

Land Tenure and Land Regularisation

in Informal Urban Settlements in Developing Countries

-Examples from Latin America and Africa-

**Sector Project:
Importance of Land Policy and Land Tenure
in Developing Countries**

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0. Preface

During the work on the guiding principles of “Land Tenure in Development Cooperation” (GTZ 1998), the need for a critical study of land right and tenure issues in the cities of developing countries became increasingly obvious. The topic proved to be of particular relevance to the situation in peri-urban areas, in other words, in those areas on the urban fringe where the transition process from rural to urban use is in progress.

This study, initiated by the Scientific Advisory Group of the GTZ Sector Project “Land Rights and Land Tenure Systems”, aims to fill that gap.

The research into the project began in the autumn of 1997. The most important information was gathered during the intensive visits to the following GTZ projects in the spring of 1998:

- PRORENDA City Development, Rio Grande do Sul (Brazil).
- Strengthening of Self-Help Initiatives on the Urban Fringe of Fortaleza/Ceará (Brazil).
- PRORENDA Integração Urbana in Pernambuco (Brazil).
- Various Urban Development Projects in Greater Santo Domingo (Dominican Republic).
- Régularisation et Restructuration de l’Habitat Spontané (Senegal).
- Projet de lutte contre la pauvreté dans les quartiers périphériques de Nouakchott (Mauritania).
- Urban Upgrading and Development Programme (South Africa).
- Small Towns Development Project (Kenya).

Also included in the review was the KfW project “Programa Integral de Mejoramiento de Barrios Subnormales” (PRIMED) in Medellín/Colombia.

We would like to thank all those who helped us with so much diligence and co-operation and gave us access to the information material we required. Any

statements not verified in the text below, are based on interviews conducted during our visits to the projects.

A draft of our conclusions was presented for discussion at the GTZ workshop “Land Rights and Land Tenure Systems” held on 18 and 19 June 1998 in Oberursel (joint event of GTZ Sections 4547, Rural and Regional Development, and Section 4248, Urban and Municipal Development). Discussions after the presentation confirmed that the draft was well received. Contributions made by several participants at the workshop were incorporated in the final version of the report.

A comparative literature review suggests that the main conclusions drawn in this report could by and large be generalised to apply to comparable cities and conurbations in South and South East Asia.

The contributions printed in appendices 5 and 6 were first presented at the GTZ workshop in Oberursel mentioned above.

Special thanks go to Andrea Marx and Anke Pötter for their layout and editing work.

*Günter Mertins – Jürgen Popp – Babette Wehrmann
Marburg, November 1998*

1. Problem Analysis

All cities or densely populated regions in the developing countries are almost completely surrounded by informal or unregulated settlements (DURAND-LASSERVE 1996). Fewer such settlements, smaller in size, and mostly in unsuited locations, are also found within cities. Slums may contain settlements which meet some of the criteria of informal settlements. (Slums are here defined as high-density, downgraded residential areas that used to house the upper, middle and working classes, usually in or near the old city centres.)

With the rapid population growth of the cities and conurbations (especially in Africa, South, South East and East Asia, and to a lesser extent in Latin America) there is a simultaneous expansion of geographical area, which is linked to the rapid growth and spread of peri-urban shack dwellings. It is commonly accepted that:

- at least 40-50% of the population of cities live in informal settlements, either on the outskirts or in inner city slums and
- at least half of the buildings (in some cities up to 80%) are informal, i.e. erected without formal approval or planning. Included in this count are the settlements that developed 20 or 25 years ago and have long been consolidated and legalised or formalised.

The extent of informal settlements as a proportion of the total built environment in metropolitan areas and mega cities is expected to remain more or less constant well into the 21st century. In Africa, South, South East and East Asia, where there is a large potential for migration, informal settlements will grow (perhaps considerably) wherever the rural - city/metropolis migration is similar to that of many areas in Latin America. From 2000 to 2020, the population of mega cities and metropolises world-wide is expected to increase by about 200% in Africa, 90% in South Asia (and by even 100% in India), 83% in South East Asia and 64% in East Asia. However, in tropical South America the increase is expected to be only about 44%.

1.1 Informal versus formal settlements and settlement development

It is accepted that only upper, upper middle and middle class residential and commercial areas, as well as all facilities for public services, develop according to official plans, norms and guidelines. However, the development of simple private service providers (small repairs, trade and commercial stalls) almost always has an informal character.

For decades there has been almost no formal private housing construction for low-income groups. In part, this is due to the fact that these households do not have sufficient disposable income for rent or bond repayments, and partially because social housing projects are mostly not aimed at this group but rather at the lower middle and middle class population groups where cost recovery can be effected.

Against the background of the natural population growth, and in particular the immense rural-urban migration since the 40's and 50's, political pressure and financial constraints led governments to adopt a laissez-faire approach to the rapid growth of large informal settlements. These developments were frequently accepted as self-help solutions to housing problems and often preceded significant consolidation processes.

Inter alia, the informal development of settlements comprises

- either the illegal occupation of private or public properties (squatting);
- or the purchasing of small properties (on average 100-150m²), often without official transfer and registration;
- building without approval (and subsequent alteration and extension), sometimes in areas unsuitable for building, which raises questions of land use and town planning;
- ignoring of building laws (construction statics, building materials, building heights, density and infrastructure);
- self-help building almost as the norm of housing provision for low-income households in many countries (thereby reducing or eliminating altogether the perceived need for public expenditure on housing programmes).

The fast growth of informal settlements presents a huge challenge to local governments who need to provide access to public services. The biggest problems for house or shack owners are possible eviction in the absence of a title deed, and that they have no access to credit for building and renovation on favourable terms.

Informal settlements present many difficulties relating to formal land use and town planning. These settlements often occur in environmentally high-risk areas, such as on steep slopes or in flood plains, where residents are threatened by mud slides and floods. When land is illegally occupied zoning regulations are ignored and the street layouts become very irregular. Later attempts to provide better access to social and technical infrastructure often involve large-scale relocation which is costly and causes social problems. Although semi-legal subdivision is widespread on sites earmarked for development, building regulations such as density, height restriction and construction statics aspects are also not observed.

1.2 Informal settlements in the context of urban development projects

Most development projects in large cities (Metropolitan areas, Mega-Cities) aim to improve the habitat (integrated urban/settlement development), and include important income generation, self-help and participation, infrastructure and housing components. The ultimate goal of these projects is usually to contribute to improved living standards of the poor population, in particular of single mothers.

Unresolved issues concerning security of tenure and land use rights often impede, delay and sometimes even prevent the implementation of such initiatives. These issues were often neglected or ignored in many development projects, as they were seen to be too complex or difficult to solve within the constraints of a single project. Many projects in large squatter settlements delayed addressing land use and tenure issues, only to find that the success of the project was jeopardised at a later stage. In a project in El Caliche (Santo Domingo), where this happened, the focus of the project was changed to prioritise the clarification of tenure and land use rights. This facilitates the implementation and ensures the sustainability of the project.

2 Types of urban land ownership

2.1 Formal types of land ownership

2.1.1 Private ownership

The concept of private ownership in the European legal tradition dates back to the “Code Napoleon” of 1804-1808. European colonialism transferred this system to many non-European countries. The Code defines ownership as the right to freely dispose of objects, as long as this is not in contradiction to other laws and regulations (PAYNES 1997, pp. 3). Private ownership of objects can be permanent or temporary.

Private property in case of clearly defined ownership rights and user rights guarantees the owner the yield of his investment exclusively (GTZ 1998, p. 33).

The term *freehold* is used in English-speaking Africa to define private ownership, but the exact meaning of the term may vary from country to country. In South Africa, *freehold* is the highest form of ownership. In Kenya, *freehold* indicates that a person or group of persons, as well as their heirs, is owner of a property while alive. Should no heirs exist, ownership reverts back to the state (compare appendix 4).

2.1.2 Public ownership

a) State property

In English-speaking countries state property is divided into *private domain*, i.e. land that is leased to a third party and *public domain*, areas that are reserved for public institutions. As a rule, *public domain* covers movable and immovable goods, which by their nature or common use do not lend themselves to private ownership (rivers, streets, power and telephone lines, forests, natural resources or military areas).

In parts of francophone Africa, as is the case in many unregulated settlements in Dakar, Senegal, *national domain* also exists. The introduction of *national domain* in Senegal in 1964 after independence consisted of nationalising all land not already

belonging to the state (95% of the total area), thereby annulling all customary land rights. After nationalisation, land use rights could only be awarded by the state, even if those who had previously used the land in question were authorised to continue to do so (see Example 1).

b) Communal land

In cities communal land normally comprises parks, streets, schools, hospitals and other areas of special use. In coastal cities (especially in Brazil) communal land often adjoins state land (land within 65m from the water line owned by the navy). Measures to upgrade and legalise illegal settlements on such land are only possible if use rights are first transferred to the municipality and, in a second step, to the residents (see also Chapter 2.1.3).

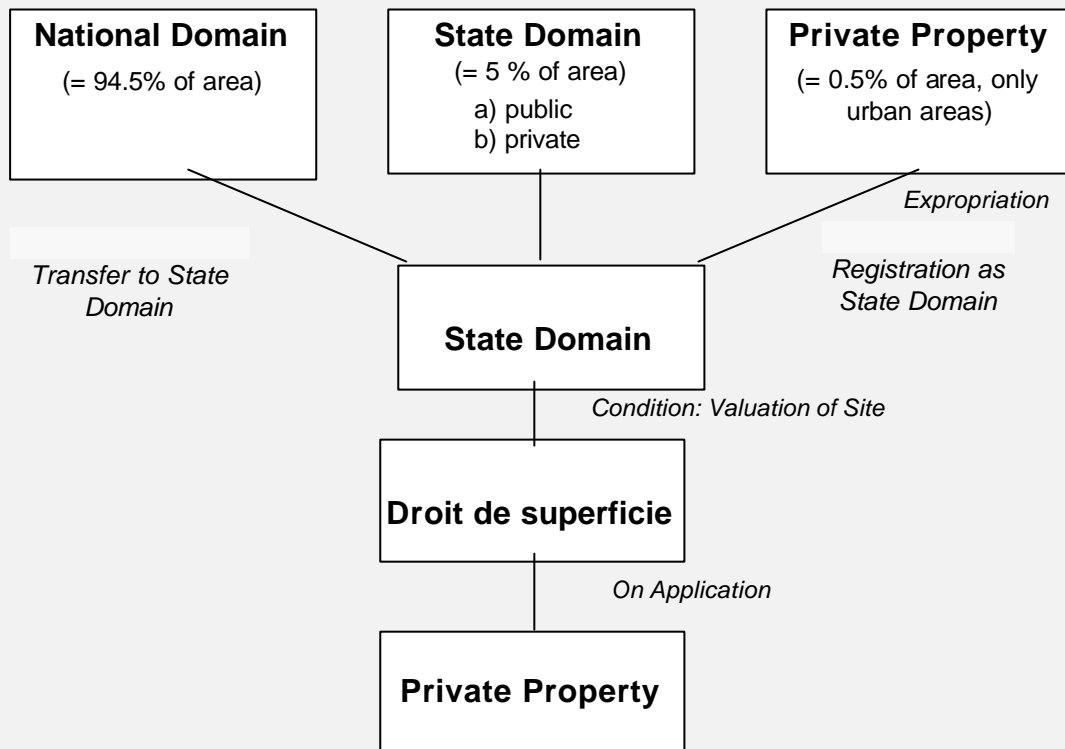
c) Collective Ownership (*ejidos*)

In Latin America *ejidos* areas are a form of collective property ownership comparable to the European *Allmende-areas*. Originally, with the founding of Spanish colonial cities, *ejidos* areas in the direct vicinity of settlements were demarcated for communal pastures and the extension of the settlement. Depending on the growth of the cities, areas were successively divided, developed and incorporated into the cities (BÄHR/MERTINS 1995, p. 14). Where *ejidos* areas still exist, they are communal property (e.g. in Cali or Neiva, Colombia) and ease urban development planning. If parts of these *ejidos* are informally occupied by residents of the city, this is normally tolerated as long as communal interests are not affected (e.g. for roads, parks or social institutions).

Example 1: Land ownership in Dakar, Senegal

In the informal settlement areas within Dakar, state-owned land, nationalised property and private property is found next to common law land and religious land. Within these informal settlements various combinations of land ownership exist. Not only that autochthonous and modern systems of land tenure co-exist, private property, state domain and national domain¹ also do (see appendix 3).

When informal settlements are legalised, they are first transferred to state domain before *Droits de superficie* are implemented, regardless of the predominant preceding form of ownership. These rights require that the property be valued. They assure a 50-year residential right with an optional right to purchase the title deeds at a later date. In this way, a uniform procedure was found in which the first steps, the partners in negotiation and the responsible agencies can vary, depending on the context.



¹ State Domain includes approximately 5% of all land and is divided into *domaine public* (movable and immovable property belonging to the state which is considered to be unsuited for private ownership, due to its use or nature, such as rivers, roads, water and power utility systems, telephone lines) and *domaine privé (de l'Etat)*.

National Domain comprises approximately 95% of all land. When the National Domain was established in 1964, all land that did not belong to the state was nationalised. In effect, this was an implicit abolition of customary land law. Land use rights were subsequently awarded by the state, even though previous occupants were given the right to continue to use the land. National Domain can be converted into State Domain (*domaine privé*) without compensation. *Zones urbaines* (urban areas) are one of four categories of National Domain, each of which are governed by their own laws and regulations. The *zones urbaines* are further subdivided into building areas and areas with still predominantly agricultural use which serve as reserve for future extensions of urban areas (EIDAM 1993).

In Mexico, a new form of *ejidos* areas emerged in the revolution of 1917. On the basis of partially pre-colonial collective forms of land ownership, a new form of collective ownership was created with the co-operative *ejidos*, whereby each farmer was entitled in principle to a plot in the local *ejidos* that remained state property. The *ejidatario* can accordingly bequeath the plot, but not lease or sell it, or pledge it as security for loans. Due to the extreme growth of cities like Mexico City, *ejidos*-areas were occupied and sold illegally despite these regulations (see also Chapter 3.2) by self-appointed property dividers, known as *loteadores* (IRACHETTA 1998).

2.1.3 Land use rights

Often land is not used by the owner, but the use rights are transferred to a third party (or group), either gratis or against payment. A distinction can be made between permanent or temporary land use rights. In English-speaking areas the legal constructs of *leases* and *tenancies* are used to describe a situation in which land is rented or leased for a fixed, limited period of time. The tenant pays the lessor an agreed amount for the land use rights. Duration of the agreement and the amount to be paid is fixed in a formal contract, which usually can be extended at the end of the current period. Leasehold agreements are secondary use rights on land. The rights arising from the lease agreement can usually be transferred (sub-letting) and, under certain conditions, serve as collateral for loans or mortgages.

In some countries, like Kenya, local authorities often only allow the acquisition of use rights. Hence most owners in the cities have properties that will revert back to the city council after the lease agreement expires. In Brazil, land use rights may be given to occupants when illegal settlements are legalised (see also Example 2).

The issuing of Occupancy Licences, as practised in Kenya, is another way of formalising land use rights on occupied land. Occupancy Licences are predominantly used in rural areas, but, with the spread of urban areas, they are increasingly being used in urban settings too. The biggest difference between owners of land use rights and license holders is that the former have greater legal security, while a license can more easily be revoked unilaterally by the issuing authority. But the license has

advantages too, as the holder is not subject to the strict regulations that govern leases and tenancies. Licenses are often preferred due to their greater flexibility. Owners have the right to grant or refuse access to their property at any time. An example for a license is the so-called *permit to occupy* which is the weakest form of land right in South Africa.

Example 2: Concessão do Direito Real de Uso (CDRU)/Brazil

The CDRU has been secured in the national law of Brazil since 1967. CDRU is a land use right for properties in public possession which the local authority may allocate to private persons, either free of charge or against payment, and includes registration in the title register. It constitutes an important instrument for legalising occupation of public land on sites of less than 250m². CDRUs are valid for between 30 years (Pôrto Alegre) and 50 years (Recife), but can be extended. In addition, CDRUs can be transferred by will. The public authorities theoretically reserve the right to take a property back if the agreed use is not observed. Although selling of the property is prohibited by law, *de facto* sales and consolidations are common on the informal market.

For better implementation of CDRUs, decrees (*leis municipais*) were promulgated and administrative structures put in place to support the issuing of CDRUs in many Brazilian cities (provision of land surveyors, lawyers, draughtsmen). Although the legal and administrative conditions are favourable for granting CDRUs, there is still a substantial discrepancy between the CDRUs needed and those actually implemented, caused in part by lengthy procedures (ALFONSIN 1997, pp. 77).

2.1.4 Autochthonous land tenure

The main characteristic of autochthonous land tenure is the premise that land use is not the prerogative of any individual, but of a whole group or community. Common land can only temporarily be given to an individual in the form of a land use right for habitation and agriculture. As traditional common land cannot be mortgaged, occupants frequently have very limited access to credit.

Autochthonous land tenure is closely connected to traditional rural communities and has ensured the survival of hunters and gatherers, farmers, herdsmen and fishermen for centuries. (See MERTINS/POPP (1996) for a discussion of customary land rights on the plains of East Bolivia, and GAWORA/MOSER(1993) for the Amazon Region.) Common land has a strong religious function and is the source of spiritual power. Therefore the use rights can only be given away by a person authorised to do so. In traditional African societies, this function is often performed by the so-called land lord (chief or “chef de terre”), who may simultaneously fulfil the roles of administrator of the land, judge in the case of disagreement, spokesperson of the community and representative of the will of the ancestors (MÜNKER 1994,p. 83). Due to continued expansion of urban areas, there is an increasing degree of overlapping between autochthonous and modern systems of land tenure on the same land, usually associated with the integration in modern real estate markets. Especially in parts of Africa, autochthonous land tenure still exercises a strong influence on land law issues, particularly in the informal peri-urban areas. While the autochthonous land tenure is usually not recognised by the modern legal system, it still exists in parallel and may exert a significant influence on land allocation practises (see also Example 1 and Appendix 3).

Autochthonous land tenure, therefore, is a form of formal land ownership. It only seems informal in the light of not being recognised by the respective constitutions. There are countries, however, that acknowledge customary land rights - Ghana, for example, where the indigenous land tenures of different ethnic groups were entrenched in the constitution in 1979 and 1992. Accordingly, land in Kumasi is allocated by customary land rights of the Ashanti tribe (see KOOP 1997). Autochthonous land tenure is therefore not merely pre-colonial law, but continue to be vital and effective and has proven to be adaptable within limits (MÜNKER 1994, p. 82; GTZ 1998, p. 50)

Customary forms of land ownership generally have religious origins (MÜNKER 1994, p.84, MÜNKER 1995, p. 7), nonetheless they can be classified as being either more religious or more mundane in orientation. Both forms co-exist in Senegal. The central figure in customary legal land ownership is the land lord. In societies under Islamic influence, the Marabout plays this role, while in traditional feudalistic cultures like the

Ashanti in Ghana, the function is performed by the king, whose role is comparable to that of the land lord as chief land administrator. At the level of individual settlements, he is represented by sub-chiefs.

Indigenous land tenure also exists in Latin American cities, although it is not as widespread here as in Africa, for example in the AREA Metropolitana of Fortaleza, Brazil, where considerable user conflicts exist between indigenous groups on state acknowledged reserve land and private investors.

2.2 Informal forms of land ownership

As regards informal land ownership forms, it should be remembered that their origin and the current situation are inextricably linked (see Chapter 3). The illegal and semi-legal settlements have the following criteria in common (BÄHR/MERTINS 1995, p. 141; see Figure 1):

- No approval exists for the conversion and subdivision of agricultural or fallow land to urban settlement areas.
- Building and consolidation occur without permission or in violation of urban building standards.
- The installation of initially rudimentary technical infrastructure is also informal. Power lines and water pipes are often tapped and organised solid waste removal is non-existent.

2.2.1 Illegal forms of land ownership

Illegal shack settlements generally appear mostly on land that is by nature unsuitable, primarily on publicly, but also on privately owned land. In Brazil areas reserved for schools, clinics or streets are occupied, even within formally established settlements. The occupier has no legal security. This means that he can be evicted at any time, whereby compensation may be paid - if at all - for physical building materials (hut, fence etc.). If an official complaint is made, the *squatters* are mostly given a period of grace within which the land must be vacated. Tolerance of illegal settlements is usually greater on public land than on privately owned property.

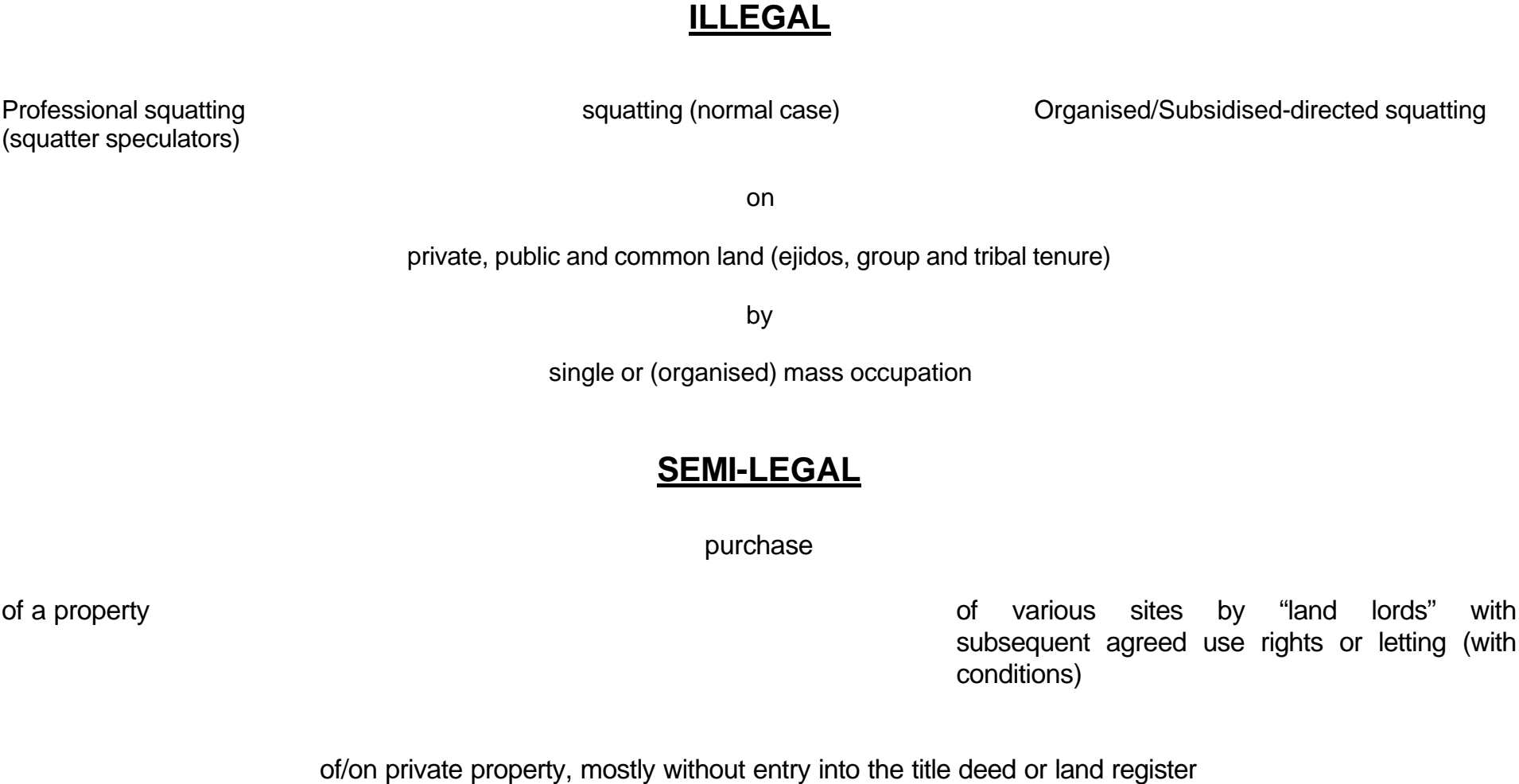
2.2.2 Semi-legal forms of land ownership

The most striking difference between illegal and semi-legal settlements lies in the manner in which they develop and in the *de facto* ownership structures (see Chapter 3). Semi-legal land ownership is established when the buyer of a plot perceives himself to be the owner. As would be the case in a legal purchase, the buyer may receive a receipt for his payment of the purchase price, or for instalments he may have paid. But no transfer of ownership would be registered on the title deed and the site may not have been surveyed, so that the owner may not be able to assert formal land ownership rights from his purchase. Nevertheless, semi-legal ownership provides more secure tenure than illegal occupation.

Division into plots in semi-legal settlements usually adheres to local land use planning regulations, thereby minimising conflicts with public authorities and facilitating later legalisation. This primarily concerns keeping to regulations for street widths, reserving spaces for special use (i.e. schools, clinics) and for parks. In contrast to illegal settlements, the layout is more regular. In the Latin American context one even sees the traditional grid layout with a central plaza in many semi-legal settlements. In general, semi-legal settlements that occur because of land pressure develop on more valuable land than that usually occupied by illegal squatter settlements (BÄHR/MERTINS 1995, p.140 ff).

The regular settlement layout facilitates a rapid consolidation. The grid-like layout of new allotments, similar to that of colonial Latin American cities, furthermore facilitates the unproblematic building of streets, as even terraced routing may be provided. Improvements are more readily made because the owners are somewhat better off financially.

Figure 1: Informal land claims and forms



G. Mertins (6/98)

In the African context, settlements can be termed semi-legal when settlers buy land from traditional authorities who see themselves, and are seen by the group that they represent, as the institution that decrees over the land and its use. In Latin America, semi-legal occupation predominantly occurs on land not in private ownership. In Latin America such land is mostly public land, whereas in Africa it is usually land under traditional tribal ownership. (Note that in the latter case, the original land owner would generally not be considered to be legal owner in terms of current legislation either (see also Appendix 3).)

For example, semi-legal land occupation is common in Tanzania, and only 5% of the settlers are illegal. The remainder entered into formal purchase agreements with owners, who claim customary rights to the land (KOMBE 1995). Nonetheless these settlements and the associated sales are considered informal, as they are not registered in the land register or cadastre. Furthermore, they mostly contravene the building laws and land use rights. Although the settlers can often show a valid receipt to prove that they bought the land, they are not safe from eviction.

A special form of semi-legal settlement is found where formerly legal settlements have lost their legal status through illegal subdivision and the absence of registration. The township of Alexandra in Johannesburg is a semi-legal settlement of this nature (see Example 3).

Example 3: Reconstruction of land right claims in Alexandra

Johannesburg, South Africa

At the start of this century Blacks who worked as domestic servants for the white population bought farmland near the city centre of Johannesburg. They obtained individual plots and even received land registration. As Alexandra was the only area within the city inhabited by Blacks, more people migrated there. Soon the original allotments were blurred with the construction of shacks on virtually all available spaces. Because the responsible public authority of Alexandra changed repeatedly over the decades, most of the land registers were lost. Today attempts are being made to substantiate ownership claims by comparisons amongst older and more recent aerial photographs and by careful assessment of available title deeds and related documentation.

The current land right situation of most Blacks in South Africa can generally be understood as a form of semi-legal land ownership. Only towards the end of the apartheid era did Blacks have the opportunity to purchase land rights (*freehold*). Previously, Blacks predominantly received *permits to occupy* (PTO) that represented the most insecure form of leaseholds, quitrents and deeds of grant (ABRAHAMS 1996a, 1997). Whoever is able to prove a customary use right now has the right to ownership and a title deed (Development Facilitation Act, 67/1995). Land registration must take place before upgrading is possible. But in many cases it is not possible to furnish this proof, as cadastral maps did not, and still do not, exist everywhere in the country. Therefore many claims were not documented, while others were destroyed during sometimes violent protests, in which government buildings were often targeted.

2.3 Forms of land tenure registration

Land tenure registration is an element of land administration (GTZ 1998, pp. 163). One can differentiate between cadastre and land register. These can either be kept separately or in an integrated form. In the land register or title register the legal status of properties is described (Who is the owner of the land? What mortgages exist, if any?) In the cadastre the exact location, size, use and in some cases the value of the parcel of land is recorded. The cadastre and the land register can be cross-referenced by the name of the owner and the site number.

In many developing countries the land tenure registration has not been solved satisfactorily yet. Therefore it is becoming an increasingly urgent task of many development co-operation projects to create functioning cadastral maps and land registers. Within the orientation provided by the guiding principles of "Land Tenure in Development Cooperation" (GTZ 1998, pp. 163) and also in WARD (1998, p. 2), the following advantages (amongst others) to owners are stated:

- secure tenure on the land,
- easier access to official credit,
- security for land markets and
- reduced conflict over land issues.

The state can expect the following advantages:

- creation of a basis for the collection of land taxes,
- basis for upgrading initiatives,
- monitoring of land markets,
- basis for land use planning and its implementation and
- basis for efficient information systems and public management.

Some of the obstacles which may be encountered include:

- high initial investments and the effort of catching up with a highly dynamic situation in appropriate databases (partially caused by fluctuating land tenure conditions and changing sizes of properties, due to subdivision);
- autochthonous land tenure not being considered when modern laws are superimposed on customary land claims and
- difficulties with the surveying of informal forms of land tenure.

Example 4: Integrating customary social land tenure with a modern land registration system in Namibia

Before proposing the introduction of a local land registration system for urban areas in Namibia, an assessment was made of informal and customary land tenure systems to ensure that the proposed system was appropriate with regard to existing social processes. In order to be effective, sustainable and to protect people's property rights, a land registration system needs to respect customary rules guaranteeing social security, such as regulations in regard to marriage, divorce, death and heritage.

It became clear from the research that there were many issues which would cause problems. As an example, amongst many Ovambo-speaking people there is often a conflict between the law and practice in relation to their matrimonial property regimes, which directly affects the way land is inherited. Conventionally, Ovambo-speaking people are matrilineal. This means that a man's sister's son inherits his land and not his own son. That is, a man inherits land from his mother's brother (his uncle) and not his own father.

An unconventional regulatory approach would have to be adopted to ensure on the one hand minimum disruption of the social land tenure system, and on the other hand the correctness of the land records. The parties to such a dispute would need to reach an agreement about the land prior to the estate being finalised and then the legal agreement would inform the land registry officials on how to transfer the registered land rights.

With respect to a simplified land registration system, a parallel system for the urban poor was introduced, which would run inside the existing system, but also be a stand-alone system at local level. Two additional types of titles were suggested, namely 'starter' title and what came to be termed 'landhold' title.

'Starter' title is the new statutory form of tenure, registered in respect of a block consisting of 40 to 100 families. The block could be owned by a local authority, private sector developer or an NGO. While the outside boundary of the block would be surveyed in accordance with existing regulations and registered in freehold ownership in the national level deeds office, the 'starter' title would be recorded at the local property office. The holders have the right to perpetual occupation of a site within the block and are thereby protected from eviction. Transfers are subject to local customs.

'Landhold' title is proposed to be a statutory form of tenure with all of the most important aspects of ownership, but without the complications of full ownership. It would provide the owner with the right to occupy a defined site in perpetuity. It could be sold, transferred and otherwise disposed of, as well as mortgaged. It would not be necessary to register landhold rights using property lawyers, as the range of transactions would be limited and the local office staff would be trained to recognise each of these transactions. Still, the boundaries of the sites would need to be mapped by a technician, not a professional (FOURIE, 1998).

It should be noted that land tenure issues in informal settlements are exceedingly complex. Occupied private and public land, and informally subdivided and let properties, can occur concurrently with overlapping or conflicting formal modern and informal autochthonous rights.

Urban development and slum improvement projects should therefore always be preceded by a detailed analysis of the prevailing land tenure systems. Clarification of

land right issues is of fundamental importance for the sustainability of a project, since its success can be jeopardised if ownership disputes are discovered at a later date (see also Chapter 4).

3. Informal land occupation and resulting conflicts

Informal land occupation can be illegal and semi-legal. Illegal settlements result from the occupation of publicly or privately owned land and the concurrent erection of rudimentary shacks to demonstrate a claim to ownership. Examples are the *favelas* in Brazil, the *villas miserias* in Argentina, the *ranchos* in Venezuela, the *barrios de invasión* in Colombia, the *barriadas* in Peru, the *callampas* in Chile, the *colonias paracaidistas* in Mexico, the *habitats spontanés* in francophone Africa, also called *quartiers non-lotis* in Senegal, the *gazrahs* in Mauritania, the *bidonvilles* in Morocco and other “Maghreb”-countries, and the *informal settlements* in South Africa. Semi-legal areas can be defined as areas that are subdivided and sold by the owner or his agent, without formal registration of the transfer. Examples of these types of informal settlement are the *fraccionamientos clandestinos* (Mexico City), the *barrios piratas* (Bogota), the *urbanizaciones clandestinos* (Quito), the *loteos ilegales* (Buenos Aires), the *loteamientos clandestinos* (Sao Paulo) and the *fraccionamientos piratas* (Guayaquil). The names reflect the informal character of these settlements (see also BÄHR/MERTINS 1995, from p. 140).

With illegal and semi-legal land occupation, marginal worked and fallow agricultural land is transformed into a settlement area, whereby unauthorised division is followed by the construction of shacks and houses without regard to building regulations and standards, and subsequently consolidated. Even the rudimentary technical infrastructure is of an informal nature, as power lines and water pipes are usually tapped illegally.

3.1 Illegal settlements and conflicts

Illegal land occupation is affected by topographical and physical geographical conditions, current land ownership and reaction of public authorities. Illegal settlements often develop on land that is unattractive for farming on desert or semi-desert soil (Lima, Santiago de Chile), on steep slopes with difficult access and difficult building conditions (Rio de Janeiro, Recife, Caracas, Medellín, Ankara), in deep erosion channels (Guatemala-City), or on flood plains and within the high water

marks along the coast (Rio de Janeiro, Recife, Salvador/Bahia, Guayaquil, Dakar, St. Louis/Senegal), or along train lines and arterial roads (Cape Town, Dakar, Sao Paulo). Some of these illegal settlements are situated in ecologically sensitive areas or even inside proclaimed nature reserves. Generally, public property or common land (*ejidos*) is preferred to privately owned land for illegal settlement, as the risk of eviction is smaller. Thus illegal land occupation mostly occurs on public land of limited value.

The occupiers come from rural areas, as well as from the cities themselves. Generally speaking there are three forms of migration into informal settlements (TURNER 1968, p. 356): migration from rural areas to cities, firstly as tenants or sub-tenants, later to settle as occupiers and “owners” in informal settlements on the outskirts of the city; secondly moving directly from rural areas to informal settlements on the outskirts, and thirdly moving as tenants within the city from an old to a new informal settlement. The intra-urban migration movements are driven by minimal living spaces, bad hygienic conditions, as well as the fear of eviction and the search for better living conditions. Professional squatters or squatter speculators occupy land for “professional” reasons and sell the plot together with the erected shack (see Chapters 3.1.2; 5.5.).

Land invasions can occur as a series of gradual, long-term, spontaneous occupations of individual sites or, as is more often the case, as organised mass occupations. To create facts fast and to prevent police or military intervention, invasions occur mostly at night or over a weekend or public holiday. Precise preparation and careful organisation are needed to ensure that such occupations are successful. Such invasions are mostly organised by professionals. The selection of a site takes time. Similarly, it takes time to secure the support of influential politicians and clerics, in advance and to subdivide and allocate plots on plans. Furthermore, the transportation of the squatters and necessary building materials must be organised. During the land invasion the whole settlement area is quickly divided into plots which are frequently numbered. After the sites have been allocated and occupied, building materials are distributed and rudimentary shacks erected. An immediate development of the land by the invaders reduces the risk of eviction because of compensations that would have to be paid by the local authority. Due to

the intense preparation and planning of an invasion, usually only residents of the city who are familiar with local conditions can organise a mass occupation.

One example of a self-organised mass occupation where people with similar interests congregated, is an occupation in Santiago de Chile, in which thousands of people took part. From the 60's onwards tenants and subtenants of the poor quarters had formed interest groups, the so-called *comités sin casa*, which enabled them to obtain a core house. Under the Pinochet government (1973-1990) land occupation was illegal and prevented by force. Nonetheless, various large land claims were successful from 1983, implemented by the *comités sin casa*, for whose protection the solidarity and support of dignitaries in the Catholic Church was secured. Professionally organised land occupations by agents are implemented in a similar manner, but lead to a different situation for the occupants. In this case the residents have no choice of location or influence on the way the land will be divided. They pay the agent his fee (see Example 5). After a successful land occupation, agents often insist on being paid a monthly rent or protection money. This practise is known in Cameroon and South Africa. Due to their organisational structure and work methods, such organisations are often referred to as "land-mafia" in Johannesburg, South Africa (see Example 6).

There is a further form of *profesionales en invasiones* (*professionals for invasions*) often encountered in cities in Latin America (e.g. Santo Domingo, Lima, Mexico City, Salvador/ Bahia): These recruit a group of interested people and sell each of them an already marked property on public land that will be occupied jointly. In Mexico City *ejidos*-areas are preferred (see Chapter 2.1.2).

Example 5: "Professionalised" land occupation in Cameroon

It is common practice in Cameroon for someone to proclaim himself owner of a vacant piece of land and sell or let plots that do not belong to him. The squatters have to pay one-off or monthly fees in cash or comestibles. As these buyers often resell or let their plots, overlapping claims are made during ensuing legalisation. Occasionally up to four different "owners" appear: the person who originally occupied and subdivided the parcel of land, the one who bought the plot, one to whom it was sold and one who occupies it at present. To identify the person with the most

legitimate claim, committees were formed in some squats in Douala. These consist of generally accepted residents of the informal settlements, such as *chefs de îlot*, *chefs de bloc* and the *chef de quartier*, who are often also traditional leaders.

A form of organised land occupation that goes beyond this is the practice of professional slum developers in Kenya, the slumlords in Mexico City and the shack lords in South Africa. In Kenya, private business people erect squatter settlements in a professional way on the outskirts of industrial areas and around factory halls. The huts are constructed of simple wooden planks with tin roofs. They have only one room in which a complete family lives. Most of the residents work in the adjoining industrial area and part of their income is used to pay rent. In this way professional slum developers start making a profit after one year.

While mass occupations ensue on increasingly large areas, single occupations can occur on smaller areas such as vacant inner city properties. In most cases though, larger areas on which numerous families can settle are preferred, as this decreases the risk of eviction and the possibility of profiting from long-term legalisation is increased.

Apart from the single and mass occupations referred to above, there are further forms of land occupation that should be mentioned for the sake of completeness, but they are not central to legalisation programmes. Amongst these are the so-called pavement dwellers, who live on tiny areas on pavements (Delhi), or even on the verges of highways (Johannesburg), the huts on roofs of inner city flats and office buildings, mostly for domestic servants or watchmen (Hong Kong, Johannesburg, Cairo), settlements on refuse dumps (Cairo, Salvador/Bahia, Manila) and graveyards (Cairo).

In the 60's, when land occupation first occurred frequently, land occupation was prohibited in most countries and during the following years it was forcefully opposed, but today governments and public authorities are more tolerant. Beside the *politique bulldozer*, as the razing of informal settlements by public authorities was called in francophone Africa, forced resettlements were also a common way of dealing with informal settlements – especially by military governments. Expulsion and

resettlement were the rule in Latin America into the 70's, and in Africa until the end of the 80's. Countless examples can be given: Caracas, Buenos Aires, Rio de Janeiro, Santo Domingo, Lima, Bogota, Nairobi, Dakar etc. Resettlement was also a popular tool for removing political agitators or opposition forces geographically from the centres of political power. Resettlement areas were often located 20 – 40 km away from towns, where there was no access to infrastructure. Examples abound in Pôrto Alegre and Rio de Janeiro, where people were resettled kilometres away during the military dictatorship, and in Johannesburg in the four *Reception Areas*, still from the apartheid-era, in the surroundings of Johannesburg.

As of the 80's, expulsion from public land has become rare. Politicians have increasingly come to realise that the problem of a growing need for residential space amongst the poor cannot be solved by expulsion and they are showing an increased responsiveness to informal settlements.

In some countries the risk of squatters being evicted from private property is decreasing. In Kenya, the *Limitation of Actions Act* allows people who have occupied one plot uninterruptedly for 12 years or more, without having been evicted by the owner during this time, or having received written notice, to demand the title deeds in court. In the same instance an owner loses his property if he tolerates the occupation of his land by another person for over 12 years. *The Prevention of Illegal Squatting Act* of 1951 (amended 1986 and 1988) in South Africa is to be replaced by a new *Squatter's Act (Unlawful Occupation of Land Act)*, intended to prevent illegal eviction and establish a compulsory procedure to be followed by land owners when squatters are to be evicted. The goal is to reduce the risk of eviction for people who occupy land illegally (see Chapter 5.3).

Example 6: The Land Mafia of Johannesburg, South Africa

In the first two months after the South African election of 1994, 200 000 people migrated to Gauteng Province, which comprises the greater metropolitan area of Johannesburg and Pretoria. Since then approximately 20,000 migrants are estimated to have arrived monthly. It is expected that this trend may continue for the next ten years. Newcomers generally live with friends or family for some time, often in so-called *backyard dwellings* on the grounds of formally rented or bought houses

("matchbox-houses"). This adds to the density of townships (e.g. Soweto). During this time they organise themselves, mostly with the help of an informal local community leader, together with other landless South Africans living in similarly precarious conditions.

Teams of *Land Mafiosi* recruit groups of already organised people looking for land and let them sign a *housing list* for 50 ZAR (about 17 DM in 1998). When they have about 2000 signatures – and about 34 000 DM – they start looking for a suitable parcel of land. They do this with exceptional thoroughness and often with professional support. They investigate documents (cadastres, transfer documents, title deeds etc.), to find the owner(s), and work with professional planners to structure the settlement on paper. The Land Mafia avoids private property, as it knows that the government will be more lenient with them than private owners would.

The actual land occupation begins in the early hours of a Sunday morning. Together with helpers, the Land Mafia mark out plots for huts, schools, sports fields and small businesses on the ground with chalk. As soon as the first huts are erected, residents – preferably women and children with whom the police would not be as harsh as with men – settle in.

Squatters pay 7 DM protection fee in addition to the 17 DM rent, as well as 3 DM for so-called *legal fees*. The *legal fees* are put into a fund to pay for an attorney or legal advisor, should action be taken against them.

The Land Mafia consists mostly of people who have strong (political) support. For example, it is thought that SANCO (*South African National Civic Organisation*), which is involved in loans for housing, may be instrumental in land occupation. An employee of SANCO who at the same time is a member of the City Council responsible for the town planning of Johannesburg is thought to use this connections for activities linked to the Land Mafia (see REEVES 1998 and Appendix 2).

3.1.1 Professional squatting

Amongst land occupiers there is frequently a small group of people who are known as professional land occupiers. These *professional squatters* are well known in Santo Domingo, Mexico City, Sao Paulo and Cape Town, but are also found elsewhere. As they are not immediately noticeable, they are not perceived at first. Their

“professionalism” is based on the fact that they occupy a plot during land occupation, but only stay until their property gains in value after legalisation. Then they sell. As soon as they have sold their plot in a consolidated settlement, they occupy another part of land in the same settlement – or of another – that has not yet been consolidated and wait until their profit can be realised and then sell again. In this manner *professional squatters* or *squatter speculators* profit numerous times from upgrading, without having changed their current living conditions. They live off their short-term profits and make do without improving their living conditions. By contrast with those land occupiers, who have to sell their plot during or after consolidation as they cannot afford the increased costs for infrastructure (water, electricity, etc.) or to pay their debts, *professional squatters* trade without pressing reasons. Frequently one family holds various plots simultaneously, so that their profit can increase accordingly during consolidation. One parcel of land in an already consolidated township may also be kept, while other occupied plots are only occasionally lived on to demonstrate ownership. The other plots may also be let (see Chapter 5.5).

A similar, but not so lucrative, form of *professional squatting* is the occupation on behalf of another person. In this case a *professional squatter* occupies a plot until it can be sold and the actual “owner” wants to sell it. This allows him to stay there free of charge. In this case the *professional squatter* does not profit from the legalisation, except while living there free of charge.

3.1.2 Squatting information networks and spatial guidelines for squatting

Land occupation depends on the availability of land, its ownership, official planning requirements and the resistance that can be expected. Land that is close to (potential) workplaces and existing infrastructure (through-ways, water and electricity supply lines, sewerage pipes) is in greatest demand. Generally land in close proximity to city centres is most sought after, due to greater employment and income-generating opportunities in the informal sector. Locations close to middle-class residential areas also offer jobs for domestic servants, nannies, gardeners, watchmen, collectors of recycling materials etc. But there is resistance against settlements that border on middle and upper income residential areas, mostly due to

the fear of rising criminal activities. As the risk of eviction is greater on private properties, communal estates are preferred for illegal occupation. Of course the envisaged use of publicly owned land is of decisive importance. If land that is earmarked for streets or public spaces is occupied, strong reactions from the authorities must be expected.

To identify an area large enough to meet all the expectations, extensive information is needed from the town planning, surveying and land registration departments, from estate agents, influential politicians and even clerics. When land invasions are organised, members of the group must generally first build up a network of information. Some members may already have contacts to key persons. During professionally organised land invasions the initiators often assume a key position within the legal urban land management and may have direct contacts with the relevant persons. These can, but need not be, decision makers, office bearers or other high-ranking functionaries. They can also work in relevant institutions and receive payment for information to bolster their often meagre income (see Examples 6, 8 and 10).

3.2 Forms of semi-legal land acquisition

In settlements established through semi-legal land acquisition, individual sites are purchased. However, the settlement is not considered legal as the site allocations take place in secrecy, contravening official planning regulations, as no building permissions were granted and as the buildings mostly do not meet required building standards.

Land can be privately or communally owned (*ejidos*). If it is privately owned, the sale is often not registered on the title deeds – even if the property has been fully paid for. Subsequent subdivisions by the buyer are almost never registered. The subdivision of communal land is performed by illegally operating or unofficial estate agents, who conduct illegal business by selling officially unsanctioned plots. However, subsequent legalisation of common land is much easier than legalisation of privately owned land.

In both cases, though, the buyer sees himself to be the legal owner (see Chapter 2.2.2).

Because the buyer of a semi-legal property had to pay for his site, a selection process in favour of the upper lower income groups takes place. Prices are set at a level just affordable to this target group.

As, in contrast to most illegal settlements, subdivision in semi-legal settlements takes place before occupation, subsequent regularisation and relocation of houses is usually not deemed to be necessary. This shortens the process of consolidation in semi-legal settlements compared to the procedures required in illegal settlements. Consolidation in semi-legal settlements is only undertaken after extensive subsequent subdivisions and subletting of the original plots.

A further advantage of semi-legal occupation over illegal occupation is the reduced risk of conflict and eviction. As the previous owner initiated the sale himself, and realised his profits from the sale, no resistance is to be expected from his side. Conflicts can arise with the municipalities though, if the land in question was intended to be used for a different purpose. Over the past 20 years, public authorities have become increasingly tolerant, often offering support in upgrading the semi-legal settlements of the very poor, thereby reducing the danger of socially motivated political unrest.

4. Informal land markets and their effects on the residents of informal settlements

The informal land market activities commence with the occupation of the land. Every measure that leads to an improvement of the entire settlement or affects a single plot influences the property price (for factors and phases of increased land market activities, see Figure 2). It should be noted that – be it in formally or informally developed settlements – there is only one *single land market*, which can be divided into various segments but there is no fixed separation between a formal and an informal land market (WARD 1998, p.4).

The informal land market activities are restricted because potential buyers have no access to official credit to invest there. Also, there is always the potential threat of eviction, which would amount to the loss of a plot bought on the informal market. Therefore only few plots are usually sold during the initial establishment phase and – as long as there is no legal security – future profits are speculated on. These sales take place even if such transactions are officially prohibited (see Example 2). Complicated strategies are found to circumvent the laws intended to prevent such land sales (see Example 7).

Example 7: Power of Attorney in Kenya

To restrict land speculation in Kenya, a law was passed that prohibits the sale of certain land within the first five years of it having been bought. Land buyers who nevertheless want to sell their properties immediately after securing the title deeds, do this by transferring the control over the property to their lawyers. The *power of Attorney* means that the lawyer has full authority to act on behalf of his client in legal matters. This is the legal way to help landowners circumvent the prohibition of sale. The owner simply transfers the control of his property, via his attorney to the attorney of the buyer, who in turn transfers the use rights of the property to his client, but formally remains the owner of the property until the five years have elapsed. The buyer however pays the seller directly and acquires an immediate informal use right, but he only receives the title deed after five years.

This example from Kenya clearly shows the limitations of attempts to regulate the real estate market. Development co-operation projects which aim to formalise informal settlements often try to eliminate the land market by restricting sales after legalisation. Experience to date suggests that this is not possible. In Dalifort, Dakar, for example, the intention was to ensure that the residents that lived there before legalisation was effected, should stay. But only two years later, wealthy businessmen built large two storey houses in the settlement which stretched over several plots. The prohibition to sell plots within the first five years was ignored, as well as the regulation that a person may only own one site within the settlement. Furthermore, it became evident that a large portion of shacks were sub-let to up to five households.

Example 8: The informal land market of Nouakchott, Mauritania

About 300 men are active as dealers in the informal land market of Nouakchott. Anybody who is interested in real estate meets at the “land exchange” under the large acacia in front of the land registry. Here the informal estate agents keep plans, provisional title deeds (*permis d’occuper*) or final title deeds if the property has been built on, at the ready under their boubous, their traditional clothes. The dealers have extensive contacts to politicians, town planners, public servants of various departments (in particular the land registry) and private businessmen. In this way they learn about planned investments that could increase the value of properties. These could be infrastructure upgrading measures, large building developments, surveying or even the commitment of a GTZ-supported project in a previously unattractive informal settlement. The agents can show their client the location of a property on the registry plan and explain the exact value.

It is estimated that more than a third of the already surveyed properties along the periphery change hands through the land exchange (KADER 1998). This has an effect on properties not yet surveyed in so-called *gazrahs* (informal settlements), as the one in Arafat which is the largest informal settlement of Nouakchott. It is at present situated on the development axis of the city, but it can be foreseen that within one or two decades this will be the city centre, due to geophysical boundaries on the one hand, and proximity to employment opportunities and water on the other.

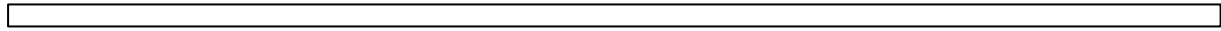
Although the prices on the informal land market in central Arafat are still relatively low, those along arterial roads are substantially higher. On crossroads prices are

higher still. The properties along the main roads are mostly in the hands of businessmen, and those in the second row already belong to the wealthy. Towards the centre of the settlement there are still wooden shacks and small, solidly built houses of poorer people. Occasionally, the beginnings of multi-storey villas can be seen.

There are many reasons for the flourishing land market of Nouakchott. One aspect certainly is that the city is very young (founded in 1960) and was originally planned for fewer people. Due to droughts and the border war with Senegal, far more people than expected migrated to the new capital. It not only seems to be impossible to cope with the masses of migrants, but there appears to be a lack of political will to change the situation, as almost all decision makers – or their direct relatives – seem to be active in the informal land market. Public servants, who earn very modest salaries, profit from the sale of information to “land agents”. The limited knowledge of land legislation characteristic of many employees of the land registry, the town planning department and even the mayor’s office is another reason for the booming informal land market. Further reasons are the marginal role of the city in relation to national authorities, and the inadequate co-ordination amongst relevant institutions, compounded by an inability to enforce laws and regulations.

Figure 2:

**Factors and phases of increased land market activities and mobility of sites
in informal settlements**



General factors / criteria

- Position / location of the settlement and the sites
- Size of property and house
- Building quality
- Infrastructure

First phase of increased land market activities

- during or shortly after the emergence of illegal and semi-legal settlements

Second phase of increased land market activities

Announcement or implementation of

- up-grading -
 - infrastructure improvement -
 - formalisation -
 - legalisation -
- } measures

G. Mertins (5/98)

4.1 Factors affecting the informal land market

The dimension of informal land transactions is affected, *inter alia*, by state controls and the prices that can be attained. These, in turn, are influenced by various factors (see Figure 2 and Chapter 5.5).

a) Location of the informal settlement within the urban area.

The location of a settlement is an important factor which influences land prices and the extent of the land market activities. The closer the proximity of a settlement to the city centre or to the residential areas of upper and upper middle class, the higher the land prices - due to potential job opportunities, infrastructure and public transport, and the greater the interest to invest in real estate there.

Natural risks and crime in the settlement also play a part (see Chapter 3.1, 3.1.2).

b) Location of sites within informal settlements.

Even within a settlement property prices vary considerably. Natural risk factors such as flooding or mudslides affect the land prices in those areas. Areas that could offer future business opportunities, due to their location, fetch higher prices. These properties usually lie along (planned) arterial roads, the most attractive ones being situated on crossroads, as the customer traffic and with it the expected profits are greatest. The same holds good for properties that border on areas earmarked for social infrastructure institutions (community halls, schools, clinics, places of worship etc.).

c) Infrastructure provision.

Informal settlements initially have neither technical nor social infrastructure, but as soon as the connection to supply lines and sewerage pipes is announced, land prices rise. Connection to commuter networks and the building of social infrastructure have the same result.

d) (Planned) private investments.

Private investments have the same effect as planned or announced (state or municipal) infrastructure. As soon as a private investor shows interest in areas bordering such settlements, land prices rise.

e) Degree of built-up area and construction fabric.

The degree of built-up area also affects land markets. Apart from how many floors will be built on a site, quality and structure are also important. If one plot has been subdivided numerous times, subdivisions can be sold separately or the site could be sold as a whole. In both cases conflicts of interest amongst residents could arise. This would make the sale complicated and therefore less attractive to a potential buyer.

f) Debt encumbrance.

An owner of a parcel of land not yet registered, can offer his plot as collateral if he has become badly in debt with a private moneylender. This means that the moneylender secures a claim on the property. Such debt encumbrance is often forced by the moneylender and put down on paper. In this manner he can acquire properties at low prices that can multiply in value after legalisation (see Example 9), usually associated with the eviction of the original occupant or owner.

g) Progress with legalisation.

The legal situation has a significant influence on land prices. During each step towards legalisation of an informal settlement, the property prices rise, from surveying to registration in a land register.

Factors that influence land prices can be categorised into persistent and non-persistent parameters. Variable factors, like legalisation and upgrading measures that add to the improvements on parcels of land, can change the land prices within a short period of time. This can have considerable consequences for the residents. If the land prices rise above a certain level, it becomes lucrative for the residents to share, let, or even sell their properties. While these are voluntary and profitable processes, regularising an informal settlement also generates additional costs. In particular, water and electricity supply and drainage can over-stretch a squatter's budget. Squatters may be able to offset additional expenses with income generated by letting a room, but often additional expenses arising after upgrading lead to debt encumbrance and the displacement of lower income group occupants, in the long term.

After regularisation, it may be expected that half to one third of the original residents will migrate again. The second residents of an informal settlement are the ones who generally stay longer (see Example 9).

Example 9: Residents of the *gazrah* of Arafat in Nouakchott, Mauritania

The residents of the *gazrah* (informal settlement) of Arafat can be divided into four groups according to their ownership status:

- debt-free “owners”,
- indebted “owners”, whose sites have already been “mortgaged” by private money lenders,
- tenants and
- semi-professional occupants, who occupy the land of another person rent-free, until it rises in value.

For one part of Arafat a type of development plan (*plan de lotissement*) has recently been submitted to the city council. The plan was prepared without the knowledge of residents and is based on standard planning modules. Depending on the ownership status of each resident, he could either profit from the arrangement or be displaced by it. While the debt-free owners will have free choice on whether they want to sell their land, and occupy other land elsewhere and speculate on profits, the other three groups are forced to move to another informal settlement even further on the periphery of town, displaced by consequences of legalisation, and unable to secure their temporary tenure, or service the debt for which they mortgaged their sites.

4.2 Forms of land markets

A distinction is often made between formal and informal land markets (for clarification see Chapter 4). While the formal land market only takes effect after legalisation, the informal market, circumstances permitting, commences with, or even before, land occupation. Informal land market activities can continue after legalisation if the sale of legalised plots is prohibited, but takes place underhand (see Examples 2 and 7). *De facto*, the distinction between informal and formal land markets has become obsolete, as both markets are controlled by supply and demand. For practical reasons, however, the distinction is maintained. It is used to better explain the characteristics of the informal activities.

The actors who become active on the informal land market during, or even before land occupation, besides the sellers and buyers, are the informal agents or mediators and the informants. Sellers could be traditional authorities, who derive their ownership rights from common law, or representatives of public authorities, who buy building land at a low fixed rate from the state and sell it profitably on the free market. The sellers rarely appear in person on the land market. They either have representatives who act on their behalf, or they sell the property to informal dealers or agents. The informants comprise politicians, public servants and employees of the local authority, who are informed about new trends in the city's development (see Examples 8 and 10).

Both the formal and the informal land markets in existing settlements can be divided into ownership and tenancy markets. In most cases the properties are sold or let if the original occupier cannot pay for services after regularisation has taken place, and migrates to another informal settlement (see Chapter 5.5). A less common reason is that the original occupier was never interested in living in the settlement himself, but occupied the land or had it occupied for speculative reasons (*professional squatters, squatter speculators*; see Chapter 3.1.2). In rare cases, the socio-economic situation of residents improves to such an extent that they can afford to relocate to an established residential area. One reason to let, rather than sell a property, is that the original "owner" may expect a greater profit from selling after the expected regularisation.

Apart from being sold or let outright, properties are also sold or let in part. This can help the seller or tenant to achieve an income that enables him to pay the rates and services for the semi-legally acquired property after upgrading measures have increased his holding costs. Both processes reduce the size of the original plot, thereby increasing the building and population density. This increased density can mean that subsequent upgrading – such as provision of sewer systems or similar infrastructure– becomes more difficult or requires the relocation of some households.

Example 10: Traditional and modern authorities on the informal land market of Dakar, Senegal

Parallel to the official/formal land market, in which prices that decrease from the city centre to the periphery are set by the state, there is also an extensive informal land market in Dakar. Here not only traditional authorities and their intermediaries, but also representatives of the state, operate as land dealers.

The common law chiefs of villages surrounding and within the cities (land lords, *marabouts*) sell off agricultural land (now within the city borders), that by modern law belongs to the national domain and is therefore, strictly speaking, common property (see Example 1). The traditional chiefs sell the land primarily to new squatters, as these do not ask for official papers as businessmen would. Of course, in doing so they do not adhere to the official development planning, but rather to customary ownership rules. The traditional authorities act either directly or, more commonly, through intermediaries. In this process, it happens that the agents sell land without consulting or informing the chief. In such cases agents deal in land on which they have neither common law nor modern law rights.

Apart from traditional authorities, public authorities also operate on the informal land market. These are normally descendants or relations of common law authorities, who are public servants, some of whom may have been elected by the people. They (ab)use the margin between prices fixed by the state and open market prices for their own gain. This means that they buy (building) land on the formal land market from the state at fixed prices and sell it on the open (informal) market at greatly increased prices. This form of property speculation could be stopped by adjusting the fixed prices to reflect the market prices. This, however, is avidly resisted by the employees in the public service, whose position is beneficial for their present role as broker, but the state loses an important source of revenue (see WEILENMANN 1998, pp. 25)

It should be clear that the actual process of displacement is driven by the additional costs for services after upgrading and the inability to service debt, rather than rising land prices. The improvements and legalisation of properties may increase the risk of displacement of the lower socio-economic group, but it makes it more lucrative to sell and thereby profit from the informal or later formal land market. As a whole a rather pronounced upward succession takes place by the property owner “exchange” and this leads to a more rapid consolidation of the settlement.

5. Regularisation of urban informal settlements

In all informal settlements buildings are hastily – often precariously – erected. These buildings are continuously, albeit gradually improved. By now, there exists a lot of expertise in physical up-grading of informal settlements. Obstacles to development resulting from unclear land rights are more difficult to overcome. Solutions are, however, necessary if conditions conducive to further public and private initiatives to improve living conditions in such neighbourhoods are to be created.

Regularisation measures are usually initiated by public authorities and generally address two issues:

- **Legal issues**, whereby a distinction should be made between the formalisation and the legalisation of a settlement. Formalisation refers to the political-administrative acknowledgement and the absorption of a settlement into a town (surveying, incorporating into town planning). Legalisation is the allocation of sites to (often illegal) residents of the area, including the land registration and/or cadastral recording (juridical regularisation, WARD 1998, p. 1).
- **Material issues** i.e. the creation and/or improvement of the technical and social infrastructure according to official minimum standards as well as the improvement of the buildings such as the replacement of shacks with simple brick houses. These measures also include alterations and extensions like added storeys and the simultaneous improvement of domestic infrastructure such as water supply, drainage systems and the like (physical regularisation, WARD 1998, p. 2).

There are other means of establishing quasi-security of tenure for the owners of shacks and houses in informal settlements, which generate increased motivation to invest and form a basis for the implementation of integrated or sector-specific upgrading projects.

Besides tenure and infrastructure issues associated with regularisation, social issues also arise (see ALFONSIN 1998). Examples are questions concerning the contribution of these measures to the raising of residents' living standards, or the

reduced social segregation for the residents – a certain phasing out of a form of “apartheid” (see BOLIVAR, 1998 for Venezuela or WARD, 1998, p. 1 for Latin America generally) – that accentuates the social and civic integration of low-income settlements and their population in the urban fabric. In the same way the incorporation of a settlement into the town after formalisation is the first but very important step for the residents – they are now officially part of the city (see Example 11)!

Example 11:

a) Formalisation of illegally established settlements (*favelas*) and legalisation of illegally occupied sites in Brazilian cities

General steps

- Application for the formalisation of the settlement or parcel of land to the community council or relevant local authority.
- Declaration of the settlement area as a “special social interest zone” (*Zonas/Áreas Especiais de Interesse Social*).
- Identification of the property owner(s).
- Drawing up and acceptance of the layout (=streets) and site plan, and determining sites for public open space (may imply a need for the relocation of some households).
- Certified registration of this plan.

In the case of state -owned land

- Listing of the *Favela* residents
- Allocation of use licenses (*Concessão do Direito Real de Uso*)
Concurrently: upgrading of infrastructure and building substance.

In the case of private property

- Listing of favela residents with proof of duration of occupation (minimum 5 years), for example, by means of electricity and water accounts, and statements by neighbours.
- Drawing up site plans; compiling of all documents.
- Starting the process of transfer of land rights
- Setting and collection of transfer duties (1st instalment).
- Registration of titles in the land register.

References: ALFONSIN (1997), VERISSIMO (1998).

b) Legalisation of property ownership in semi-legally established urban settlements in Brazil

Steps towards legalisation

- List/register sites at the legalisation office or neighbourhood association
- Draw up selection criteria
- Per decree of the community council: notify the settlement area as a *Zonas/Áreas Especiais de Interesse Social*.
- Undertake a survey of site ownership
- Survey sites
- Draw up and accept area plans.
- Certify and register the area plan
- Expropriate still vacant plots for future housing projects
- Release individual title deeds.

Reference: VERISSIMO (1998)

5.1 Formalising settlements

Formalising informally established settlements is a retrospective process, with the aim of incorporating them into the formal town, and is almost always a condition for subsequent and sometimes concurrent upgrading programmes or projects, the re-orientation or correction of area plans, relocations of households where necessary, and for the transferring of title deeds to the landowners.

This process of official recognition of informal settlements before legalisation has taken place is known almost throughout Latin America. Similarly, in South Africa the recognition as *official township* is the first regulatory measure. The initiative to formalise a settlement can come from the residents (community associations, through political contacts or pressure) or from the responsible authority. It could also come from a higher political level (state president, responsible ministry). The formalisation of settlements forms an important part of integrated urban development projects.

There are many types of formalisation measures. Some of the most important are:

- The so-called **normal case**. The lengthy official process, in which legal procedures and regulations are followed to transform an informal settlement into a formal one. This process is reflected in the names of programmes such as *Programa Favela-Bairro* in Rio de Janeiro. The tendency is clearly to shorten these processes and make them more transparent (see BEHNFELDT, 1986 for Peru and VERISSIMO, 1998 for Brazil; also the *Less Formal Township Establishment Act*, 1995 or the *Development Facilitation Act*, 1995 of the Republic of South Africa).
- The **legal recognition** of informally established townships (e.g. in Peru by the statute 13517/1961), which may be conditional on the establishment of basic infrastructure by the residents (through self-help) and nominal payment for the occupied sites. This would mean that the juridical regularisation should occur after the infrastructure has been regularised, but this practise was abolished in Peru already in 1968. This type of state amnesty for illegal land occupation almost always stimulates new waves of migration and land occupation (see CALDERON 1998a,b, for Peru).
- The **notification of such settlements as “special social interest zones /areas”** (*Zonas/areas especiais/especiales de interes(e) social: ZEIS/AEIS*), which is practised in some countries (e.g. Brazil, Colombia and El Salvador). This is a binding declaration of intent by the local authority to formalise the

settlements, legalise the tenure claims (based on the axiom that the right of housing overrides ownership rights!), and implement urban and infrastructure upgrading measures. Simultaneously – and this is initially the main effect – such a notification serves to provisionally secure tenure rights for the house or shack residents. During the regularisation process, still vacant areas for necessary relocations can be notified as ZEIS/AEIS. The same procedure can be used to reserve vacant land for future housing estates (comparable to a *zone de restructuration et régularisation forcière* in Senegal). For each ZEIS/AEIS a town planning guideline has to be compiled (in Brazil: *Plano Diretor Urbanístico*), which includes specifications regarding the permitted property size (e.g. Recife: 250m² maximum, 18m² minimum), building density, or building height – number of storeys. A further requirement is that only families with a monthly income equivalent to three minimum monthly wages, or less, should live in the settlement when the regularisation process commences.

- The **expropriation of occupied private and state land** and the subsequent transfer of the ownership rights to a legal entity such as a local authority, or church. This is often linked with the founding of a trust which administers the expropriated property in the settlement (e.g. *Community Land Trust* in Kenya). The residents, as members of the trust, receive use rights, but do not hold title deeds to their individual sites. The buildings and other structures they erected remain private property and can be held in perpetuity, leased or sold. On the other hand, houses and flats built by the holding organisation on such trust land, may only be let and subletting is not permitted. These forms of split ownership rights are often chosen in Africa, to prevent displacement of settlers out of the affected areas or to eliminate speculation.

The opinion held by many, that land speculation and social displacement in these areas can be eliminated by such means, cannot be supported. The stipulation of such criteria may restrict land markets and speculation in those areas, but it cannot eliminate the effects of legalisation and upgrading measures. To do this additional restrictions would have to be imposed and enforced, such as a ban on sales, subdivisions and letting of properties, and this is hardly feasible.

The considerable costs associated with formalising measures, especially for the so-called normal case, are borne by the local authorities and are not apportioned. However, some contributions – like providing basic infrastructure through self-help – are sometimes requested from the owners of the sites before the legalisation process is initiated (e.g. Peru (see above) and Mexico). This practice is quite different from that followed with the planned layout and establishment of semi-legal settlements: Here the responsible developer or his agent will reserve space needed for roads, parks and other purposes, but the cost of such land is apportioned amongst the property buyers (see BRÜCHER/MERTINS 1996 for Bogota). It is virtually taken for granted that illegal landowners must provide land for infrastructure such as streets and parks when a subsequent settlement plan is drawn up (see PRIMED, 1995 for Medellín, and MERCADO, 1996 for Bolivia).

The challenge to integrated urban development projects is to strengthen community organisations so that they are better able to articulate community needs and direct their demands for regularisation in an appropriate and effective manner to the authorities and politicians concerned.

5.2 Legalisation of sites

The legalisation of illegally occupied or semi-legally acquired sites which are not registered in the land register or cadastre, is the most important measure in the eyes of the land “owners”. It simultaneously motivates them to participate in these projects, contribute with self-help, or serve on committees.

The affected land “owners” stand to gain the following from legalisation (registration in the land register):

- full security of tenure and the elimination of the still latent fear of eviction from their plot;
- access to official credit on reasonable terms, as the property can now be mortgaged. In this manner the step from shack to house, alterations or extensions can become affordable;

- a legal basis is provided when making claims for the upgrading of infrastructure;
- a new self-confidence arises from the recognition as property or house owner. This is an important step towards integration into the urban community and can bring with it a willingness to invest (see Chapter 5.1 and e.g. ALFONSIN, 1998 for Brazil).

The claim is often made that the formalisation of settlements and registration in the land register provides access to the formal land market and that the complete regularisation process affects land values and increases the prices of affected houses (see Chapter 5.5).

The legalisation of illegally occupied and semi-legally acquired properties can ensue in three ways (see Example 11 for Brazil).

- **On application by separate property “owners”.** This possibility is rarely used as the official process is lengthy (often 4 – 5 years!), complicated and rather expensive for the applicant, who mostly comes from a lower socio-economic group (see Example 12). An important factor is that the “owners” usually have little insight into or understanding of the rather complex administrative process. This causes fear of lengthy delays and money-consuming visits to authorities, compounded by insufficient reading and writing skills (a high level of illiteracy amongst the poor!), frequently reflected in psychologically and socially stereotyped attitudes towards bureaucratic barriers (see BEHNFELDT, 1986 for Peru, DECAMPS, 1990/91 and JIMENEZ, 1994 for Bogota, de SOTO, 1992 for Lima, VERISSIMO, 1998 for Rio de Janeiro and Example 12.). The application can generally only be submitted after an uninterrupted occupation of several (3 – 5) years, confirmed by the testimony of neighbours. The time factor is intended to prevent professional squatting and the occupation of more sites.
- **By passing an Act** that gives amnesty to all informally acquired sites and the houses and shacks built thereon in a given area, as in the case of Peru described in Chapter 5.1, where this legalisation process was followed by further legislation such as *Ley de Municipalidades* 23853/1984 or 24513/1986. In this manner title deeds were issued for 198 087, or 58.3% of all illegally occupied sites in Lima

between 1981 and 1996 alone (CALERON 1998a). Similarly, in Ecuador, it was possible between 1964 and 1994 to expropriate occupied state, communal and private land and to transfer ownership to the land occupiers against payment of a symbolic price (CHANG LOQUI 1998).

- Such “amnesty acts” are often passed **as a result of internal political pressure** or changes of government policy, for example in the Philippines in 1986, when the successors to the Marcos government guaranteed all squatters on public land immediate security of tenure, which affected more than 30% of the population of Manila (PAYNE 1997).

Example 12:

Expectations of security of tenure in illegal land invasions in Lima, Peru

With the occupation of public land, and immediate erection of shacks, a certain basis to a legal claim to the occupied sites is established. This can be termed expectation of security of tenure.

As soon as it becomes clear that the police or militia will not raze the settlement, the first invaders start to replace their mat shelters with brick houses. In this manner the tenure expectation is strengthened substantially, as it is unthinkable in Peru to demolish such houses. With the erection of a substantial building, the illegal land occupiers in effect write their own title deeds. In parallel, the expectations of tenure security are constantly reinforced, for example by community-based organisations which start to keep an informal register of “ownership”. In this manner it becomes possible for the land occupiers to gain access to small credits, secured by pledging their sites as security, which are then invested in the improvement of their house. Gradually the expectation of security of tenure is also strengthened by the authorities themselves, for example by laying on water or erecting electricity lines.

If residents of an illegal settlement decide to try to legitimise their ownership claims, it would take no less than 159 procedural steps until they would eventually receive their title deeds and the settlement would be formally integrated in the city. This procedure could take about 20 years to complete, so it is little wonder that it is rarely used, and the occupiers of illegal settlements hope for amnesty laws instead, or that the municipality does not change its laissez-faire attitude (see DE SOTO 1992).

- Title deed transfers happen most often and most easily **within the context of urban development and upgrading projects**, for example in Brazil, Colombia, or the Dominican Republic. Simply the existence of the project and the announcement of legalisation strengthen the tenure claims of residents, although the transfer of title deeds usually only takes place towards the very end of such projects.

Sometimes, for example in Peru (see above), the legalisation of informally acquired sites takes place free of charge. This was recently done for political reasons by means of Act 803 of 1996 (CALDERON 1998a). In other countries, free transfer was also implemented when semi-legal ownership was legalised, as the new owners had paid for the sites and could not be held responsible for the neglect of land registration, as transfer had been impossible. Where legalisation had to be paid for, transfer duties varied considerably, for example from a symbolic price within urban development projects in Guayaquil or Santo Domingo, to more than US\$ 50 for the transfer of illegally occupied public land in Bogota and Medellín, and up to US\$ 5000 in Fortaleza, Brazil. These costs naturally reduced the willingness to legalise drastically and caused house sales and migration. The effect also takes hold when owners have to pay for legalisation in urban development projects. Prices are lower when the occupation sites on public land are legalised, as the steps to regularisation can be reduced and registration fees often do not apply. In South Africa, a housing subsidy can be applied for which also covers transfer and legalisation costs. In Senegal, a revolving fund for housing improvement exists (see Example 13). In some Brazilian cities, local authority funds are used to finance legalisation measures.

In Latin America, the legalisation of the informal “ownership” status is the main aim of all regularisation measures and for almost all affected people. In many African countries, however, the interest to acquire the title deeds is not as pronounced. Traditionally, the land belongs to the tribe or group and only individual use rights can be allocated. These rights guarantee sufficient security of tenure according to the understanding of autochthonous right (see Chapter 2.1.4). Newcomers to the cities are frequently not aware of the significance of ownership rights, and they rarely enquire about them, as this is time-consuming and expensive. In the past this often

meant that such groups were disadvantaged. But for several years now some countries have been trying to integrate the autochthonous system into the legalisation of informal settlements. In this way residents in Senegal, for example, can acquire only use rights for urban sites (*droit de superficie*), valid for 50 years, as a first step. The second step (transfer) is normally not taken due to the high administrative cost and the traditional understanding that use rights represent security of tenure.

Example 13: The revolving fund for upgrading in Senegal

In Senegal a revolving fund for upgrading (FORREF) has been established by decree, for the financing of upgrading and legalisation measures. Credits can be given from this fund to a so-called *opérateur* – that is an organisation that is responsible for the planning and co-ordination of the various executing activities – as well as to the end-user directly. The fund is financed with the revenue from land sales, that temporarily flow into the national budget and from there in the form of subsidies back to the fund again (see CRÄMER-MÖLLER et al, 1996).

FORREF is to be integrated into the national *Programme de Restructuration et de Régularisation foncière* (PRORREF), when some remaining issues have been resolved and a legal omission has been corrected. The GTZ-supported project “Régularisation et Restructuration des Quartiers Spontanés” is busy establishing a foundation, the *Fondation Droit à la Ville*. It is to be oriented towards the private sector and plan and co-ordinate regularisation measures on behalf of the community, and thereby secure efficient use of FORREF credits (Projet DUA/GTZ 1998).

5.3 Other possible ways of obtaining security of tenure for a site

Against the background

- of lengthy and expensive legalisation procedures (outside of urban development projects, e.g. where no appropriate legal procedures apply),
- of the necessity to create security of tenure quickly to provide rapid access to public mortgage finance (at low interest rates), and encourage private investment,
- of the complexity of administrative procedures which overwhelms most owners of informal houses, which many try to avoid,

different solutions to achieve security of tenure have been developed in many countries.

Examples are:

1. **issuing of use licenses** (*Concessão do Direito Real de Uso*) on public land, in Brazil, which can be done free of charge (Recife) or against payment of a monthly fee of US\$ 6-10 in Pôrto Alegre. The money collected in this manner flows into an urban development fund and serves to finance social housing programmes. Limitations are often imposed on the size of the sites for which use licenses are issued, for example 125m² in Salvador, Bahia. The registration of occupied sites and shacks or houses erected thereon is the first step connected to the issuing of the license. This temporary transfer of use rights should later be regularised by registration in the land register (see VERISSIOMO, 1998 for Rio de Janeiro, MERTINS and TOMAE, 1995 for Salvador, Bahia or BOLIVAR, 1991 and 1998 for Venezuela). Here the municipalities can issue an “urban use concession” (*Concesión del Uso Urbano*) for occupied public land. To a degree this equals an official acknowledgement of illegally built houses and illegally established settlements. Complete integration with urban infrastructure is usually a condition for the granting of such concessions.

Comparable with this is the legal possibility of releasing public land for usufruct, for example in the Dominican Republic, also used in voluntary agreements between private land owners and occupiers. In both cases the parcels of land cannot be sold or given away. In Sub-Saharan Africa it is common to allow such land use licenses. In Zambia, occupancy licenses can be issued for state land for a period of 30 years. In Botswana and Lesotho, permanent certificates of use virtually constitute security of tenure for households in squatter settlements and are sufficient to provide access to credit for house improvements (PAYNE 1997).

2. the **usucaption of ownership rights** (prescriptive rights) to occupied private land has existed in rural Latin America for a long time (according to the axiom: he who works the land has a claim thereon), and is allowed for in the new

Brazilian constitution of 1988 (Article 182). It has also been extended to urban areas (*usucapiao urbano*, see Example 14). The application of this principle to the occupation of public land has been explicitly excluded through legislation (ALFONSIN, 1997; VERISSIMO, 1998). However, usucaption of tenure rights to sites also applies to occupied public land, for example in the metropolitan areas of Venezuela (see BOLIVAR 1998), where such claims are strengthened when the municipal utility organisations supply technical and social infrastructure to the settlements, or when integrated urban upgrading programmes, sometimes financed by the World Bank, are implemented, whereby a legal situation is created which provides security of tenure comparable in status to fully legalised sites.

There are frequent complaints that excessive bureaucracy associated with such measures increase time and costs (see ALFONSIN 1997 and 1998).

3. through **lease agreements** between the relevant authority and the squatters for occupied communal land. The squatters feel more secure and are more likely to invest in house improvements and extensions, especially when such agreements are normally made for 20 years and are automatically extended (to a maximum of 99 years, for example in the Dominican Republic). Although the rent is relatively low (US\$ 1,- per square metre per year in greater Santo Domingo) it is usually not paid. But non-payment rarely leads to termination of the agreement and is no hindrance to subsequent legalisation.
4. by identification of the ownership and land use situation and by **certifying the length of residence** on an occupied parcel of land (*carta de constancia*, Dominican Republic) or by listing it in an inventory (Colombia, *registro de un hecho*). This is often a preamble to leasing the said properties.
5. by municipalities proclaiming areas that were illegally occupied and subdivided as “**special social interest zones/areas**” (ZEIS/AEIS, see Chapter 5.1), for example in Brazil, Colombia or the Dominican Republic. The condition created tolerates occupation and protects families living there from eviction. This also implies that the responsibilities of the local authority are extended from tenure

issues to the social and welfare realm (see ALFONSIN, 1997 for Brazil). Proclamation as ZEIS or AEIS creates an obligation to improve or create basic infrastructure. The regularisation of these areas including the construction of roads can lead to the relocation of families, and therefore to the incorporation of still free areas in ZEIS that – for social reasons - should be directly connected to the existing settlement. In some countries areas that are unsuitable for habitation due to the risks of natural hazards (mud slides, flooding etc.) can be included in ZEIS proclamations, implying that occupation of such sites is prohibited. The same applies to areas earmarked for parks or other public functions or land that is of special ecological value, such as water protection areas.

Finally, proclamation as ZEIS can activate the land market and cause dramatic price increases of the affected sites. This effect can be dampened by restrictions such as a prohibition of subdivisions and sales.

There are many additional options, not mentioned here, which are specific to countries and local authorities, whereby security of tenure is secured. It should be mentioned that by acting in a specific way, a legal situation parallel to the law can be created, that provides a basis for a subsequent transfer of title deeds. This includes payment of land taxes – stipulated by the responsible local authority – in illegal settlements of Medellín, installing infrastructure (by self-help) or drawing up so-called supplementary titles (*titulo supletorio*) in Venezuela (BOLIVAR, 1991 and 1998) that confirm who built the house (illegally) and reflect its present value. This title has to be produced during legalisation procedures and is also necessary when applying for a public credit for renovations or extensions.

In this context it should be noted that today the legalisation of informally established settlements and/or the transfer of title deeds in such settlements is not a necessary prerequisite for the provision of infrastructure, or for gaining access to credits for house improvements on favourable terms (see Example 12). Often, for example in Colombia, conditions similar to security of tenure, or an application by a public institution, suffice for the provision of infrastructure in informally established settlements to which the residents have a legal claim and for which they pay (reduced) user charges.

Example 14: Usucaption (*usucapiao urbano*) of land in Brazil.

The right to usucapt (to acquire by long occupation) land in the rural areas of Brazil exists since 1916 (Código Civil Brasileiro). With the constitution of 1988 (§ 182) the legal foundations for usucaption of urban properties were established. The transfer of ownership of illegally occupied sites on privately owned land is made possible on condition that:

- the individual site is not larger than 250m²,
- the occupier has lived there for a minimum of five years without the owner objecting, and that
- the occupier does not own another property in an urban or rural area.

Electricity and water accounts as well as “external” witnesses can be presented as evidence to establish length of occupation.

To date, there is only an individual right of usucaption. However, in new draft legislation (*Lei Estatuto de Cidade*) the possibility of a group-usucaption is provided for. This could speed up the legalisation of whole settlements, but the transfer of individual properties remains the ultimate objective; in other words, the process may involve considerable duplication and expense.

In some Brazilian towns (Recife, Pôrto Alegre, Salvador) new regulations, which call for the appointment (and payment) of lawyers and surveyors, were passed to support usucaption. In general, there still is a large discrepancy in all towns between the legal possibilities and the actual transfer of title deeds (see ALFONSIN, 1997).

5.4 Regularisation or legalisation as prerequisite for (further) upgrading measures

In most Latin American countries the formalisation of informally established settlements and the legalisation of these property claims have two important consequences (see BÄHR and MERTINS, 1995):

- the integration of the settlement into the technical and social infrastructure. Specific measures, such as the laying of sewers and the building of community

centres and kindergartens are usually undertaken with significant self-help contributions by residents. In some countries (for example Dominican Republic, Colombia, Venezuela) formalisation is not a prerequisite for the installation of basic infrastructure. On the contrary: in Colombia these settlements even have a legal claim (§142/1996) to the provision of a minimum basic infrastructure (see Chapter 5.3). WARD (1998, p.2) appropriately points out that the utility companies in most Latin American towns install technical infrastructure according to their own guidelines and legal title is rarely an important criterion.

- the allocation of official credit for the improvement of living conditions (improvement of the house, replacement of a shack with a simple brick-built house, extensions, or improvement of residential infrastructure such as sanitation and the like). While in Costa Rica and El Salvador property legalisation is a prerequisite for the allocation of official credit, in other countries such as the Dominican Republic, Brazil, Colombia and Venezuela, small credits (so-called building material credits) are given especially in semi-legal and illegal settlements on public land where this prerequisite is not met. Building material credits enable residents to buy building material up to a specified value in selected stores. Especially on illegally occupied public land and on semi-legally acquired parcels of land, such improvements occur relatively soon as eviction *de facto* need not be feared.

The creation of security of tenure as well as building and infrastructure upgrading can initiate still other processes, in particular (see BÄHR and MERTINS 1995 for Latin America) the practice of letting new extensions to immigrants or intra-urban or metropolitan migrants, which can increase the population density considerably. The additional income generated in this manner makes it easier for the house owners to pay the instalments on their credits and increases their standard of living (see Chapter 4.2).

It should be emphasised that there are far more infrastructure and housing upgrading programmes than so-called social housing programmes (which were often only affordable to middle-income households) or low-cost housing programmes, core housing programmes and site and service programmes (which did not reach a sufficient number of households). This also applies to Technical Cooperation projects

(PRORENDA, for example, in some Brazilian cities). The reason is that the contribution of self-help activities by the residents who are interested in infrastructure or house improvements – particularly those interested in legalising their property - can be tapped directly in these programmes. As a result, such programmes are much less of a drain on public resources than low cost housing programmes would be.

5.5 Legalisation and mobility of sites

The announcement of regularisation or legalisation leads to an increase in land prices and land market activities in the affected settlements and may thereby force property mobility. This applies to illegally occupied as well as to semi-legally acquired land. In this context, it should be kept in mind that prices on the informal real estate market, similar to the formal market, are determined by supply and demand (see Chapter 4).

The dynamics of the land market and property mobility are influenced by various factors (see Chapter 4.1): firstly, by the announcement or execution of the formalisation and/or legalisation of land rights and urban infrastructure upgrading (see Chapters 5.1 – 5.4); secondly, by the size of the sites (possible subdivision!), the size and quality of the self-built houses, the service connections already present and the location of properties within the settlement area that could be suitable for small businesses, for example on main roads or crossroads.

Many property owners, not only professional squatters or squatter speculators, perpetually seek the best time to sell. Besides these economic considerations, there are quasi-contractual and economic reasons that often force the landowner to sell or leave his property:

- Squatter entrepreneurs in this situation usually arrange for the transfer of the occupied properties to the squatters or semi-legal landowners they support (see Chapter 3.2). These properties are then usually bought by members of higher income groups (lower middle and middle income, so that considerable upward social mobility is often associated with the upward spatial mobility).

- At the latest when properties are legalised and the settlement has received basic infrastructure, house owners must pay (reduced) taxes and levies (for water and electricity). Many cannot or barely pay these. If repayments for official credits or debts with money lenders are added to the cost of services, properties will almost inevitably be sold to people with a higher income (see above). A more rapid building consolidation of the settlement normally follows.

The departing original residents usually relocate to the urban periphery and beyond, thereby creating new informal settlements which will later be incorporated into the city, when they are overtaken by urban sprawl (squatter suburbanisation hypothesis, see Bähr and Mertins, 1995 p. 93,99).

There is a paucity of data on the development of property prices in informal settlements and it is not helpful to cite isolated examples which cannot be generalised. However, the fact that properties are almost always sold to higher income groups, suggests that a significant increase in the land's value is created by legalisation. For semi-legally acquired sites, sales prices achieved after legalisation often exceed the price paid at first occupation by a factor of 10 to 15. Due to the processes outlined above, mobility of ownership in such settlements is very high. The dynamics depend on the location of the settlement in question and on the effectiveness of externally imposed constraints on such transactions. But it is common that a mobility rate of 50% to 60% is reached two years after the creation of an informal settlement (for Salvador, Bali, see MERTINS and THOMAE 1995). This means that the demand for suitable sites is very high, as it is difficult to explain why else the ownership of approximately half of all properties changes so soon.

Land market activities and mobility of sites usually show two peak periods. The first peak period starts immediately or shortly after the semi-legal sale of sites. While there is still an unceasing demand for remaining sites, the first occupied sites already change hands, perhaps due to miscalculations of occupants, or induced by higher prices offered by speculators, especially for well-located settlements or sites within them. The same applies to illegal land occupation, where many families may still wish to join an initiative and then offer inflated prices to early occupants, many of whom may be professional squatters who sell and move on soon after the initial occupation and erection of a simple shack (see Figure 2).

The second peak period is closely associated with announcement or implementation of legalisation or upgrading measures and the concomitant improvement of security of tenure and better access to infrastructure. Increased holding costs also induce mobility during this phase.

5.6 Possibilities for optimising regularisation measures

During the GTZ workshop held on 18 and 19 June 1998 in Oberursel, various themes that offer substantial possibilities for optimising regularisation measures were discussed. A large portion of the measures mentioned were independently referred to during the “International Forum for Regularisation and Land Markets” in Medellín in March 1998 (see WARD, 1998). The results of the discussions held in Oberursel are summarised below:

- The early guarantee of secure tenure. If the right to stay on a site *in situ* or on a resettlement area is signalled soon after occupation, the owners are motivated on the one hand to invest and to participate in regularisation; on the other it strengthens their position during negotiations with people who want to prevent their staying – e.g. neighbouring middle- and upper-income residents who fear a devaluation of their properties and increased crime (see Appendix 6).
- The consideration or integration of informal actors. It is very important for the success of a project to have a sound knowledge of the social structures within the informal settlement, though this is often neglected. Not only is it important to know how the population is comprised, but in particular to identify influential actors, their interests and the predominant power structures (see WARD, 1998). It can be assumed that there are “informal structures” in most informal settlements. They can be headed by a traditional leader or a street committee. If these are acknowledged by the rest of the residents and are not criminal (see Example 6), the cooperation of authorities (or the involved project) with the “authorities” of informal settlements can be very helpful. Contact with them and acknowledgement of their position of power often facilitates access to the

residents (see Appendix 3). Furthermore, if the project strengthens the capacity of informal structures, this can facilitate interaction between settlers and authorities.

- The acknowledgement and integration of legal tenure alternatives (see also PAYNE, 1998; WARD, 1998). In parallel with the official state law, the informal land allocation is often influenced by customary law, particularly in Africa (see Chapter 2.1.4). If this legal system is accepted by the majority of the residents, it should be taken into consideration (see Example 4), on condition that the residents are relatively homogenous. In other words they should belong to the same ethnic group or at least have a very similar concept of the law. Furthermore, care should be taken that this type of law does not lead to discrimination against parts of the population. Customary law often does not offer satisfactory solutions for single mothers. Innovative titling schemes are required to comply with their needs (see also WARD, 1998). Besides customary law, other alternative forms of law can also offer solutions, in the first instance with regard to use rights, e.g. in the form of trusts or community property (see Appendix 4).
- An early cost estimate and agreements on how costs will be covered. Experiences in many projects – e.g. during the improvement of a residential area in Dakar – have shown that regularisation often comes to a standstill if it was not specified exactly at the beginning of legalisation and upgrading which costs the municipality would cover and which were to be borne by the residents or the project.
- To replicate projects, and thereby achieve a wider impact, it is of the utmost importance to be able to operate without external funding. This implies the need to introduce levies and taxes (see WARD, 1998) and a need for careful planning and preparation to avoid the financial capacity of residents being exceeded.
- Public private partnerships (PPP) for the development of land occupied by the urban poor. In the past, it became clear that neither the state nor the market alone could satisfy the demand for land of residents without adequate residential space. A complementary cooperation amongst public and private institutions can create new options, in which the public sector provides the context and creates the

necessary political, legal and administrative conditions. The public sector also arranges for relaxed standards and norms and assures that the interests of underprivileged groups are represented. Complementary, the private sector sees to cost-efficient, market-oriented solutions. In the same way, formal and informal partnerships are possible – cooperation with traditional landowners, informal or unauthorised developers, community-based and non-governmental organisations. Important prerequisites for public and private partnerships are, amongst others, overcoming preconceived ideas and changing roles and rules. But the biggest challenge lies in convincing the private sector that it should invest in an area that may be thought to bring only marginal profit (PAYNE 1998).

- A thorough explanation of the rights and obligations of residents (which makes participation possible and obligatory) as well as simplified and condensed procedures for regularisation. This comprises adequate preparation of the information, access to legal advice (sometimes provided by an NGO as is being tried in Dakar at present), application of simplified planning procedures (e.g. identification of plots on aerial photographs and use of videography) as well as the legal entrenchment of condensed procedures (surveying, registration, transfer of title deeds, etc.) and lowering of standards which may thereby become easier to comply with.

It is controversial whether attempts to control and limit property mobility make sense. In reality, social succession after regularisation in informal settlements is relatively fast, and after lengthy consolidation a large part of the original population does not live there any more. A reason for migration is that often high levies cannot be met by low-income households. Regulating the land market (e.g. prohibiting sales for a number of years) would result in rising debt or the increased letting of rooms. This would mean that the living conditions of many households might again deteriorate.

To summarise, it was concluded that the reality of legal pluralism should be accepted. The need for courage to interact more intensively with informal structures was confirmed. The cooperation with informal actors and the development of alternative forms of secure tenure was seen to contain significant opportunities for the improvement of regularisation measures.

5.7 Conclusions drawn from “curative” measures

The formalising, legalising and upgrading measures that were introduced in Chapter 5, as well as the possibilities for optimisation mentioned above, are all “curative” by nature. This means that they attempt to formalise the illegal or semi-legal land tenure situation and simultaneously contribute to improving the living conditions of the residents. All measures reviewed so far are quantitatively insufficient. In Mexico City about 200 000 properties are legalised every year, but 200 000 new ones are added each year. Therefore the stock of about 2 million informally acquired properties has remained unchanged for the past 10 years (IRCHETTA, 1998). In Bogota, about half of the growth of the municipal area – about 500 ha each year – occurs via semi-legally established settlements (*barrios piratas*). In 1994 about 520 *barrios piratas* were legalised and just as many were still waiting (JIMENEZ, 1994). Similarly, ALFONSIN (1997 and 1998) laments the slow progress being made in Brazil.

Although the “curative” measures immediately trigger unwanted side effects (see Chapter 5.2), they are generally applauded as positive and necessary, especially as they have increased substantially since the mid-80’s and early 90’s. Nevertheless, simplification and tightening of legal administrative procedures for property legalisation, cost reduction (reducing property mobility and migration!) and strengthening of the implementing agencies is called for, which implies a need for more effective controls. It must be mentioned, though, that in Africa many municipalities would not be able to implement such measures due to inadequate financial and human resources. A sound point of departure for cooperation projects lies in the provision of guidance and capacity building for officials to increase efficiency and effectiveness.

Future-oriented planning of preventive measures such as the design of areas for informal settlement activities as “special social interest zones” is possible in some cities, but the practice is not widespread (see Chapter 6.1 and 6.3).

6. Opportunities for steering the process

6.1 Preventive measures

Two scenarios are possible for attempts to satisfy the continued demand for residential space by low-income groups.

On the one hand, the prevailing policies of retrospective measures can be continued (see Chapter 5). Because the amount of land available is decreasing and in view of the high cost of retrospective regularisation of marginal land areas in this manner, however, it is not a financially viable option for the medium or long term. It only makes a limited contribution to resolving urban settlement and social problems sustainably.

On the other hand, a departure from chaotic illegal occupation to a planned steering of further informal settlements is conceivable. Two planning approaches are discernible: the allowed division of private land and a managed development process of/in "preventive areas" .

Proclamation of land for Guided Land Development (GLD)

One approach to the management of informal land claims is the proclamation of public as well as private land that can be subdivided and sold. Here the state provides basic infrastructure such as roads, water supply and waste water removal before occupation and construction of houses commences.

GLD corresponds broadly with the traditional site and service programmes, which offer a newly developed settlement area on the outskirts of town. All service connections to houses have to be installed by the owners themselves, or at their expense. These programmes are primarily targeted at low-income applicants who can afford small loans or leases.

Identification of Special Social Areas in land use or town development plans.

While the classification of special social areas (similar to the Brazilian *Zonas Especiais de Interesse Social*; see Chapter 5.1) is frequently already practised, it is conceivable that such areas could also be proclaimed in advance in regional or urban development planning prior to occupation to guide or manage the expansion of informal settlements on public as well as private land. Private land may have to be expropriated here. In Brazil and Colombia the proclamation of vacant land as “areas of social interest” is already possible, but this option is only used for the resettlement of families from high-risk areas, ecologically sensitive areas and from regulated informal quarters. Such areas could be administered via a municipal advisory board where people interested in land allocation can register and receive information and technical support for the construction of houses and self-help infrastructure. In this manner the municipality could provide a certain number of sites each year. At medium-term, the property should be transferred to the residents for a small monthly payment which could be spread over a period of 20 years. As this procedure would entail a site allocation to individuals, land speculation or immediate sales might be reduced.

The feasibility of such programmes depends on the ability to intervene restrictively when land is occupied illegally, coupled with well-publicised information to show that long-term and safe settlement is only possible in the designated areas.

In practice, only a few examples are known. One example is Pelotas (Rio Grande do Sul State, Brazil), where due to the proclamation of preventive areas no spontaneous *favelas* developed in the town. All illegally occupied parcels of land are cleared. However, the precarious installation of sewerage canals makes it difficult to view this initiative as exemplary.

Basically the following advantages can be expected to accrue to local authorities by proclaiming preventive settlement areas for low-income groups:

a) Financial

Experts in urban development projects assume that it costs local authorities more to provide basic infrastructure prior to occupation, but over the medium-term substantial

savings can be expected, as subsequent regularisation measures in existing informal settlements would cost more. No exact cost comparisons exist as exact expenditures for the complete regularisation process are rarely known. The local authority also stands to save on social housing costs, as residents create housing through self-help.

b) Town planning

By proclaiming areas in advance a contribution to settlement development is made. While the unguided informal occupation of random areas in urban areas makes advance planning difficult, a framework for future town planning can be provided by early proclamation of areas that will be developed.

Critics fear that proclaiming settlement areas in advance could increase migration from rural areas to towns. But these areas would be occupied in any case, and by steering the occupation, at least basic infrastructure is provided and a more regular form of settlement is guaranteed.

Furthermore a non-tolerating response to deviations from the managed settlement process can be justified more easily if official areas are proclaimed for informal settlements.

c) Social

The planned settlement of low-income families with security of tenure gives the newly established housing estate a formal status right from the start. This means that the residents can establish long-term social contacts and networks in the neighbourhood. These social structures are often destroyed during upgrading or resettlement to peripheral settlements, which makes it difficult to identify with the neighbourhood and increases the readiness to migrate or sell.

In practice it is difficult and not always possible to proclaim “preventive” areas. Reasons are:

- *Land shortage*

In many cities there is not enough land available to proclaim special social areas (e.g. Recife, Brazil; Medellín, Colombia).

- *Distance to place of work*

If the “preventive” areas are too far from the urban centres and sub-centres (which are frequently also residential areas of the upper middle- and upper income groups), the residents have no access to job opportunities, or face prohibitive transport costs. This in turn would provoke illegal occupation of land closer to job opportunities.

- *Political will*

One can assume that the proclamation of preventive areas and the subsequent rapid solution of tenure issues do not always reflect the political will of decision makers. The promises of land and residential space can be used by politicians during election campaigns to canvass votes. A clear and effective transfer of land would considerably reduce the dependency of the citizens on the actions of such political leaders.

The proclamation of preventive areas on a sustainable level can only be realised with the broad cooperation of the citizens. Political guidance would then be provided through the local authority and other bodies involved. Monitoring of the settlement development should occur on a suburban level. Due consideration should be given to the extent to which professional developers and utility companies ought to be involved in land use planning.

There are possibilities of identifying suitable areas through work groups in which participation occurs on an equal footing (*conselhos*), such as groups in Fortaleza, Brazil. The long-term planning for the *Area Metropolitana* is to be discussed by the planned *Conselho de Planejamento Estratégico*, of which the local GTZ-supported PRORENDÁ initiative will also be a member. Over the long-term, land use plans can only be changed with the broad political involvement of the lower-income groups.

Preventive planning of settlement development offers significant potential for Technical Cooperation, particularly in the area of land use planning, determining selection criteria for land proclamation, and support to community-based organisations.

6.2 Modification of the normative parameters

Effective modification of settlement developments in cities, conurbations, metropolitan areas and the like can only occur over the medium term, through changes in the conditions under which such developments take place. At the national level this means admission or promotion of democracy and the accommodation of central issues concerning housing policies in the constitution (the right of housing or the recognition of housing as a human right). One example of the modification of the normative policy context is the acceptance of the “social function of property” in the Brazilian constitution, which promoted the establishment of the “special social interest zones” (ZEIS, see Chapter 5.1; ALFONSIN, 1997 p. 62). This also provides a legal basis for the expropriation of building land used inappropriately for speculation.

In principle, before changes are made it should be examined what role the normative policies have, who feels bound by them and what possibilities actually exist for the creation and changing of statutory regulations. The following possibilities for intervention can be considered:

- Introducing adapted standards (see Chapter 5.6): The regularisation of informal settlements (as well as the provision of “preventive areas” with basic infrastructure) can be simplified and accelerated by lowering the relevant standards. In Brazilian cities this was achieved by allowing narrower streets in the ZEIS. As most residents do not have a car, only some streets need to be of regular width (for ambulances, fire brigade and public transport). In the rest of the settlement the narrow streets may remain.

When “preventive areas” are proclaimed, appropriate lower standards that can be raised over time should be planned initially. For better integration of the settlement into the town, support should be given to mixed use.

As a rule though, the legalisation of settlements should not be linked to the compliance with general urban standards (see Chapter 5.4 and WARD, 1998).

- Introducing adapted procedures (see Chapter 5.6): At national level, the support of the national cadastre office is important for establishing decentralised

structures and introducing simple land surveying (for example by using aerial photographs). Local authorities need advice in developing and implementing appropriate building approval and land transfer procedures. They also need guidance with more effective and more practical property tax assessment and collection, as well as with rationalisation of the procedure of issuing title deeds.

During the process of formulating a development plan, structure and area plans are more rapidly implemented and more easily controlled than complicated master plans.

- Improvement of communication and co-ordination within the municipality by creating decentralised structures and committees.
- Promoting the exchange of experiences at local level in the form of “round tables” with representatives of the responsible departments of the relevant local authority, utility companies and residents or the inter-municipal exchange of experiences with policy issues.

6.3 The need for land use planning across municipal boundaries

The worldwide urbanisation and associated expansion of urban agglomerations that increasingly affect surrounding communities calls for land use planning across municipal boundaries. As land reserves are declining, or due to extremely high land prices in remaining areas (see Bogotá), informal land claims by low-income groups increasingly occur on the edge of existing settlements or on land of adjacent municipalities.

The objective of the GTZ-supported PRORENDA initiative in Recife, Brazil is highly acclaimed. It promotes a financing programme in which all 14 municipalities of the *area metropolitana* are involved. It is proposed that contributions for the allocation of new land for social housing or occupation should be made by each local authority according to the size of the population affected. If a town allocates too little space, it would be obliged to pay proportionately more into the community fund.

On the whole, considerable difficulties still exist with the implementation of land use planning across municipal boundaries:

- So far only a few examples of land use planning across municipal boundaries exist as do medium-term plans. Most town planning strategies do not extend beyond the time horizon of the next election (4 – 6 years).
- Many adjoining municipalities are governed by different political parties who are often not interested in cooperation across municipal boundaries.
- Despite the establishment of town planning associations across municipal boundaries, the political influence of individual authorities usually ends at their own boundary.
- If land use planning across municipal boundaries is supported by inter-municipal town planning associations, these do not have a higher authority than the town planning departments, but exist parallel to these. This causes conflicts and duplication of planning, especially when the roles and responsibility of the key actors have not been adequately defined.
- To date, integrated planning that is coordinated amongst all sectors of the administrations exists in very few towns. However, it is a vital prerequisite for cooperation amongst local authorities.
- Utility companies (water, gas, electricity, transport) usually manage their infrastructure networks without much consideration of official town planning issues (see Chapter 5.4). Nonetheless, cooperation between utilities from adjacent municipalities is usually much better than that between town planning departments.

The success of urban regularisation strategies depends largely on party-political continuity and on the political goodwill of local governments. In Pôrto Alegre for example, where one party survived for several terms of office, success is more apparent than in municipalities without party-political continuity.

The costs of subsequent regularisation are extremely high as the administration of municipalities, particularly in the area of land administration, functions poorly and legalisation procedures are wearisome. Subsidising these procedures by paying for lawyers and other professionals is only meaningful if the administrative systems, structures and procedures are also improved. A holistic approach is necessary,

which may include the promotion of community-based organisations. Within the short duration of most cooperation projects, investments to strengthen participation over the medium term and increase transparency are helpful. In general, it is accepted that a rapid creation of security of tenure leads to a closer identification of the residents with “their” settlement and is followed by increased self-help initiatives.

7. Conclusion

Security of land tenure, actually, forms the cornerstone in informal settlement development. This occurs in accordance with the globally recognised “right of housing” as a human right (see ROYSTON, 1998 and WARD, 1998).

In Chapters 2 and 3 types of land tenure, informal land claims and resulting conflicts in cities in developing countries were summarised. These conflicts have been known since the 70's. The same holds true to a somewhat lesser extent for problems associated with public regularisation of urban informal settlements (Chapter 5.6), but is not at all applicable to the understanding of the complexities of land markets in informal settlements (Chapter 4). Neither does it apply to options available to provide security of tenure (Chapter 5.3). A considerable need for research exists here. There is an equally large deficit in development cooperation projects in applying or testing alternative methods, in particular options for preventive management (Chapter 6).

At two international seminars, *Regulación y Mercado de Tierras. Presentaciones comparativas de Centro y Sur América* (16-18 March 1998 in Medellín, Colombia) and *Comparative Policy Perspectives on Urban Land Market Reform in Latin America, South Africa and Eastern Europe* (07-09 July 1998 in Cambridge Mass.) land tenure reform, regularisation measures and the land market in informal settlement areas in developing countries were dealt with in detail. General examples were shown and case studies discussed. This study documents the conclusions reached at both seminars. In most case studies the impact of curative measures for informal land claims were clearly stated (see Chapter 5). These approaches will remain unsatisfactory, although much knowledge has been gained and shared.

“New types” of solutions for the continuous population growth and sprawl of cities and mega cities with favourable growth and location criteria in Latin America were discussed in Medellín. Some of these “new” solutions are the preventive proclamation and allocation of suitable sites (reception areas, free settlement areas) in the context of managed settlement development, and steering and thereby controlling the proclamation of settlement areas in cities. This would facilitate effective town planning.

The planned proclamation of such areas and *a priori* legalisation of illegal land occupations and semi-legal land sales seem to be an alternative. This is, however, in contrast to public opinion and actions so far. In this manner it is possible to guide the emergence of new informal settlements, even if the demand for land should rise. It may even be possible to contain urban sprawl.

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Appendix 1 Special social interest zones / areas (*Zonas/Áreas Especiais de Interesse Social; ZEIS/AEIS*) in Brazil and the example of Recife.

Since the mid-80's "Special social interest zones / areas" have been proclaimed in Brazilian cities. From city to city different terms are used to describe these areas, e.g. *ZEIS* in Recife, *AEIS* in Rio de Janeiro and Pôrto Alegre, *Profavela* in Belo Horizonte and *ZRE* in Fortaleza. The legal policy basis for the proclamation of ZEIS is the principle of priority of occupation over ownership. This is embodied in the Constitution of 1988. The social ties between a site and its occupants are strengthened with the proclamation of ZEIS. The main aim is integration into the formal town. Figuratively speaking, this means that *favelas* can be found on town plans and their existence is officially acknowledged.

In Recife the first ZEIS were proclaimed by land use law in 1983. Recife was a pioneer in this respect in Brazil. Due to pressure from citizen initiatives a regularisation procedure for ZEIS was drawn up in 1987. The following areas can be proclaimed as ZEIS:

- consolidated illegal settlements that are lacking in basic infrastructure;
- land designated for subsequent social housing settlements;
- land adjacent to illegal settlements, that is required for the relocation of favela residents during regularisation.

A town plan must be drawn up for each ZEIS-area in which the maximum (250m²) and minimum (18m²) size of a site is defined. In resettlement areas the sizes are 250m² and 40m² respectively. The building density, building height etc. must also be specified. Contrary to official statements, property speculation is not prevented in this manner. Selling of houses and properties is allowed, although permission from the authorities may be required.

The proclamation of a settlement as a ZEIS already protects the residents (usually low -income groups) from eviction. During the lengthy regularisation process use-licenses are issued (for 50 years, *Concessão do Direito Real de Uso*). Title deeds are issued in the case of privately owned land (*Usucapiao Urbano*; see Example 14).

Existing building structures and layout provide the basis for urban land use regularisation. In other words, general town planning and zoning regulations do not apply. In this manner the current structure of the settlement can be retained in ZEIS

areas. Costly and socially questionable relocations are avoided. This means that minimum standards set for street widths and site sizes need not be adhered to in such areas. The maximum specified population density can be exceeded.

Besides the built environment and technical infrastructure, social infrastructure should also be improved in ZEIS areas. To this end, a local committee must be established in each ZEIS, consisting of representatives of the local authority, residents of the ZEIS and NGOs. A forum of representatives of all ZEIS in a local authority represents common interests of the residents of all such settlements (see ALFONSIN, 1997 and 1998; VERISSIMO, 1998).

Appendix 2 Land occupations and informal settlements in South Africa

In South Africa squatter camps emerged on vacant land within and on the outskirts of townships. They also emerged in homelands if these bordered on cities reserved for Whites. Examples are the squats in Soweto, some consisting of more than 30 000 shacks and the homelands bordering on Durban, where about 1.5 million squatters live (BÄHR and JÜRGENS, 1993).

Many of these informal settlements have existed for years and the residents consider their claim to be secured by common law. As mentioned in the White Paper on South African Land Policy (1997 p. 33): “*a de facto system of land rights exists on the ground, even if it is not legally confirmed*”.

1. National legislation

Until recently, the *Prevention of Illegal Squatting Act* (Act 52 of 1951) spelt out the legal relationship between authorities and squatters. The Act provided for the prosecution or resettlement of squatters. The Act was amended in 1986 and again in 1988. This permitted upgrading of informal settlements and even allowed leasing of plots and finally land ownership in informal settlements. The *Less Formal Township Establishment Act* (Act 113 of 1991) was passed in 1991 during the land reform¹ and a further part of the *Prevention of Illegal Squatting Act* was abolished. The aim of the *Less Formal Township Establishment Act* is to create conditions conducive to more rapid procedures to determine land use, allocate and develop land. It also aims to facilitate recognition of informal settlements by local authorities. In the *Development Facilitation Act* (DFA) (Act 67 of 1995) one paragraph in chapter VII (Land Tenure Matters) deals with changing of informal tenure claims to formal title deeds and outlines the procedure.² Furthermore, the DFA provides for staged tenure, which should provide protection from eviction early in the legalisation process. In terms of

¹ The *White Paper on South African Land Reform* (1991) together with the *Abolition of Racially Based Land Measures Act* (108/1991), the *Upgrading of Land Tenure Rights Act* (112/1991) and the *Less Formal Township Establishment Act* (113/1991) laid the foundation for a new land order in South Africa after the abolition of apartheid. The land reform abolished racial segregation in land allocation and *racial zones* for which separate laws and different procedures existed.

² Two essential principals of the DFA are (White Paper on South African Policy 1997, p.81):

- a) Policy, administrative practice and laws should provide for urban and rural land development and facilitate the development of formal and informal, old and new settlements.
- b) Policy, administrative practice and laws should discourage the illegal occupation of land, with due recognition of informal land development processes.

the Act, people still living on land without infrastructure should be able to acquire tenure rights immediately. The procedure outlined has not been put into concrete form to date as the responsible Department, the Department of Land Affairs, initially focussed on regularising rural land rights. It is only now developing guidelines for urban informal areas. In the interim the *Prevention of Illegal Squatting Act* together with the amendments of 1986 and 1988 was abolished. A new bill has been proposed to parliament. The *Unlawful Occupation of Land Act* comprises three aspects: prevention of illegal eviction from privately owned land – even if this calls for the expropriation of the land - , specifications which land owners must follow if – in specific cases - they wish to evict illegal occupants from their land anyhow, and guidelines for criminal prosecution which may be necessary in certain situations.

The present *modus operandi* for informal settlements makes provision for the formalisation of the settlement as a whole, as a first step, in accordance with the *Less Formal Township Establishment Act*. As a second step, individual title deeds are then issued in terms of the *Upgrading of Land Tenure Rights Act* (ULTRA). Only once a settlement has been proclaimed as a *formal(ised) township* (subdivided and supplied with infrastructure) can title deeds and subsidies from the Department of Housing be applied for. These *housing subsidies* can be used by private people to acquire title deeds. Depending on monthly income, subsidies vary from 5,000 to 15,000 Rand (approximately 5,000 DM). In addition, households can raise credit.³ The conditions to qualify for a housing subsidy are a maximum monthly income of approximately 500 DM, South African citizenship, and that no similar subsidy may have been granted to the applicant or his/her partner.

A further national financing programme is the *Settlement/Land Acquisition Grant*. The programme of the Department of Land Affairs provides grants of up to 5,000 DM, according to the same criteria used in the housing subsidy scheme. Grants can be used to secure and improve tenure, to purchase land, or to finance basic infrastructure.

³ The Department of Land Affairs (and decentralised offices) is legally responsible for land registration and created laws like ULTRA. Because the Department of Housing (and its representatives in the provinces) must apply these laws and issue housing subsidies conflicts often arise which make the implementation of these programmes difficult.

2. Programmes of the Provinces, Gauteng taken as example

The right to transfer tenure rights in urban areas was transferred to the provinces in 1995. With this right the responsibility for dealing with informal settlements was drastically increased. The programmes of the provinces are aimed in the first instance at landless people and are an attempt to prevent the emergence of informal settlements.

In Gauteng Province a pilot programme (*Mayibuye programme*) is underway that uses the *Settlement/Land Acquisition Grant* to earmark land. Grants have to be used for acquisition of privately owned land, surveying and registration of the property and must lead to security of tenure for the recipient. The grant is only paid out after the province or local authority has released the land for settlement and can only be used for acquisitions of privately owned land in accordance with provincial or local plans.

The intention of the *Mayibuye programme* and grant financing is to prevent land invasions by providing access to land for hitherto landless people. In this manner subsequent installation of infrastructure can be planned for and the occupation of unsuitable areas prevented. The *Mayibuye programmes* facilitate the establishment of “formalised informal settlements”. In Gauteng the expectation is that a consolidation process will quickly set in these formalised squats, as was the case in many Latin American informal settlements after the risk of eviction was reduced. In this respect Latin America provides an example for South African planners and politicians.

The *Mayibuye programme*, while successful initially, only reaches a very small proportion of the migrants who arrive every month. The programme is targeted primarily at the landless. It does not address the need to proclaim and provide resettlement areas for residents of existing informal settlements.

3. Measures at local level, the example of the Eastern Metropolitan Local Council (EMLC) in Johannesburg

The EMLC is responsible for the town planning and development of eastern Johannesburg. The only inner city informal settlement in South Africa falls within its jurisdiction. The very first residents of Alexandra bought their sites in the early 1900's from a farmer. After the sales had been registered in the land register the new owners held the title deeds. Alexandra was the only “Black” settlement within Johannesburg and over the years an immense population density was reached by

subdivision, to a point where the original boundaries of sites and the associated tenure rights are no longer recognisable. The formal recognition of land ownership claims is now fraught with difficulties and requires considerable research. Aerial photographs taken at different times have to be evaluated and documents searched for in the archives of the various municipalities that were responsible for Alexandra over the past century. Most importantly, the current situation has to be carefully assessed, which may prove to be nearly impossible due to the permanent in and out migration of the residents. Apart from the recognition of land claims, measures to create additional residential space are necessary. The EMLC has three projects at the moment to improve the living conditions of residents in Alexandra. Two of these are part of the national housing subsidy programme and should create space for 4750 households in areas bordering on Alexandra. A third project should make 1200 residential units available within the already built up areas of the city. All three projects try to reduce the enormous population density in Alexandra.

The EMLC has two strategies that it follows regarding the provision of residential space. Firstly, it tries to identify settlement areas for landless people and residents of informal settlements, and secondly it tries to facilitate access to additional residential land. However, in the understanding of officials of EMLC, the function of the EMLC should not be to provide residential land itself. Instead, it should more appropriately concern itself with the development of the necessary policies and conditions that facilitate the release of land. In this regard, EMLC is encountering numerous problems (see ABRAHAMS 1996 a, b, 1997; and ROYSTON, 1998):

- Land near the city centre is rare and mostly privately owned by “Whites” who show little interest in selling their land for the development of low-income settlements.
- Resistance from the middle- and upper income residents in adjacent areas.
- Lack of necessary political will.
- Public financial resources are limited, as is the capacity of the building industry.
- The limited capacity of local authorities.
- The planned *private-public-partnership* are not being realised. The intention of these partnerships was and is that the private sector should be given guidelines under which it would supply residential land, creating jobs in the process. This idea has failed so far as no concrete programmes were developed.

- The process is subjected to too much partially overlapping legislation and regulation.
- No clearly and exclusively defined roles and responsibilities for the different ministries involved in the process.

Conclusion

The problems that occur during legalisation of informal settlements in South Africa are closely connected with issues of land administration and institutional problems. They are a result of the complex land administration system in previous “Black” townships. The recent changes in the government make the situation even more complex, as many new laws and assignments have resulted. Tenure issues are still unclear as the sphere of responsibility of provincial administrations encompasses new political and policy themes and the capacities of many local authorities are constrained by limited financial resources and shortages of suitably qualified staff. These problems are even more acute in remote regions than in the above-mentioned example in Johannesburg (ABRAHAMS 1996b).

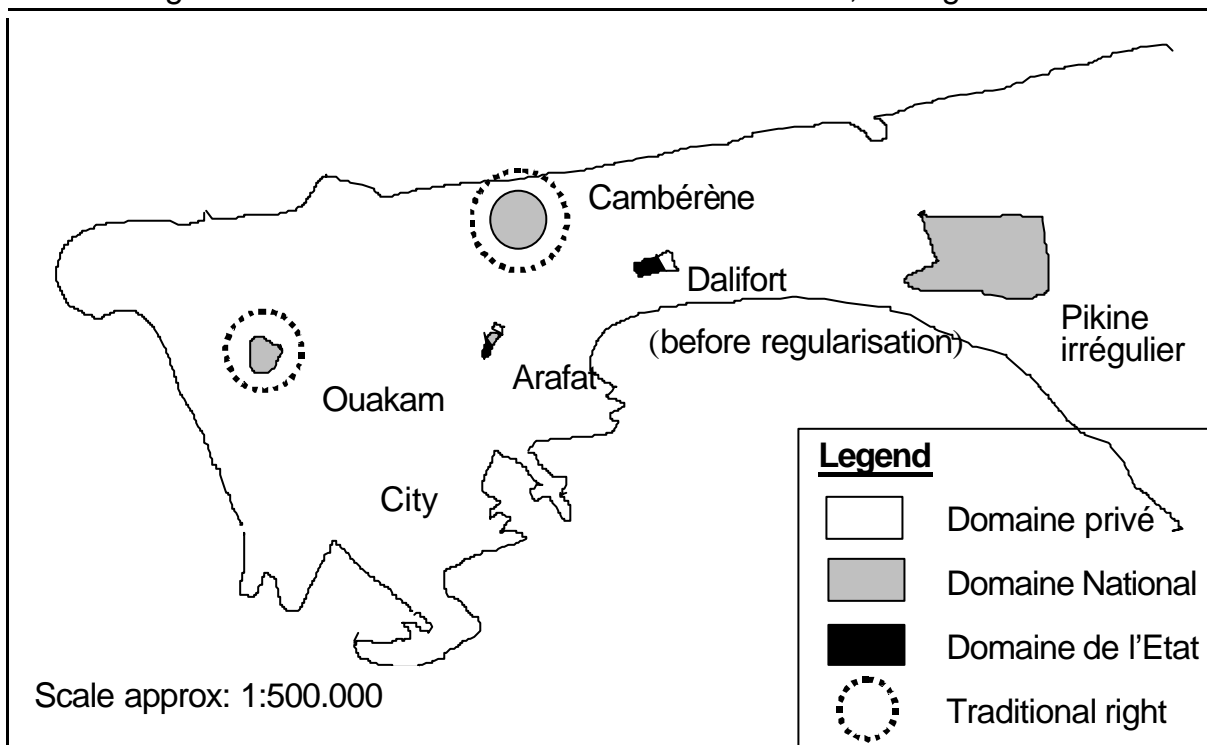
Finally, it should be noted that the legal situation in South Africa has changed radically over the past 10 years in favour of residents of informal settlements. Formalisation and legalisation are now not only possible, but they are desired. The concrete measures that have been taken are not yet sufficient, be they the preventive *Mayibuye Programme* of the Gauteng Administration or the curative measures of the EMLC. Thus informal solutions like informal sub-letting of residential space in Alexandra or Soweto remain widespread. For many people, organised illegal land occupation (see Example 6) is still the only means by which to acquire residential space.

Appendix 3 The land right situation in informal settlements of Dakar, Senegal

Within the municipal boundaries of Dakar there are various informal settlements. Each is different in respect of size, appearance and tenure situation. In the settlements Dalifort and Ouakam which are situated near the city centre, between 6000 and 7000 people live in densely populated tin and timber shacks. But in “Pikine irrégulier”, closer to the outskirts, over 300 000 people occupy less closely packed brick houses.

The land tenure situation is different in all informal settlements. For example in Arafat all three formal types of tenure – state domain, national domain and private property (see Example 1) – exist side by side. In the former villages Ouakam and Cambérène, autochthonous and modern systems of land tenure coincide. Here, official modern law applies and according to this law the land is considered national domain. In daily practice though, common law is followed.

The land right situation in the informal settlements of Dakar, Senegal von



B. Wehrmann, 1998

To explain the different points of departure for a planned formalisation, important characteristics of the respective settlements are explained below:

Dalifort

In Dalifort about 7000 people live in tin and timber shacks on about 20 ha of land. At present the first solid houses are being built. Two years ago the first title deeds, in the form of registered use rights, were issued: so-called *droit de superficie*. Although the title deeds are officially not for sale, it is estimated that about 5% of the original residents have sold their properties. Leasing and subletting is very common.

Before regularisation the land on which most of the settlement is located belonged to the state. A small portion of the land was privately owned by some higher income people. At the time of legalisation, the five landowners had not lived in Dalifort any more for many years or had never lived there. Three of them were Europeans. After the owners had been found they received compensation and the properties were transferred to the state. Only then were *droits de superficie* handed to the present residents of the settlement (see Example 2) with care being taken that nobody bought more than one site.

Pikine irrégulier

Pikine irrégulier is the largest informal settlement in Dakar. Approximately 300,000 people live here. In contrast to Dalifort, most live in brick houses. In the spring of 1998 the settlement was being reproclaimed from *domaine national* to *domaine de l'Etat* (see Example 1), and in the summer of 1998 issuing of *droit de superficie* should have begun. However, both the cadastre and the land registry were so short of finances, that without help from outside they even would not have had the necessary paper or the fuel to drive to the settlement to survey it.

Arafat

Presently about 9,500 – mostly well-educated – people live in Arafat. Relative to their income the substance of their houses is good. Nonetheless, the residents do not have title deeds and the settlement is classified as informal. While less than 10% of the land is privately owned, 40% is considered *Domaine Nationale* and over 50% *Domaine de l'Etat*. About a quarter of the 42 ha area fell victim to the *politique*

bulldozer. Many residents are still traumatised by the devastation and have become increasingly suspicious of the state.

Ouakam and Cambérène: Two traditional villages

The two villages Ouakam and Cambérène are now situated within the boundaries of Dakar. Officially the land was transferred into the *domaine national* in 1964. Parallel to the modern law, customary law is valid. The nature of the two customary legal systems differs significantly between the two settlements, as do the actors responsible for their implementation.

Cambérène

Originally Cambérène was a fishing village that was founded by a *Marabout*. Even today the status of the present *Marabout* is correspondingly high and he is considered the highest authority by the residents. According to the residents of the village, all the land belongs to him. It is of little importance that the land is registered as national domain.

Originally the properties with their brick houses were large enough and the streets wide enough to serve as social spaces. In recent years though, the houses spread and were subdivided more and more. So much space was lost that, according to the residents, important neighbourly contacts could not take place. (In the past meals were taken in the streets and neighbourly contacts were common.)

Many years ago, when GTZ-supported project workers came to Cambérène for the first time, the *Marabout* did not tolerate any interference. In the meantime some residents of the settlement recognise the necessity for regularisation to prevent the uncontrolled covering of all free space and loss of its social function.

Ouakam

The 6,000 residents of Ouakam partially live in brick houses and partially in tin and timber shacks. The 20 ha are densely built-up and many properties are not accessible by vehicle. This could have a devastating effect in the event of fire. This village is situated much more centrally than Cambérène. This might be the reason why the elders are by and large well-educated, approachable men, who encouraged

cooperation with the GTZ-supported project. In Ouakam there was coordination with the elders from the start and for that reason their authority in respect of land allocation and use rights was accepted.

The example of Dakar demonstrates that there is no one land rights situation in all informal settlements within a single city. It is necessary to investigate each land right situation in every informal settlement in detail.

Appendix 4 Community Land Trust in Voi, Kenya

Tanzania Bodeni Community Land Trust Project – background

Tanzania-Bodeni lies in the southern part of the old town Voi. It is about 150 km from Mombassa on the main road to Nairobi in the Taita Taveta District. The development of this informal settlement began in the 50's. People settled on a private sisal plantation and on the state land of *Kenya Railways* without acquiring title deeds. The uncertain legal situation and constant fear of eviction was noticeable in the run down condition of the houses. Not even 1% of the houses could be classified as permanent. Most shelters were built of clay and rush, and services and infrastructure were inadequate.

The informal settlers in Tanzania-Bodeni took the initiative to have the municipality contact the *Small Towns Development Project* in Nairobi and requested support for legalisation and upgrading of the area (MLG/GTZ s. d., p.1f).

Separation of land and house ownership

After the request for legalisation and upgrading in the project area was granted by all parties involved, the community chose a suitable model for long-term securing of land rights. Amongst all the models the *Community Land Trust* (CLT) was identified as suitable. The CLT is based on the idea of sustainable securing of communal land. For this purpose a company was founded. Members of the Land Trust receive use rights for the properties administered by the Land Trust trustees. No title deeds are issued. The residents only own the improvements on the properties allocated to them. These can be bequeathed, and if a member moves out of the settlement area only these improvements may be sold – not the land itself, which reverts to the CLT. In this way the land and the buildings thereon were separated and the land market was considerably restricted (MLG/GTZ o. J., p. 5).

Community Land Trust (CLT) - A tenure model

The CLT is based on a model designed in the USA and is a result of various efforts to explore tenure systems. A combination of traditional African and Islamic land tenure systems was modified and adjusted to the local situation of the Tanzania Bodeni squatter settlement. The tenure model is based on

communal ownership. The community owns the land and the members of the community act as trustees with no right of ownership to the land but usufructary rights.

Officially, the rights to the land are secured by registering it in the name of the community. Each individual owner of structures is owner of the developments and improvements undertaken on the sites. These developments and improvements but not the land itself can be held in perpetuity. As the land cannot be sold, but the improvements made on it can, land and improvements have been separated. The basic principle of this model is to secure tenure for the whole community in a sustainable manner, which allows individuals to benefit. Speculation and land market forces of a land market are reduced (GTZ, 1997 p. 210).

The legal environment

As the CLT is based on a model developed in the USA, derived from elements of traditional African as well as Islamic land rights, some changes had to be made to adapt it to Kenyan law. Civil servants of various ministries, representatives of NGOs, the municipality of Voi and the community council of Tanzania-Bodeni together with legal advisors and the *Small Towns Development Project* (STDP) compiled a legal submission. As there was not only one legal procedure that could have been considered, various forms of regularisation had to be tested. The result was a combination of various procedures (MLG/GTZ, s. d. p.6).

Steps to legalise the CLT (MLG/GTZ, s.d. p.6)

1. Initially the informal settlers joined together as a legal entity and formed an organisation with a constitution and rules that agreed with the concept of the CLT. Then the *Tanzania-Bodeni Settlement Society* was registered under the *Societies Act*.
2. A *Trust Deed* was drafted for the Society to guide the Board of Trustees with the management of jointly held land. Trustees were appointed and registered as the *Tanzania-Bodeni Community Trust* in terms of the *Trustees (Perpetual Succession) Act*.
3. To strengthen the *Trust Deed* the conditions that coincide with the CLT were negotiated with the *Commissioner of Lands* and incorporated in the head lease

which covers the whole area. Through the CLT, the Settlers receive individual sub-leases.

4. As the intention was that the land should be released under a single head-lease the already approved development plan was registered under the *Documentation Act*. It specifies site boundaries, streets and public facilities.
5. Finally the sub-letting by the trust to the members of the community was prepared. With this tenure was to be secured, land use regulated and tenants bound to the principles of the CLT.

Up to now the title deeds that confirm the CLT as owner of the Tanzania-Bodeni land could not be transferred. This is partially due to the lengthy negotiation processes with the original owners of the land. The negotiations with the sisal plantation owners were extremely protracted. For this reason the land could not be surveyed for the cadastre entries. Furthermore, the CLT-concept is new in Kenya and has never been tested. The complete process, including the testing of the legal conditions and separate steps for the transfer of land to the CLT, take an enormous amount of time.

A further step that is still to be completed is incorporating provisions for the procedure to secure tenure rights via a CLT in national legislation.

Comments on how the procedure in Voi could be replicated

According to comments by project staff, CLT could present a possibility for upgrading and legalising informal settlements that enable access to land and residential space for the poorest citizens.

Important factors that added to the success of the project are:

- publicly owned land was available,
- residents have trust in communal land ownership,
- legal mechanisms exist that ensure that the structures erected on sites can be held in perpetuity,
- the Town Council and the Local Authority were highly motivated.

Presently the CLT is recognised in the media and by the public as a promising alternative for securing tenure. But the legal basis to secure tenure via the CLT is lacking in Kenyan legislation (Act of Parliament). Nonetheless, it is already possible

for members of the CLT to take up credits simply on the grounds that they are members of the CLT.

One weakness of the CLT in Voi is that it does not specify obligations and rights of tenants and landlords. It takes no position in respect of standard rent and maintenance of let properties.

At present other informal settlements are trying to achieve legalisation and upgrading, as in Voi. However, there are no examples of a similar execution of the CLT-models. In Kilifi the CLT-model was suggested to one informal settlement group. They followed the example up to a point, but then decided on individually divided land and separate title deeds. The interest of stakeholder groups does not always coincide with the constellation of interests in Tanzania-Bodeni. One cannot predict that the cooperation between the government, the city council and informal settlers will be as good in other towns as it is in Voi.

As the concept was new, interested parties such as the bank that issued the credits to the CLT, were very interested in the success of the CLT. The high motivation of the members motivated the bank to release credits not secured by land. It is uncertain whether all parties will be willing to invest as much time in future projects of this nature and whether such communities will be treated in a manner as privileged as was the case in Voi.

Conclusion

At present the CLT in Voi is a one-off solution that may work under specific conditions in Kenya. As the CLT is successful in Tanzania-Bodeni, other squatters in Voi have decided to work along similar lines. But opinions differ in Nairobi about the implementation of the CLT. Supporters of the concept believe that the basic premise of the CLT – with minor adjustments – may constitute one possibility for the legalisation and upgrading of informal settlement areas in Nairobi. In areas with a very high population density, a modified CLT-model could be applied to multi-storey apartment buildings. Residents would own their apartments while the land and the common installations would remain the property of the housing society, which in turn would consist of members of the house community. Critics are of the opinion that

particularly favourable conditions contributed to the success of the Tanzania-Bodeni-project and that it cannot be replicated.

More important than the question of whether replication is possible, is perhaps the challenge which the basic premise of the CLT approach poses for mainstream theoretical discussions, according to which it is assumed that residents strive to own individual title deeds. According to this understanding individualised land tenure is part of the global shift towards democracy and free market economy. On the other hand, the CLT-experiment shows that there are cases in which individual interests are well met by communal land rights. Community-based tenure should not be dismissed as antiquated or pre-industrial, as it still has a place in a free-market economy in the 21st century that is worth watching and researching (JACOBS and BASSETT, 1996).

Appendix 5 Informal Land Management in Tanzania:

An Integrative Policy Framework for its Formalisation

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Introduction

In most Third World towns and cities, accessibility to urban land can either be through formal state controlled or informal land supply channels. Over the past three decades, informal land supply and development has become the leading sector. In many ways it has been more effective in meeting the demand for housing land than the formal system. In Dar Es Salaam, for instance, nearly 75 per cent of the city inhabitants live in informal areas.

While the extent and role of the informal sector have been acknowledged, the working mechanisms and potentials of the system are often ignored and in fact hardly understood or documented (DOWALL 1991, MABUGUNJE 1990, KOMBE 1994, KREIBICH 1998). This has in turn made the informal sector appear inferior and its contribution trivial, particularly in terms of complementing urban land management endeavours.

Prompted by the extent and the overwhelming role the informal land supply and development sector plays in Tanzania, the authors have conducted a study in three cities in Tanzania to find out how the system operates, who is involved, which instruments and tools are used and what are its strengths and weaknesses. Of particular interest are the lessons it could offer in improving the management of urban land especially in rapidly urbanising countries but with insufficient resources for planned urban development like Tanzania. The cities selected are Dar Es Salaam, the capital city, Morogoro, a provincial town, and Dodoma, the new capital under construction.

In order to obtain an overview of the forces underlying the emergence and sustainability of the informal land supply and development system, a brief review on the land management in the country is presented before the main observations and implications which they have on the future policy of the management of urban land are highlighted.

Land management in Tanzania

Land management in Tanzania is operating in a complex tradition of norms and regulatory systems which are partially co-existing: the customary law when land was

owned by the community, the British system inherited from colonial rule, the socialist ideology which interdicted private land ownership and the new liberal market-oriented environment.

Today, land management in Tanzania is still governed by the Land Ordinance Act. Cap 113 of 1923. Section 3 (1) of the ordinance recognises all land in the country to be public property. Private persons have only the right of use and not of ownership. Land is considered a common property with the President being the custodian of the land on behalf of all citizens. According to the law, access to land is through a grant of “right of occupancy” by the government. The ordinance also recognises land rights of native communities or private individuals who have been occupying land in accordance with the native or customary practices.

The formal process of accessing customary land for urban development is through the provisions of the Town and Country Planning Ordinance Cap 378 of 1956. This legislation gives the local governments the mandate to acquire land, prepare land use plans, and survey it to make it ready for allocation. A local authority wishing to acquire land has to request the President to exercise the powers which have been conferred to him under the Land Acquisition Act of 1967. After paying compensation for non-exhausted improvements on the land and not for the land itself, the land is henceforth subject to urban regulations including all the procedures for land use planning, surveying, allocation and registration.

The consequences following from the principle of public land ownership include prohibiting private land ownership and transactions, declaring land as a valueless item and allocating it administratively through the procedures laid out by the government. One of the prime objectives of adopting and pursuing this policy was to ensure free access to land regardless of the social, political, ethnic or economic background of the land seekers, indeed a very noble aspiration.

A detailed discussion of the performance of the formal land supply and development sector is not a subject matter of this discourse. It may suffice to note that the performance of the system has overall been very poor. In short, the formal system which statutorily is the only way through which one can obtain access to planned land in urban areas has so far mainly served the socially, economically or politically powerful groups having access to the public supply system (KOMBE 1994 and 1995; KIRONDE 1994).

The notion or belief that land is a non-marketable item seems to have been an untenable practice in Tanzania. The failure of the land socialisation policy in Tanzania has given

rise to the informal land markets which are currently rampant in most urban centres in the country. Most urban land seekers, especially the poor, have to rely on the informal system which has been gaining strength and is striving to fill the gap that has been created by the ailing formal land supply and development system.

In the informal system land is allocated outside the procedures laid down by the government, mainly by private individuals through market mechanisms. Such land is normally not planned. i.e. it has not been subjected to urban land use regulations.

The operation of the informal land management system: main observations

Distinct growth stages and characteristics

Informal urbanisation which presently constitutes the modus operandi for urban growth and expansion in most urban centres in Tanzania, is a multifaceted system. The structure and characteristics of settlements vary with their spatial context and stage of growth. Three main stages of growth can be readily identified:

- *Infancy stage*: This is the starting stage where agricultural land in the periphery is being eaten up by residential activities. In short this is the formation of brownfields in what have been greenfields in the urban periphery. Charambe settlement in Dar Es Salaam and most of the periphery areas of the studied urban centres fit fairly well in this category.
- *Consolidation stage*: In this stage informal settlements are undergoing rapid transformation through intensified land parcelling, transactions and development. Consolidation or booming stage is a dominant feature in all areas of land which is ripe for urban development. Kihonda in Morogoro and Chang'ombe in Dodoma are representative cases.
- *Saturation stage*: This is a characteristic of informal settlements in which open land for building is more or less exhausted. Therefore most of the transactions are being effected through infill and extensions. These are areas which are gradually undergoing gentrification. A case at hand is Keko Mwanga in Dar Es Salaam.

The three categories depict varying problems and complexities in physical, socio-economic, administrative and institutional terms.

Self-regularisation mechanisms

There are considerable self-regularisation mechanisms which have developed in the absence of public institutional guidance for land management. These include:

- *Locally administered property rights*: access to land; transfer and transaction procedures; mechanisms for guaranteeing ownership and arbitrating disputes including use of social recognition. These features are dominant and presently used in Kihonda, Chang'ombe, and Rangi Tatu. Apart from land transfer, transaction and registration forms are in Maji Matitu in Charambe as well as in Kihonda.
- *Community level mechanisms for regularising and guiding settlement growth*: spatial orderliness including the creation of road reserves in Kihonda and Chang'ombe which are well adapted to the pre-settlement structures and post-Ujamaa village layout patterns in Rangi Tatu in Charambe.
- *Remarkable land servicing initiatives*: land for schools in Keko Mwanga, Rangi Tatu and Kihonda; public water supply in Chang'ombe and Rangi Tatu and designation of land for communal facilities in Kihonda.

The effect of the economic and political transition on informal land management

The adoption of liberal socio-economic policies including increased democratisation, privatisation and commercialisation has invigorated informal urbanisation. Land has become much more commercialised due to increased demand, making it a collateral in the capital market. The acceleration of informal land use changes is triggering off new land-use conflicts, viz. housing vs. industrial or commercial uses in Keko Mwanga.

The increased commercialisation of land has weakened the informal land regularisation actors, institutions and processes. As land markets heat up, as is often the case in saturated settlements, and conflicts escalate with increasing density, informal actors and processes which have pioneered land regularisation gradually wither out and their role diminishes. Keko Mwanga glaringly depicts this process.

Existing local institutions have no mandate in land management

In cities in Tanzania there are well-established democratic political-administrative structures in all Ward and Sub-ward areas in addition to the former party branch offices and leaders. These local institutions are, however, not mandated to administer land development issues in the local areas, being only responsible for routine functions like

maintaining law and order, collecting local government revenue, approving applications for business licenses and issuing identity cards and certifying residency.

Weak linkages between local and central administrative institutions

The linkages between the local community level and the municipal authorities are very weak, not only because of limited competencies but also in practical terms. Especially land administration is a reserve of municipal and central governments. In general, the principle of subsidiarity is hardly practised.

Positive linkages between informal land markets and legal institutions

Community Dispute Resolution Committees refer cases to the court of law. Courts of law recognise private property rights and informal ownership rights notwithstanding the informalities involved.

Increased challenges to land management under the conditions of rapid urban growth

At the saturation stage the informal institutions guiding land management tend to wither and they lose capacity to guide and regulate land transactions and development. Unfettered, profit-oriented land markets disregard non-profit land uses including circulation, recreational, environmental and communal needs. Land use changes are user- (market-)determined, resulting in eminent conflicts between liberal economic policies and urban development policy aspirations.

Insufficient administrative and planning capacity of public institutions

The public capacity to control and intervene in land management activities at the local community level is highly insufficient: lack of adequate resources for administering land management (transport, equipment), lack of cadastral maps, outdated and poor records and insufficient, unskilled and unmotivated personnel.

Policy implications

The main thrust of a positive policy perspective towards the informal land supply and development sector is to make it operate more efficiently commensurate with the demands emanating from the new market-led national land policy. Probably more important is to improve its contribution to the national economy. The more or the sooner it is formalised, the greater the contribution it will make to the urban and national economy.

Identify and recognise the institutions which the informal sector has forged

The 1995 National Land Policy recognises land values and benefits which can be accrued from market led land supply systems. However, the policy and strategies evolved to operationalise it were not informed by informal land management experiences. The new market-led National Land Policy can hardly be successful without adapting the informal sector potentials, including entrepreneurial processes and instruments, and building on actors who have been in place for over three decades and are accepted by many.

Decentralise land use planning and administration

The informal sector has been effective inter alia because its operations are decentralised. The capacity of the public sector to intervene in the future depends on giving local government and community organisations authority and mandate to regularise land parcelling, transfer and development. The ultimate aim is to put in place an institutional structure where local governments are strong enough to oversee the entire municipal or town area within which the socio-economic, environmental and physical interactions operate, and small enough to be articulated to development in the local (neighbourhood) communities.

Identify strategic intervention areas

The limited public resources could be better used if strategic intervention areas are carefully identified. One of the prime objectives of widening up the scope of actors involved in the management of urban land is to enhance public intervention capacity. This includes the capacity to devise strategic action areas including effective co-ordinating mechanisms, town planning land use frameworks, support mechanisms for land adjustments, minimum land parcelling standards, setting maximum densities and protecting hazard lands from unauthorised building and development.

Enhance local capacity for managing land

In order to make local communities more effective in responding to land use management and planning in their areas it is necessary to improve the technical capacity at the grass-roots level. This could be in form of inculcating or equipping local community leaders with some basic principles related to land use designation, subdivision, transactions and registration, e.g. through training and advisory programmes. It is also important to create more awareness on matters pertaining to legal requirements on land

transaction and use. This includes enhancing the collection and dissemination of information on land use, land values and prices and cadastral systems.

Create a supportive legal and fiscal framework and incentives

In order to make local communities accountable and promote transparency in dealing with the vital land management requirements, an appropriate legal and fiscal framework ought to be put in place. The intention is to provide mechanisms to ensure compliance to the agreed norms, to increase sustainability of community operations in land management and to stimulate a sense of commitment among the key actors at the community level.

Redefine Priorities

In order to make future decision-making processes more viable in technical and economical terms and create synergies between formal and informal land management operations, the need for redefining or resetting priorities is critical. This includes devising strategies for monitoring land development in settlements with critical densities, viable local resource mobilisation options, measures to regress infrastructural deficiencies and weak local government authorities. Whilst these are immense assignments, the persisting social, economic and political transformations seem to offer an opportunity window for effecting changes.

Conclusions

Enhancing the future performance of informal land management system depends on evolving public supportive mechanisms, including effective operational policy instruments. The new market-led national land policy does not seem to provide a framework for genuine reform, although bold steps have been taken in the right direction. The integration of the subsisting informal sector potentials (both individual and communal) into the formal urban land management system remains one of the main challenges to the operationalisation of the New Land Policy in Tanzania.

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Appendix 6

The significance of legal status in the resolution of the land-use conflicts in the informal settlement of Marconi Beam, Cape Town

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Marconi Beam is an area about 250 ha in size, 8 km north east of Cape Town, South Africa, within the municipal area of Milnerton. Until the abolition of apartheid¹ only Whites were legally allowed to own land in Milnerton (URBAN FOUNDATION, 1993 p.5). The horse racing course just west of the area, opposite the four-lane Koeberg Road was decisive for the establishment of the informal settlement of Marconi Beam. Many black people found work in the stables of the race course and were accommodated in community barracks provided. A strike for better working conditions in August 1990 resulted in the workers being locked out and refused access to their quarters. Approximately 200 workers then moved to Marconi Beam, which at that time was undeveloped bush land. Some found shelter with a few families already living there, others erected new shacks. After the strike ended many did not return to their quarters on the race course but preferred to stay with their families (SAFF, 1996 p. 243). Furthermore, additional settlers moved to Marconi Beam from various black townships in and around Cape Town. As a result of these two processes, 226 shacks were widely scattered over the area by the end of 1990. The site belonged to the Department of Post and Telecommunications². The additional building activities on the fallow-lying land led some white (formal) residents of Milnerton who became aware of the informal settlement, to lodge a complaint with the municipality. The resistance against the squatters was organised by various interest groups, primarily by the rate payers association of adjoining communities.

The complaints were motivated by several factors. Town planning in the South Africa of 1986 pursued the goal of apartheid. The informal settlement posed a challenge to apartheid. The apartheid laws were in favour of the formal residents, as the informal settlements were contravening the *Prevention of Illegal Squatting Act* as well as the *Group Areas Act*. The unaccustomed – but now more frequent – contact between white (legal) and black (illegal) residents in the area caused fear of criminal

¹ The crucial *Group Areas Act* was abolished in 1986.

² The land was later transferred to the para-state successor organisation Telkom.

influences and anxiety that property values might fall (SAFF, 1996 p. 247 f). The South African law provided for (frequently used) forced eviction as a solution to the conflict. As the prospects for the residents of the informal settlement were very poor, on political and legal grounds, the NGO *Surplus People Project*³ tried to obtain at least temporary legalisation for the settlement. With the help of an attorney and the support of the Town Clerk of Milnerton, parts of the area were temporarily proclaimed as *transit areas* as described in §6 (3a) of the *Prevention of Illegal Squatting Act*⁴. At that time, Telkom, the land owner, had already razed 20 – 30 shacks.

The proclamation as *transit area* had the following consequences for the residents of the illegal settlement:

1. They had to move to the land allocated to them. Previously their shacks were erected far apart on the 250 ha of land. The new area comprised only 8 ha.
2. The settlement of the *transit area* was legal, thereby providing temporary relief from the fear of eviction.
3. After the negotiations between the squatters and the municipality, the latter supplied basic sanitary infrastructure in the form of shared water taps and toilets for a small sum that was *de facto* never paid.
4. Until the status as *transit area* was lifted, the Milnerton municipality – not the owners – had full right of disposal over the land. It could have prevented further migration into the area but this was not done.

As the *transit area* status was only temporary, a solution had to be found for where and how the residents could be housed.

In December 1990 the Milnerton municipality appointed consultants to propose an area to which the squatters could be permanently relocated. Marconi Beam was initially excluded from the options. By the beginning of 1992 the appointed firm had identified various suitable areas (URBAN FOUNDATION, 1993 from p.3), all of which were turned down by neighbouring residents. The residents of the *transit area* turned them down as well, as they favoured a permanent settlement on the previously occupied land. Various local rate payers associations took the side of the formal residents who feared depreciation of their properties due to a low-income settlement

³ This non-governmental organisation cared for victims of forced removals. It published the most complete empirical study on forced removals in South Africa, comp. SURPLUS PEOPLE PROJECT (1983): *Forced Removals in South Africa Volume 1 – 3*. Cape Town.

⁴ MURRAY / O'REGAN (1990) and O'REGAN (1989) deal with this law in detail.

in their area. The informal residents of Marconi Beam founded new organisations to represent their interests, as no structures existed due to the short existence of the settlement.

At the time, lengthy discussions were held between the Milnerton municipality and the above-mentioned interest groups. The squatters were supported during the negotiations by the NGO *Development Action Group* (DAG⁵).

Because of the relatively secure status in the *transit area*, the squatters could appear as equal partners in the negotiations. According to the political conditions at the beginning of the 90's it would not have been possible to lift the status as a subsequent eviction would not have been publicly justifiable. DAG saw to it that the Marconi Beam issue was well publicised in the press.

Due to the very conflicting opinions about the location of suitable land for the permanent settlement of the squatters, the negotiations reached a deadlock towards the end of 1992. A socio-economic study about Marconi Beam was commissioned in the hope of finding new impulses for the negotiations (URBAN FOUNDATION, 1993 p. 3f). In July 1993 the results of the study were released. They revealed that of the 820 households⁶ interviewed, 2/3 did not want to leave Marconi Beam. The reason given being the proximity to their workplace. Of those who expressed a willingness to leave Marconi Beam (1/3), most (65%) said that they wanted to leave because of bad living conditions in the settlement (URBAN FOUNDATION, 1993 p. 17f).

At that stage Telkom was prepared to hand over the southern part of Marconi Beam to the squatters at a nominal price for permanent use. This was a further reason that negotiations were resumed. Part of Marconi Beam had now become an option for permanent settlement, which is what many squatters had wanted.

With the participation of all interest groups involved, a land-use plan for the whole fallow area of Marconi Beam was subsequently prepared and submitted in October 1994. The plan proposed a mixed-use area with light industry and retail areas, and social as well as residential areas. It contained stringent guidelines and minimum standards for the appearance of the newly emerging squatter settlement. The

⁵ The NGO DAG decided to support marginalised groups in Cape Town and the surrounding peri-urban areas in the independent creation of adequate residential space (DAG) 1996, p. 28). DAG still supports residents of Marconi Beam in an advisory and training capacity.

⁶ From 1990 to 1993 the number of households in the *transit area* had almost quadrupled from 226 to 834 (SCHLAUTMANN 1998, p. 45).

development was to be financed with the help of the housing construction subsidy programme⁷.

In the mean time Telkom had sold the complete fallow property to an estate agent who was obliged to take over the agreements with the squatters. In January 1995 a contract was finally signed between the new land owner and the *Marconi Beam Civic Association* (as representative of the residents of Marconi Beam), DAG and the Milnerton municipality. A time frame and the procedure and conditions of the land sale were stipulated. The purchasers of the land appointed committee members of a trust, still to be founded. The new squatter settlement was named Joe Slovo Park in remembrance of the former Minister of Housing.

Some conditions, that were decisive in the solution of this conflict, distinguish the above mentioned case from many others in South Africa that have a similar context. The neighbourhood of informal settlements and residential areas of a higher income group and/or another socio-cultural structure is often the initiator of conflict between these groups. For an all-round satisfactory solution, the legal situation of the settlers had to be improved to give them a chance for further negotiations and to prevent eviction by the land owner. This was facilitated by the commitment of the community director of Milnerton, who was involved in proclaiming the *transit area*. This provided the basis for further negotiations.

For the further developments another factor was of vital importance: the *transit area* was part of an area that was legally vacant and the land owner wanted to sell it. Therefore the suggestion to zone it as a mixed area for retail, industrial and residential purposes was compatible with the interests of all parties involved. Finally, even the rate payers association agreed with this solution as they were involved in the planning, but particularly because the settlement of the residents of the *transit area* would not occur directly in their neighbourhood. In this way a compromise was found that was acceptable to all interested groups: the rate payers association achieved the removal of an "eyesore" from their immediate neighbourhood. The residents of the *transit area* secured a permanent settlement area that was close to their previous residence and thereby close to their place of employment. The central condition for the solution of the conflict was that the squatters achieved legal security

⁷ According to the rules of the state housing construction subsidy everyone, who meets the following criteria, can receive a subsidy; the household has a monthly income of less than 3 500 Rand, the household consists of at least one married couple or one adult with dependants, to date the household has not made use of any other housing construction subsidy, the applicant is a permanent resident of the Republic of South Africa. The subsidy is set depending on the height of the monthly income.

against eviction through the proclamation of a *transit area*. This reduced the imbalances of power amongst the involved parties and encouraged the search for mutually acceptable solutions.

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