plan unveiled in 1979 indicated a dramatic shift in direction. The key elements of the new program include: incentives to the private sector that induce their participation in the low income housing markets; sites and services projects; some core housing; and settlement upgrading programs. Thailand's government generally seems to have accepted a much lesser role in the provision of shelter units and an increased presence of other elements in the housing market. NHA (THAILAND) DEVELOPMENT PLAN (DRAFT), *supra* note 46, at 201; USAID, REVIEW OF THAILAND POLICIES, 1978, *supra* note 21, at 5-10. The Philippines, encouraged by the impact of its project in the Tondo Foreshore area of Manila, has made a similar commitment to the newer strategies, as indicated in a recent announcement by the National Housing Authority. Approximately half of its funds are devoted now to squatter upgrading programs, with the balance fairly equally divided between new sites and services projects and the provision of fully completed housing units. 3 THE URBAN EDGE 3 (July 1979). Authorities in Indonesia and India also report greater emphasis on improvement of existing housing stock and development of sites and services projects, with a corresponding decline in publicly built and subsidized shelter units. DEPARTMENT OF PUBLIC WORKS PERUM PERUMNAS (INDONESIA), SHELTER DEVELOPMENT IN INDONESIA 2; Rivkin, MINISTRY OF WORKS AND HOUSING REPORT FOR 1977/1978, at ii (1978) (India); Rivkin, *supra* note 36.

⁵⁶ Egypt's retention of some government subsidized shelter provision in its current housing policy illustrates the gradual assimilation of the principles of the new approach. The traditional public rental housing program provided relatively spacious, high-standard units to a small number of households with a significant subsidy, a policy that failed to provide for the housing needs of large numbers of urban poor. The government's more recent strategy involves the provision of core housing and infrastructure to each income group of the population. While not yet fully formulated, a start toward that objective is reflected by a regulation which requires 70% of public housing units to be 45 square meters or less in size and targeted for the lowest income groups, while the remaining 30% of housing units may not exceed 60 square meters and must be targeted to the next highest income group. ARAB REPUBLIC OF EGYPT, MINISTRY OF HOUSING AND RECONSTRUCTION, MINISTRY OF PLANNING *with* U.S. AGENCY FOR INT'L DEV., OFFICE OF HOUSING, REPORT OF THE JOINT HOUSING TEAMS: SUMMARY REPORT 20 (1977).

standards, broad replicability requires careful avoidance of the harmful administrative and institutional tendencies that plague governments of nations at each stage of development. Examples of consistency between the new housing programs and a country's socio-political objectives can be found in Indonesia and Zambia. The self-help emphasis of sites and services projects is consistent with Indonesia's Basic Housing Law, which proclaims a right to decent housing for all citizens and a concomitant duty to further that objective commensurate with an individual's ability.⁵⁷ The official explanation of the law states that this is consistent with the traditional Indonesian principle of *gotong royong*, a concept of self-sufficiency and cooperation. The Zambian government also stresses self-reliance in its emphasis on the sites and services and upgrading approaches to the urban housing problem, a strategy that is central to the government's conception of "Zambian Humanism." It also has utilized the sites and services approach to promote its ideal of socially integrated neighborhoods, in which members of all income groups reside.⁵⁸

Attainment of social goals through the new housing programs may be hampered by rather common administrative problems of developing countries. Institutional problems of coordination and implementation, inherent in any bureaucratic system, are more critical in many developing countries, where government agencies often work under severe financial and administrative limitations. Aside from these constraints, several tendencies of government sponsored programs should be avoided if the recent housing trends are to have widespread impact. Large scale sites and ser-

⁵⁷ Law No. 1 of 1964, ch. 1, art. 1 (Indonesia).

⁵⁸ G. Simwanga, Integrated Residential Housing 122-124; T. Mulala, Integration of Housing 78-90. Papers presented at the National Housing Policy Conference in Livingstone, Zambia (March 1978). While the impact of the attempt has not yet been fully assessed, the concept of social integration may prove to be a crucial determinant to the success of any sites and services program. Projects that attract only the better off of the low income population (i.e., those with steady employment) may have serious repercussions on a city's overall settlement patterns. Socio-economic diversity in existing settlements is essential to the economic prospects of the lowest income levels, since their informal sector employment depends largely on having relatively better off neighbors as consumers of their goods and services. Thus, a sites and services project that draws settlers solely from the higher end of the low income population is potentially disastrous for those left behind. The policy measure needed to prevent this sequence of events is to offer enough variety, in terms of lot size and level of services, utilizing the cross-subsidy principles discussed in notes 44-47, *supra*, and accompanying text, so that a mix of income levels is represented in each project. Similarly, small sites and services projects, offering relatively better living conditions, can be scattered throughout upgrading projects to ensure representative proportions of socio-economic groups. L. Peattie & W. Doebele, Some Second Thoughts on Sites and Services (Unpublished manuscript (Draft), November 1979).

VICES projects should be avoided, for the corresponding standardization and lack of locational considerations are contrary to the basic themes which emerged in the 1970's. Effective projects offer a wide range of choice of all elements of housing, enabling families at all income levels to determine their own methods for meeting their particular residential needs.⁵⁹ Similarly, upgrading projects should avoid the tendency to overly standardize provision of services without determining that specific neighborhoods desire a particular level of service.⁶⁰ Both contemporary strategies, sites and services projects and upgrading projects, are certain to play a major role in the formulation of housing policies in the decades to come. The precise proportion of each approach will be determined in a given country by variables such as financial capacity, conditions in existing settlements, and official perception and response to the needs of the low income population. But the most decisive factor, by far, in any government's effort toward an efficient and equitable urban settlement policy will be the balance of power between the government and the private sector in determining the use and control of urban land.

The past decade has witnessed a gradual shift in thinking among policy makers; compared with the overly ambitious public housing schemes that have consistently failed to meet real needs, the HABITAT movement represents a redefinition of the roles of government and the private sector in meeting housing needs. Governments are realizing that their major role must be to provide organization and, in some cases, subsidies of essential attributes of housing such as land and services, while leaving most of the task of shelter construction to the historically ignored, yet extremely productive, private and popular sectors. This reorientation of approach would seem to hold great promise for dealing with land and housing problems in the future.

For any housing policy to succeed on a broad scale, however, there first must be an adequate legal framework providing the government with sufficient power to ensure orderly urban development according to the needs of each level of society. The remainder of this Note examines issues of urban land law which underlie governmental efforts to address the needs of all income groups for serviced land and shelter. Emphasis is placed upon those aspects of land control and regulation that need the most

⁵⁹ *Id.* at 8.

⁶⁰ The "guided democracy" approach of Lusaka's upgrading program ensures that residents' priorities dictate the timing and extent of infrastructure provision in each settlement. See note 55, *supra*. See also *Upgrading in Lusaka*, *supra* note 54.

change if the recent trends in housing policy are to achieve their intended impact. The recent emergence of these policies reflects the need for fundamental changes in existing urban land law; the unresolved question is whether governments have the will and the power to make the necessary responses.

IV. SOME ISSUES IN URBAN LAND LAW

The patterns of urban land use in a mixed economy are a function of three interrelated factors: private market forces, the degree and effectiveness of government regulation and control, and land tenure relationships. Urban land has dual sets of characteristics which make it both an economic commodity and a natural resource. Land as an economic commodity is a fundamental tenet of capitalistic theory. Other characteristics of land, however, have led some nations to place more emphasis on urban land as a natural resource subject to varying degrees of public control. These characteristics include: extremely limited supply, need for land for public purposes, market imperfections and externalities (particularly the impact of social decisions on private profits), and non-fungibility of urban land.⁶¹ However, most nations recognize the need for public intervention into the urban land market to some extent, including countries where private rights of land ownership are embedded deeply in the legal framework. Nonetheless, mixed economic systems may vary widely in terms of the extent, purposes and methods of public control and regulation.⁶²

Ineffectively regulated, private sector dominated patterns of land use are evident throughout the developing world and are largely responsible for the systematic denial of the needs of the low income population for space and shelter. In many developing cities, there is a growing realization of the consistent failure of unregulated land markets to meet the growing needs of society, particularly those of the low income population. Accompanying this recognition is the acknowledgment of inherent constraints found in most developing country contexts, especially the lack of institutional capacity to accurately plan and implement policies.⁶³

⁶¹ Doebele, *supra* note 48, at 106-107.

⁶² Compare, for example, the approach of Singapore to public control over land use decisions with those of some Latin American countries. In Singapore, objective land scarcity necessitates widespread government intervention. In some Latin American countries, however, the right to land ownership remains unbridled, due to the historical dominance of the private sector in land control issues. See generally PORTES AND WALTON, *supra* note 10, at 49-52; Rivkin, *supra* note 26, at 87-88.

⁶³ See generally Courtney, *supra* note 18; Rivkin, *supra* note 26.

Thus, the task is to identify which land control techniques are appropriate to the various assumptions and needs of developing country cities, eliminating those instruments which are unenforceable and conflict with the real needs of urban development. "In other words, the question becomes one of how to limit the deleterious effects of land use controls while preventing correcting or off-setting the shortcomings of the market forces."⁶⁴

The fundamental objective of an urban land policy has been stated as "supplying the land needed for urban development in the appropriate location, at the right time and at an appropriate price."⁶⁵ Local governments face the challenge of using the proper mix of policy instruments to realize that objective in their own circumstances.⁶⁶ Currently emerging in academic and institutional circles,⁶⁷ and reflected by policy decisions in some developing cities, is an understanding of urban land policy which is predicated on the concept of public and private sector co-existence and cooperation, with adequate respect on each side for both private profit and social needs.⁶⁸

⁶⁴ Dunkerly, *Urban Land Use Policy Issues and Opportunities: An Overview*, in I URBAN LAND POLICY ISSUES AND OPPORTUNITIES 51 (World Bank Staff Working Paper No. 283, 1978).

⁶⁵ DARIN-DRABKIN *supra* note 13, at 1. This broad statement usually encompasses any number of related, more specific objectives, such as: creating conditions so that the low income segments of the population are given the opportunity to enjoy some defined housing standards; achieving the optimal social use of land; preventing the concentration of ownership of land among relatively few people; checking excessive land prices and curtailing speculation; and capturing the increases in value generated by social decisions for the public welfare. C. Haff, *Urban Land Policy and Administration 2-43* (Unpublished manuscript prepared for the Lincoln Institute of Land Policy, 1979). See also Courtney, *supra* note 18.

⁶⁶ There are many interacting elements that determine the land policies that a nation follows. Consequently, generalizations are difficult and one must be cautious about setting up any land-policy typology. Although some central tendencies do seem to exist among groups of countries, one must always keep in mind the limitations of such statements. The urban land policies of countries with different types of socio-economic structures are based on adopting different measures in order to achieve similar land-policy objectives. Policies and control measures change with the development level and changing socio-political structure of the country.

DARIN-DRABKIN, *supra* note 13, at 1.

⁶⁷ See generally DARIN-DRABKIN, *supra* note 13; URBAN LAND POLICY ISSUES AND OPPORTUNITIES (World Bank Staff Working Paper No. 283, 1978).

⁶⁸ The heightened awareness of the need for mutuality in the relation between government and private landholders is reflected in the following passage from an Egyptian urban land policy project report:

Two kinds of demands have to be reconciled in the planning process. One demand is that the land program meet community needs. The other demand is that land meet individual needs. The first is associated directly with government policies; the second is influenced by government policies but is managed by the real estate

The challenge for public officials contemplating urban land strategies is to determine the set of instruments that will encourage private sector decisions to consider social objectives, that will remain politically feasible, and that will be enforceable through retention of sufficient profit motives for private initiative. The traditional urban land policy responses which have been attempted in the developing world have consistently failed to meet stated objectives, as evidenced by the current land situation in most developing cities. New approaches must conscientiously avoid the mistakes of the past, particularly the tendency to proclaim lofty goals and high standards which are subverted by the realities of institutional weakness resulting in failed enforcement. Clearly, any new strategy, to be effective, must be based on realistic objectives, political acceptability and renewed dedication by governments to serve the needs of all income groups for adequate land. Before the apparent potential of a new housing policy can be realized, there must be a marked improvement in effectiveness of government rationalization of the overall urban land market. It is in this context that an examination of the legal framework of urban land policy in the developing world must proceed.

The basic policy instruments of urban land policy can be divided into two major categories. One category is government regulation and control of the private land market, including planning and zoning laws, regulations of land subdivisions and standards for buildings, and various forms of property taxation. A second category concerns direct governmental participation in the urban land market; sites and services and upgrading programs are largely dependent on the powers of government to assemble land for public purposes and to adjust tenure arrangements when necessary. The thrust of the new housing policy, with its heavy reliance on the private and popular sectors for shelter construction, demands a re-evaluation of the functions of government land policy instruments and a consideration of their proper roles in a comprehensive urban settlement policy. Although the various instruments of land policy are analyzed separately in the ensuing discussion, it should be apparent that their practical impact depends largely on how well they are coordinated by public authorities.

market in land. Neither government decree nor real estate alone can manage land — a balance of power has to be struck. Ensuring the viability of this balance is a prime objective of land policy.

A. *Government Regulation of the Urban Land Market*

1. *Planning and Zoning Laws*

Land use planning is essential to any strategy designed to deal with the deleterious effects of rapid urbanization. Traditionally, the adoption of long-range plans and zoning ordinances seeks to provide guidelines within which private market forces can operate. In theory, this leads to an optimal pattern of land use within a metropolitan area. The failure of public authorities to rationalize effectively land use patterns is evidenced by the chaotic land situations currently prevailing in most developing country cities. Many factors contribute to the consistent failure of attempts to control the effects of rapid population growth through planning and zoning instruments, most of which related to misguided attempts to apply Western objectives and standards to a substantially different cultural context in the developing world. Included in these attempts are an over-emphasis on physical planning (or "beautification" according to elite tastes) to the exclusion of social and economic considerations; a rigid classification of land uses which is fundamentally at odds with the needs of access of the low-income majority; and a reliance on the static master plan/zoning map approach. These techniques are rarely effective in developing countries given the institutional constraints on predicting growth pressures and implementing control measures.⁶⁹

Further impediments to the effectiveness of the master plan and zoning techniques are the historical dominance by the private sector of land use decisions and the lack of legal force behind the policy instruments in many countries. In Indonesia, for example, the DKI Jakarta Master Plan has not received official governmental approval. This prevents effective enforcement against politically powerful developers. A further problem is the lack of a large, reasonably well-paid and highly skilled civil service and the resulting potential for graft and corruption, which also tends to reduce the enforcement potential of the master planning approach.⁷⁰ Even where master plans and zoning regulations have legal force, lack of coordination between planning agencies and the officials who make decisions concerning public infrastructural investment frequently reduces the planning process to an exercise

⁶⁹ See generally Courtney, *supra* note 18; Rivkin, *supra* note 26.

⁷⁰ S. Sherer, A Land and Land Use Policy for the Jakarta Metropolitan Area (JABOTABEK) 25-26 (Unpublished manuscript prepared for the Government of Indonesia, October 1979).

having minimal impact on actual land use patterns.⁷¹ The failure of most developing country cities to implement land use plans for urban growth reflects not only legal and institutional constraints to effective enforcement; it also evinces the perception of planning as a static process, unchanging over time.⁷²

There are some indications of a shift in approach from conventional master planning to more flexible techniques better suited to the dynamic context of developing country cities. The new action-oriented approach represents a significant departure from traditional planning in several ways. First, the overall perception of the role of planning is altered and the inherent limitations of such a process are accepted.⁷³ Second, flexible techniques that are responsive to rapidly changing conditions are preferred.⁷⁴ Third, institutional coordination and implementation are emphasized, albeit with reduced performance objectives.⁷⁵ Closely related to

⁷¹ See Courtney, *supra* note 18, at 142; Rivkin, *supra* note 26, at 115.

⁷² Such an approach views planning as a process for *a priori* definition, when conditions in developing cities mandate more of an emphasis on empirical experience. Crooke, *supra* note 7, at 115.

⁷³ One author describes the principle of "action planning" as follows:

The new emphasis is on continuous, incremental, flexible and immediate planning responses in situations which, by the nature of things, cannot be preconceived nor effectively constrained in some preplanned blueprint. The city makes itself and its citizens make their opportunities as they go along. What individual households or groups cannot do to cope with largely unpredictable circumstances is to provide a citywide framework within which resources can be matched to the provision of essentially public goods. Traditional urban planning, of which housing and residential area planning was a sub-species, did not relate itself to such matters save in the one-dimensional space of physical appearance and organization. The new planning is more comprehensively concerned with the application of resources to selected public projects geared to respond to popular demands and needs. The continuing influx of migrants into the city on the basis of chances of improved economic prospects and social conditions can then be absorbed up to that point where the fully mobilized resources generated in and by the city can sustain such improvement, where this is defined by the needs and aspirations of the newcomers rather than those of the established authorities.

Id. at 115. The author then points out the implications of the new approach on the issue of shelter, emphasizing the objective of "incorporating and consolidating housing development that already exists, and of providing for housing arrangements foreseeable in the near future." *Id.* at 116.

⁷⁴ Instead of the traditionally ambitious, but rarely accurate, predictions of the extent and pattern of urban land development, the current need is for flexible plans, subject to frequent review, to ensure an appropriate response to actual development pressures. Dunkerly, *supra* note 64, at 54-55. A proposed planning law for Cairo would require zoning maps to be thoroughly reviewed at five year intervals. URBAN LAND USE IN EGYPT, *supra* note 13, at 49.

⁷⁵ In addition to the obvious necessity of giving planning and zoning instruments legal effect, there must be a heightened commitment by public authorities to enforce the control measures. One potentially effective device which is largely under-utilized in developing cities is the withholding of permission to build on land where the development conflicts with public plans. Courtney, *supra* note 18, at 141.

the current trends in planning, although not yet actually implemented in any cities, are the concepts of "critical areas planning" and "infrastructure planning."

The latter two approaches are based on recognition of the greatly varying standards of quality among the areas of developing cities. The high density unplanned or spontaneous settlements require fundamentally different policy responses than high quality sections of the metropolis.⁷⁶ Planning for critical areas is suggested for those sections which are most susceptible to rapid pressures for development:

It is a strictly selective approach to planning, eschewing more comprehensive, sophisticated metropolitan efforts. A governmental agency could designate sections of the region as "stable," "developing," "meriting preservation" or by some other broad-brush categorization. Analytic effort would be applied to the "developing" areas to determine what array of measures could be rapidly introduced to guide their growth. By the same token, the preservation areas would get some attention to determine whether special controls, selective land purchases, or some other measure could retard their transformation. The stable areas would effectively be left out of consideration in the short run. Planning activity would thus be focused, not diffused.⁷⁷

Sri Lanka provides an example of a similar approach. Local administrative authorities have the power to define certain urban areas in which special legislative measures apply.⁷⁸

Infrastructure provision planning relates closely to critical area planning; the two approaches plausibly could be used together. This type of planning seeks to reverse the common patterns of public provision of infrastructure to newly urbanized areas only after settlement has occurred. Infrastructure provision following development is often inefficient, expensive and harsh on residents awaiting the needed services. Infrastructure provision planning could be undertaken as a means of encouraging various types of development by supplying certain levels of infrastructure and services. "Although rarely used, the public authorities have potentially strong powers of persuasion available in the provision or withholding of roadway, water, sewer, telephone and electricity connections. The potential is strongest at the trunk-line installa-

⁷⁶ See, e.g., NATIONAL KAMPUNG IMPROVEMENT POLICY, *supra* note 41, at 15.

⁷⁷ Rivkin, *supra* note 26, at 121-122.

⁷⁸ DARIN-DRABKIN, *supra* note 13, at 39.

tion and later in the provision or extension of distribution methods."⁷⁹

Both suggested approaches reflect the growing dissatisfaction with the failures of conventional attempts at comprehensive planning.⁸⁰ They merit further consideration for their efforts to re-order the objectives of the planning process, their linkages with public investment policies, and their feasibility within the context of limited institutional resources. While less ambitious than conventional attempts at comprehensive master-planning, both suggestions offer more potential than another typical response to urban land use—no planning at all.⁸¹ Furthermore, governments utilizing such strategic planning techniques arguably could have a greater impact on urban land use patterns than do governments which employ conventional master-planning approaches.

2. *Building Codes and Subdivision Controls*

A complete reconsideration of building and subdivision regulations is implicit in recent housing policy trends of both the actual government-assisted projects and the general thought regarding potential private and popular sector contribution. Standards in building and subdivision regulations typically have been based on Western models and have often been far beyond the budgets of low income households. The disparity between prevailing Western legal standards and the level of services provided in upgrading and sites and services projects is evident from a recent World Bank study. Researchers concluded that recommended forms of land subdivision for the optional layout of sites and services projects would be illegal in most developing cities.⁸²

Bogota's experience illustrates the results of overly stringent subdivision requirements. After a 1968 law requiring infrastructure provision before subdividing urban land, legal plot prices rapidly rose beyond the reach of low income groups. This led to a speculative market in clandestine subdivisions which offered lots with few or no infrastructural services. Lack of effective enforcement of the subdivision control law resulted in an estimated 45%

⁷⁹ Dunkerly, *supra* note 64, at 56.

⁸⁰ Aspects of both approaches are demonstrated in the "guide planning" strategy, which is employed in some small- to medium-sized Brazilian cities as a temporary effort until more detailed plans can be implemented. An administrator selects areas suitable for certain types of land uses. This is followed closely by the public provision of infrastructure to support the desired pattern of development in the area. Rivkin, *supra* note 26, at 114-115.

⁸¹ *Id.* at 115.

⁸² Courtney, *supra* note 18, at 77.

of Bogota's population living in these illegal settlements.⁸³ Jakarta's experience with building codes further illustrates the potential consequences of the lack of institutional resources to implement regulations. The level of standards in the present legal framework is appropriate and affordable only for middle and upper income areas of Jakarta. These standards generally are ignored by the construction industry; authorities estimate that only about 17-20% of all new construction in metropolitan Jakarta is built according to permit.⁸⁴ The stringent levels of amenities mandated by such ordinances often have been selectively enforced, but the illegal status of many low income areas, with the resultant risk of removal, has inhibited investment in construction activities by the private and popular sectors.⁸⁵ Regulations requiring high levels of construction also have tended to favor large heavily importing, capital intensive building materials suppliers. These policies are at the direct expense of popular sector builders who utilize techniques and components that are more affordable to low income residents, more labor-intensive, and more responsive to local conditions and needs.⁸⁶

Certainly, the basic needs approach, which emphasizes affordability and potential for incremental improvement of basic universal services, includes some required standards that ensure acceptable levels of public health and safety. Conventional attempts to apply Western standards to all areas of a metropolis, however, should be replaced by flexible standards which are responsive to the variety of socio-economic conditions found in different areas of the city. If the basic needs of all income groups are to be met, it is clear that provision of services beyond the levels now existing in most developing country cities is imperative. The United Nations Guidelines for Housing Policy explains several factors related to the determination of appropriate levels:

⁸³ D. SATTERTWAITE, THREE YEARS AFTER HABITAT 53 (1979).

⁸⁴ Sherer, *supra* note 70, at 34.

⁸⁵ See generally Courtney, *supra* note 18; Rivkin, *supra* note 26.

⁸⁶ In the late 1960's, a foreign consulting firm recommended to the government of Honduras that all new dwellings should have at least four bedrooms and be technically sound enough to last for fifty years. This was suggested at a time when 70% of the urban households in Honduras had monthly incomes of less than \$90 U.S. Drakakis-Smith, *The Role of the Private Sector in Housing the Urban Poor*, in GEOGRAPHY AND THE ENVIRONMENT IN SOUTHEAST ASIA 312 (R. Hill & J. Bray eds. 1978). This is perhaps an extreme example of the "build big, beautiful and forever" mentality that only recently has begun to give way to the basic needs approach. "Construct big, beautiful and forever" was the 1963 statement of a public official in a developing country. Cohen & Keare, *A Case for Reduced Sights and Increased Efforts in Urban Development in Developing Countries*, 5 PLANNING AND ADMINISTRATION 8 (1976).

The standards of housing, services and community facilities to be followed by the construction sector should be related to a nation's environmental, economic, technical and social conditions, as well as to the quantity and quality of available resources. In determining the kinds of building materials, floor space and requisite services and facilities, the task involved is to strike a balance between health, cultural and safety requirements, on the one hand, and the financial resources available for housing construction, on the other . . . admissible standards should take in to account not only differences between climate zones, urban and rural housing and the like, but also differences between middle-income housing built of permanent materials and low income housing built of short-life materials.⁸⁷

Recognition of the need for flexible and more realistic standards is indicated by changes and proposals in several countries. In Colombia, in 1973, after experiencing the deleterious effects of overly ambitious attempts at subdivision regulation,⁸⁸ Bogota officials enacted a system of *Normas Minimus* (minimum standards). Although it is too early to assess fully their impact, this demonstrates the trend toward the use of minimum shelter and service standards which are more closely aligned with the priorities and resources of low income residents.⁸⁹ In Egypt, a suggested amendment to the proposed planning law provides that subdivision standards may vary in different areas of a city, depending on present and proposed land use, socio-economic conditions and other considerations, so long as such standards meet minimum requirements for health and safety.⁹⁰

The Draft Policy and Development Plan for Thailand's National Housing Authority summarizes the policy concerning standards within settlements as follows:

The low income families' *affordability or ability to pay* will largely determine design standards for plot sizes, infrastructure and the houses. This necessitates that some housing units will not be completely built or will be "core houses" which will nevertheless be habitable immediately but can be extended as and when the tenants require or could afford to do so.⁹¹

⁸⁷ UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, HOUSING POLICY GUIDELINES FOR DEVELOPING COUNTRIES 66, U.N. Doc. ST/ESA/50 (1976).

⁸⁸ See note 82, *supra*.

⁸⁹ Shoup, *supra* note 27, at 77.

⁹⁰ URBAN LAND USE IN EGYPT, *supra* note 13, at 11-12.

⁹¹ *Supra* note 46, at para. 1.b.

Another promising use of subdivision controls is the requirement that development land be dedicated for public use. The Philippines recently increased from six to thirty percent the amount that developers must reserve as open space for parks and playgrounds.⁹² Aside from these relatively rare attempts to develop flexible and realistic standards, the conventional policies followed in most countries contribute substantially to the dependence on long-term financing, which blocks the access of lower income groups to the formal housing market. In contrast, the new housing policy assumes that incremental shelter improvement will parallel the resident's gradual entry into the economic mainstream of the metropolis.⁹³ Perhaps the most sensible way for authorities to view the issue of standards is to abandon the presumption that a house is completed before it is inhabited in favor of a policy which accepts the fact that building in low income areas is an incremental process and that houses often are occupied long before completion.

3. *Property Taxation Policies*

Property taxation systems, when properly conceived and executed, have vast potential for directing private land use decisions toward socially desirable ends. However, with few exceptions,⁹⁴ authorities in developing countries fail to perceive a purpose for urban property taxation beyond the immediate need to secure public revenue and, thus, fail to attain the potential impact of tax law as an instrument of land policy. Many factors behind the present urban land crisis in developing cities relate directly to the failure of property taxation policies, not only in the lack of effective implementation which characterizes most efforts, but also in the failure to formulate appropriate objectives.

Proper urban property taxation policies could significantly bolster governmental attempts to meet overall objectives in land and housing issues: such policies could provide incentives for efficient allocation of resources; reinforce urban planning measures;

⁹² Presidential Decree 953 (1976), cited in USAID, PHILIPPINES SHELTER SECTOR ASSESSMENT, *supra* note 14, at 80.

⁹³ Keyes, *Economic Development and the Housing Problem*, 27 PHILIPPINE STUDIES 227 (1979).

⁹⁴ Some examples are: Taiwan's tax on vacant lands to stimulate development of certain zones; Jakarta's use of property tax rates which vary according to whether the land conforms with zoning laws; and taxation of speculative gains on land scales (a technique that is becoming increasingly popular). Shoup, *supra* note 27, at 7.

and reduce inequities in the distribution of benefits in land and housing markets.⁹⁵ In most developing country urban areas, these general objectives are translated into specific public policy concerns, such as the concentration of ownership among a minority of elites; the mutually reinforcing phenomena of rapid land price escalation and chronic land speculation (characterized by the "leapfrog" development of suburban sprawl over vacant lands which are needed for development but are withheld from the market); the private realization of socially-created gains in value; and the inability of governments to provide public services to all areas of the city. However, the same institutional and political constraints that pervade other instruments of public land policy also curtail the ability of authorities to formulate and administer property taxation policies consistent with the needs of all segments of society. Often the result is a reinforcement of existing patterns of tax laws that systematically deny the low income majority access to land and housing markets. While the revenue generating potential of an effectively administered property taxation system is essential to developing country cities, this discussion of property taxation as an instrument of public policy will focus upon specific taxation techniques. Some are used currently in developing countries and others have been suggested due to their effectiveness in more developed countries in terms of their potential to ameliorate certain negative features in urban land markets.

Various property taxation policies could remove present incentives for private landowners to hold land out of development for speculative purposes. These measures include: general taxation of property; variable tax rates according to type of land use; and property transfer taxes. The crucial issue in direct taxation of property is the determination of the tax base, the value on which tax is computed. For many countries, either the value of the property, including improvements, or the property's rental income, rather than its potential development value, is used as the tax base. The Egyptian Property Tax, for example, is based on the annual rental value, which is artificially low due to rent control.⁹⁶ Indonesia's tax valuation is determined by a complex formula based largely on rental value.⁹⁷ Under these and similar systems, valuation depends solely on present use of the property, although that

⁹⁵ *Id.* at 28.

⁹⁶ Law No. 56 of 1954, art. 9. (Egypt).

⁹⁷ Sherer, *supra* note 70, at 79.

use may be inefficient and undesirable, and fails to consider the property's development value. These laws create substantial disincentives to develop urban land, which has led many critics, but few governments, to advocate a heavy tax on the value of land itself and to decrease the tax on buildings. Several arguments have been espoused in favor of site-value taxation as an alternative to the current property value tax systems:

1. the current system of taxing construction is a disincentive to produce the housing in areas already serviced with urban amenities;
2. if land is taxed according to its capacity to generate revenue, even if it is presently undeveloped or under-developed, the owner probably will improve the land to pay the taxes or sell it to someone who is willing to do so;
3. part of the betterment resulting from provision of public services would be returned to the public, since land values would increase whenever infrastructural improvements are made; and
4. positive macro-economic development is encouraged when investment is channeled into productive enterprises rather than land holdings.⁹⁸

Jamaica, Kenya and Taiwan are among the few developing countries to adopt forms of site-value taxation.⁹⁹ Taiwan's experience illustrates the concept well. The Land Value Tax¹⁰⁰ is applied to land located within city planning areas. Applicable to the aggregate value of all land owned by each landowner within each city, the tax is progressive in its operation, tying the tax rate to the land value's percentage above the Progressive Starting Value (city average).

Some countries which use the variable tax rate method have introduced additional taxes on vacant lands. Taiwan's Land Law¹⁰¹ provides that, in designated areas, a vacant land tax several times

⁹⁸ Shoup, *supra* note 27, at 74.

⁹⁹ See generally LINCOLN INSTITUTE OF LAND POLICY, PROPERTY TAX REFORM: FOREIGN AND UNITED STATES EXPERIENCE WITH SITE VALUE TAXATION (Lincoln Institute Monograph #77-11, December 1977). See also G. Gitongo Antho, Taxation of Unimproved Land Values: The Kenya Experience; G. Tideman, Land Value Taxation and Housing in Jamaica (unpublished manuscripts).

¹⁰⁰ THE LAND LAW, part IV, ch. IV, arts. 170-171 (Taiwan). See also A. WOOLERY, THE ROLE OF TAXATION IN LAND POLICY (Lincoln Institute of Land Policy Monograph #78-10, December 1978).

¹⁰¹ Land Law, part IV, ch. IV, art. 175 (Taiwan).

the amount of land value will be imposed on private land which has been planned for construction purposes but which has not been developed within a prescribed period. To obviate the potential enforcement problems, "vacant land" includes improved land with structures valued at less than ten percent of the value of the land. Taiwan serves as an illustration of the sometimes conflicting policy objectives common in developing countries. In 1973, the vacant land tax was suspended to reduce the pressure of demand on building materials. The law remains available for future application, if needed, as a deterrent against land speculation.¹⁰² The Philippines also has the legal framework for imposition of a vacant land tax. The Real Property Tax Code states:

Additional ad valorem tax on idle lands. The President of the Philippines, at his discretion or upon recommendation of the Sec. of Finance, may authorize provinces, cities and municipalities to levy, assess and collect an additional real property tax on idle private lands at a rate of not exceeding 2% per annum based on the prevailing assessed value of the property.¹⁰³

The definition of "idle lands" applies to land greater than 5000 square meters, two thirds of which remain unutilized.¹⁰⁴

In addition to a vacant lands tax, the variable tax rate method also has been used to alter tax rates according to the type of land use or size of holding, in order to encourage socially desirable development patterns. In Jakarta, for example, tax rates are higher for land uses not in conformity with zoning regulations.¹⁰⁵ In the Philippines, the additional tax on idle lands also applies to subdivisions that have not been developed in accordance with regulations.¹⁰⁶ Exceptions to the standard rates of Taiwan's Land Value Tax¹⁰⁷ reflect social goals:

1. owner occupied residential land (up to three acres) is taxed at only half the rate of non-residential land of below-average value;¹⁰⁸

¹⁰² King, *Land Taxes in the Republic of China-Taiwan*, in *THE CITIES OF ASIA* 398 (J. Wong ed. 1976).

¹⁰³ Presidential Decree 464 § 42 (1974) (Philippines). Other developing countries which have some provision for taxation of vacant lands include Colombia, Brazil, Tunisia, Turkey and Botswana. LINN, *supra* note 22, at 264.

¹⁰⁴ Presidential Decree 464 § 43 (1974) (Philippines).

¹⁰⁵ Shoup, *supra* note 27, at 7.

¹⁰⁶ Presidential Decree 464 § 43(b) (1974) (Philippines).

¹⁰⁷ See note 100, *supra*.

¹⁰⁸ King, *supra* note 102, at 385.

2. industrial sites are taxed at a flat rate which is equal to the rate of below-average land value;¹⁰⁹ and
3. property held by an absentee landowner is taxed at double the regular Land Value Tax rate.¹¹⁰

Mexico attempted to impose a variable tax rate in 1975, when the Department of the Federal District (Mexico City) instituted property tax reform measures that substituted progressive rates based on size of land holdings for the uniform rate then in effect. A 20% increase in tax rates for unimproved land was also established. However, enforcement and jurisdictional problems have impeded its effect.¹¹¹

Transfer taxes have also been invoked in many countries to capture a portion of the seller's capital gains and to discourage speculative transactions in general. Taiwan's Land Value Increment Tax¹¹² is a capital gains tax on profits realized from transfers of property within specified city planning areas. The tax rate is steeply progressive, ranging from 20% on the increment not over 100% of the base to 80% on the part over 300%. Under such a system, the dual objectives of recapturing socially created capital gains and curbing speculation have not been attained. The rates do not deter speculators who would have to pay an even higher income tax if they earned the same amount from other sources. The rates also are almost confiscatory for those who inherit land and are not speculatively motivated.¹¹³ It has been suggested that a more effective transfer tax policy would impose a flat rate on capital gains, such as the 50% rate of Korea's real estate speculation suppression tax.¹¹⁴ The proper rate is crucial to the success of a transfer tax in discouraging speculation. If the rate is too low, the tax will not deter speculation. If the rate is too high, property transactions will be discouraged and unreported transfers will increase. The rate must be high enough to discourage the speculator who will need a high annual rate of return but not so high as to be

¹⁰⁹ *Id.*

¹¹⁰ LAND LAW, part IV, ch. IV, art. 175 (Taiwan).

¹¹¹ Private landowners effectively blocked enforcement of the new provisions through the evasive tactics of registration in the names of family members and of hiring squatters to erect buildings on unimproved land. Another reason the tax reforms are likely to be ineffective is because they apply solely to the Federal District, while the most intense land speculation presently occurs in the metropolitan areas within the surrounding state of Mexico. Cornelius, *supra* note 13, at 265.

¹¹² LAND LAW, part IV, ch. IV, art. 181 (Taiwan).

¹¹³ King, *supra* note 102, at 398.

¹¹⁴ *Id.*

detrimental to the average investor who will expect to hold the property longer and thus can accept a lower annual rate of return.¹¹⁵

There is also some support for eliminating property transfer taxes altogether, an argument which stresses their limited effect in practice and their possible negative impact on urban land and housing markets. Transfer taxes raise the transaction costs of the urban land market, which in turn restricts the supply of urban land available for housing purposes. "These taxes may also encourage evasion of official registration requirements, lead to the under-reporting of sales prices, and thus throw a wrench into cadastral and general property tax administration. Property transfer taxes are clear candidates for abolition, especially where the revenue losses are of only minor importance."¹¹⁶

Other tax and pricing policies attempt to capture a portion of the "unearned increment" reaped by private landowners. These techniques include betterment levies, user charges and valorization, all of which have been attempted with varying degrees of success.¹¹⁷ Even where there are no specific attempts to recover socially created betterment, tax revenues usually are expended by upgrading and sites and services projects, since the residents typically receive secure tenure and thus incur tax obligations. For example, because Jakarta had no precedent for a betterment levy and such a system would have been opposed by powerful interests, public authorities concentrated their efforts on improving the collection of the sporadically enforced general property tax.

The general failure of taxation policies to impact positively upon urban land markets relates not only to the nearsightedness of policy makers in regarding taxation solely in terms of its revenue generating function, but also to the severe institutional constraints that hamper other attempts at government regulation of powerful landholding classes. As one expert has observed:

In developing nations, property taxes have not been successful in capturing the unearned increases or in checking the rise in land values. This is mainly due to the fact that property taxes are weak in all their aspects—rates, valuation, collection and administration. As a consequence they do not achieve the desired impact of which they are capable on the urban land situation.¹¹⁸

¹¹⁵ Sherer, *supra* note 70, at 78.

¹¹⁶ LINN, *supra* note 22, at 266.

¹¹⁷ See generally URBAN LAND POLICY ISSUES AND OPPORTUNITIES, *supra* note 67.

¹¹⁸ Haff, *supra* note 65, at 2-50.

Governments can, in principle, levy heavy taxes on land held out of development

In addition to the redefinition of objectives necessary for most developing countries' urban property taxation schemes, some fundamental improvements in tax administration also are required before an effective system can be achieved. Several important administrative weaknesses which need attention are:

1. property assessments far below market value;
2. inadequate tax collection performance due to the lack of enforced penalties for nonpayment; and
3. the failure to keep current and accurate records.¹¹⁹

One method of combatting these problems, used in Taiwan, is a system of self-assessment of value by landowners, enforced by the threat of the government's power of preemption.¹²⁰ While this mechanism has great potential for curbing the abuses of undervaluation, the experience of several cities in Latin America demonstrates the necessity for a credible threat of compulsory purchase by the government before the system can be effective.¹²¹ Thus, improving the urban tax administration will depend on a nation's political will to undertake and sustain the changes, something which too often seems to be lacking in developing countries.

B. *Direct Government Intervention in the Urban Land Market*

Essential to an effective urban land strategy are measures which can directly influence the land market in and around urban areas. Among the pressing needs for most developing cities, where a significant percentage of the low income population live in slum and squatter areas, are government policies which directly affect the development of peripheral areas currently becoming urbanized, as well as the outlying areas that inevitably will make the rural to urban transition. Public development projects in the metropolitan extension and the unserved urban areas often must be based on direct action by the authorities who own the

for speculative purposes and on proceeds of land sales that show excessive profits. In practice, few developing countries' governments have exercised this power because land speculation is so much a way of life and because of the political repercussions involved.

Rivkin, *supra* note 26, at 119.

¹¹⁹ Shoup, *supra* note 27, at 73.

¹²⁰ Haff, *supra* note 65, at 2-52.

¹²¹ Shoup, *supra* note 27, at 74.

land themselves. Several objectives for direct government participation in the urban land market have been expressed, including:

1. improved effectiveness of land use planning when sites are laid out before settlement, which results in considerable savings compared to the subsequent use of upgrading projects;
2. provision of revenues to public authorities to finance infrastructure;
3. improved distribution of land value benefits among target population groups, businesses and government interests; and
4. retention of government control over some land interests after conversion to private use, as an alternative to less effective efforts with planning and zoning instruments.¹²²

Policies directed at meeting specific housing needs (e.g., sites and services and upgrading projects) as well as those designed to accomplish broader land control and supply objectives (e.g., public acquisition of development rights and land banking) depend largely on the financial and administrative ability of public authorities to acquire and develop the necessary privately owned land. One of the major difficulties in public land ownership is determining the proper balance between immediate needs of space for settlement and long-term development needs of the entire metropolitan areas. Properly administered programs of public land ownership could minimize this conflict by making land available for housing purposes within the context of a comprehensive plan for the city region that coordinates provision of services and infrastructure.¹²³

The timing of acquisition of fringe areas is a crucial decision for public authorities. Acquisition after a project has been approved may limit the choice of location and increases the private speculative advantage, which imposes an additional cost to the government. However, acquisition far in advance of development has its own set of problems, such as the risk of inaccurate predictions regarding the direction of future urban growth and administrative costs during the period before project implementation. Often included in these costs are the expenses resulting from squatter occupation of the publicly owned lands. Obviously, such occupation frustrates the attempts at orderly settlement, coordinated with infrastructure provision, in those areas.¹²⁴

¹²² Shoup, *supra* note 27, at 53. See also DARIN-DRABKIN, *supra* note 13, at 112.

¹²³ DARIN-DRABKIN, *supra* note 13, at 99.

¹²⁴ Dunkerly, *supra* note 64, at 8.

Although few developing countries have aggressive public land ownership policies,¹²⁵ the escalating land and housing needs of the low income majority necessitate an increase of direct governmental intervention in the urban land market to complement land use regulations and to provide for needs not met by the private sector. The nature of government landowning policies depends on the political structure and the balance of power within a particular mixed economy. The crucial question is whether the government will attempt merely to smooth out market imperfections and externalities or whether market forces will simply fill in the gaps of government policy where private choice is permitted.¹²⁶

1. *Public Land Acquisition*

The first requirement for a meaningful policy of active government participation in the urban land market is a firm legal basis for public acquisition of privately held property interests. While many developing countries' constitutions and national laws recognize a degree of societal interest in all property rights,¹²⁷ governments often lack the effective power to acquire urban land, due to statutorily weak and cumbersome expropriation procedures.¹²⁸ The most crucial variables in measuring legal methods of public land acquisition are definition of public purpose, the manner in which adequate compensation is determined and the procedures for transferring land from private to government ownership.

Two Southeast Asian cities exemplify problems with current government land acquisition procedures. In Bangkok, land expro-

¹²⁵ The commonly cited exceptions are Singapore, Hong Kong and Taiwan.

¹²⁶ Shoup, *supra* note 27, at 52.

¹²⁷ The constitution of Brazil cites the "social function of property" as one of the guiding principles for achieving national development and social justice. Const. tit. III, art. 160 (1967) (Brazil).

Egypt's constitution provides: ". . . The Law regulates [land's] social function serving the national economy and within the development plan without deviation or exploitation. Private property may not be used in a manner incompatible with the general good of the people." Const. art. 32 (Egypt).

The Indonesian constitution states that "Land is to be in the last instance controlled by the state for the benefit of the people." Const. § 33(3) (Indonesia). The Basic Agrarian Law of 1960, art. 6, provides that "all rights of land have a social function." Article 2 of the Basic Agrarian Law, based on article 33(3) of the constitution, gives the national government the power to regulate and control the utilization of "earth, air and water" and to determine the legal relations between persons and those national resources for the purpose of achieving "maximum prosperity in terms of happiness, welfare and freedom."

¹²⁸ For example, the constitution of Brazil authorizes government expropriation only of rural land without mention of public acquisition of urban land. Const. tit. II, art. 16 (Brazil). See also notes 129-132, *infra* and accompanying text.

priation under the present legal framework is extremely unwieldy and time consuming.

The process starts with an issuance of a royal decree delineating areas to be surveyed. The effect of this decree is to freeze the price of land. The decree has a life of up to five years but it can also be renewed for another five years. After the survey is completed and the exact area specified, a new law has to be enacted to expropriate the said land. When the law is enacted, land owners will be offered compensation at the market value of land when the first royal decree was issued. By this time, three to four years would have elapsed and in most cases, the landowners, understandably, would not be satisfied with the rate of compensation offered by the government. Then, another lengthy process through the court of justice takes place. Court decision is considered final. The owners retain full rights to the land until this final stage and the government has no right to enter to undertake any construction work during this period. On the average, the whole process takes at least five years and in many cases it goes beyond ten years. This has constituted the most serious impediment for the majority of the public works construction programs.¹²⁹

Authorities in Jakarta have had similar problems in their efforts to acquire urban land for public programs. Under the expropriation law in Indonesia,¹³⁰ a presidential order is necessary to acquire land for public purposes. The law is so unwieldy in practice that it has been used only once in the nearly two decades since its enactment.¹³¹ Thus, "since the formal procedures are rarely used, local authorities rely on a combination of persuasion and threats to reach an agreement on the amount to be paid."¹³² The major differences between localities, in terms of expropriation policy, often depend more on the local political balance than on any legal framework.

In response to the impracticability of the expropriation law, Jakarta officials promulgated two laws establishing procedures for the freeing of urban land.¹³³ These laws contradict the princi-

¹²⁹ Vichit-Vadakan, *Land Use Policy in Thailand with Special Reference to Bangkok Metropolitan Area*, in *THE CITIES OF ASIA* 245 (J. Wong ed. 1976).

¹³⁰ Law No. 20 of 1961 (Indonesia).

¹³¹ Sherer, *supra* note 70, at 54-55.

¹³² NATIONAL KAMPUNG IMPROVEMENT POLICY, *supra* note 41, at 142.

¹³³ Regulation No. 15 of 1975 of Ministry of Dalam Negiri and Decision of Governor of DKI Jakarta No. 11/3/17/1972. (Regulation No. 2 of 1976 extended the power to free urban land to private parties who proposed to carry out public purposes).

ples of the colonial laws on which they purportedly were based. The colonial laws require that all concerned parties reach an agreement about the land and that the land ultimately should be used by the state rather than private parties. The new procedures for the freeing of land fail to provide a satisfactory basis for public acquisition for several reasons, including:

1. without any legal guidelines beyond agreement of both parties, there is a great risk of abuse on the issue of compensation;
2. lack of a definition of public purpose may result in many cases where land freed for public purposes eventually is used for middle to higher income housing;
3. there is not an effective mechanism ensuring timely development by the party granted the land;
4. compensation determination favors the party seeking the land over the present owner;
5. there is no impartial review procedure for resolution of disputes; and
6. there is no means of returning to the original owner land not developed according to plan.

Given these difficulties with the procedures for freeing urban land, particularly their questionable legal status, the best solution seems to be improvement of the original expropriation law.¹³⁴

Governments traditionally have expropriated land in order to provide basic infrastructure and public services, such as roads, schools and utilities. Implementation of low income settlement projects requires an expanded interpretation of the phrase "public purpose" which enables governments to acquire land for general settlement purposes. Thailand illustrates the restrictive definition of this phrase. Courts have held that, under the constitution, there is no power of compulsory acquisition of land for housing needs.¹³⁵ Realizing the shortcomings of its land acquisition powers, the National Housing Authority has applied to the government for the right of eminent domain over slum areas.¹³⁶ A broader definition is found in Egypt. In Cairo, where the government owns large amounts of urban and peri-urban land, expropria-

¹³⁴ Sherer, *supra* note 70, at 56-63.

¹³⁵ U.S. AGENCY FOR INT'L DEV., OFFICE OF HOUSING, REVIEWING OF THE POLICIES, PROGRAM AND STRATEGIES OF THE NATIONAL HOUSING AUTHORITY (THAILAND) 23 (1976) [hereinafter cited as USAID, REVIEW OF THAILAND POLICIES, 1976].

¹³⁶ See note 51, *supra*, and accompanying text.

tion under Egyptian law is broad enough to encompass any type of government redevelopment project.¹³⁷ According to Indonesian law, "public purpose" includes all components of a Kampung Improvement Program with reference to health, sports, social welfare, security, religion and economic activities that benefit social welfare.¹³⁸

Throughout the developing world, the emerging pattern of expropriation includes projects such as housing, greenbelts and a variety of other public works not within the conventional definition of "public purpose." As the role of government as an assembler of land for the provision of public services to low income groups becomes more widely accepted, traditional restrictions on the scope of public acquisition necessarily must give way to the acceptance of general development programs as sufficient justification for expropriation.¹³⁹ The policy of excess condemnation is an important corollary method for the control of subsequent development which is attracted to development projects by the provision of infrastructure. Acquisition of surrounding land provides the options of later public development or conveyance under specified terms concerning usage.¹⁴⁰

Compensation is the most difficult expropriation issue confronting public authorities and the most crucial factor in the success or failure of an active program of government urban land development. Most legal systems in the developing world require payment of compensation to owners whose land is taken for public use. For example, Egypt's constitution provides for compensation "in accordance with the law."¹⁴¹ Indonesia's expropriation law requires payment of "adequate" compensation.¹⁴² Many countries have attempted compensation schemes at rates lower than present market value. These attempts are designed to minimize the speculative advantage which normally accrues to the landowner. Common experience has shown that public knowledge of governmental intent to acquire certain land invariably produces rapid price increases. This sort of speculation often makes expropriation

¹³⁷ Law No. 577 of 1954 (Expropriation for Public Purpose); Law No. 27 of 1956 (Expropriation for Planning Purposes). See URBAN LAND USE IN EGYPT, *supra* note 13, at 64.

¹³⁸ Presidential Instruction No. 9 of 1973 (Indonesia), *cited in* NATIONAL KAMPUNG IMPROVEMENT POLICY, *supra* note 41, at 142.

¹³⁹ Haff, *supra* note 65, at 2-57.

¹⁴⁰ Rivkin, *supra* note 26, at 107.

¹⁴¹ Const. art. 34 (Egypt).

¹⁴² Law No. 20 of 1961 (Indonesia).

prohibitively expensive to public authorities which usually operate under severe budgetary limitations.¹⁴³

Several forms of low compensation schemes have been attempted. Value freezing in particular areas has been applied successfully in some developed countries, such as France and Spain, and has been recommended for consideration in some developing nations. A method which is similar to value freezing has been applied in India. In New Delhi, compensation is based on existing market value at the time of preliminary notification of the decision to expropriate (plus a small additional solatium).¹⁴⁴ Another low compensation plan involves compensation according to owner-declared tax assessment. For example, self-declaration by landowners for taxation purposes also provides a basis for a compensation award in case of expropriation, in both Singapore and Mexico.¹⁴⁵ Compensation according to market value at some particular point in time is an approach used in Singapore. It bases value on existing use, "the intent being to exclude the effects from expectation of a future change in use."¹⁴⁶ Some countries look beyond the particular land in question, using calculations of the publicly created increase in value of the owner's other local property holdings. The Bombay Municipal Corporation Act allows the court, in calculating the amount of expropriation, to take into account any other land of the owner that is benefitted by the acquisition and demolition activities of the government.¹⁴⁷ Another tactic is to refrain from considering value increases which result from public development. Egyptian law, for example, provides that, in determining compensation for land taken for public purposes, the state is not required to pay for the incremental rise in the value of the land due to a public project undertaken within the preceding five years.¹⁴⁸

Low compensation schemes, tailored to fit the circumstances of developing countries, have been common components of expropriation policies. Apart from issues of equity and fundamental fairness,¹⁴⁹ the more blatant attempts at less than full compensation

¹⁴³ Rivkin, *supra* note 26, at 113.

¹⁴⁴ DARIN-DRABKIN, *supra* note 13, at 85.

¹⁴⁵ *Id.* at 33, 111.

¹⁴⁶ *Id.* at 86.

¹⁴⁷ See the Bombay Municipal Corporation Act, *supra* note 19, at ch. XII, § 354, RN 237.

¹⁴⁸ Law No. 577 of 1954 ch. V, art. 20 (Egypt).

¹⁴⁹ The arguments revolve around the proper balance in considering the dual role of urban land as a natural resource and economic commodity. The shift toward viewing land more in terms of its social function to serve the needs of all income group is one of the basic

are unlikely to succeed, given the current political balance of power between most developing country governments and the private landholding sectors. This is suggested by the fact that the only examples of truly successful programs of public land acquisition and development are limited to the cases of Singapore and Hong Kong, cities whose institutional capacity and power over private interests greatly exceed that of their counterparts in most developing countries.¹⁵⁰ Thus, there is a convincing argument for payment of full market-based compensation for land taken for public purposes, especially given the political power structure common in most developing cities. Compensation based on market value minimizes the opposition of landowners, obviating the costly delays which characterize the negotiation process in many countries.¹⁵¹ Improvement in the overall system of public finance and administration,¹⁵² however, is required in most developing cities before government acquisition policies which provide full compensation can become a major component of urban land strategies.¹⁵³

themes of the HABITAT movement. See REPORT OF HABITAT, *supra* note 34. This trend has yet to materialize in the form of significant changes in the legal structures of most urban land markets; it remains the crucial issue to be addressed in the near future.

¹⁵⁰ See note 26 *supra*.

¹⁵¹ While certain mechanisms for decreasing the amount of compensation paid may be feasible in some systems, many schemes only increase private sector opposition to expropriation and thwart public development efforts. For an expropriation compensation system to be politically feasible, the expectations and needs of both public and private interests must be accommodated. Any deviation from an established market-based compensation rate should proceed cautiously and should not be applied retroactively. Otherwise, public land acquisition policies are likely to be severely handicapped by powerful private interest opposition.

¹⁵² In addition to the necessity of strengthening the tax base and improving collection techniques (see note 119 *supra* and accompanying text) other methods of financing land acquisition can be formulated, as illustrated by the approach of Jakarta's Kumpang Improvement Program. In Indonesia, compensation for government acquisition is defined as the present market value. Presidential Instruction No. 39 of 1973. A recent study of the Kumpang Improvement Program recommended taking the burden of compensation away from the city government and including such costs in the total Kumpang Improvement Program costs. When city government bears the financial responsibility, its limited budget often results in the purchase of cheap land far from the major economic opportunities of the community to be served. The study reasoned that incorporating the compensation obligations into the total Program costs would lead to a division of the burden between the national government, local authorities and soft-term loans. NATIONAL KAMPUNG IMPROVEMENT POLICY, *supra* note 41, at 142.

¹⁵³ Many changes are needed in laws that needlessly impede implementation of public projects. For example, authorities in Bangkok are currently required to bid competitively with other parties interested in the cleared land, a requirement that increases costs considerably. USAID, REVIEW OF THAILAND POLICIES 1976, *supra* note 135, at 24. In Indonesia, where formal expropriation laws are rarely used, due to their unwieldiness, the negotiating process delays acquisition and is abused by many local governments. The fundamental need is for laws that establish equitable and efficient acquisition procedures rather than allowing procedures to fluctuate according to local temperaments.

Lack of adequate funding frequently limits the ability of governments to pursue active land acquisition policies. The experience of some more developed countries, such as Australia and Korea, with a process known as land readjustment, indicates the potential for controlling development of urbanizing areas in developing cities. Greatly simplified, land readjustment involves the following elements: groups of owners of suburban, undeveloped land negotiate with public officials concerning the urbanization of their lands, whereby the government provides a specified level of services and utilities and then redistributes the land on a *pro rata* basis to the contributors after retaining a substantial portion of the land for public development purposes. While the coordination and implementation of such a program may demand greater administrative skills than are presently found in the developing world, the process illustrates the creative potential for public and private sector cooperation in urban development, with the benefits of value increase more equitably allocated.¹⁵⁴

2. Land Tenure Policies

Laws ordering urban land tenure arrangements are as important as acquisition policies to the overall success of public development programs. Land tenure laws have enormous potential to aid the attainment of several land and housing policy objectives, including: equitable allocation of the benefits of landholding among a broader range of income groups; encouragement of individual and collective environmental improvement; and rationalization of patterns of metropolitan development. Tenure laws reflect a given society's conception of the appropriate balance of competing individual and public needs for a scarce supply of urban land.¹⁵⁵ Two broad categories of tenure policy instruments will be considered: first, restrictions on land acquired by government and dedicated to public purposes; and second, laws restricting ownership rights of private property. Laws of both types will determine how

¹⁵⁴ Shoup, *supra* note 27, at 54-59. See also Doebele, *Land Policy in Seoul and Gwangju, Korea, with Special Reference to Land Readjustment* (World Bank, Urban and Regional Report No. 77-9 (Vol. I), January 1976).

¹⁵⁵ Virtually all societies have recognized the dual nature of land as both a natural resource and an economic commodity; the differences developing countries lies in the emphasis legal systems place on urban land's public and private nature. This emphasis is reflected largely in the laws which define tenure arrangements. One suggested method of determining the "optimum land tenure system" is one that is "most capable of reconciling the trade-offs inherent in these two contradictory natures as they evolve with time and degree of urbanization." Doebele, *supra* note 48, at 107.

developing cities deal with the dilemma caused by the pressure of urbanization on land use: the conflicting needs for security of tenure for private property and for flexibility to accommodate future urban expansion.¹⁵⁶

Some land acquired by public authorities necessarily is held from development as a reserve for changing demands of future urban growth. Much of the land expropriated for public purposes, however, is equipped with urban infrastructure and allocated for low income groups in the form of sites and services and settlement upgrading projects. Tenure arrangements under these programs can have long term effects on individual families and on the pattern of urban expansion. Governments must carefully weigh the alternative forms of tenure policy in order to avoid potentially harmful effects while positively influencing private initiative and overall urban development. Mere regularization of tenure in upgrading or sites and services projects, without certain safeguards, can have severe unintended consequences. Foremost among these problems is the "raiding" by the middle income population of projects intended for lower income groups. While the original residents may benefit initially by selling their rights to higher income groups, this "quickly raises values to a point where the area is no longer suitable for low income settlement, and the persons affected move themselves and their housing problem to another area of the city."¹⁵⁷ Initial provision of only basic services tends to make a project less susceptible to this phenomenon. Tenure arrangements also can aid in its prevention by prohibiting transfer without prior authorization or by providing that the government will hold the right of first refusal to any transfer.¹⁵⁸

Other provisions in tenure instruments can prevent potential deleterious effects of low income settlement plans while promoting public objectives, particularly with regard to the issue of population density. As pressures of urban expansion increase, a project initiated in a fringe area at a relatively low density probably will need to accommodate a greater number of families at some future point. This contingency can be covered in the terms of tenure originally granted to the project settlers. Another condition which is commonly attached governs individual improvement of the shelter structure. It can give the entire settlement mutual assurances of gradual upgrading.

¹⁵⁶ Dunkerly, *supra* note 64, at 7.

¹⁵⁷ Doebele, *supra* note 48, at 145.

¹⁵⁸ NATIONAL KAMPUNG IMPROVEMENT POLICY, *supra* note 41, at 141.

Tenure arrangements differ according to local traditions and needs. However, they should always extend adequate title security to foster individual investment in the incremental upgrading of the housing area. At the same time, they must remain flexible enough to respond to the dynamic conditions of urban expansion. Governments can attach significant conditions to the interests in land which they grant through a variety of legal forms; they should not forego this opportunity to maintain control over the patterns of land use.¹⁵⁹

Other forms of tenure control impact directly on private property rights and seek to minimize distortions in the urban land market which have blocked access of lower income groups to urban land and housing. Laws restricting land ownership reflect the relative balance of public and private interests in a particular system as private land ownership, once regarded as virtually absolute, increasingly is being subjected to public controls. Precisely drafted statutes correct some of the excesses of the market, but often may have limited practical effect because of forceful political opposition.¹⁶⁰ If not anticipated, the effects of other policy instruments, such as rent controls, may aggravate the problems they

¹⁵⁹ Tenure controls, exercised through deed restrictions or lease provisions, are potentially more effective than land use controls, for several reasons: (1) they are based on the retention of certain property rights by the public so that violations may result in the property being transferred back to the public, whereas violations of zoning ordinances or other land use controls usually result in fines or less severe penalties; (2) they can be individualized, whereas land use regulations usually apply to general districts; and (3) they allow more alternative approaches to policy issues such as efficiency, equity and recapture of incremental value gains, since legal limitations on land use controls usually do not apply where the public has acquired a share of the property rights. The greatest disadvantages of tenure policies are their administrative demands and the potential for corruption in individualized situations. Doebele, *supra* note 48, at 113.

¹⁶⁰ One statutory approach limits the holdings of any individual or family within a metropolitan area. In 1976, India adopted the Urban Land (Ceiling and Regulation) Act, which provides that ownership of vacant urban land will be limited to specified amounts, depending on city size, with the excess land passing to the government upon settlement of compensation arrangements. For India's largest cities, such as Delhi, Madras and Calcutta, 500 square meters is the upper limit on permitted vacant landholdings, whereas the ceiling is higher in smaller cities (up to 2000 square meters of vacant land may be held in the category of least populated cities). *Id.* at 131. However, different policies toward urbanization and government intervention are held by the Ghandi and Janata parties, which, given the current flux in India's government, casts considerable question on the present validity of this law. SATTERTHWAITTE, *supra* note 83, at 27.

Another form of tenure control is compulsory development in designated zones. The Philippines enacted such a law in 1978, aimed at reforming urban land markets, plagued by the common pattern of large landholdings, chronic speculation and national development. Under this law, the president is authorized to proclaim "urban land reform areas" within which owners are required to develop their land according to government specifications or else face expropriation. Presidential Decree 1517 (1978), *cited in* USAID, PHILIPPINES

purportedly are designed to ameliorate.¹⁶¹ Apart from the considerable private sector opposition to changes in tenure arrangements,¹⁶² many developing cities also face enormous difficulties due to uncertainty and confusion in their existing systems of record keeping and registration.¹⁶³

C. *The Need for Policy Coordination*

Coordination of government action is vital to the effectiveness of the instruments of urban housing and land strategies. Policy coordination must exist among various municipal authorities concerned with shelter, infrastructure, planning and finance,¹⁶⁴ as well as among the numerous municipalities which may compose a

SHELTER SECTOR ASSESSMENT, *supra* note 148, at 87. A similar law has been proposed in Brazil but is not likely to be implemented, due to concerted opposition of private interests. SATTERTHWAITE, *supra* note 83, at 52.

¹⁶¹ In times of emergency, rent controls may be necessary to resolve short term needs. Prolonged application of rent controls, however, has serious results if not adjusted to allow private owners an adequate return on investment. The most visible result is the disincentive for maintenance and improvement, perpetuating and worsening slum conditions. See generally UNITED NATIONS, DEPARTMENT OF INTERNATIONAL ECONOMIC AND SOCIAL AFFAIRS, REVIEW OF RENT CONTROL IN DEVELOPING COUNTRIES, U.N. Doc. ST/ESA/85 (1979).

¹⁶² Political opposition by private interests accounts in part for the failing of many governments to enact aggressive tenure laws, even though their basic legal frameworks authorize such action. This is clearly the situation in Indonesia, where traditions of small landholding and productive use of one's own property clash sharply with the elite dominated modern urban land situation. The government is authorized under the Basic Agricultural Law to prevent excessive ownership and control of land which violates the public interest (art. 7) to restrict absentee ownership of land (art. 10), and to delimit minimum and maximum landholdings of individuals (art. 17). Despite the legal foundation, laws altering tenure arrangements thus far have been applied only to rural land, while the urban land market continues to fail to meet the needs of the low income majority. Sherer, *supra* note 70, at 70-73.

¹⁶³ Several factors relating to a lack of information inhibit land policy instruments, including:

1. weak or non-existent land registration requirements;
2. insufficient data on existing land use and density characteristics; and
3. lack of accurate information on economic and social dynamics of population to be utilized in planning for urban development.

Rivkin, *supra* note 26, at 92.

¹⁶⁴ One of the prerequisites of effective urban planning in the developing world is the coordination of action between planning agencies and public authorities which make capital investment decisions regarding provision of services and infrastructure. See notes 76-80 *supra*, and accompanying text. Joint action among officials, however, is not yet a reality in many cities. Bangkok's attempts to plan for infrastructure provision illustrate the common experience of fragmented planning and implementation authority. In that city, numerous plans for long range provision of public services and utilities have been prepared by municipal water, electricity and telephone authorities. The fact that these master plans are not coordinated makes the prospects for effective implementation appear doubtful. Vichit-Vadakan, *supra* note 129, at 239.

metropolitan region.¹⁶⁵ Furthermore, urban land and housing programs should be viewed in the context of comprehensive national settlement policies that include measures for rural development, establishment of new towns, and promotion of secondary cities as growth poles.¹⁶⁶ One step toward consolidation of authority over settlement issues is the establishment of national development agencies with broad powers over all phases of urban housing and land development projects.¹⁶⁷ The fundamental need is for coordi-

¹⁶⁵ One method of coordinating policy decisions across jurisdictional boundaries is the development authority approach, whereby a metropolitan agency is given wide powers to develop housing and land programs throughout the region. This has been the response in the metropolitan Manila area, which contains seventeen separate jurisdictions. Yeung, *The Urban Environment in Southeast Asia—Challenge and Opportunity*, in GEOGRAPHY AND THE ENVIRONMENT IN SOUTHEAST ASIA, *supra* note 86, at 23-24.

¹⁶⁶ The interdependency of urban land and housing strategies with overall national settlement policies is expressed well by an observer of African urbanization:

Urban planning now involves both rural and urban areas. In much the same way that housing demand may be solved without supplying housing units (through sites and services), it is now being recognized that the problems of cities may be solved in the rural countryside where, if only conditions can be improved, the trek to the cities may at least be made to slacken or stop. The science of human settlements is now replacing traditional town and country planning as an approach to planning. National or regional systems of cities are being planned within national human settlement strategies. The planning process now also cuts across not just territorial but disciplinary lines as well. The combined efforts of physical and social scientists—engineers, sociologists, transportation experts and urban anthropologists—who are now commonly involved in planning, assure a more balanced view and, therefore, a more realistic change for development.

Housing in Africa, 4 PLANNING AND ADMINISTRATION 107 (1977).

¹⁶⁷ Given the proper administrative and financial commitment, such agencies can exert powerful influence on urban development. UNITED NATIONS, POLICIES ON HUMAN SETTLEMENTS IN LATIN AMERICA 13, Latin American Conference on Human Settlements, Mexico City, November, 1979, U.N. Doc. E/CEPAL/CONF.70/L.7 (1979). The potential of National Development Authorities to improve administration and effectiveness of housing programs is illustrated by the experiences of Brazil and Malaysia. Brazil's National Housing Bank (BNH) began as a housing finance agency but evolved into a full scale development institution with wide powers over all aspects of housing and infrastructure provision. The BNH has broad influence over the direction of urban development, due to its role as a major financial institution for commercial facilities, as well as for infrastructure and shelter construction. In one instance, the BNH threatened to withhold financing of a major industrial complex unless the company agreed to furnish adjacent sites for low income employee's housing. Rivkin, *supra* note 26, at 110; Rivkin, *supra* note 36, at 9. Malaysia's Urban Development Authority (UDA) is another example of a comprehensive agency empowered to undertake urban development projects with a mix of financial and regulatory instruments. In addition to the general powers of acquiring and developing urban land for low income housing projects, the UDA also finances and constructs new towns and multi-use complexes, programs that encourage increased Malay participation in the economy. Since the UDA has become a major source of development credit, it uses its financial leverage to direct the pace and location of urban development. Rivkin, *supra* note 26, at 110-111. The Malaysian and Brazilian experiences with comprehensive national development agencies may not be transferable directly to other developing countries that lack the requisite financial and administrative resources. However, these experiences demonstrate the need for

nation of planning agencies with authorities that formulate public investment priorities. To be effective, urban development policies must demand this crucial linkage between planning and investment policy.

V. SUMMARY AND CONCLUSIONS

The housing assistance programs that are becoming increasingly popular certainly are preferable to the misguided and ineffective responses of many developing countries. Reduced emphasis on government construction of low income shelter units should free financial and administrative resources for increased public participation in assembling other major elements of housing, such as land and services. Settlement improvement, serviced sites and similar projects should not be regarded as definitive solutions but rather as intermediate steps toward meaningful overall urban land and housing policies. The significance of the shift in thinking that has occurred within the past decade should not be missed. It can have great impact for large numbers of urban low income families. But vast problems remain. Unless the principles implicit in sites and services and upgrading projects are incorporated into laws governing the urban land market, the potential effects of the new housing policy are not likely to be fully realized.

If the objective of local authorities is to improve the land, shelter and public service systems for greater numbers of lower income families, several administrative responses must be made. First, unrealistically high service standards should be abandoned in favor of levels attuned to the priorities and resources of target groups. Public efforts should turn toward providing minimum standards for all families, rather than the frequent anomaly of having legal standards which are not attainable by the masses, who must resort to illegal sources of services, often below minimal levels of health and safety. Second, public officials should seek to improve physical access through land use planning policy. The planning process must become part of the legal machinery before it will have a measurable effect on the rationalization of urban land use. This process should include the crucial linkage of planners with officials who determine public investment priorities. Before

consolidation of planning, public service and finance authorities, to resolve inter-agency conflict and to provide the framework for unified and more effective public action. W. Doebele, *Establishing a National Urban Land Policy*. Paper presented at Shelter Training Workshop, USAID, Office of Housing in Washington, D.C. (Nov. 5-30, 1979).

planning policy can succeed fully, there must also be a recognition that the assumptions at work on the current urbanization of the developing world are fundamentally different from those in the developed nations. Thus, the rigid separation of land uses present in many industrialized cities is probably not appropriate in most developing country cities. Instead, flexible planning, including mixed-use zoning, is more suited to the needs of developing cities. Third, improvements are needed in all aspects of land taxation systems, including improved collection of taxes; under-assessment of current values; valuation which reflects development value rather than current or present use value; the formulation of new taxes to recapture value increases resulting from public investment and to accomplish other social objectives, such as vacant land taxes; incentives to develop low income housing; and betterment levies and user charges. Public authorities should seek to exploit the revenue generating potential of effective systems of land taxation. Beyond this immediate advantage, officials should recognize the power of taxation policies to positively affect private decisions regarding urban development. Fourth, governmental assistance in delivering the various components of low income housing must be facilitated by adequate measures for public acquisition of land and for adjustment of tenure rights. Without effective powers of expropriation, governmental intervention in urban land and housing markets is hampered severely. Although the particular legal contexts vary greatly, improvement of public powers of land acquisition is necessary in most developing countries. Perhaps more important than any set of policy options is the overall need for increased attention on the part of decisionmakers to the related needs of all people for shelter, space and services.

Government responses to settlement needs of urban poor now must extend beyond the traditional project oriented response; a new level of commitment toward ameliorating the urban land crisis is necessary. Public action must be coordinated within an overall settlement strategy. The complex problems of urban land and housing must receive a higher priority within national goals and budgets. Increased government participation in the urban land market will require a major shift in the balance of power among public and private sector decision makers. Both sectors must realize that adequate provision for those who cannot compete is a prerequisite to continuance of a market system of land control. Recent progress has been made; past failures have been recognized and more effective approaches are being implemented.

However, the question remains whether developing countries have the institutional strength and political will to resolve some of the fundamental problems that perpetuate and aggravate existing urban conditions.

Bertis E. Downs, IV