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# **Perspective on Urban Land and Urban Management Policies in Sub-Saharan Africa**

Akin L. Mabogunje

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## **FOREWORD**

This paper addresses the problems of governance in municipalities in Africa. The concern has been to adapt traditional systems of governance to the needs of modern urban management. This paper focuses on governance at the community level, where empowerment and accountability begin. The importance of the particularly dynamic systems of traditional governance at the lowest level in managing urban growth is only recently being recognized.

This paper was produced under the aegis of the Municipal Development Program for Sub-Saharan Africa (MDP). MDP publications are meant to support the analysis and debate of policy, strategies, and state-of-the-art thinking on topics vital to strengthening local governments in Africa.

The MDP is a capacity building initiative directed at the development of effective local participatory governance.

The Municipal Development Program is a collaborative undertaking of development agencies and African institutions to help provide the analytical resources and capabilities to enhance the effectiveness of African local governments. The program is funded by the Governments of Italy, Canada, and the Netherlands. The World Bank, through the Africa Technical Department and the Economic Development Institute, is the program's Executing Agency, with a Program Office established in Harare, Zimbabwe.

This paper was prepared by Professor Akin L. Mabogunje during his tenure at the World Bank as a Visiting Fellow. Being chair of the National Board for Community Banks in Lagos and having taught at universities worldwide and written extensively on city, regional, and national planning in Africa, Professor Mabogunje brings extensive experience and insight to African urban development concerns.



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The views expressed are those of the author, however, and should not be taken as reflecting those of the World Bank, and the author alone is responsible for any errors or omissions.

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## ***ABSTRACT***

This paper investigates the need for a new analysis of the twin problems of urban land and urban management in Sub-Saharan Africa. This need is based on the apparent paradox between the dynamic, city-creating activities of civil societies in all of these countries, and the weak capabilities of states to guide and direct these activities. The paper focuses on governance. It argues that a prerequisite for dealing with these problems is an institutional environment with which the target populace is familiar and to which it is likely to relate in participating in managing the city.



## PREFACE

Two ideas provide the overarching conceptual framework for this report. The first is that of "strong societies and weak states"; the second is that of "institutional radicalization". The idea that many of the problems of weak implementation capacity and poor performance by governments in Sub-Saharan Africa stems from the relative weakness of the State vis-à-vis the society is not new. Goran Hyden, in his two books "Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry"<sup>1</sup> and "No Shortcuts to Progress",<sup>2</sup> alluded to the fact that in Africa "small is powerful" because the State has remained unable to "capture" its peasantry. However, it is the recent publication by Joel Midgal, entitled "Strong Societies and Weak States"<sup>3</sup> that captures the essence of the pervading problem of counter-marginalization between the State and society which underscores the problem of transition to modernization in most African countries today.

Society remains strong not because it is conservative and holding on to old ways. Rather, it is strong because it is dynamic, actively creating and adapting structures to meet the real challenges of survival. On the other hand, the State remains weak because it is entrapped in its colonial legacy. Its bureaucracy sees its role as one of a commitment to the preservation of outmoded colonial structures and procedures rather than to taking new initiatives and designing innovative strategies to assist the society in modernizing itself. The result is a situation in which the State seems irrelevant to the needs of society, and Society is very indifferent to the role of the State.

This problem cannot be left purely in the realm of ideas. It is too vital for the progress and development of all African countries since it critically affects the capabilities of the State to perform its task of governance. Such capabilities derive from the capacity of the State in any country "to penetrate society, regulate social relationships, extract resources, and appropriate or use resources in determined ways"<sup>4</sup>. It is the enhanced status of these capabilities

in advanced industrial countries which underscore Magnet Pospisils' statement that:

"In (our) Western civilization we are accustomed to regard the law of the State as the primary, almost omnipotent standard to which the individual looks for protection and with which he tries to conform in his behavior. Only within the framework of this basic conformity, we tend to think, may there exist additional controls of the family, clique, association, and so on. In other words, in the West it is assumed that the center of power controlling most of the behavior of citizens of a modern nation lies on the level of the society as a whole."

"There is, however, nothing sacrosanct about the law of the State. In the advanced industrial countries this law has evolved out of the customs, practices, and experiences of their specific societies. In the late 19th and early 20th century, it has unfortunately been transplanted in its codified form to colonial territories where it now constitutes the set of "formal" institutional rules which societies in those territories are meant to obey. Where the intensity and depth of penetration of these rules have been highly significant as in the countries of large European settlement (South Africa, Zimbabwe, and Kenya), these rules and institutions have had some chances of effectively influencing the direction of societal evolution. But over most of Sub-Saharan Africa, the period of colonial rule was in reality not more than half a century, and the degree of State penetration very superficial in many cases. The interruptions of two World Wars during that period also served to further attenuate these influences in many areas."<sup>5</sup>

Yet, with political independence we are confronted everywhere with new nations having all the paraphernalia of modern States but residing within inherited colonial boundaries drawn around myriads of ancient societies with different institutional and behavioral mores. For these states, the most pressing

challenge in all fields is how to strengthen their capabilities so that increasingly they can provide for all citizens "the primary, almost omnipotent standards to which the individual must look for protection and with which he must try to conform in his behavior."<sup>6</sup> Since such capabilities can best be derived through activating and utilizing evolutionary strategies, as advanced nations themselves have had to do, there is need for a new set of practical policies and measures on the part of the State to achieve this end.

This is the rationale for the second concept of "institutional radicalization."<sup>7</sup> Institutional radicalization refers to change processes which seek to preserve the obvious forms of existing institutions while radically transforming their substance; that is, to change processes which do not immediately abolish and replace existing forms of behavior but which circumscribe them in a manner to make them more accommodating of new rules while still deriving advantages from the enforcement characteristics of the institution. The rationale is simple: it lies in the problem of mobilizing a large mass of illiterate (though not unintelligent) people behind a new set of ideas, concepts, values, and standards which are critical for development. Considerable economies of effort would be achieved if, instead of seeking to impose alien institutions on people, attempts were made to identify and understand relevant indigenous institutions whose rules and enforcement characteristics could gradually be transformed so that, with time, appropriate modernizing norms of behavior would evolve.

The articulation of the concept of "institutional radicalization" may be new, but in practice one can find attempts to implement such a strategy in virtually any Sub-Saharan African country. In Botswana, for instance, when, after independence, the government tried to become more involved in matters of land allocation over which Chiefs had hitherto presided, it established Lands Boards, some of whose members were appointed while others consisted of locally elected members. The Chiefs were, however, retained and were appointed to the boards as ex-officio members with varying degrees of active participation. Like the Chiefs before them, the Boards were then declared

trustees of tribal land, but they now had executive secretaries and clerks who reported to the Ministry of Local Government and Lands. The Boards were also required by the Act to comply with instructions of the Minister.<sup>8</sup> However, for the general population, the presence of the Chiefs provided an element of continuity and lent some validity to the mission of the new agencies. As a strategy of enhancing State capabilities, institutional radicalization has to be extended over wider areas of societal activities. At present, most of these activities are described as "informal." Whether it is a societal adaptive process of making land available for urban housing, building houses, engaging in capitalist-type productive activities, running transportation services, establishing credit institutions, even of organizing themselves -- all have been dismissed sometimes not simply as "informal" but also as "illegal." A situation where the activities of the majority of the population in a society are so described and treated cavalierly, needs to be critically reviewed and revised. In the particular instance of this monograph on urban land and urban management, these critical possibilities have been kept in mind.

It must be stressed that in cities all over Africa, processes are already under way whereby the people are engaged in resolving various problems of urban existence in spite of the State. Whether it involves selling and buying land for housing construction, local self-help activities to improve neighborhoods or local financial contributions for needed services, urban societies are already finding ways and means of tackling existing problems. The reality of decentralization is thus being actualized without formal recognition and promotion by the State.

Consequently, however, the liberating impact of these societal adaptive strategies on modern urbanization is limited. If significant achievements are to be recorded in the 1990s in various areas of national life, especially urban land development and urban management, the State must work deliberately and purposefully through institutions and practices with which society is already familiar. This strategy, which seeks to create an enabling environment and to further advance society in the directions it is already headed, is also bound to enhance the capabilities of the State in general.

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## EXECUTIVE SUMMARY

This report proposes the need for a new perspective in looking at the twin problems of urban land and urban management in Sub-Saharan Africa. The need for this new perspective is predicated on the paradox between the dynamic, city-creating activities of civil societies in all of these countries and the weak capabilities of the State to guide and direct these activities. This is most apparent with regard to urban land. In cities of Sub-Saharan Africa, land transactions occur for residential home construction on a large scale, yet the State has developed little capacity for recording these transactions. Moreover, it is hardly able to issue and register titles to these land holdings, or to appropriate revenue for needed urban infrastructural development from these land assets. The state is also only marginally able to manage the cities. The effective resolution of the urban land situation is thus central to the problem of effective urban management in these countries. Both problems, however, can be resolved through a strategy of governance that capitalizes on institutions and processes with which the population is familiar and to which it is likely to relate in participating actively in the management of the city.

The report is organized in seven chapters and a preface. The latter sets out the two ideas which provide the overarching conceptual framework to the report. The first of these two ideas is that of "strong societies and weak states"; the second is that of "institutional radicalization." In the first, the strong society is attributed to the society's own dynamism and active preoccupation with creating and adapting structures to meet the real challenges of survival. The State, however, remains weak because it is entrapped in its colonial legacy with a bureaucracy that sees its role as one of a commitment to the preservation of outmoded colonial structures and procedures which inhibit taking new initiatives to modernize the society. The second idea of institutional radicalization is presented as a viable strategy of enhancing the capabilities of the State to guide and direct the urbanization

process to ensure that, in the 1990s, Sub-Saharan African countries can achieve greater successes in improving both the living standards of urban residents and the quality of the urban environment in which they live and work.

The introductory chapter reviews the efforts of the World Bank in dealing with the urban land problem. It identifies three broad phases as far as Sub-Saharan Africa is concerned. The first phase was the period prior to 1972 when the Bank's main concern was simply to ensure that African governments secured land for Bank-financed projects. The second was the period 1972 to about 1982 when the interest shifted to the need of the urban poor and low income groups to secure title to land. This was seen as necessary to induce them to invest time and resources in improving their shelter. This was the period of the sites-and-services and slum upgrading schemes which together accounted for 77 percent of the Bank's loans for urban development in Sub-Saharan Africa. The third phase, which can roughly be dated as post-1982, is the period when the Bank realized it could no longer approach urban problems in this piecemeal and *ad hoc* fashion. Interest has now shifted to "integrated" urban projects, and more recently, a serious concern with urban management. This report emphasizes how this recent concern makes the resolution of the urban land policy question more imperative than ever before.

Chapter II examines the nature of the urban land policy question. It insists that if the question is properly posed, it will indicate that the issue is not whether land is being made available for urban purposes but rather whether the post-colonial States in Sub-Saharan Africa have developed the capabilities to ensure that land is properly brought to the urban land market. The chapter explores the historical background to the present situation. It calls attention to the contradictions in the colonial mission in Africa. On the one hand, this mission was concerned with the subjugation and exploitations of peoples at lower levels

of economic development; on the other hand, it sought to insert the economies of these people into the global free market system. While African labor has generally been successfully commoditized, the interests of European settlers and various strategies of domination made the colonial administration shy away from the process of fully commoditizing and inserting land into the capital market system except for Europeans and Asians. In many colonial territories, even where the law allowed the registration of individual land holdings by Africans, the colonial administration neglected to uphold this law, primarily to deny Africans the rights to permanent residence in the city.

Yet African societies themselves recognized that traditional society had no prior experience to draw on for guidance in connection with the transformation being initiated by inserting their societies and economies into the global capitalist system. With respect to land, therefore, they developed strategies for buying and selling land. This was particularly necessary to ensure that the large numbers of migrants to the city could provide themselves with necessary land on which to build their homes. The colonial and post-colonial State treated these adaptive reactions of society as aberrations. They described them as "customary", "informal", or "illegal", thereby excusing themselves from dealing with a process that accounts by far for the majority of land holdings in African cities.

Chapter III investigates how these adaptive processes came about and suggests how the State can overcome them if its capabilities to manage the modern African city effectively are to be enhanced. It describes the structure of the pre-colonial and pre-industrial city in Africa and points out the importance of quarters, wards, and neighborhoods in ensuring effective participation in governance in those days. It indicates how, in spite of colonial indifference and disregard to this internal structure of African cities, the system survived and has continued to serve as an "informal" model for new suburban development. In the case of Greater Khartoum in the Sudan, for instance, the chapter illustrates how much this system has been used by urban residents to meet the needs for various services. Yet, because neither the colonial nor the post-colonial administration paid much attention to strengthening these neighborhood institutions, their potential has hardly been recognized for enhancing the effective management of the modern African city. The chapter suggests that this institution provides tremendous opportunity for radicalization so that

it can service many vital purposes of urban administration including land management. It also recalls that some of the Bank's most recent urban projects in Sub-Saharan Africa show some orientation in this direction; notable among these are the Second Urban Project in the Republic of Guinea; and the Second Addis Ababa Urban Development Project.

Chapter IV reviews the urban land tenure systems encountered in countries of Sub-Saharan Africa. It observes that the traditional land tenure systems all over Africa are basically simple, having been predicated on the kinship nexus. Complexity was introduced with the massive mobility of population, set in motion by colonialism and by the growth of a free market economy. This complexity is the product partly of the adaptive responses of African societies to the novel situation of rapid urbanization, and partly of various devices of colonial administration to keep the Africans out of having a permanent stake in living in the city. Tenure systems as the *livret du louer*, the *permis d'habitation*, *certificates of occupancy*, *head lease*, and *quitrent* are some of the contrivances to deny freehold rights to Africans living in the city. By the time of independence, freehold tenure had come to be seen as a European device to expropriate African land. Thus, although in all countries there had always been recognized land in the public domain and the right of the State to acquire more land for public purposes had never been challenged, it is remarkable that, especially between 1974 and 1984, as many as 20 countries of Sub-Saharan Africa (accounting for nearly 75 percent of the total population of the region) decided to nationalize their land and offer citizens only leasehold rights of varying duration. Nationalization, however, was largely a legislative measure and not one to expedite the issuance of appropriate titles even for those leaseholds. This development, to the extent that it tried to substitute administrative processes for allocation through the free market system to which the society was already responding, must, to that extent, be considered retrograde.

Chapter V examines the various urban land management systems. The chapter reviews the traditional land management system in pre-colonial urban centers using the capital of the Basuto Kingdom as an example. The role of ward chiefs is strongly underscored as well as the clarity of traditional land policy objectives. The latter sought simply to ensure, to all families, access to land for residential, cultivation and grazing purposes. This clarity of policy goals contrasts sharply with the ambiguity and incoherence

surrounding present land policies in most countries. The result is the difficulty of effectively managing urban land processes in most Sub-Saharan African countries. This explains the poor state of development of both geodetic and land surveys, the complete absence of cadastres in many cities, and the inchoate institutional development with respect to land titles and land registration. The provision of fiscal and legal cadastres for African cities must now be seen as a compelling necessity if the present confused situation is not to be perpetuated indefinitely. It is recognized that developing a cadastre is a time-consuming and costly task. A strategy is, therefore, presented for undertaking this task in stages. The first stage is the production of what has been called a "halfway" cadastre using relatively inexpensive but expeditious modern methods such as large-scale aerial photography with microlight aircraft. Once this information from the "halfway" cadastre is ready, neighborhood organizations can be mobilized to help in expediting the process of listing the names of owners of particular plots. With time and more detailed survey, the provision of real title documents can then be planned. The impact of this informational "infrastructure" on the capacity of African cities to generate a significant proportion of the revenue they need to pay for their physical infrastructure and services should always be borne in mind. The example of self-reliant cities in Zimbabwe is instructive in this regard.

Chapter VI considers the question of urban planning and urban land markets. It examines the factors likely to contribute to a continued and increasing demand for urban land, and the problems impeding adequate land supply processes. These problems have resulted in the emergence of a dual land market system--the formal and the informal--creating conditions of considerable distortion in land values and land prices. Little systematic information exists about land transactions in most cities, a fact which affects the effectiveness of supply. The role of urban planning departments in facilitating the supply of urban land is also discussed. The need to revise the outmoded legislation which established these urban management agencies in most African countries is stressed. Equally underlined is the need to enhance the capability of these agencies to supply, more expeditiously, serviced land for urban development. In this connection, the prospect of utilizing the current widespread practice of land nationalization is considered. A strategy based on Doebele's concept of "moments of transition" from rural to urban land is outlined as a way of facilitating

the process. The involvement of private land development agencies and of private sector organizations is generally regarded as central to this strategy. The experience of the Republic of Korea based on the "land re-adjustment strategy" is described in brief as providing valuable lessons for African countries as to how cities can engage in a self-financing process of urban land development.

The concluding Chapter VII examines the role for technical assistance. It begins with a reflection on the observation by Karl Polanyi that improving the performance of the free market economy often entails more tasks for governments rather than less, as was evident in the case of Europe in the 19th century. These tasks include extensive legislative reforms, comprehensive and continuous bureaucratic record keeping, and wide-ranging administrative surveillance of the efficient operations of the free market. Each of these tasks provides ample opportunity for technical assistance without compromising the integrity of any government to make its own decisions. The chapter identifies seven broad areas where such assistance would be catalytic:

- A. Human resource development
- B. Enhancement of neighborhood capabilities
- C. The creation of the "half-way" cadastre
- D. The development and implementation of strategies for transforming "half-way" cadastres into proper legal and fiscal cadastres
- E. The strengthening of land titling and land registration departments
- F. The strengthening of urban planning departments
- G. The closer integration of private sector organizations into urban land development programs. The report concludes by reiterating that the 1990s are bound to witness a tremendous upsurge in the urbanization process in Africa. Whether the concomitant, dramatic, areal expansion of African cities takes place in a more orderly and environmentally satisfactory manner is the challenge facing all countries in Sub-Saharan Africa as well as bilateral and multilateral agencies participating in the social and economic development of the region.



## INTRODUCTION

The last three decades have seen considerable pre-occupation with the problems of urbanization not only in Sub-Saharan Africa but in all regions of the developing world. In Sub-Saharan Africa, the end of the colonial regime saw a massive exodus of population from rural areas to the urban centers of one country after another. Statistical data on the rapid growth of the urban population present a one-dimensional picture of the process, failing only to capture the real essence of the dramatic transformation through which societies in those countries were passing. It is reckoned, for instance, that between 1960 and 1980, the number of persons living in urban centers in Sub-Saharan Africa jumped from 33 to 90 million, a growth rate of some 10.5 percent per annum. The 1980 figure, it is anticipated, will further triple to nearly 260 million by the year 2000; thus Africa, which started off as the least urbanized of the continents, may likely end up with at least 39 percent of its population in cities and a great potential for even further urbanization.

Not unexpectedly, as the futility of initial attempts to limit these waves of in-migration to the city became more and more apparent, emphasis shifted to the major issue of how to provide these agglomerations of people with adequate services. For the World Bank, this emphasis was translated into seeking technical solutions to improve service delivery. This meant infrastructural lending for such services as improved water supply, drainage and sanitation, transportation, electricity, telecommunications, and so on. The implementation of projects within these sub-sectors soon made evident the problem of public access to land for urban projects, a problem which was easily resolved by making its resolution part of the conditionality for the disbursement of loans.

By the early 1970s however, inequity in the access of different social groups to urban facilities and employment had become a salient issue in the urban development process. A significant proportion of the low-income population was found to be squatting on unserviced plots of land within cities and in peri-urban

areas around the cities. The squalor and unsanitary conditions of these areas and the environmental hazards which they constituted provoked the initial reaction on the part of many governments of bulldozing the shanty dwellings constructed by these squatters.

Then, in 1972, the World Bank led the way by undertaking an unprecedented urban shelter project specifically directed at the needs of the most deprived urban social groups. This project entailed what came to be known as the sites-and-services approach to urban development, that is a strategy which was meant to be flexible in not insisting on any preconceived notions about architecture, costs or building materials. Rather, its emphasis was to encourage the mobilization of self-help efforts and private savings for shelter construction among urban poor and low-income groups while the public sector intervened to see to physical planning and infrastructure development. The design standards for the projects were deliberately set at a low level so that services would be affordable to the poor. It was also expected that the approach would make it possible for project costs to be easily recovered and for such schemes to be replicable on a large scale. A variant of the scheme was the slum-upgrading project which entailed the provision of infrastructure including water supply, sanitation, roads, footpaths, drainage, and electricity to households with minimal demolition to their slum dwellings. Both the sites-and-services and the slum-upgrading schemes were predicated on a basic premise, namely, that the status and conditions of shelter would be improved by their owners in response not only to the provision of infrastructure but, more importantly, to the guaranteeing of secure title to land. The issue of secure title thus became a major conditionality in the initiation, design, and implementation of these schemes. Over the period 1972-81, these shelter schemes dominated World Bank project lending to Sub-Saharan African countries in the urban sector. Of fifteen urban projects with total costs of US\$449.3 million and a loan component of \$243.5 million, shelter accounted for 69 and 77 percent, respectively.

The land title issue, however, began to make evident some of the basic defects in programs which had tried to approach the urban development challenges of Sub-Saharan Africa on an *ad hoc* sub-sectoral basis. Secure title to land was a highly desirable goal not only for the urban poor and low-income groups but also for the urban middle class. Not surprisingly, therefore, a situation developed under most of the schemes whereby an increasing proportion of plots passed out of the hands of those for whom they were intended to members of the urban middle class. In a situation where land with secure titles is at a premium because the institutions responsible for land titles and land registration are poorly developed, it is easy to appreciate the basis for such a development.

The underdeveloped state of these institutions also has implications for other aspects of urban life and urban governance. It impedes the effective emergence and efficient operation of urban land markets, the orderly development and growth of urban housing finance, and the comprehensive mobilization and collection of municipal revenue. It is thus no wonder that recently the emphasis in the World Bank's urban lending program in Sub-Saharan Africa has been shifting towards "integrated" urban projects comprising various combinations of components dealing with shelter, infrastructure, transport, solid waste management, business support, health, nutrition, and education.

Moreover, the Bank has over the last few years launched a joint World Bank/UNCHS (Habitat) Urban Management Program. The main objective of this Program is to strengthen the ability of cities to perform their economic functions more efficiently while improving the standards of living of urban municipal services. Efficient delivery of infrastructure and social services, in turn, depends on the strength of local government and the effectiveness of urban manage-

magnet. The latter is often the product of not only intergovernmental relations but also of an improved financial resource mobilization effort on the part of municipal authorities. For it is only when municipalities can provide, in large measure, the revenue they need that they may secure a high degree of autonomy in matters of local governance. Experience from most developed and some developing countries shows that a property tax is perhaps the most durable means of mobilizing significant local financial resources. However, central to the effective administration of a property tax is land registration and the availability of a fiscal and legal cadastre denoting the land and property holding situation in the city.

This strong nexus between urban land, urban financial resource mobilization, and effective urban management underlines the thrust of the present report. Now that the World Bank has come to accept the imperative nature of a new approach which emphasizes that State interventions in the urban sector can be construed as "the management of processes rather than as a series of discrete projects," it is important to review the significance of this nexus and evaluate its critical role in guiding the development of new policies, programs, and techniques of urban development in Sub-Saharan Africa in the 1990s. For such a review to serve its purpose of provoking and strengthening an alternative perspective on the Bank's interventions in the urban field, it is necessary to consider the historical context not only of colonialism but, more importantly, of the worldwide expansion of the free market economy into which Sub-Saharan African countries entered particularly since the last quarter of the nineteenth century. In this way, the urban processes in these countries become more understandable, and the direction in which policies and programs need to be developed to make them appropriate and more effective becomes clearer.

## REPOSITING THE URBAN LAND POLICY QUESTION

In its lending operations, the World Bank has always had to confront the problem of secure access to land both for projects and for beneficiaries of projects. This problem is much more severe in Sub-Saharan Africa, and there are innumerable references to its effects in delaying the completion rate of projects. Yet, the review of the Bank's lending for Urban Development 1972-82, while noting this fact, suggests that "the Bank's insistence that existing settlements be legalized through granting of land titles has resulted in major changes in the Bank's member countries. Projects have, in effect, been established for urban land-reform programs in cities where land issues have been among the most burning of political questions. The bulldozer has been replaced by the deed or long-term lease as the leading instrument of land policy."<sup>9</sup> Nonetheless, although the review did not propose any major programmatic thrust with regard to urban land, it noted that the Bank's research into urban land policy has revealed an array of problems whose resolution is critical if large-scale replicability in the urban sector is to be achieved.<sup>10</sup>

Increasingly in the period after 1982, as the Bank's urban investment program became more citywide in orientation, the seriousness of the urban land issue began to command attention, and components of projects were directed at initiating moves to resolve it. The 1983 Cameroon Urban Development Project, for instance, noted that "more than 90 percent of urban residents do not hold registered title to the land on which they have built, though they must pay occupation rights to the customary landowners."<sup>11</sup> In the case of Conakry, Guinea, the appraisal report noted that "illegal settlements represent the most frequent form of urban land occupancy and result from informal and unregistered financial arrangements with customary occupants." The report for Rwanda observed that "most urban residents have no written evidence of tenure status on the land they occupy."<sup>12</sup>

Studies by other scholars of the African case confirm the magnitude and seriousness of this situation.

Falloux, for instance, noted that "Sub-Saharan Africa is the only region of the world where land property rights have hardly been surveyed. As a rough estimate, less than 1 percent of this region, primarily in urban areas, have been covered by any kind of cadastral survey. Some exceptions do exist, such as Kenya and Zimbabwe, due to rural cadastral surveys conducted by European settlers in colonial times."<sup>13</sup> In regard to the urban areas, the more common situation is represented by Burkina Faso, where again Falloux observed that out of about 6,000 land titles delivered to date, an estimated 89 percent are in the urban areas of Ouagadougou and Bobo-Dioulasso. But, these only cover about 6 percent of the land parcels in these two towns."<sup>14</sup>

All over Sub-Saharan Africa, therefore, with the exception of areas of European settlement, the so-called customary land tenure system continues to operate in urban centers making it difficult to develop a clear urban land policy or articulate programs to significantly improve the land situation. Customary land tenure refers to a system of land relation in which the ownership of the land is vested in a collective (whether a family, a lineage, or a clan) while individuals enjoy virtually unrestricted rights of usage. The head of such a collective (whether a family head or a chief) is regarded as a symbol of the residuary, reversionary, and ultimate ownership of all land held by the collective.

Although everywhere in Sub-Saharan Africa there is abundant evidence that considerable transactions in land are taking place on an individual basis, especially in urban centers, the overall situation is regarded as too complex to be addressed. Thus, while the World Bank in recent years has increased its assistance to cadastral and mapping projects in Latin America and Asia, it has considered this type of assistance unnecessary and of lower priority in the case of Africa. As Falloux observed, "bilateral and international agencies, including the World Bank, have always regarded land tenure and cadastral surveys (in Africa) with circum-

spection because of their complexity and political ramifications."<sup>15</sup>

Such a position is becoming increasingly untenable not only because of other complementary interests of the Bank in African development, but also because of the new course African countries must pursue as they seek to resolve the current economic crisis. That course requires that, as much as possible, urban communities in particular and the nation in general, be mobilized to pay for the services it seeks to consume. Cost recovery for infrastructure facilities and social services must now be regarded as a basic fact of urban life necessitating greater attention to urban revenue generation through the instrumentality of property tax. The present situation thus compels a repositing of the urban land policy question, first by raising the issue of the sense in which the prevailing land situation can be described as customary; second, by reinvestigating the background of the trajectory of present practices; and third, by examining the factors which can help to align that trajectory with the needs and requirements of modernizing urban economies.

#### How Customary Is the Present Land Tenure Situation?

By the last quarter of the 19th century, when colonialism was extending its sway to Sub-Saharan Africa, most societies in the region had occupied their territory for many centuries. Various institutions had evolved to provide necessary settings within which people engaged in structured and regularized interactions among themselves, between them and other groups, and between them and their natural environment. These institutions ranged from small families and lineages, to neighborhoods, towns, kingdoms, and the ethnic group as a whole. Through these institutions, societies utilized a variety of sanctions, rewards, and symbols to induce their members to behave in their interactions according to certain rules and norms, whether these were interactions between father and son, chief and commoner, priest and acolyte, and so on. These rules included their languages and how they are spoken and used, the age processes of getting married, the crops to grow, when to grow and harvest them. According to Midgal, these various rewards and sanctions, together with their symbolic configurations, have "determined the characteristic forms of

social control in a society; through time, they have constituted the specific institutional arrangements that have distinguished one people's history from that of others; they have marked off one culture from another."

Midgal also noted that all people combine available symbols with opportunities to solve mundane needs for food and housing, and to create for themselves *strategies of survival*. These strategies represent blueprints for actions and beliefs in a world that hovers on the brink of the Hobbesian state of nature. They provide for the individual not only a basis for personal survival but also a link between the realms of personal identity and self-serving action (a personal political economy) and the sphere of group identity and collective action (a communal moral economy). Of all the institutional strategies of survival, none is perhaps of more crucial importance than that surrounding land.

As Polanyi observed: "*What we call land is an element of nature inextricably interwoven with man's institutions...[It] is tied up with the organizations of kinship, neighborhood, craft, and creed—with tribe and temple, village, guild and church... It invests man's life with stability; it is the site of his habitation; it is a condition of his physical safety; it is the landscape and the seasons. We might as well imagine his being born without hands and feet as carrying on his life without land.*"<sup>16</sup>

And yet, as soon as colonialism began, the possession and utilization of land became its primary focus. To cater for the land requirement of a new set of foreigners — whether immigrant Africans or settler Europeans or their powerful commercial enterprises — was one of the cardinal interests of colonial administration. The result was that by the end of the colonial regime, Sub-Saharan Africa, as Samir Amin so aptly observed, had become divided into three types of regions based on the degree of colonial penetration of land owning institutions:

- A. Africa of the colonial economy, where the land remained virtually in the ownership and control of the indigenous population — for example, French and British West Africa, in Cameroon, Tchad, Sudan, and Liberia

- B. Africa of the concession-owning companies, where major European companies secured large concessions to land for plantations — for example, Zaire, Congo, Gabon, and Central African Republic
- C. Africa of the Labor Reserves where Africans were dispossessed of much of their land in favor of European settlers whom they were then meant to serve as cheap labor — for example, East, Central, and Southern Africa, as well as Rwanda and Burundi.<sup>17</sup>

The reaction of Africans against this assault on their most vital societal resource was predictable. By asserting almost uniformly across the continent that land was not a commodity which any individual could alienate to another, the African was fighting a rear guard battle of survival. Yet, this particular strategy of repelling the assault had two other important and logical elements to it: first, on the part of chiefs or natural rulers, the right to own land within a territory traditionally entailed owning a pledge of allegiance to the particular chiefly rule. That any individual can come into a polity and lay claim to land without any pledge of allegiance undermines the very integrity of chiefly rule. Thus, although there is ample evidence of numerous land transactions among members of a given ethnic polity, it was critical in the colonial period to deny that tradition sanctioned such operations.

Second, in the context of the pre-capitalist society in which land had not been made into a commodity, it must indeed have been incomprehensible to the masses of the population when asked whether they want to sell their land, in the sense of losing all claims to it now and in the future.

It is, of course, important to stress that, for most of the colonizing nations themselves, this transition to a concept of commoditized, individually owned land was achieved in their home countries in different stages only in the early part of the 19th century. As Falloux noted, although the idea of registering land documents (bills of sale, mortgages, etc.) or transactions from solicitor's files started in Britain in the 16th and 17th centuries (Registration of Deeds), the system whereby the State actually declares and registers on a certificate (Registration of Titles) the rights of an

individual to a defined parcel of land dates only from the 19th century.<sup>18</sup> Yet, in all their colonial territories, individualized land held in freehold tenure confirmed in a land title certificate became the hallmark of European interest in land both in urban and rural areas.

Land titling systems were thus established by each of the colonial powers as soon as they were in a position to do so. As far back as 1896, the French had introduced the system of land alienation and privatization in Madagascar with the goal of encouraging European settlement, and adopted the Torrens system of land registration the following year.

In French West Africa the holding of land as privately registered property had theoretically been possible since the Decree of July 24, 1906, although it was not until the 1920s and 1930s that the practice became widespread. Even then, it was limited to European settlers, church missions, and private companies. Africans in urban centers during the colonial regime were allowed only occupancy rights to plots of land in their separate housing quarters. Although they were allowed to build on the plots and perhaps profit from the sale of any buildings, their title to the land was no more than a *permis d'habitation*. The British were more concerned with this aspect of land administration only in those countries where they had a settler population. Here, the right to secure land holding was guaranteed to the settlers as long as their parcels came from blocks of land already designated Crown Land. Even where Africans settled on part of the Crown Land, as in Nairobi, they were merely allowed to occupy the land and had no confirmed title to it. In the Spanish and Portuguese Colonies, the situation was not particularly different.

Three reasons can be given for this rather expedient attitude of colonial administration to issues of urban land management. First, there was the general attitude that even though Africans were attracted to the city, they did not think of it as their permanent residence. This was true even in the case of West Africa where the role of the African in the colonial economy was more critical. The second reason was the fear of the tenuous hold of the colonial administration on law and order. Given the general sensitivity with respect to matters of land ownership, the reluctance of the colonial administration to actively pursue individual

land ownership can be appreciated. But perhaps more important than either of the two preceding reasons is the fact that, particularly in English-speaking Africa, the colonial administration preferred to strengthen the myth of the communal ownership of land as a means of giving greater clout to local chiefs who, as a result, became more dependent on the colonial power.

### **The Failure of Capitalist Transformation of Land**

To the extent that the colonial administrations in Africa failed to actively promote the individualization of land ownership, they also failed in their mission of fully integrating the economies of these territories into the global capitalist economy. For in the transition from a pre-capitalist to a capitalist economy, individualization of land ownership has the special significance of facilitating the process of bringing land to the self-regulating market as a commodity. The imputation of an exchange (as distinct from a use) value of land considerably increases its importance in the economic development equation of any society. The process transforms land into an economic asset whose present value can be computed in terms of its expected future appropriations of rents. This fact immediately confers on the owner of a freehold right to land an asset portfolio that can be used to raise credit in the capital market in order to further enhance his income-generating capacity in that market and increase his ability to accumulate capital.

Property rights are thus a major factor in the efficient operation of a free market economy. The greater the number of individuals with access to such rights, the greater the rate of capital accumulation and of the robustness of the economy. Moreover, the ownership of such rights promotes concepts of democratic social relations and personal liberty. Indeed, as Polanyi puts it: "such freedom in dealing with property, and especially property in land, formed an essential part of the Benthamite concept of individual liberty."<sup>19</sup>

It is thus easy to appreciate why, as Lonsdale observed, "colonial rule was self-defeating in the very sense that what was instrumentally optimal to the metropolis was directly antagonistic to their bureaucratic agents, since increasing production necessarily fostered the boisterous politics of local class formation."<sup>20</sup> The task of subjugating and exploiting colonial populations in the longer term ran counter to that

of expanding the international sway of the free market economy. Kay and Wayne, in the case of Ghana and Tanzania, respectively, argued that the colonial bureaucracy in these territories was so alienated and distant from local realities that they suppressed rather than vigorously supported indigenous capitalist endeavors to subvert the pre-capitalist social formations.<sup>21</sup>

What is perhaps more instructive is that the post-colonial states in most of Africa continue to confuse these two missions of colonialism in their nationalist reactions. While they believed they were obliged to oppose the continued exploitative postures of neo-colonial agents, they failed to appreciate that some of their policy choices in this regard had weakened their societal effectiveness in the free market economy. This contradictory posturing is most evident in the prevailing official attitude to land ownership in African countries. For African countries everywhere to nationalize land and do so little to promote the "leasehold" form in which they prefer rights in land to subsist, is to inhibit tremendous economic opportunities which could otherwise enhance the access of their populace to credit and increased productivity.

In order to help release this pent-up economic energy, particularly in urban Africa, there is need for a more deliberate attitude towards the issue of urban land, an issue which is even more central to national development now that most African countries are confronting the economic crisis of structural adjustment. To operate an increasingly free market economy and yet remain indifferent to the incapacity of the majority of citizens and institutions to function effectively within that system is a clear recipe for remaining in a permanent state of economic paralysis.

### **Adaptive Reactions of African Societies to Urban Land**

The situation is perhaps even more urgent against the background of the positive and adaptive strategies of African societies to respond effectively to the operation of the free market economy. In spite of frequent official and formal protestations to the contrary, the individualization, sale and alienation of urban land is the order of the day in all African countries. These facts are too glaring to be denied or ignored. Everywhere, cities are growing and expanding very rapidly. New suburbs are being created not

simply by squatters but more by middle class individual developers. These developers have bought land from the indigenous population and have been accorded enough legitimate rights of ownership that they can develop their plots in peace and without hindrance. Of course, there are many cases of contested ownership, but these simply underscore the importance of recognizing and striving to regularize the reality of land transactions in African societies.

It is important to stress that the adaptive reactions of African societies to the free market economy in land is not a matter of recent origin. In Togo, for instance, the system predates the colonial era, having been initiated by repatriated African slaves from Brazil who had settled on the coast, especially around the Port of Aného. They purchased and sold land along the coastal plain from the outset, and they, rather than the Germans, were the originators of Togo's small land market.<sup>22</sup> Repatriated slaves from Sierra Leone and Brazil were also known to have actively engaged in selling and buying land from the indigenous population in Nigeria, especially in the area between Abeokuta and Lagos.

Indeed, there is some controversy as to how foreign the concept of individual, as opposed to communal or corporate, ownership of land has been in certain African societies. In Madagascar, it was claimed that the notion of individual ownership of land precedes the colonial era and that the Merina royal court had set forth the idea in a Code of 305 articles in 1881.<sup>23</sup> In Uganda, Ethiopia, Senegal, Dahomey, Cohen suggests that the roots of Africa's freehold tenures would be found to lie in the pre-colonial patterns of semi-feudalism.<sup>24</sup> Similarly C.M.N. White, the government Land Tenure Officer in northern Rhodesia (Zambia) who, in 1956, conducted a painstaking enquiry into the land tenure situation in all provinces except Barotseland, emphasized in concluding his survey that everywhere he found that land was essentially individually acquired and held.<sup>25</sup> In an equally detailed study of the situation in Ghana, Vercrijsee observed, with respect to the Abura-Dunkwa territory, that land had been sold and bought at least from about the time of the Aburaheme, Kwesi Otu I in 1831.

The important thing to assert from this is that whatever the original reasons for ruling that land was

not to be sold or alienated to outsiders, African societies everywhere — as soon as they appreciated the direction in which the free, monetized market economy was headed — had begun the process of selling and buying land and adjusting their institutional rules accordingly. Instead of the colonial regime being supportive, if not actively promotional, it chose rather to be hostile when not totally indifferent.

More recent recognition of what has been taking place has taken the form of describing these processes of transformation as either "illegal", "informal", or "customary." The application of the word "customary" to the land tenure situation in most African cities is indeed most inappropriate since it tends to obscure the tremendous evolution that it represents. Of course, as Riddell and Dickerman observed, in a sense "all law is predominantly customary; what is so often in the literature referred to as 'modern' law in Africa is merely the transplantation of a codified form of that which was once 'customary' law in European society. Africa is the only major research zone where development speaks of a continent-wide customary land tenure system. One does not hear, outside of theoretical Marxist writings, of an Asian customary tenure system. Neither do we speak of common pre-Columbia ... tenure of Latin America."<sup>26</sup> Similarly, to describe the process as "illegal" is to underscore the irrelevance of the legal system. If the process favored by the majority in a country can be so described then the so-called "legal" system must be an anachronism and an unwarranted imposition on a people. Calling the situation "informal" is also choosing to ignore the most important economic processes which State institutions and laws need to be striving to capture and direct, if they are to continue to have any relevance and necessity for civil society in African countries.

### **Conclusion: The Challenge of State Capabilities**

The urban land situation is thus significant because, above all, it focusses attention on the capabilities of the post-colonial state in Sub-Saharan Africa. Of the many features of state capabilities, that of regulating social relationships or asserting social control is perhaps of the utmost significance in differentiating between strong and weak states. As Midgal noted: "By the mid-twentieth century, in practically

every society on earth, political leaders had adopted the end of creating a state organization in a given territory, through which they could make a set of common rules that govern the details of people's lives and could authorize, if they choose, other organizations to make some of these rules."<sup>27</sup> Such rules are meant to encompass everything from living up to contractual commitments, to driving on the right side of the road, to paying alimony on time. They involve the entire array of property rights and countless definitions of the boundaries of acceptable behavior among the citizens.

A situation in which the vast majority of land holdings in virtually all African cities can be described as being in "illegal", "informal" or "customary" tenure outside of what is recognized or controlled by the governments, says more about the capabilities of the State than about the level of developmental evolution of the society. The urban land policy question in Africa is thus not simply one of the availability and price of land for projects and other purposes, but of the capabilities of African governments to establish appropriate institutions and operate

according to relevant and realistic rules that facilitate and ensure that serviced land is easily brought to the urban land market.

What is involved is not a simple matter of passing laws asserting that all land now belongs to the State; rather, it is a matter of strategic institution building which recognizes that the European institutions responsible for dealing with these matters, evolved from the different historical circumstances of different European countries. The fact that these institutions were exported wholesale in a codified form to Sub-Saharan African countries, principally to serve the needs of European settlers and enterprises, does not necessarily make them appropriate to serve the needs of emerging capitalist-oriented African societies. Thus, just as the goal of bringing land to the market must remain the same, there is the need in every African country to explore strategies which would facilitate their attainment of the goal of institutionalizing urban land market processes, and ensure that the State can more effectively harness the strength of society for rapid and productive urbanization.

## ***THE URBAN MANAGEMENT CONTEXT***

For African governments to enhance their social control capabilities, especially with respect to urban land and urban development, generally requires that they pay attention to the need for creative governance in virtually all aspects of national life. Such a requirement is predicated on two virtually incontrovertible facts. The first is that for the vast majority of the population (who may be illiterate but not unintelligent), there is much about modern government at all levels — central, provincial, and "local" — which is shrouded in considerable opaqueness. Whether it is the process of passing laws or by-laws, of securing revenue, of imposing tax, of incurring expenditure or of providing services, the population is told so little of what is going on, nor are they encouraged to think that it concerns them. The colonial era may have ended but its legacies of authoritarian management and citizen marginalization in the decision-making process remain firmly in place. It is this, more than anything else, that continues to make traditional rulers and traditional institutions appear to be so much more relevant and meaningful to the lives of people at the grassroots level.

The second incontrovertible fact is that governmental structures and processes which were imported into African countries by the various colonial administrations represent no more than the level of institutional responses to the evolving free market economy of their home countries up to, at best, the beginning of the Second World War. It is unfortunate that these obsolescent structures and processes have come to be hallowed by bureaucratic practices in most African countries. They constitute a serious impediment both to the evolving institutional responses of African societies to free market forces, as well as to the transforming influences of post-Second World War global development.

In pursuing more realistic development goals, whether urban or otherwise, it is thus necessary for African countries to scale over this particular hurdle. This entails a deeper appreciation of societal reality

and a recognition that it is far easier to induce societal change working through institutional forms with which the majority of the population are familiar and can relate. As regards urban land, therefore, it is of primary importance to appreciate the spatial structure of social control especially among those African societies with pre-industrial urban systems. In this way, it is possible to conceive and create more appropriate institutions of greater salience and effectiveness which can enhance the capabilities of modern African States to regulate the social relations of land within urban centers.

### **The Structure of Traditional African Cities**

Traditional African cities, especially in West Africa, have a structure not very dissimilar to that of pre-industrial cities elsewhere in the world. At the center of the city is the palace of the traditional ruler. As was well documented by 19th century explorers, the palace traditionally covers a substantial area of land. In front is usually a large open space used for public gatherings. Sometimes the same open space served as the main market of the city; sometimes there is a separate location for the market but within the view of the palace.

Usually, major roads in the city radiate from this center and continue beyond the town wall(s) which demarcate the limits of the city.

What is of interest in the present context is the internal arrangement for the management of this pre-industrial and pre-colonial city and how this was allowed to atrophy during the period of colonial rule. Although there was always a traditional ruler who heads the administration of the city, the city itself was usually divided into smaller administrative units or quarters known by different names in different societies. These quarters had their own subordinate rulers overseeing the affairs of their own quarter. These rulers tried to replicate the physical structure of the palace of the paramount chief, albeit on a smaller

scale. Their palaces occupied a larger area of land than those of surrounding families, fronted by open space used for second-order markets and for public purposes.

These quarter chiefs had significant roles to play in the general management of traditional cities especially in ensuring that decisions taken at the level of the paramount chief were communicated down to the level of every family in the quarter. They were also the witness or enforcer of transactions among families in the quarter and, in general, they served as the repository of information about the quarter. The frontage of their palaces served as meeting grounds for residents in the quarter to meet on formal occasions to discuss and take decisions affecting their lives. Even among the women, there were corresponding organizations which ensured that their voices, on issues of interest to them, were not completely suppressed. All in all, the arrangements ensured very broad-based participation in community affairs.

Even where the size of the migrant trading population was considerable, especially in the trading cities of those days such as Kano, Timbuktu, Whydah, and Kumasi, they were encouraged to organize themselves into a quarter or quarters and to select their own leader or leaders. The latter was responsible for the conduct of the people of his quarter and represented their interests in the city council.

The principle of territorial partitioning for purposes of societal mobilization is, of course, not peculiar only to those societies with a tradition of urbanization. Among societies with any degree of centralization of authority there was always this internal structural subdivision into districts and subdistricts. The situation in Botswana, Burundi, Malawi, Tanzania, and Uganda is instructive in this respect.

### **Colonialism and the Urban Management Structure**

This hierarchical arrangement for mobilizing people and ensuring that they continue to be intimately involved in changes affecting their lives was largely ignored by the colonial administration. This, of course, is inherent to the whole notion of colonialism since the emphasis is to achieve some economy in the costs of maintaining law and order. For the British, for instance, this was secured through the "indirect

rule" system. The system claimed to rule ostensibly through the paramount chiefs. This, however, should not be construed as meaning that the system sought to preserve traditional status quo. What it did, in fact, was to distort traditional institutional arrangements by concentrating power and resources in the hands of the paramount ruler who, consequently, became very dependent on the colonial administration and had to tow whichever line the administration dictated. The position was not particularly different in the French colonial territories where direct rule was imposed. Everywhere in colonial Africa, the detailed structure of societal organization and governance was ignored. In the process, the powers of quarter chiefs were eroded, and their role in the formal governance of their communities simply became of little importance.

With the nationalist struggles, the paramount chiefs found themselves aligned on the side of the colonial administration. As a consequence, when the colonial era ended, the governance of communities by traditional rulers was replaced by that of elected councils in most of anglophone Africa, and by commune type administrations in francophone Africa. In both systems, however, although ward organization was undertaken, the wards did not serve more than an electoral function. The result was that in most African cities today, the prevailing relationship between the municipal authority and the masses is one of alienation, with the masses knowing very little of what is going on and having great difficulties in relating to the management of the city.

The vacuum so created since colonial times has, of course, been filled by various intermediary organizations, indicating again the vigor and resilience of societies in countries of Sub-Saharan Africa. Various so-called "informal" neighborhood associations have emerged to mediate and help resolve the challenges of urban existence and service provision for the majority of residents. In Lagos, there are Landlord and Tenants Associations which have worked together quite successfully where their interests, in regard to service provision, do not conflict.

But perhaps the best example of "informal" societal response is found in Greater Khartoum. Here, the neighborhood mosque has come to represent the focal point for societal mobilization. Today, the city is organized into some 367 neighborhood councils

around these mosques. These councils provide a mechanism for grassroots involvement in running neighborhood oriented services by generating self-help projects and promoting self-reliance. Their activities have tended to be more inclined towards contributions for projects in the education and health fields (much like the harambee movement in Kenya), but they have also financed water projects and local road construction and rehabilitation. Indeed, El Sammani estimated that the amount of funds generated by self-help campaigns undertaken by these councils for financing different projects of services and development in Greater Khartoum reached several million Sudanese pounds in 1985.<sup>28</sup>

This tendency to neighborhood self-organization and self-reliance is, of course, not limited to the older parts of cities. There is evidence that as cities expand into new areas, the natural tendency of residents is to organize themselves into definable neighborhoods, usually on the basis of traditional modes of relationship with which they are familiar. The study of Sandra Barnes of such neighborhood formations in the suburb of Lagos is most incisive in this regard.<sup>29</sup> Not only did the group of new migrants seek secure access to land, but as they built their houses — some of which they let out to other migrants — they formed themselves into an association of landlords and played the local political game so astutely that their leaders aspired to and came to be recognized as traditional chiefs.

### **Radicalized Institutions and Urban Management**

As long as activities and decision-making in most African cities continue to be divided between the competing formal and informal management structures, it will be difficult to seriously promote meaningful development in most African cities. For one thing, the formal urban management by having rather tenuous relations with the city organization at the grassroots level — has little capability for regulating social relations or enforcing any regulations. Furthermore, its lack of capability means that, although the masses of urban residents are constantly making contributions towards the improvement of their living conditions or paying relatively exorbitant prices for much needed services, they do not see the formal management as particularly relevant to their existence. On the other hand, the formal urban management depends largely

on subsidies from higher levels of government for its operations. Thus it has no need to cultivate its natural constituencies. The lack of serious interactive relations between the urban management and urban residents not only means a failure to mobilize abundant local resources, but also the lack of a local mechanism for ensuring public accountability and inducing greater transparency in the governance of urban communities.

Clearly, this unsatisfactory state of affairs cannot be allowed to continue indefinitely. To enhance urban management, everything must be done to obviate the prevailing dichotomy. A unified management system in which the strong society is, as it were, harnessed by the state must be encouraged. To achieve this outcome requires an appreciation of the critical importance of radicalizing traditional quarters or neighborhood organizations in these cities. If the majority of urban residents are more conversant with the adaptive institutional structures which their societies have created to cope with the urbanization process, and are either unaware of the formal urban structures of colonial origin or find the bureaucratic hassle of relating to them discouraging, then to involve them in the prevailing urban management processes would entail three steps. First, the adaptive institutions that have emerged to deal with particular problems must be officially and legally recognized. Second, these institutions must be integrated into the normal processes of urban management. Third, efforts must be made to progressively change the rules and procedures of these institutions to gradually align them with the existing modern urban management system. The expectation is that, because the institutional form itself is not dramatically changed, neither is the people's perception; and they can thus continue to relate to these institutions while the character and rules of operations continue to evolve.

This principle may not have been articulated so precisely but it has been applied in varying circumstances to dealing with serious administrative problems. In Lesotho, for instance, radicalization of the institution of land allocation was begun by the Land Act in 1974 under which the Government set up, within the areas of jurisdiction of each chief, a Land Committee with power to grant all land allocations and with the chief remaining as chairman. This position, of course, retained him as a sign-post for the people. However, the Act required that the Committee make

its decisions by majority vote. Appeals from such decisions go to the next senior committee, up through a hierarchy which parallels that of chiefly authority, and ultimately to a Land Tribunal appointed by the Minister of Interior.<sup>30</sup> Although some abuses have been reported in the operation of this system, it is agreed that the system has facilitated land transactions and provided most urban land owners with some documents which they could convert to leasehold as required. Indeed, by 1988, the Government established a Land Commission to review the Land Act. The Commission recommended further revisions that would enable the levying of taxes and charges on land held under these radicalized arrangements, facilitate the conversion of these temporary documents into formal tenure instruments, and promote a more efficient process of allocating land leases.

The critical point here is that the retention of the chief as chairman of the Land Committee preserved the institutional form of land allocation. Everything else deriving from the establishment of the committee represented a radicalization of the institution. The chiefs themselves came to depend on special forms prepared by the State to authenticate their approval of particular allocations. The existence of a committee can be used to direct the process in any particularly preferred direction. The link between the activities of the Land Committees and the Land Record and Registration Offices can now be more easily regulated without, in any way, disorientating the populace who continue to relate to the Land Committees headed by the Chief.

Eventually, what Lesotho would end up with (if that were the intention) is the provision of formal tenure instruments like leasehold or freehold titles to a larger number of those presently occupying land in urban areas or claiming to own land in peri-urban districts. What institutional radicalization would then have done is to make the State accept the viability of using recognizable "informal" institutions as intermediaries to facilitate the pace of change, and to enhance the capabilities of the State to penetrate society and regulate societal relationships more effectively.

### **Radicalizing Urban Neighborhood (or Quarter) Institutions**

Currently, there is considerable concern in the literature and in discussions among donor agencies

about promoting a higher degree of decentralization in the fiscal and jurisdictional relationship between the central and the municipal authorities. A high degree of local autonomy is being canvassed for municipal authorities in regard to both the raising of local revenue and the provision of services. Such autonomy is not meant to do away with the responsibility of the central authority to maintain appropriate financial and organization oversight, and to ensure responsible behavior and accountability at the local level. It is contended that if the issues of autonomy and accountability are to be realistically pursued, they must also be conceptualized in terms of the role to be played by the constituent neighborhoods of each city. Otherwise, the State's incapacity may have simply been transferred from the central to the local level.

Therefore, to strengthen local state capabilities requires that adaptive traditional neighborhood organizations be radicalized and closely integrated into the governance of urban centers. These neighborhood organizations must be distinguished from the electoral ward system that pertains to the modern elective municipal council. Sometimes, there is a territorial convergence between the neighborhood and the ward, but often times the ward comprises more than one neighborhood. For more effective urban management, it would be necessary to identify all the neighborhoods in a city, to appreciate the nature of their leadership and their organization, and to seek to radicalize and harness them for the overall administration of the city. Radicalization in this context may or may not involve providing each neighborhood with some resources to operate more effectively. It may or may not entail giving the leadership special designation (as distinct from that of elected counsellors). In the anglophone countries, for instance, the designation "Justice of the Peace" has been conferred on individuals who are empowered to adjudicate in minor cases, perform marriages, administer oaths, and serve as notary publics within neighborhoods. The position carries no stipend but confers official respectability on the holder. Neighborhood leadership, however defined in the present context, must be carried out by individuals through whom information can flow from the council to residents of neighborhoods and vice versa. To reduce the level of alienation in urban areas, people must simply know more about what is going on in their cities. They must also appreciate what their own responsibilities are, both financially and otherwise, to

ensure improved service delivery and enhanced environmental quality.

It is, of course, gratifying that the Bank is encouraging and supporting governments which have decided to pay attention to this aspect of urban management in some of the new generation of urban management projects. The Second Urban Project in the Republic of Guinea, for instance, envisages that the city of Conakry would be organized not only on the basis of five communes, but also of 76 neighborhoods or city wards which would be "the lowest level for information exchange and organization within the framework of carrying out objectives determined at the commune level or above."<sup>31</sup> Similarly, the Second Addis Ababa Urban Development Project in Ethiopia recognizes the neighborhood (Kebele) organization of the city. The Project has proposed the Kebele Development Fund to provide loans to any Kebele community which requires a development project, is able to raise 10 percent of the project cost, and can demonstrate the project's technical, financial, and economic (or social) viability.<sup>32</sup>

It is not known, however, whether the neighborhoods in Guinea, or the Kebeles in Addis Ababa are traditional in the sense that most of their residents will have no difficulty in relating to them. Kebeles, for instance, are described as small associations of urban dwellers (of not less than 2000 persons) which make up a municipality, which elect its policy committee and three other subordinate committees as well as a judicial tribunal. The three subordinate committees are the revolutionary defense, inspection, and executive committees. The Kebeles report through the Awraja (district) offices to the municipality. Clearly, the Kebeles are components of a party political organization, and the extent to which ordinary residents will relate to them cannot easily be assessed.

What is clear, however, and what must be stressed is that any serious program of urban management must closely examine the neighborhood structure of governance within each municipality. It must help the State to modernize this structure, initially through recognizing their existence, integrating them into the management system, and then radicalizing them to enhance their capacity to function effectively within the context of a modern municipality. Enhancement of capacity

can be expected to include seminars, lectures, and short-term courses not only for neighborhood leaders but also for leaders of voluntary organizations, womens' societies, and youth groups.

Similar programs would also need to be mounted for the private sector leadership and the local Chamber of Commerce. All of this will serve not only to mobilize the population of the city but to reinforce the foundation of a transparent and participatory urban management system.

### Land in the Urban Management Context

Specifically with respect to land, the expectation is that an urban management system whose neighborhood structure has become an active element of local governance is in a better position to promote the formalization of the land tenure situation within the city. The ultimate aim of this process is twofold. For the existing built-up area, it should be possible to provide all landowners with an official document which indicates the present tenurial status of their rights. For the peri-urban areas which have not been built up and which are on the track of imminent or later development, the process should facilitate the accumulation of information of who owns what land, well ahead of the decision concerning development.

For both of these two processes, actively mobilized and radicalized neighborhood institutions are regarded as crucial and essential. The position of neighborhood or ward chiefs thus needs to be identified and transformed. In some African countries, such as in Burkina Faso, such chiefs are also referred to as land chiefs. In some instances, no single neighborhood chief will be identifiable. There would be, instead, heads of families who own most of the land within the neighborhood and who can attest to a list of persons to whom land had been sold according to formally or informally recognized practices. In southern Nigeria, for example, no land sale was regarded as valid without the signature or thumb print of the individual regarded as the head of the lineage. As the number of the heads of such landowning families is finite and as their distribution relates closely to the neighborhood structure of the city, it should not be impossible to establish a procedure to record a list of such heads of landowning families, give them some recognizable role especially in matters

of land adjudication, and make them part of an institutional arrangement more amenable to State direction.

Such radicalized institutional bodies at the neighborhood level can be made responsible not only for facilitating the dissemination of information concerning the codification of land rights, but also for participating in the distribution and collection of the preliminary papers for determining the validity of these rights and issuing official title documents. Their role is thus both to participate in enlightening urban residents about the land management process and, more importantly, to reduce the bureaucratic hassle which often inhibits many of them in seeking to secure title documents. The experiences of Lesotho and Cameroon, which are currently undertaking a similar program of land management, are very instructive.

### Conclusion

The urban management context has thus been shown to be critical for the effectiveness with which the urban land policy question is addressed. Correcting the situation in most African cities with respect to information about land holdings — their location, ownership, size, use and value — is now so vital for the overall development of the cities that it is no longer realistic to seek an alibi in the complexity of the prevailing tenurial systems. Instead, the challenge is to be intellectually creative and to designing systems and mechanisms which would enable modern African States to more effectively penetrate the plural societies

they have inherited from colonial times, and enhance their capabilities to initiate and regulate nationwide social relationships with respect to urban land. This, among other things, would also enhance the State's capabilities to extract resources which can be used for promoting the overall development of the nation.

In this connection, the goal remains the facilitation, within acceptable limits, of the operation of the free market economy. The history of developed countries shows that this facilitation can take a variety of paths which are more in keeping with the cultural experience and social organization of the peoples concerned. The thrust of this chapter, therefore, has been to emphasize the importance of investigating the role of institutions within the African cultural traditions which can serve as radicalizable intermediaries to facilitate the operations of the free market economy, in this case as it affects urban land.

The issue, however, is not to underplay the complexity of the urban land situation or minimize the difficulties that may be encountered in the process of massively transforming land rights such that they can be brought to the market. In subsequent chapters, an attempt will be made to delineate the nature of these complexities. But the point remains that if something must be done to resolve it, then working with prevailing societal tendencies and with relatively familiar institutions, but in a direction to enhance the capabilities of the State, holds perhaps the greatest chance of success.

## **URBAN LAND TENURE SYSTEMS**

One of the most striking paradoxes about land tenure in Sub-Saharan Africa is the fact that a basically simple traditional system should result today in the complexity that characterizes the situation everywhere. The traditional land tenure system in pre-colonial Africa was based on a set of widely accepted rules, appropriate for pre-capitalist societies for whom kinship relations provided the coordinating factor of socioeconomic life. These rules include vesting the ownership of land in a collectivity whether a lineage or a community and conferring the usufruct in the individual for plots of land which he had occupied and used all his life. This principle of partible inheritance is perhaps the most critical element of African land tenure. It means that, however individual the rights which a person exercises on a plot of land while he is alive, at the time of his death, these rights pass to a corporate entity comprising of his children. The only other critical element of traditional land tenure was the right of community heads to allocate unappropriated land.

These simple principles operated in most societies with minor modifications. Such modifications were based on whether social organization was patrilineal or matrilineal; whether the economy was predominantly agricultural, pastoral, or mixed; and whether the society was in a transitional stage to feudalism and a strongly hierarchical authority system. There was no real reason for it to be vastly different since in most parts of the region, the kinship factor was paramount, and geographical mobility within and between societies was of very modest proportions. Where such mobility was not induced by wars or environmental disasters, it was usually mainly for trade and was directed to urban centers where there were adequate arrangements for accommodating outsiders.

Then came the European colonialists, desirous not only to acquire land on a permanent basis for themselves, but also to transform local subsistence produc-

tion and integrate it into a global free market economy. Their efforts immediately provoked massive geographical mobility among the peoples, apart from inducing other wide-ranging changes in social relations. The major direction of this massive mobility was toward urban areas, some of which were pre-colonial in origin. Many others, especially in east, central, and southern Africa were, however, founded by the colonialists. The emerging concentration and agglomeration of such diverse and heterogenous groups of people along with the changed modes of production and administration immediately began to force various adjustments and adaptations to the land tenure system in most parts of the region. The result is the complex situation prevalent today.

Table 1 provides a summary of urban land tenure systems in Africa today. It recognizes that there may be variants of particular categories of tenure which are not included. By and large, what is indicated in the Table, however, allows for the discussion on the basis of the complexity and provides some guidance as to the direction to pursue in any attempt to resolve the problems posed.

### **Urbanization and Customary Land Tenure**

Within the urban context, customary land tenure recognizes the extended family as the typical corporate residential group. In a patrilineal society, such an extended family would comprise a man, his wife (or wives), his children, his adult children and their families, and his brothers and sisters and their families. The physical structure occupied by such a group is generally known as a compound. A compound is a sprawling structure, usually quadrangular in shape, with many rooms allocated by the head of the family on the basis of each wife and her children. In some other societies, the compound is in the form of circular or rectangular strings of huts, the spaces between usually covered from public view by a matting or mud wall.

**TABLE 1  
LAND TENURE SYSTEMS IN SUB-SAHARAN AFRICA**

PRIVATE DOMAIN	PUBLIC DOMAIN
<p>A. Customary</p> <ol style="list-style-type: none"> <li>1. Communal                             <ol style="list-style-type: none"> <li>a. Patrilineal</li> <li>b. Matrilineal</li> </ol> </li> <li>2. Individual</li> <li>3. Corporate</li> <li>4. Gift, Loan, Pledge and Pawn</li> <li>5. Stool Land</li> </ol> <p>B. Adaptive Non-Official</p> <ol style="list-style-type: none"> <li>1. Purchased (Customary Freehold)</li> <li>2. Islamic</li> </ol> <p>C. Adaptive Official</p> <ol style="list-style-type: none"> <li>1. Livret de Logeur</li> <li>2. Permis d'Habitation</li> <li>3. Certificate of Rights</li> <li>4. Occupancy Certificates</li> <li>5. Mailo (and Kiwanja) Rights</li> <li>6. Quitrent Tenure</li> <li>7. Head-Lease System</li> <li>8. Land Record Rights</li> </ol> <p>D. Modern</p> <ol style="list-style-type: none"> <li>1. Leasehold                             <ol style="list-style-type: none"> <li>a. Individual</li> <li>b. Corporate</li> </ol> </li> <li>2. Freehold</li> </ol>	<p>Crown Land National Land Public Land State Land Mixed Individual</p>

The land on which the compound is located is treated usually as family or corporate land. In a few societies in Burkina Faso (among the Mossi), Mauritania, and Burundi, land holding may approximate individual ownership, but it soon becomes corporate with the death of the original owner. Land could also be offered as a gift by the head of a landowning family to a friend on which the friend could build. Some land transfers on the basis of pledges, pawning or loaning are also known, but it is not clear whether the construction of residential accommodation on such plots would be allowed since they can always be redeemed.

The unused part of land at the periphery of settlements can be allocated by the head of the community acting in his representative capacity, but not as the owner of the land. Such land in Ghana, for instance, is often referred to as Stool Land.

One of the most dramatic impacts of the free market economy on the compound as the typical unit of traditional family residence is to create sharp interpersonal differentiation in income-earning, and therefore in desired consumption pattern. Kinsmen within the same family compound found that their tastes in what their residence should look like and their

ability to effect necessary changes to the part of the family compound which they occupy, are highly variable. When the head of the family dies, there is, consequently, considerable pressure to break up the compound. The portion of the compound land now occupied by each nuclear family assumes something approximating to an individual unit of ownership. This trend has been reinforced by religious proselytisation, whether Christian or Moslem, which places emphasis on the nuclear instead of the extended family of traditional society. This process of individualization through fragmentation is well illustrated in the older parts of Ibadan, Nigeria, where the consequence has been a high density of individual buildings, each on a rather small plot of land.

### Colonialism and Adaptive Land Tenure Systems

The main reason for discussing the situation within the pre-colonial areas of traditional African cities is to emphasize that, under the impact of the free market economy, even the customary system of land tenure had to adjust to take account of differential individual income and preferences among kinsmen. With increased mobility and the presence of migrants seeking land to build housing or places of work, purchased land conferring what might be referred to as "customary freehold" became the most important tenurial system in African cities. However, although the colonial administration appreciated what was taking place, it preferred to ignore it or, as in the case of Gambia, to pass the Land (Provinces) Act (1946) specifying that land occupied by Africans was to be governed by customary tenure rules. The result has been, particularly in the English-speaking African countries, an absence of a legal mechanism to deal with such land transfers and sales.

While people were adapting traditional tenure to meet the demands of the market, in some areas such as in Madagascar, Sudan, and Gambia, adherence to the Islamic religion provided another basis for adaptation. In the Sudan, for example, private individual ownership of land (known as *melk*) — which is a fundamental concept of Islamic land law — became widely observed in urban centers. This was particularly so in the more thoroughly islamized areas of northern and central Sudan where it was prevalent long before colonial rule. The practice greatly facilitated the transfer and sale of land. Similarly, in the Gambia, it

was observed that "Islamic and customary rules had become so melded together that people do not think of rules as having one or the other origin - they are all customary, and all in accord with Islam."<sup>33</sup> Consequently, the rate at which the practice had facilitated land transactions in both urban and rural areas began to give rise to some concern because of the lack of any established procedures for regularizing such transactions.

Nonetheless, although these "informal" adaptive systems constitute by far the most important basis of land holdings in cities in Sub-Saharan African countries, the colonial administrations — because of determination not to offer modern freehold or leasehold tenure to Africans who had migrated to the cities — began also to improvise. In the Belgian colonial territories such as Zaire, Burundi, and Rwanda, Africans were not allowed to hold freehold or leasehold titles registrable under the Torrens Act; these were reserved only for Europeans. Instead, urban land was declared state land, ostensibly leased from the State. Leases were for three-year periods, renewable twice for two-year periods on the basis of a document, invested for the purpose, and known as *livret de logeur*. The temporary right of urban land occupation represented by this document was changed to a perpetual lease for citizens only in 1980.

In many French speaking colonial territories such as Burkina Faso, Congo, and Mali there was similar contrivance as found in the *permis d'habitation*. The purpose was again to deny the Africans access to freehold land tenure in urban areas when this was easily possible. In Mali, for instance, even African commercial interests were only offered *occupation rights*, while residents got the *permis d'habitation*. A 1959 law changed habitation rights to one of ownership while occupation rights remained unchanged.

In most of the British colonial territories, the position was not much different with respect to land over which the colonial government claimed to have authority. In such cases, for example, in Tanzania, Africans were simply offered a *certificate of rights* and a confined to particular sections of the city. In other territories, similar devices were arranged in order to promote other colonial objectives, such as ethnic

segregation or the strengthening of the power of traditional rulers. The former situation is exemplified in the case of northern Nigeria where the British had claimed ownership to the land on the basis of the Islamic *Maliki* law which accorded them these rights because they had conquered the Fulani Emirs in war. In spite of this, southern migrants to northern cities were only offered *occupancy certificates* and segregated to specific areas of the city.

The latter situation of enhancing the power of traditional rule is evident in the case of Uganda. Here, the Kabaka of Buganda, his chiefs, and other landowning families were given private grants of land known as *mailo* land (a local corruption of the square mile unit of measurement). These lands were divided up and leased to others under the Kiwanja (or tenancy) system.

In South Africa, especially in parts of what is now Transkei, a *quitrent tenure* was also introduced. Under this system, a plot holder pays an annual rent and is allowed to sell the land only with official permission. Subdivision is strictly controlled, and plots may be forfeited if a holder is guilty of certain crimes, fails to pay his quitrent, or uses the land in a non-beneficial manner. Mortgages are not allowed and the land may be pledged; but it can be inherited by certain relatives of the holder.

Since independence, some post-colonial African governments have also indulged in these makeshift arrangements. Perhaps the best example comes from those countries like Zambia, where the World Bank assisted sites-and-services, schemes have been actively pursued. In this connection, the Government initiated a hybrid type of tenure known as the "head-lease system."<sup>34</sup> Under this system, the State grants leases to local authorities which, in turn, sublet lesser interests to individuals in these sites-and-services schemes. The interest so assigned, known as the "*Land Record*", has never been clearly defined. The *Land Record* is a memorandum of an oral agreement between a local authority and an occupant. The relationship between the two is of a dual character, covering both landlord-tenant as well as creditor-debtor relations since the local authority provides the occupant a loan to erect a permanent structure on the land according to specified standards. The agreement specifies that as long as rent is paid and all other covenants are observed, the

tenants shall occupy any given parcel of land for a period of ten years.

The main purpose of outlining the large variety of tenurial systems found in African cities is to underscore the fact that most of these systems are the product of a colonial unwillingness to promote and facilitate the operation of a free market economy with respect to land in so far as African immigrants to the city were concerned. Instead, with few exceptions, such as in Zimbabwe, freehold and leasehold tenures were specifically restricted in many African cities to Europeans and Asians, even when, as in the case of French West Africa, the law made no such differentiation. Indeed, this limitation of the right to freehold and leasehold only to Europeans was used in settler Africa and Africa of the concessionaires to carve out large chunks of land from which the rights of the African owners were peremptorily extinguished, even when such lands were not being put to any beneficial use.

Not surprisingly, therefore, African leaders came to develop something akin to paranoia to the whole concept of freehold tenure. The extent of this paranoia and how far it has constituted a hinderance in the path of the orderly evolution of the land tenure system in most Sub-Saharan African countries becomes easy to appreciate when the public land tenure systems in the region are considered.

### **Land Tenure in the Public Domain**

Almost from the beginning of the colonial era, efforts had been made to distinguish between land in the private and public domain. Of interest in the public domain was the category of *Crown Land* which was peculiar to Portuguese and British territories. Indeed, when the Portuguese began to settle in Mozambique, all uninhabited land was declared to be Crown Land. From it, large tracks of land, known as *prazos*, were granted to individuals under terms of either perpetual hereditary rights (equivalent to freehold) or for three generations (equivalent to leasehold). This system was abolished in the late 19th century and replaced by one which granted land to three commercial enterprises, which in turn could make subconcessions to other companies for their development. Similarly, the British, under the Uganda

Agreement of 1900, vested all wasted and vacant land in the Crown. Out of these holdings, which amounted to almost half the total area of Buganda alone, the Crown could and did grant freehold title to missions, groups, and individuals. Designation as Crown Land became the standard form of expropriating land from Africans in Kenya, Zimbabwe, and Zambia, thereby making it available for freehold allocation to European settlers and companies.

The situation in Swaziland, especially after independence, was rather special and gave rise to the substitution of National Land for Crown Land. Indeed, because Swaziland is a kingdom, the term Swazi National Land was first used to cover land held by Swazis under customary tenure separate from individual, European holdings of freehold and leasehold, as well as Crown Land. Much Crown Land was later converted to Swazi National Land. In addition, an area now approaching 20 percent of the country has been purchased from freeholders by a special fund, made up of levies and, more recently, of substantial contributions from the British Government as part of the arrangements surrounding independence (the Lands Purchase Programme). This land has been converted to Swazi National Land, but its control is closely in the hands of the king and is not subject to subordinate chiefs as in most areas still under customary tenure.

Public Land, on the other hand, consists of those lands used or specifically acquired by the government for public purposes. Sometimes compensation is paid in respect of such land; and sometimes the acquisition is simply to enable the government to develop and/or subdivide the land for private allocation as freehold or leasehold.

The concept of State Land is not significantly different from that of Crown Land. In most part of Sub-Saharan Africa, the colonial administration ruled that all "unoccupied" land belongs to the State which reserves the right to allocate it as it wished. Such State Land is then said to exist in either the private or public domain. State Land in the private domain comprises of land which the State is willing to put on the market through the award of leases. State Land in the public domain comprises land which is not on the market and which is used by public entities. The latter includes not only forests, game parks, mining lands, military camps, roads, seashore, water, and other natural resources, but also all uncultivated land. In Namibia, for instance, urban areas are also regarded as being on State Land. In some extreme cases, such as in Gabon and Zaire, customary tenure in land has not been recognized by law, and all land is regarded as State Land.

**TABLE 2**  
**COUNTRIES THAT HAVE OR HAVE NOT NATIONALIZED LAND**

NATIONALIZED LAND	NOT-NATIONALIZED LAND
I. Traditionalism	1. Botswana
1. Madagascar (1981)	2. Burundi
2. Lesotho (1979)	3. Chad
3. Cameroon (1980)	4. Gabon
II. Formalism	5. Gambia
4. Central African Republic	6. Ghana
5. Congo (1979)	7. Guinea
6. Mali	8. Kenya
7. Senegal (1964)	9. Liberia
III. Efficiency	10. Malawi
8. Côte d'Ivoire (1961, 1963)	11. Mauritania
9. Nigeria (1978)	12. Namibia
10. Sudan	13. Niger
11. Zaire (1973/1980)	14. Rwanda
IV. Ideology	15. Sierra Leone
12. Angola (1975)	16. South Africa
13. Benin (1976)	17. Swaziland
14. Burkina Faso (1984)	18. Togo
15. Ethiopia (1975)	19. Uganda
16. Guinea Bissau (1974)	20. Zimbabwe
17. Mozambique (1979)	
18. Somalia (1975)	
19. Tanzania (1963, 1969)	
20. Zambia (1975)	

### **The Regime of State Ownership**

One of the most significant developments over recent years has been the imposition of a regime of state ownership of all lands in most countries in Sub-Saharan Africa. State ownership is different from State or Public Land since it seeks to extinguish all existing rights to land within a country and transfer these to the State. The State then becomes recognized as the sole allocator of land, whether urban or rural. The orientation in most of this development is not necessarily towards land reform. There is no explicit interest in land redistribution to improve the access to land of disadvantaged groups. This is perhaps understandable since, in most of Sub-Saharan Africa, there is no traditionally entrenched land aristocracy. Instead, land, as has been shown, is owned by a multiplicity of lineages or families and is in an almost

continuous state of fragmentation; it is a case, as Hyden noted, where small is powerful.

There are some twenty countries out of forty in Sub-Saharan Africa today which claim to have nationalized all lands and extinguished private freehold ownership. Table II shows a list of these countries, as well as of those which, although recognizing that the State can own land or even declaring the State to be residual owner of all unused or unoccupied land, still recognize tenure systems of various forms in the private domain. The Table emphasizes that by far the most important countries in the region, especially in terms of population, have opted for the nationalization of land. Together, these countries in 1987 accounted for some 335 million out of the total population of 451 million

(or nearly 75 percent) in the region. Moreover, the Table also shows that by far the majority of countries nationalizing their land did so during the 1970s.

The reason for the rise of nationalization or state ownership are fourfold and have been indicated broadly in Table II. First, there are those countries which have nationalized land because they believe they are carrying on a traditional African practice in which ownership of land resided in the community and not the individual. Since the modern State is seen as the amalgam of all the communities within its territorial boundaries, it is plausible to argue that the State can generalize the rights of land ownership. This position is most explicitly stated in the case of Lesotho which, by the Land Act of 1979, simply stated that all land in

Lesotho is owned by the State, as representative of the Lesotho nation. Similarly, in the case of the Cameroon, Ordinance No. 74-1 of July 6, 1980 states that "the State shall be the guardian of all lands."

The situation in Madagascar is perhaps different since it predates the colonial period. As far back as 1881, the Code of 305 Articles had propounded the concept that all land comes from the State. The French colonial administration quickly seized upon this idea to take possession of land in the territory and divided it into two categories: *domaine public* and *domaine privé*, with the latter being made available as concessions to commercial and individual enterprises.

Second, there are those countries which simply pursue and promote the formal French colonial position which refuses to recognize customary land tenure, and treats all land as belonging to the State. Indeed, in the case of the Congo, France, in its first period of contact with that territory, did not directly challenge customary land rights and allowed chiefs to control trading contacts between African and European traders. In 1899, however, urged on by King Magnet, France adopted a system similar to that in the Belgian Congo, that is all land not officially registered under the Torrens Act, or held in accordance with the French civil code was considered vacant. African customary law was not recognized. Only French law was to be applied in the colony, and French law recognized only private individual property. The communal holding of land by communities, the role of chiefs of land, and the customary rights of individuals

were simply ignored. Since independence, land legislation in these countries has continued to dismiss the validity of customary land tenure. Since 1973, all land was officially declared as held by the State in the name of the people. All land titles and customary rights were abolished. Article 31 of the Constitution of July 8, 1979 in the Congo spells out the situation very clearly. It states: "Over the whole of the People's Republic of the Congo, the land is the property of the people. All the land titles and customary rights are abolished. All use of these titles and rights is contrary to the constitution and punished by law."

In the case of Mali and Senegal, the same French colonial claim the State owning all of the land in the territory is preserved. Despite Mali's espousing of Socialist ideology, the country has made little attempt to change the French colonial land laws which still form the basis for laws and ordinances passed since independence. In Senegal, the post-colonial State codified colonial practice in the *Loi Relative au Domaine National* of 1964 under which all land not already in the public domain and unregistered is classified as part of the national domain and the property of the State. With respect even to *zones de territoire* (the occupied village lands) which previously were under customary rule, the law now states that "members of the local communities occupy and develop the land under the control of the State."

Efficiency in the allocation of land for public and other uses was the reason given in some other countries for nationalizing land. In the Côte d'Ivoire, a 1961 law vests all land in the state which, in turn, can grant concessions for varying lengths of time. This law was further amplified by the Ivorien National Assembly in 1963 when all customary rights in land were abrogated. The Government was given the power to allocate vacant lands, and individual rights to land were made revocable and uninheritable until the land was registered for full ownership. The Nigeria Land Use Decree of 1978 had the same purpose. It vests all land in the territory of each of the 21 States of the Federation in the Governor of the State, and claims that "land is to be held in trust and administered for the use and common benefit of all Nigerians" in accordance with the provisions of the Decree. Nonetheless, the Decree conceded that land registered as individual or family land prior to the Decree

remains vested in their holders, but is now held under a right of occupancy rather than of freehold. Similarly, the General Property Law of 1973 (amended in 1980), in Zaire abolished the category of "native" lands under customary tenure and declared all land to be state domainal land. The Law, however, states that customary rights will be regulated by a Presidential Ordinance. Up to 1986, that ordinance had not been enacted.

The present situation in Sudan attempts to islamize the State. Under a 1970 Unregistered Land Act enacted shortly after Nimiery came to power, all land of any kind whatsoever, occupied or unoccupied, belonged to the State and was deemed to be registered in the name of the State. The Act was a reaction to extensive land-grabbing in central Sudan. However, with the controversial islamization of the State, this law was replaced in 1984 by the Civil Transaction Act, which establishes that the basic property regime for the country was now Islamic Law, which had previously affected only inheritance of land.

Finally, there is the group of countries which have nationalized land in accordance with the socialist ideology espoused by their one-party governments. For many of these states, the nationalization of land was partly to enable the State to experiment with various forms of collectivist productive activities, and partly to reassert a claim that socialism was, in spirit and intent, a more valid ideological successor to the traditional communalism of most African societies. This was certainly most noticeable in Tanzania and Zambia. However, in Ethiopia, there was a radical ideological element to the nationalization of land because of the feudal system which the military government had to reform and replace.

On March 5, 1975, the military regime in Ethiopia nationalized all lands in the country and made them the collective property of the Ethiopian people, a reform comparable to the situation during the Russian and Chinese Revolutions. Specifically, Proclamation No. 47 nationalized all urban land without compensation. In addition, while private ownership of urban houses was not completely abolished, an individual or family could no longer own more than a single dwelling. All "extra" houses became government property. In place of private ownership of land, persons and families were granted possessory rights over a maximum of 500 m<sup>2</sup> of urban land which could not be sold or mortgaged. Urban

tenants who did not previously own their own dwellings could also claim possessory rights of 500 m<sup>2</sup> of land that they occupied as of the date of the Proclamation.

## Conclusion

The above outline is important in enabling a better appreciation of the basis for the existing complexity of urban land tenure in most African countries. Throughout the region, societies have been trying to adapt to the demands of a free market economy through individualizing, alienating, selling, and trafficking in land, the only natural response given the massive mobility of the population which colonialism and the new market economy had set in motion. Rather than assist and promote these tendencies, colonial administrations almost without exception did their best to frustrate them by acts of omissions and commissions. Indeed, in many cases, they devised their own less-than-appropriate contrivances which left Africans unable to derive the maximum benefit from the possession of a negotiable land asset in a monetized urban economy.

This discriminatory situation resulted in many African states, after independence, taking steps to nationalize land as a means, on the face of it, of protecting African land from any further risk of expropriation by foreigners. Since the grant of freehold rights was the predominant instrument for such expropriation, most African countries abolished freehold tenures and replaced them instead with leasehold of varying duration granted only by the State.

This administrative allocatory system, as distinct from allocation through the market mechanism, could superficially appear to be the best way to control inequities in allocation while promoting efficiency. However, the reality has been very different.

Like all allocative mechanisms based on administrative procedures, all sorts of influences come to bear on the decision-making agencies to bias allocation towards the direction of particular classes. This, coupled with other weaknesses of bureaucratic processes, has tended to result in a land management situation which is far from efficient and which, in many countries, is already promoting serious inequities of access for members of the various social classes, particularly the poor and low income groups.

## URBAN LAND MANAGEMENT SYSTEMS

Urban land management can be defined as a system of land administration concerned with the judicious allocation and use of land to achieve orderly growth and efficient functioning of cities. Within different modes of production, orderliness and efficiency are concepts that manifest themselves in different forms. In a pre-capitalist society where societal coordination is largely mediated through the kinship relationship, orderliness and efficiency could take the form of the territorial arrangements of families to reflect their closeness or otherwise to the paramount chief.

An illustrative example is provided by the pre-colonial situation in the capital city of the Basutos. Here, the paramount chief alone was responsible for the allocation of land for building, although this function was delegated to subordinate authorities who exercised it on his behalf.<sup>35</sup> In most cases, the paramount chief delegated such powers to one of his relatives — his son, his brother, or an uncle. A ward was allocated to a lineage group and was under a ward head, the Modisa. A Modisa reported to an area or a district chief who, in turn, reported to the paramount chief. In allocating a dwelling area, the Modisa first chose his own area, after which he allocated to each head of a family a plot according to the size of the family. If the head of the family had a number of wives and many children, the plot allocated to him was big enough to allow for many huts. The heads of the families reported to the Modisa.

The allocation of land, as Shapera observes, was done in such a way that the outskirts of the town were inhabited by the wards least important in order of seniority, mostly peoples of alien origin.<sup>36</sup> The royal wards, on the other hand, were situated immediately around the paramount Chief and his Kgotha. This hierarchical organization and the related system for allocating land made it almost impossible for a member of one lineage group to move from one sector of town to another. This immobility was supported by a system of controls vested in the ward heads (who were

relatives of the paramount Chief) through other restrictions in the economic system, such as the allocation of arable land and grazing areas.

Three factors need to be stressed in this description of the Basuto land management system. First is the fact that the kinship relationship was the allocative and locative determinant of order and efficiency in the pre-colonial city. Second, chiefs served as the major allocative agencies in the community and ensured, through various systems of social controls, that the order and efficiency so created was sustained. Third, chiefs were the communal repositories of information about what was happening in respect to land because of their continuing role in land adjudication. Their continued importance in most countries today in spite of the colonial land management systems and the problems these systems have created is perhaps best illustrated in the case of the Gambia. Here, in the town of Kombo Saint Mary, there is currently serious confusion as to how much of the land is government-owned and how much is held under customary title, because traditional allocations by alkalos (the heads of the landowning lineages) have outstripped government efforts to introduce land use planning and more systematic land allocation systems.

### Land Management Policy

As with the traditional land management system, colonial land management involved the determination of land tenure or property rights, the spatial definition of the extent of land to which the rights relate, the registration of the spatial entities embodying these rights, and the transactions involving those entities and their rights. Each of these was to be codified in a body of law, and any conflicts mediated through the judicial system. However, unlike traditional systems, the situation of a developed society — where most of the population is literate and where the State possesses significant surveying and remote sensing capabilities — allows land to be managed in a considerably more sophisticated manner. In most countries today, urban

land management is a multi-faceted and multi-agency activity which has political, legal, social, economic, historical, cultural, and religious dimensions.

Perhaps the most vital aspect of urban land management is the definition of policy and policy objectives. In traditional Africa, this policy was clear and its objectives easily understandable. Ownership of land resided in the collectivity, and the individual had only right of use. The objective was to ensure easy access to land for every household in a predominantly agriculturally subsistent society in which every family was responsible for the food its members needed to live. Similarly, the colonial administration was quite clear in its land policy and its objectives. European individuals and enterprises and, in some cases, Asians held land in freehold or leasehold tenure, guaranteeing them an asset which they could use directly for production and residential activity or indirectly by appropriating the future rent value for other investment projects through mortgaging the land.

What is perhaps most notable about the land management situation in most African countries today is the ambiguity surrounding land policies and objectives. With the exception of those countries where the impact of European settlers was so overwhelming so as to ensure that the concept of land as individualized, commoditized and transformable into an asset for further capital accumulation is well accepted, the policy in most other African countries ranges from those which seek to keep land completely from the market (notably the socialist countries like Ethiopia where urban land cannot be sold or mortgaged) to those (the majority) which are in between the two positions. The origin of this ambivalence at the policy level, as has been suggested, is a mixture of paranoia and populism. The former associates freeholding in land with a European attempt at land grabbing, while the latter seeks ostensibly to discourage setting in motion a process that may end up producing wealthy, large-scale landowners through land concentration side-by-side with those who may become landless. Either way, the result is the absence of a clear, definitive urban land policy.

The fact that many African countries have, since independence, passed various laws concerning land — even laws nationalizing land — should not be construed as indicating the existence of a clear policy.

What is clear is that most African governments today prefer that land, and especially urban land, be held in leasehold of a duration between 49 and 99 years. This, by itself, need not be a deterrent to a vigorous urban land policy, provided that a program is put in place to insure that this policy is effectively implemented. The truth, of course, is that except for the restricted areas of each city (usually the elite areas of the city), these laws are honored more in their breaches than in their observance. In their place, in the greater number of African cities, the adaptive informal system of land transactions and sales involving members of the local landowning population and the migrant population stands unimpeded, though formally unrecognized. Many reasons account for this situation, all of which require a detailed examination of the relationship of policy implementation strategies to the effectiveness of urban land management.

### Policy Implementation Strategy

Whether an individual is only allowed the usufruct of a piece of land or whether he has leasehold or freehold rights to it, a basic requirement of land management is that there be an unambiguous demarcation of the area concerned. In many African societies, the traditional practice of demarcation is to plant a perennial shrub at the corners defining the limits of family land or to use farm paths to mark individual plots.

The colonial administrations' concern for the unambiguous demarcation and registration of freehold land and concessions granted to Europeans and Asians introduced the system of land survey and registration of titles. However, with the exception of countries such as Kenya and Zimbabwe — because such European settled areas were small enclaves — the attention to both geodetic triangulation of African countries and the survey of land in African cities were treated with indifference.

This, of course, is not to say that the idea of surveying one's land did not catch on, especially among urban residents. Land surveyors of varying levels of proficiency had a field day demarcating privately purchased land, establishing survey pillars, and submitting their survey plan to the Surveys Department for purposes of charting onto a master reference map. Where the plot is, however, part of a

bigger lay-out plan that is being subdivided, the situation is more critical for boundary plots.

With the nationalization of land in a number of African countries, this vital process of land individualization and cadastral definition has been stalled. Nationalization implies that only the government can now determine which areas of cities can be allocated for subdivision and allocation. Given the usual tardiness of the bureaucracy, this process has been considerably slowed down in many cities. Land surveying in many African countries today is a very depressed industry. The failure of land nationalization to meet the demand for building plots has transformed the processes of private land transactions which were formerly merely informal, to strictly illegal.

The next step after surveying a plot of land is to have a proper legal conveyance from the landowning family to the purchaser. Here, again, private law firms used to have a major role to play. However, with nationalization, this is another depressed industry. In some countries, one way around the constraint constituted by nationalization is to make the conveyance document pre-date the law conferring the ownership of land to the State. This was quite plausible a device in the years immediately after the passing of the law; however, it rings increasingly hollow and unlikely, as a solution with each passing year.

A conveyance document needs to be registered to have any validity in law. This is usually done with the Registrar of Deeds in a Land Registry. In most African countries, the possession of such a deed does not in any way imply that an individual has an incontestable right to the plot of land in question. What it does mean is simply that a land transaction has taken place and that a contractual relation exists between two parties.

In many countries, especially the English-speaking ones, the involvement of the head of the family or lineage (usually the oldest male member) is regarded as central to validating such transactions. There are usually disputes when an exigent member of a family is trying to sell his portion of land without such a validation. Since, however, there is no way for the unwary purchaser to know who is or is not the present head of family or lineage, the opportunity for all types of abuses with regard to land transactions is unlimited.

The result is the tremendous emphasis in most African countries on adjudication, usually involving Land Departments and the judicial system. In Botswana, for example, in spite of the existence of eleven Major Land Boards and thirty-five Subordinate Land Boards — whose membership comprises both land chiefs and elected (or appointed) representatives of local councils — disputes over land still occur, which may involve challenging the decision of the Land Board in the customary court system. Appeals are entered by these courts to higher courts within the national judicial system.

All of these processes result from the lack of a systematic approach to the identification, demarcation, and formal registration of the parcel of land to which an individual lays claim. For many middle-income people, the process can be costly and risky since it could end up with an individual losing a plot of land in which he invested much money. For the low-income groups, such a loss could be devastating since it could involve the loss of an individual's life savings.

#### **Land Title Registration**

Particularly in the French-speaking African territories, it has always been possible to register title to land. For example, the Decree of July 24, 1906, which established freehold tenure in French West Africa, also made it possible to register land based on the Torrens Act. What this entails is perhaps best illustrated in the case of Gabon.<sup>37</sup> Here, the registration of title to land involves two phases: administrative and judicial. First, the Registrar of Land publishes information about the planned registration of land to notify anyone who may wish to oppose the registration. Second, a judge renders an ordinance of registration which is inscribed in the land book. Both of these processes can take anywhere from six to 24 months.

In the case of Cameroon, the process can even be more tedious and time-consuming. It requires that the land document be circulated among, at least, seven agencies. If no dispute occurs, all of this may take an average of 15 to 18 months; a period of two to seven years is not uncommon.<sup>38</sup> This lengthy, costly procedure has led to tens of thousands of pending land title requests so that title registration is usually conducted to a great extent on the basis of administrative and

political influence. Falloux observed that out of an estimated total of 1.6 million parcels of land waiting for registration in Cameroon in 1988, only about 100,000 were registered. Current capacity allows only for titling of about 12,000 new parcels per year, even though roughly 30,000 new housing units are built each year.

Given this bureaucratic incapacity, it is no wonder that popular reaction to title registration has been only a shade better than one of indifference. Again, in Cameroon, as of August 1974, all holders of urban land were required to register their holdings and to convert the previous "certificates of occupancy" or "land register books" into land certificates, defined as the "official certification of real property rights." Landholders were given ten years to make the conversion. All transactions in urban areas which ignored this requirement were to be declared null and void. Whether this complete conversion has occurred, however, is doubtful, and customary land transactions undoubtedly continue to take place in ignorance or disregard of this legal requirement.

The situation in Cameroon typifies a more widespread practice in Sub-Saharan Africa: law is passed whose objective may or may not be worthy. In this case, of course, it is very worthy. Yet, no attention is paid to ensuring that the institutional capability to carry it out exists. Penalties are also prescribed for non-compliance even when this may arise from the State's incapacity. No attempt is made to evaluate the appropriateness of existing institutions or the need for designing more appropriate institutions if the worthy objective is to be achieved. The result is a situation in which the State appears increasingly irrelevant to vital societal processes.

### **The Role of the Cadastre**

Surveying individual property and registering title are activities of limited value if they do not represent an integral part of the processes of producing a cadastre. A cadastre is an official public record usually maintained to register the ownership rights of land in a given jurisdiction, state or country. For each parcel of land, the cadastre records location, physical description, value, any improvements made on the parcel, all persons with some rights to the parcel (occupancy, ownership, right-of-way, etc.) as well as

the exact nature of these rights. A cadastre often goes hand-in-hand with a cadastre map which shows the legal property framework of an area, including property boundaries, administrative boundaries, legal road corridors, parcel identifiers, sometimes the area of each parcel, road names, and administrative names. Because of these details, cadastre maps are usually produced on a large scale which in many areas is 1:1000. Cadastral maps may or may not show the buildings on a property.

Because they represent the most systematic cartographic and descriptive record of all properties within an urban area, cadastres and cadastral maps are perhaps the single most important instrument for effective urban land management. Establishing and maintaining an accurate, reliable cadastre, however, can be a lengthy, complex and costly process. First, it entails the establishment of a geodetic network, that is a set of points on the earth's surface whose geographical plane coordinates and/or altitude are known. This network is a precise, uniform frame of reference which ensures that errors introduced when the location and extent of a land parcel are expressed only in relation to the immediate surroundings, are reduced to a minimum.

The major function of the geodetic network, however, is to facilitate the detailed representation or base mapping of a set of land parcels. This can be achieved using traditional land surveying techniques or geographical referencing through ground control and aerial triangulation, or stereo plotting and rectification or photogrammetry through the use of aerial photography or satellite imaging. In most African countries today, the geodetic network has an incomplete or inconsistent coverage. As a result, it is often very difficult to reconcile surveys, maps, and overlay data which do not belong to the same reference system. For the same reason, cadastral surveys have been based on approximate geographic coordinates which make them less reliable in the long run.

Of more immediate concern, however, is the fact that most African governments have accorded very little importance to mapping activities. Indeed, a large part of the region has no maps other than uncontrolled photomosaics or reconnaissance diagrams. Where maps exist, they are heterogeneous in origin and generally outdated. Most of the base maps from

which they are derived have not been updated since they were produced in the 1950s and 1960s. Moreover, the vast majority are standard base maps drawn on a medium scale of 1:50,000. With the exception of Kenya, Zimbabwe and to some extent Madagascar, hardly any country in Africa has cadastral mapping for most of their cities.

A cadastre is significant not simply because it provides a legal record of property ownership (the legal cadastre), but also because it enables an urban center to have some idea of its land and property assets (the fiscal cadastre). A fiscal cadastre is thus an official, up-to-date record for a jurisdiction, state or country which shows, for each land parcel (legal, rating or assessment parcels), the name and address of the taxable or rateable owner, the address and (when-ever possible) a legal description of the parcel, its current and planned land use, and a dated evaluation of the land and any improvements made on it. In other words, a fiscal cadastre is an inventory of all taxable properties containing, for each property, the information required to assess and collect property taxes.

A fiscal cadastre is thus a *sine qua non* for any urban settlement that intends to manage its own affairs on a self-reliant basis. It is, in fact, to effective and efficient urban management what infrastructure is to the effective and efficient operation of the city. In other words, the fiscal cadastre is a veritable infrastructure for urban management. Apart from providing urban managers with vital information on the city's assets, the number of rateable properties, and the basis for a rough estimate of its population, it also provides information on the amount of revenue a city can expect to generate locally and constitutes a register to ensure that each citizen, through the property rate, bears his own share of the cost of providing needed services for the city. More than this, the fiscal cadastre, by making available information about the resources which a city can mobilize, is critical for the ability of a city to raise necessary bonds in the financial market to develop and enhance the quality of infrastructural services which it can provide for its citizens.

### Designing a "Half-Way Cadastre"

Clearly, if the current effort at administrative decentralization and strengthening of municipal author-

ity in Sub-Saharan Africa is to have any meaning, it must be on the basis that the capacity of municipalities to generate much of the revenue they need to be financially self-reliant is ensured. To do this, serious attention must be paid to providing them with the beginnings of a cadastre, or what has been called a "Half-Way Cadastre." With time, this can be improved upon and brought up to generally acceptable standards — a long term project lasting over 10 to 15 years. It cannot be an immediate goal although it is important to ensure that whatever temporary structure is designed can be easily upgraded to higher standards of acceptability.

In designing a "half-way cadastre", the objectives must be clear. Essentially, there are three objectives that must be included in designing and developing a "half-way cadastre." These are:

- The achievement of a total coverage of all identifiable properties in the city
- The presentation to all the owners (whether individual or corporate) of registration documents to establish their credentials in regard to their property
- The enhancement of the State's capabilities to operate, sustain, and update the cadastre while also engaged in a continuous process of improvement to bring it up to an acceptable standard of accuracy and reliability.

These three objectives are attainable through a creative process entailing a mix of simple technologies, institutional radicalization, and minor bureaucratic reorganization. It is necessary to take each of these objectives one by one to show what can be done.

To achieve total cadastral coverage of the city entails distinguishing between the existing built-up area and the urban fringe which is still to be developed. The former can be dealt with through a house-listing program; the latter through innovative programs of land development which will be considered in later chapters. The basic logic behind house listing is that each house stands on a parcel of land which can be assumed to have been individualized, even if this is to a corporate body, like a family. To the extent that such structures constitute the basis of the extensive

urban sprawl resulting from the rapid growth of cities, it must be *respected* that they represent widespread land transactions.

To quickly put all of this information on a map, there are various options besides the tedious land surveying techniques. Photogrammetry, with its emphasis on providing the best image quality combined with coverage of the largest possible area per photograph, is valuable but increasingly quite expensive. A recent development in this field, whose value for the rapid production of the "half-way" type of cadastral map is increasingly being appreciated, is provided through the use of the small format microlight survey (SFMS).<sup>39</sup> The SFMS is a low level, localized aerial survey based on the use of an extremely lightweight and inexpensive aircraft (the microlight), recent developments in camera design, and easy availability of improved film in both monochrome and color.<sup>39</sup> The details of the operation of the microlights or of the SFMS are not of concern here. What is important, however, is that for a considerably small investment, it is now possible, for most African cities, to produce a first approximation of a cadastre which would provide complete coverage and enable municipal authorities to begin the process of building up much needed urban management information systems.

The second objective is to create a situation in which every property owner has a pre-registration document to establish his credentials in regard to his specific property. It is, of course, common experience that if the existing municipal bureaucracy were to handle this aspect of the process, little would be done. Therefore, the reactivating and radicalizing of institutions in the city which are best placed to distribute, collect and monitor activities in connection with the establishment and use of a cadastre is required. Such institutions should also be part of the process of local state penetration of urban society and of enhancing State social control capabilities.

As mentioned in the Chapter 3, every city, whether traditional or modern in origin, tends to organize itself in neighborhoods. A neighborhood is often a smaller territorial unit than the electoral wards in the city such that the latter often comprises a number of neighborhoods. But neighborhoods tend to be of such a size that residents are more cohesive in

action. As such, they provide a basis for ensuring a higher level of involvement and participation in the governance of the city.

In promoting the development of the "half-way cadastre", therefore, neighborhood committees constitute an important institution to be revived and radicalized in the sense of performing functions that make them more effective as intermediaries between the grassroots and the higher levels of the municipal administration. In the particular context of the development of the cadastre, such committees can be expected to perform the following functions:

- Explain at the level of the neighborhood the purpose and nature of a cadastre
- Distribute, monitor and collect the pre-registration documents from all house owners or occupiers in the neighborhood and deliver these to the municipal authority
- Where there are disputes, serve as the first level of adjudicators, without prejudicing the rights of contestants to appeal to higher levels of adjudication
- Perform other functions (for example, monitoring property tax payments) that may, from time to time, be assigned to them on agreement with the municipal authorities.

The importance of establishing such an intermediary institution between the urban populace at large and the bureaucracy of the municipal administration cannot be overemphasized. One of the factors responsible for the lack of observance of most laws or regulations is inadequate State penetration to levels where it matters. Moreover, colonial attitudes die hard in the relationship between the bureaucrats and the public in most developing countries. Leaving the promotion of the development of the cadastre to the bureaucrats alone can thus be a prescription for ineffectiveness as experience to date has shown.

Finally, an important objective of engaging in this "half-way" solution is to begin the process of enhancing the State's capabilities at the level of the city to create, sustain, update, and improve the cadastre until it attains an acceptable standard of accuracy

and reliability. The role of neighborhood committees in this regard has already been noted. The expectation is that the chairmen of these committees will directly relate either to their ward representatives in the municipality, to the council representative in charge of the whole effort, to the chairman of the municipal administration, or to all three at different stages of the process. What is important is that the chairmen of neighborhood committees be made to feel that they are performing a vital role in the development of self-reliant capacity to manage the affairs of the municipality.

The provision of so much information to municipal administrations with the concomitant demand for other types of documents from them puts considerable strain on the management ability and capacity, both at the municipal and central government levels. The situation must be a major consideration in the new round of technical assistance programs for capacity-building in the field of urban management. Data management using the now moderately priced range of mini-computers must be seen as a *sine qua non* for efficient municipal management. Moreover, this underscores the need for greater coordination among agencies that deal with the issue of land both at the municipal and central government levels. In spite of the multi-faceted nature of the task of developing a cadastre-involving surveying, cartographic reproduction, land registration, land adjudication, property valuation, rating and taxation, it is important to designate one agency (usually the Land Department) as primarily responsible for keeping the records and ensuring that all the other agencies relate to it and inform it of all transactions negotiated through them in respect of any land parcel. One way of ensuring this is to pay attention to the format of relevant documents used by these other agencies and build in a device that necessitates that a copy of any transaction is sent to the primary land agency as a matter of routine.

Capacity building, however, should not be seen simply as a matter of institutional arrangements or of staff development, although both of these are very important. It must also embrace a high degree of quantifiable productivity and accountability. The processes involved in the development, updating and use of a cadastre is one that requires dedicated attention from officials in a municipality. Since neighborhood committees are finite in number and since their

leadership has easier access to the municipal authorities, they can be used as sounding boards from the neighborhoods to monitor the productivity of relevant municipal departments, and to elicit a higher level of accountability from their staff than hitherto.

The task of improving, on a continuing basis, the standard of accuracy and reliability of the cadastre is, of course, one of providing a more detailed survey of the land parcel. This can be a very expensive task especially if each individual land owner were left to provide such survey plans on his own. With the "half-way cadastre" already available to the municipal authority, it should be possible to reduce considerably the cost of producing the plan for each parcel of land by offering each surveyor a large number of parcels to do at a time. Indeed, this could be done on the basis of each neighborhood negotiating with the surveyors an acceptable rate per acre or hectare.

### Conclusion

The situation of cities in countries like Zimbabwe where the municipality is, to a large extent, able to provide most of the services it requires for its residents from locally-generated revenues based on the efficient management of their land resources, underscores the imperative nature of this exercise for other cities in Africa. If services must be improved, if infrastructure must be maintained and upgraded, if the environmental quality of cities in Africa are to be enhanced, and if the costs of doing all this must be recoverable and recovered, then it is clear that there is no realistic alternative to creatively confronting the seemingly intractable problem of urban land management in these cities. This should be done through designing strategies and procedures which would enable land transactions which have previously been marginalized through being designated "informal" to be brought into the main stream. As long as these transactions are so designated and so marginalized, the capabilities of the municipality and the State to manage the affairs of their cities effectively will be greatly impeded.

Creativity, however, must serve more than the end of enhancing State capabilities. It must also engender a stronger sense of belonging and of participation among citizens. For too long, the relationship of most residents of African cities to the municipality

in which they live has been one of alienation. The history of such alienation is well known, but there is no need to project it into the future. If, instead of alienation, a new sense of belonging must be engendered, it must be widely recognized and accepted and

this can happen only if each resident in his neighborhood is prepared and is enabled to make his contribution, however small, to resource mobilization for ensuring a more effective, efficient management of the city.

## URBAN PLANNING AND URBAN LAND MARKETS

The designation "urban" when applied to a parcel of land is meant to differentiate it from rural or agricultural land. Such differentiation is certainly not simply a matter of location, as it also relates to certain attributes of the parcel of land depending on whether it is in an urban or a rural environment. Clearly, then, just as an important attribute of agricultural land is the degree of soil fertility, that of urban land is the extent of infrastructure services. Indeed, the critical factor for the conversion of land at the urban fringe from agricultural to urban use is dictated by the extension to it of basic urban infrastructure, notably roads, water supply, sewerage, storm drainage channels, electricity, telecommunications and so on. Urban land can thus be defined as serviced land, a product created by a mixed set of public and private agencies. In cities of countries operating a free market economy, there is always a market for such land because of the great pressures exercised by the forces of demand and supply.

### The Demand for Urban Land

The demand for urban land is usually driven by a number of forces. Among these, the most important are the rate of population growth, income distribution, the volume of government activities, the rate of economic growth, and the inflationary situation in the national economy.

Population growth is by far the most important force driving the demand for land for residential development. In this connection, the distinction between growth by natural increase and growth due to migration is critical. Even traditional urban settlements had to make provisions to accommodate increased demand for urban residential land as the size of the population increased and new families were formed. This demand, however, tended on the whole to be of very modest proportions, one that could be contained within the allocative mechanism of kinship relation. For small towns in many African countries, natural increase still remains by far the more important

process in their population growth. As such, even though the population is relatively more heterogeneous today due to rural-urban migration, the demand for urban land has not created too dramatic a change.

The position in the bigger centers and metropolitan areas is radically different. Here, the rapid rate of population growth is overwhelming due to heavy migration, not simply from the immediate hinterland of the cities but from the entire country and often from beyond. The result is a highly heterogeneous population, all of whom demand land for residential and other purposes.

The income distribution factor determines the space need and amount of land required by individual households. It can be contended that, particularly for the poor, this need is no more than a room or two within a rooming house. If such houses were made easily available through the provision of building plots and housing loans to the lower income groups that often build these types of accommodations, it should be possible to obviate or greatly reduce the growth of squatter settlements. It must be emphasized that the reason for the failure of many sites-and-services schemes and their co-optation by the middle class is not simply a matter of perversity on the part of the poor man who sells well secured land after it has been allocated to him. Rather, it is the fact that, in the African context, land is not really his need if he can find shelter. To put him on a serviced site under such a scheme with the expectation that he would thereby provide himself with a decent, lower middle-class type of home is to ignore the additional costs and burdens being imposed on him. These costs and burdens include the costs of maintaining the surroundings of his home, as well as guaranteeing its safety from burglars and petty thieves, all of which he does not have to worry about when he lives in a rooming house.

The factor of income distribution translates in the land market into the intense competition for land. This competition is not only among individuals, but

also between them and the wide range of economic enterprises which seek to locate in the city. Commerce, industries, finance, professional services, transportation, entertainment, as well as social services such as education, health and recreation — all jostle for space and appropriate locations within the city. The result is the mosaic of different types of land use that typically characterize the modern city. Noticeably, the various uses show a pattern that the more land they require, the greater the tendency to displace them towards the periphery of the city.

The demand of government activities for land very often tends to be less subject to the pressure of this competition or to the dictates of the market. The ability to insist on the right of eminent domain to acquire land anywhere for public use has sometimes resulted in governments and municipalities hanging on to land in locations which tend to distort the operations of the market. In some cases, these rights are exercised judiciously against the market for valid environmental or community purposes, such as providing open spaces and recreational grounds close to the center of the city.

One final source of demand for urban land is for speculation, especially as a hedge against inflation. In many countries of Africa where inflationary pressure on the economy has become the order of the day, many of those with ample financial resources have sought to protect their income by investing in land. This often sets in motion an upward spiral in land values and prices which governments invariably must seek to stem. More than this, most governments in Africa are conscious of the socially deleterious consequences of allowing land to be concentrated in the hands of the wealthy minority of the population. The spate of land nationalization in many African countries and some of the tedious regulations governing land transfers were no doubt calculated to keep in check such speculative pressure on the demand for land.

### **The Supply of Urban Land**

The adequate supply of urban land, however, could itself have served this purpose more efficiently. In most African countries, perhaps the single most important problem facing the vigorous development of the urban land market is the gross inadequacy of

supply. As has been indicated in the preceding chapter, a primary reason for this is the incoherence in the policies and procedures of conferring and registering titles to land. Instead of dealing with these problems, most governments insist on nationalizing land and issuing leasehold titles of variable duration to individuals.

It is important to stress that the insistence on leasehold tenure for urban land by itself is not inimical to the proper functioning of an urban land market, especially if the duration of the lease is long, say for 99 years. What has been problematic is that by concentrating supply only in the hands of the central government through the process of nationalization, an unwarranted bottleneck has been imposed on the due market process. Without prejudice to the overriding need for some form of public surveillance over the process of land transactions and land transfers, it is possible to remove this bottleneck through various degrees of decentralization to municipal authorities depending on their status and capability. Such decentralization can also take the form of land grants to certain categories of municipal authorities. The authorities would then have the responsibilities both for servicing the land and preparing it for subsequent subdivision and allocation. The central government can reserve the rights to monitor the allocative process so as to deal quickly with issues of abuse or undue concentration.

Although issues of land tenure, land title and registration are some of the most important factors determining the supply of urban land, they do not exhaust the set of constraints. Various regulations governing urban land use often have the same constraining effect on the number of serviced plots available on the market. Such regulations include those governing the minimum size of building plots, the floor area ratios, the setback distance of plots from the road, the minimum extent of rights-of-way, as well as zoning regulations. The issue is not that African cities can afford to do without such regulations. For example, it would be short-sighted, if not self-defeating, not to enforce zoning regulations, particularly where these are required to minimize negative externalities of certain types of land use. What is important is the need to exercise a greater degree of circumspection and judiciousness in defining standards, bearing in

mind the nature of local demand, and the financial and technical capabilities of the municipalities.

All of this calls into question the role of town planning authorities and of land development agencies in the supply of urban land. Since these roles are crucial and relate more to future strategies of promoting the orderly and efficient development of African cities, the discussion is postponed to later in this chapter.

### **The Nature of the Urban Land Market**

The constraints in making land easily available through the formal governmental mechanism were such as to force people, desperate to provide themselves with shelter, to seek other avenues of gaining access to land. The result has been the emergence of a dual land market system in most African cities. The formal land market caters to the middle and upper classes and is generally mediated by estate agents who advertise in newspapers or whose offices are easily identified. This formal market, however, accounts for a small proportion of land transactions in most African cities. These transactions are usually in regard to estates laid out or approved by public authorities for which there are title certificates, deeds or conveyance documents. Of course, in such countries like Zimbabwe and Kenya where, during the colonial period, considerable efforts had been undertaken at land titling and registration, the formal land market accounts for virtually all land transactions.

Elsewhere, in Sub-Saharan African countries, the informal market is dominant in matters of land transactions and transfers. There are no advertising estate agents; there are instead land agents or brokers who serve as middlemen between families who want to sell their land and individuals who are desirous of buying parcels of land. Not infrequently, these families also employ the services of land surveyors to help with the sub-dividing of their land into plots and, where still acceptable, to register the layout with the Lands Department of the government. The attestation of land transactions takes various forms from a mere issue of receipt for money received signed by both parties, to the drawing up of a formal conveyance document which is then formally executed and registered by a lawyer or a notary public.

In countries where land has been nationalized, a whole new protocol has been enacted over the prevailing informal processes creating an obstacle between the market and the actual disposal of land. Since nationalization in most countries has been treated purely as a legislative measure and has not entailed practical programs of responding expeditiously to the demand situation for urban land, most residents are forced to go, surreptitiously and illegally, to the informal market to purchase land and then to seek to secure a legal leasehold from the government. The usual charade is to pretend to have purchased the land, or to have owned it, well before the legislative measure to nationalize. The result is an increase in the time needed to complete the land registration process and therefore to reduce the rate of supply of land to the market.

Not unexpectedly, the most characteristic feature of the urban land market in Sub-Saharan African countries is the lack of information. There is no information as to the volume of transactions, the amount of land changing hands, their general pattern of distribution within the city, or their prices. Spot surveys are sometimes conducted to gain some idea of land value gradients and build up some rough time series data to estimate price trends. But the paucity of information makes for imperfect competition and gives rise to serious price distortions. Considerable distortion is also introduced into the market because of the very striking differences in the supply characteristics of land from the formal public or the informal private sources. Land supply from the former tends to be secure in its tenure and in some cases already serviced at least by road. In the case of land supply from informal private sources, there is a great risk and a perpetual threat of losing it in a litigation. The result is that land supply from formal sources tends to be at a premium, while the price of land purchased in the informal market is variable depending on the relative astuteness of the two parties involved.

The premium factor of formal land allocation itself introduces a further distortion into the land market. Between the initial allocation to individuals by the State and subsequent private transactions of the same plot in the land market, the price difference can be as much as one hundred times, especially if the plot of land is in the most socially select area of the city.

Even when this is not the case, for example, secure sites-and-services plots, the secure tenure element could increase the price by as much as a factor of ten.

All of these distortions in the land market send confusing signals to agencies concerned with the systematic layout, subdivision and development of building plots in most cities of Sub-Saharan Africa. These agencies are primarily the Town Planning Departments of government. In some countries, there are parastatals who also have powers to provide building plots. However, the incentive to act becomes very weak indeed when prices are so distorted that the revenue these agencies can expect to raise does not even begin to compare with the income that subsequent land owners can derive from trafficking in these same plots.

### **The Urban Planning Process**

In most Sub-Saharan African countries, the Town Planning Department is expected to be the primary agency for the supply of urban land. The well-known pervasive ineffectiveness of this agency is not simply a product of the contradictory price signals from the market. Much is due to the defects and outmoded nature of the legislative instruments which established them. The situation in Ghana is illustrative of the situation especially in most of anglophone Africa.

Under the law, the Town and Country Planning Department of the central government of Ghana is responsible for the preparation of schemes for the provision of serviced urban land. The law dates from 1945 and, although amended in parts, has not been revised in any significant manner until now. Complementary regulations which go with the Town and Country Planning Ordinance of 1945 (No. 13 of 1945) (as amended) are the 1939 Building Regulations meant to be passed by District Authorities. Although these regulations are alleged to have been revised in 1961 and 1971, the revised versions have not been operative until now.<sup>40</sup> The Ordinance, in its preamble, states its objective as one of making "provisions for the orderly and progressive development of land, towns and other areas, whether urban or rural, to preserve and improve the amenities thereof and for other matters connected therewith." The Ordinance vests the Minister with the power to declare any

area as a planning area. Once an area has been so declared, no person is allowed to carry out any development of land or any construction, demolition, alteration, extension or repair or renewal of any building until a final scheme for the area has been approved. This planning scheme is expected to be prepared within three years of the declaration or the area loses its statutory status. Given the fact that most planning agencies of government lack the necessary logistical support, it is no wonder that few planning schemes are ever prepared. Moreover, the emphasis on planning schemes meant that planning authorities in most Sub-Saharan African countries perceived their tasks as one of planning the development of little enclaves (or schemes) of land here and there, rather than taking a holistic view of the growth and development of the city. The sites-and-services schemes promoted by the Bank in the 1970s and 1980s fell into the same tradition. The result, as Safier noted, was that "the aim of traditional town planning in many African countries, supported by both colonial and independent governments, was essentially to provide for the physical accommodation of development, meaning the orderly fitting in of externally initiated investments on an *ad hoc* and piecemeal basis to 'hold the ring' of private actions within the bounds of some overall design concept."<sup>41</sup>

Urban planning authorities go beyond the preparation of such planning schemes in the production of a physical master plan. Such master plans attempt to represent the future growth of the city with proposals for zoning, density control, route alignment, and so on. Master plans for many African cities have been criticized for being flamboyant in design and expensive in execution. They tend to conceive of cities with wide green belts separating neighborhoods of different social classes, having low-density and low-rise buildings, wide streets based on the expectation of a highly motorized population, and high standards of housing and infrastructural development.

In spite of the master plan, however, the general situation has been that planning authorities pay little attention to situations and developments in most parts of the municipality and have very little information on what is happening in regard to the demand for land. Consequently, the urgency and the priority that needs to be given to the serviced land provision makes little impact on the official consciousness.

## **Enhancing Urban Land Supply Capability**

To rectify the present situation and enhance the capability of municipalities to supply urban land, a number of proposals can be made. First, the reluctance in many African countries to accept that municipalities must be differentiated from local government must be overcome. In order to ensure that municipalities are accorded the attention they deserve because of their very special functions of managing large urban agglomerations, some countries, like Zimbabwe, have gone so far as to grade their municipalities and give them powers and functions commensurate with their size, resources and responsibilities. Such attempts at formal designation and grading of municipalities in a country is strongly recommended as a means of introducing some competitiveness and a sense of importance into urban management.

Additionally, the conferment of the status of a municipality on a settlement should entail the granting of some degree of autonomy with regard to urban planning and land development. All municipalities, or at least municipalities of a certain status, must be encouraged to have their own planning division working closely with the municipal authorities and owing their allegiance first and foremost to those authorities. Furthermore, especially in countries where the State has nationalized land, it should not be impossible for the central government to link the conferment of grades of municipal status to differential but substantial grants of land to the municipality. Even in countries where land is not nationalized, the State can still exercise its right of eminent domain to make such grants to a municipality. Such grants could be defined as a ring of land of varying depth around the city over which the municipality has the exclusive (but centrally oversighted) responsibility of initiating subdivision and promoting development.

Given the inadequate resources and bureaucratic dilatoriness usually associated with existing local governments, the series of initiatives being proposed here must be considered only within the overall context of a reformed urban management system. With regard to the land grant, the issue is not to saddle authorities with land which they have no logistical capabilities to service and supply to the market in large number. Rather, it is to outline a somewhat different strategy which can help expedite

the process of urban land supply while enhancing the capabilities of municipal administration.

The first issue is to examine what is entailed in the grant of nationalized or publicly acquired land to municipalities. Here, the critical distinction to make is that between ownership and management of land. In traditional societies, it is claimed that ownership rights are vested in the community or some lower order collectivity, while the individual exercises rights of use and, to some extent, rights of management of the land. (In the longer term, the community could also be said to be exercising some right of control and therefore of management). In parts of West Africa, when the colonial administration was faced with the need to create forest reserves for timber extraction and to protect land for environmental reasons, it decided to utilize this distinction between ownership and management to great effect by not contesting the ownership rights of the communities whose lands were involved. Indeed, the colonial administration openly recognized these rights. It was also prepared to pay royalties to the communities involved whenever the resources of timber on their land were exploited and some revenue accrued to government. The administration, however, insisted on its responsibility to effectively manage the land through controlling the rate at which timber on the land was felled, and ensuring that adequate resources were put aside and arrangements made for regenerating the forest.

The distinction between ownership and management of peri-urban land could serve very well to resolve the difficulties in the provision of land for urban development. Unlike Latin America, State ownership of land in Sub-Saharan Africa does not mean the absence of some subdued or residual private rights, whether the land, is publicly acquired, declared State land, or is nationalized. Invariably when the land is to be used, some compensation, even if only for economic crops on the land, is paid. As long as the land is then used for some public purpose, no problems arise from the families or lineages whose land rights have been so extinguished. If, however, the land were simply channelled through public authorities into private hands without some compensation being paid, violent reactions could be expected.

To obviate this possibility, a strategy of land transformation can be articulated. Doebele, in discussing

the process of urban development, conceived of the concept of moments of transition<sup>42</sup> — that is, in the typical cycle of land utilization, public intervention is easiest at moments of transition when the market, land use controls, and tenure options are in a fluid state. The first and most important moment of transition is when agricultural land is converted into urban land (usually, but not always, signaled by the division and sale of urban-size lots); the second is when major urban infrastructure — a water system, sewers, major roads and so on — is installed on or near the property; the final moment is when actual construction begins.

Normally, it is during the first moment of transition that the highest single increments in capital value are realized, and land use and tenure are likely to be committed for many years to come. Consequently, in most countries of Sub-Saharan Africa, this is the moment when it is necessary to propose that governments be willing to allow the veil of land nationalization or State ownership to be lifted to allow some recognition to any dormant private land rights before they are extinguished permanently. This means, in effect, that at the point of a municipality deciding to begin the process of subdividing and developing its land grant, it must make provisions for allowing lineages and families whose lands are included in the grant to prove their rights of ownership and to avail them of some appropriate compensation or royalties.

Once the right of the municipality to substantial amounts of land is assured, the next critical issue is the adequate supply of the land in appropriate serviced condition. There is need to evolve a strategy which does not saddle the municipality with more than the cost of designing the broad features of the layout and, perhaps, constructing the primary infrastructure. But even these broad features, it must be emphasized, must be based on the principle of self-financing. To achieve such a goal requires deliberate policy reform which accords the private sector a more significant role in urban land development. Urban land development companies, equipment leasing companies, as well as appropriate financial institutions, all need to be involved in the process of promoting a more efficient and effective rate of supply of serviced urban land.

Clearly, involving the private sector so directly in urban land development means a willingness to con-

cede that this is also an area where some technical assistance in local capacity building may be vitally necessary. The practice of proposing a greater role for the private sector in the development process, but without articulating deliberate plans for enhancing their capacity to respond to these new challenges, needs to be seriously re-examined. What is entailed here is not just the informal sector; the formal sector, through their trade associations and chambers of commerce and industries also need to be actively encouraged and assisted, where necessary, to play a more direct role in urban land development and shelter provision.

In this connection, the experience of some countries in the other developing regions of the world can be very instructive and provide options which the African countries may want to consider. Given the limitation of space in this monograph, it will not be possible to describe the experience of many of these countries. As an example, the experience in the Republic of Korea is provided here for the various lessons it illustrates.

### **The Korean Experience**

The basic urban land development strategy in the Republic of Korea has been described as one of Land Readjustment.<sup>43</sup> This strategy was devised by the Korean Government when it became obvious that the extensions of Korean cities by private developers would place impossible burdens on its ability to furnish the necessary urban infrastructure; yet, it was imperative that the government should retain control over virtually all urban development and the increasingly complex problems of land prices and land use allocation.

The background to this strategy can be traced back to 1906. The State of Prussia at that time attempted to recapture enough of the high increments in land value occasioned by the conversion of agricultural to serviced urban land in order to defray the capital costs incurred by government in installing basic urban infrastructure. This German system was formally incorporated by the Japanese in their City Planning Act of 1916, and became an important principle of urban development in that country, and it was introduced into Korea during the Japanese occupation (1910-1945). Although used more or less continuously

over that period a major recodification in the Land Readjustment Project Law No. 1822 of August 3, 1966, gave it striking visibility as a most creative strategy of promoting urban land development in an efficient and expeditious manner.

Land Readjustment (sometimes translated as "Land Consolidation") permits a city to participate directly in the urbanization process and to share in its profitability. The concept is a simple one. When an area of the city is ripe for development, it is declared a Land Readjustment Project. A site plan is prepared by the municipality and applied to the area. The plan divides the area into an appropriate pattern of streets, parks, schools, and sites for other uses, and further subdivides blocks formed by streets into lots for private development. The area for public uses (including streets) is then determined by measuring the number of square meters in the planned streets, parks, etc., and comparing this to the total area of the project. A parallel calculation is then made of the costs of installing the necessary infrastructure and of the probable total value of all the lots when they are placed, with values, on the market. The comparison of these two figures produces what is called "the cost reduction rate", that is, the percentage of lot areas which, if sold, would produce exactly enough money to recover the costs of installing the infrastructure. If, for example, it is estimated that in a project the area needed for public uses (streets, schools, parks, etc.) comes to 30 percent and that 17 percent of the lots to be created have a value equal to the cost of constructing the services, a landowner owning 1000 square meters of unserviced (generally agricultural) land before the project was undertaken would receive back 530 square meters in the form of serviced plots; 300 square meters of his original holding would be used for streets and other public uses; 170 square meters would be in the form of serviced plots, held by the city, which would be sold on the market and the returns used to offset the expenses the city had already incurred to install the services, including administration and borrowing costs.

Over the years, the experience has been that if the calculations are correct, the city can create new urbanization without any net outlay. At the same time, the private landowner receives back lots in as near the same location as possible to his original holding. While these would be substantially smaller in area (53

percent in the above example), they would, because they have been subdivided and serviced, have almost invariably a much higher value than the original serviced rural land. In this way, both the city and the landowner gain.

This strategy of land readjustment has been used for virtually all major residential development in Korean cities and, to a lesser extent, for industrial and commercial development. Indeed, by 1979, it was observed that it was being practiced in as many as 49 Korean cities and towns. Moreover, on a per capita basis, the strategy seemed to be more extensively used in the smaller rather than the larger centers. However, since land is notably a non-fungible good and the estimation of construction costs and future land prices is an uncertain science, there are a number of technical issues which have to be taken into account whenever this strategy is to be applied.

These issues have been considered in some greater detail in the publication by Doebele and Hwang and need not be repeated here. What is important to stress is that there are various options in confronting the challenge of creating and making available an ample supply of serviced land in cities of sub-Saharan Africa. How decisively the problem is tackled is thus a matter of the commitment of individual governments rather than the intractable complexity of the land tenure system.

### Conclusion

The problem of providing adequate building plots to accommodate the rapid rate of urbanization in sub-Saharan Africa has reached desperate proportions. With or without government assistance, indeed many times in spite of that assistance, the majority of urban residents seek and secure access to land outside of formal institutional arrangements. The result has been that development invariably precedes planning. Much of city planning in most African countries is thus no more than fire-fighting — a reactive process in which the impact is hardly felt, if felt at all.

If Africa is to bring to an end the era of disorderly and squalid urban sprawl, then some very innovative and anticipatory urban planning and land development strategies must be put in place expeditiously in virtually every city, however small. People

migrating to the city are strongly motivated to seek to secure their own accommodations. They will not wait for government. However, in order to have orderly, well laid out and environmentally satisfying urban centers in Sub-Saharan Africa, the present processes and procedures of urban planning and land development must be drastically reformed with the overriding

objective to greatly enhance the land development capability of municipalities so that land supply remains slightly ahead of demand. Only in this manner can the urban land market function efficiently and be able, at the same time, meet the needs of the lower income groups who make up the majority of city residents.

## CONCLUSION: THE ROLE FOR TECHNICAL ASSISTANCE

*"The road to the free market was open and kept open by an enormous increase in continuous, centrally organized and controlled interventionism. To make Adam Smith's "simple and natural liberty" compatible with the needs of a human society was a most complicated affair. Witness the complexity of the provisions in the innumerable enclosure laws; the amount of bureaucratic control in the administration of the New Poor Laws which for the first time since Queen Elizabeth's reign were effectively supervised by central authority; or the increase in governmental administration entailed in the meritorious task of municipal reform. And yet all these strongholds of government interference were erected with a view to the organizing of some simple freedom — such as that of land, labor or municipal administration."<sup>44</sup>*

The above quotation from Karl Polanyi stresses that the transformation from a pre-capitalist to capitalist mode of production in Britain in the 18th and 19th centuries was marked not by less governmental intervention, but with infinitely more of it. Paradoxical as it may sound at this time when there is concern for privatization and the facilitation of the operations of the free market forces, the present monograph calls attention to the fact that to effectively give reins to those forces, there remains a compelling need for the decisive intervention of governments in many areas in countries such as those of sub-Saharan Africa. Of course, it should be clear that this form of intervention does not mean the participation of government in direct production for which it has little or no comparative advantage; rather, it is to enhance the State's regulatory and directive capabilities so as to facilitate the efficient functioning of market forces and the effective management capacity of different levels of government.

The preceding chapters, in fact, emphasize that a correct positing of the urban land question does not have to simply consider whether land was available in Sub-Saharan African cities for residential and other urban purposes and at what price. Rather, it needs to

examine the capabilities of African States to establish the appropriate institutions and operate according to relevant and realistic procedures that would facilitate and even ensure that serviced land is brought to the urban land market in abundant supply. The answer that has been proffered in these pages is that a high degree of innovative, participatory and responsive governance is called for. African governments must show greater determination to engage not in cosmetic reforms of intergovernmental relations or bureaucratic processes. They must strive to transform the State apparatus which will gain in potency and effectiveness as it works in close tandem with the strength of their societies, with their cultural disposition, and with their adaptive creativity. For only in this way can civil society in each country be harnessed and, together with the State, work towards the creation of a democratic and economically strong nation.

When the State is engaged in such a mission, certainly no external agency can dictate to or compel it to act against its own inclinations or judgment. Indeed, nothing in this monograph can or should be construed as potential conditionalities to be used by donors or multilateral agencies in offering an aid or loan package. Certainly, none of the suggestions are meant to detract from or undermine the integrity of African States to determine the path to their own development as they see it. Yet, it must be recognized that development is no more than the product of the interplay of transforming ideas on a nation's institutions and practices. Consequently, it is not inconceivable that in the process of negotiating technical assistance packages, opportunities will emerge for such interplay of creative ideas which may influence the choice of policy options and the articulation of programs and projects. The expectation, therefore, is that within the compass of this monograph ideas and suggestions of such potency may be found so as to help to transform the prevailing dire situation in the management and development of cities in Sub-Saharan Africa.

However, as already emphasized, those ideas and suggestions entail a considerable increase in government administrative activities for which there would appear to be ample opportunities for technical assistance of one type or another. In fact, it is possible to identify seven broad areas where bilateral or multilateral agencies could provide extremely valuable technical assistance to governments in sub-Saharan African countries with a view to enhancing their capabilities in the ample provision of serviced urban land, and the efficient and effective management of urban processes. Furthermore, what African governments themselves must do to ensure greater chances of success of technical assistance received is as essential as the nature of the technical assistance being proposed. The seven broad areas offering great opportunities for technical assistance are as follows:

#### **Human Resource Development for Managing Categories of Urban Centers**

In most countries, cities and towns consist of different populations, geographic extensions and economic and administrative complexity. Nonetheless, it is obvious that however small the city, its requirements in infrastructure, services and environmental quality maintenance are clearly of a different order from those of rural hamlets or villages. It would be important for African governments, therefore, to provide clear legislative distinction between municipal government and purely local (that is, largely rural) administration. Such legislation could also distinguish between categories of urban centers on the basis of their size, complexity, and their internal revenue-generating capacity. This should help to determine the extent of power, administrative structure, and autonomy (for example, ability to raise bonds in the financial markets) of each municipality. All these may need to be spelled out as criteria which municipalities must meet to be able to move from one category to another.

Given the tasks that even the smallest municipality would have to face in creating a cadastre, setting up a land titling, land registration and land valuation departments, providing or overseeing the provision of a whole series of infrastructure and social services, maintaining the standard and quality of these services, stimulating the economic growth of the municipality and responding to the changing needs of residents and

businesses, there is considerable need for further development of the capacity of municipal officials.

There is also a need for innovation in packaging this type of technical assistance. Apart from short-term courses or short-term exchanges of municipal officers between south-south and south-north countries, it should be possible to conceive of mobile urban management consultancy teams (MUMCOT) of four to six individuals who would spend an extended period with a municipality, helping it to set up an appropriate management system. Such a team itself would have had the opportunity for previous experience in an African setting. To allow for this, the formation of the team would be preceded by pilot projects from whose successful execution some of the leaders of a MUMCOT could then be drawn.

Two issues, however, need to be underscored in regard to the proposal to further develop the human resources available to municipal authorities in sub-Saharan Africa. The first is that as much as possible, the individuals involved in the training programs should have good knowledge and/or experience in the problems encountered. There is great advantage in using personnel from local universities and research institutions, as well as some of the more successful municipalities in Africa or other developing countries as part of the team. Non-African members of such teams should, on the whole, be individuals of some maturity and experience so that the team will be able to command the respect and enjoy the confidence of senior municipal and central government officials.

The second issue in regard to human resources development is that, as much as possible, technical assistance should be an on-site operation. Situations where middle-management staff — who tend to be the candidates selected for training — allege that the problems militating against positive change in the administration derive from the lack of comparable training exposure of their superior officers, would thus be reduced. As there is no standard blueprint for enhancing the capacity of municipalities, technical assistance programs must, therefore, look, listen and learn from and about the society and government being assisted. The programs must then draw from the comparative experiences of its personnel to attempt innovative but realistic solutions to local problems.

## **Enhancing Neighborhood Capabilities to Effectively Participate in Municipal Governance**

The issue of decentralization does not stop at the level of the municipal administration, as it is equally important to establish the internal structure of city organization to ensure that it facilitates active participation on the part of residents in the governance of the city. In many African cities, it is remarkable that there are no maps showing the neighborhood structure and no interest in identifying, demarcating and officially recognizing new neighborhoods as they are formed. It is, of course, easy to appreciate why this indifference exists, given the centralization of decision-making at higher levels of government.

Mobilization, however, should be on the basis of clearly defined roles. In the chapter on urban land management, it was suggested that neighborhood committees have an important part to play in facilitating the development of the "half-way" cadastre. This would entail paying some attention to the composition of the membership of such committees to ensure that they include representatives of landowning families, local landlord associations, tenant associations, women's societies, and so on. The idea is to have a committee that assists in the challenging task of compiling a cadastre; identifying who owns what property; helping with the distribution and collection of pre-registration forms; serving as the first tier of agencies in the process of land adjudication; monitoring the issuance of an appropriate tenurial certificate; assisting in the later stages of preparing a proper cadastre for the city; providing information that may assist in the process of property valuation, rate assessment, and rate collection; and generally helping in propagating and promoting a new ethic of local self-reliance and accountability in the provision of municipal services.

For neighborhood communities to be reoriented to perform these customary roles, there is a need for a deliberate program of capacity building. This program may entail no more than organizing short-term seminars for neighborhood leaders — leaders of various voluntary organizations — especially women's and youth organizations, as well as representatives of private sector organizations. It may also entail organizing educational visits to other cities in other coun-

tries to see how they function. There have been various proposals for the association of municipalities embracing both counselors and staff of these authorities. The present recommendation would extend the proposals to embrace some important community leaders who may not necessarily be counselors or officials.

It is essential to stress that just as it is important to strengthen the capacity of a municipal administration to manage a city, it is equally vital to enhance the internal capacity of city residents to ensure accountability on the part of the officials. The more residents feel that they have an accountable and responsive municipal administrative system, the greater the chances that they will participate more actively in the affairs of the city, be more willing to pay taxes, and be less likely to sustain the pervading air of social alienation.

## **Creating the "Half-Way" Cadastre**

The creation of a "half-way" cadastre is largely a technical matter, although with significant community input. The establishment of a relatively simple but expeditious system of providing a large-scale map of the city showing roads and individual properties is, of course, the most basic need. There are various technological options available for carrying out this task, including the use of the microlight aircraft.

The task of converting the map to a cadastre through preparing a complementary register that links the property on the map with the name of the owner is one which would be greatly facilitated through the assistance of neighborhood community leaders.

The creation of "half-way" cadastres is considered as perhaps the most urgent need for technical assistance in the effort to facilitate more informed management of cities in Sub-Saharan Africa. It enables the municipal administration to have quickly at its disposal the requisite estimates of the magnitude of its responsibilities measured in terms of number of houses to be serviced, which rates or user charges are to be collected, and the estimated population involved. The "half-way" cadastre is thus the first stage not only in building up a realistic land information system, but also in developing an urban management data system.

### **Developing Strategies for Transforming a "Half-Way" Cadastre into a Proper Legal and Fiscal Cadastre**

The process discussed here requires a more painstaking and long-term program of assistance. It entails a more systematic surveying of building plots in the city and a careful verification and validation of their boundaries. During this process, land disputes can be expected to be most common and arrangements must be made for an effective system of land adjudication.

The task of systematically surveying building plots in a city is, again, a purely technical process for which bilateral and multilateral assistance can be solicited. There is a wide range of technological options available for expeditiously undertaking the task. The task, however, goes beyond simply producing a comprehensive cadastral map of the city, as includes the production of separate plans for each individual property which would be indexed to conform to the "half-way" cadastre and referenced for purposes of title registration.

The other major step in this process is that of land adjudication. Since the intention of technical assistance is to help a country create a cadastre, disputes during the implementation process period must be expected. The normal institutions, whether ministerial or judicial, for dealing with such disputes are bound to be overwhelmed and unable to cope effectively and with requisite speed in resolving such disputes so that the task of constructing the cadastre can be completed. Consequently, the importance of encouraging the government concerned to establish a land adjudicating task force with adequate powers to deal expeditiously with any dispute beyond what the neighborhood committees can resolve, must be emphasized. The establishment of such a task force may need to be treated as a condition precedent to the implementation of this particular program of technical assistance.

### **Strengthening the Land Titling and Land Registration Departments**

It is clear that if proper fiscal and legal cadastres are to be provided for each municipality, considerable pressure would be exerted on the Lands Department of both the municipality and the central government, to issue title certificates and conduct in some systematic

manner the registration of all the land holdings of the city. Experience so far has demonstrated that this is one of the major bottlenecks that discourage most people from registering their property. So much of the task continues to be performed manually and at a pace more appropriate to the slow rate of development during the colonial period. Technical assistance must consider how to provide the various types of logistical support needed to accelerate the process of titling and land registration. This is not simply a matter of using electronic computers, although this is very crucial; it also entails reviewing the critical path in the process of securing the authentication of various signatories to the title document.

During this exercise, the degree of autonomy of action and the staffing and funds made available to the Land Department would deserve serious attention. Equally important would be the formal establishment of a protocol for inter-agency relations which would ensure that information concerning any land transaction which passes through any other agency is communicated automatically to the Lands Department to enable it to continuously update its records.

### **Strengthening the Urban Planning Department**

The urban planning department is responsible for the orderly and efficient growth of the city. This entails quite a range of responsibilities, not all of which are important and germane to the present program. This program is limited to strengthening the capabilities of the Urban Planning Department to discharge its tasks of providing an adequate supply of serviced land for the urban land market. The task involves not only layout designs for infrastructure and social services, but also the collection of information concerning land prices and land values to guide the municipal authorities in reaching decisions as to the cost per plot of such serviced land. This will enable the municipality to determine the price at which land can be supplied in different districts of the city. It will also strengthen the municipal authorities in keeping land prices under control and minimizing the chances of inflation due to land speculations.

Providing layout designs and land subdivisions is a fairly technical job requiring well trained

professionals. The availability of appropriate equipment, including field transportation vehicles, is also central to this effort. However, since countries should be encouraged to explore the feasibility of adopting the Korean-type model of land development in which the process is self-financing, technical assistance should be directed towards organizing the operations of the department in an effort to meet this objective.

### **Integrating the Private Sector into Urban Land Development Programs**

One of the major weaknesses of urban development programs in most Sub-Saharan African countries to date has been the little attention paid to the role of the organized or formal private sector. In many of these countries, private land developers are either discouraged from emerging or are deliberately prohibited by law from operating, the assumption being that they tend to promote land speculation, to fuel inflationary pressure of land market values, or that they encourage land concentration. Their more positive role in promoting the orderly development of urban neighborhoods tends to be considerably played down.

In seeking to enhance the capabilities of the State to undertake efficient land development and urban management, it will be necessary to create conditions that would facilitate the growth of private land development agencies. These agencies can work side-by-side with existing government departments or parastatals. The government must be encouraged to formulate policies which would provide the framework for promoting and regulating the operations of such private-sector land developers.

It is expected that such agencies will have the capacity to construct, within a given area, primary and secondary infrastructure and translate planned layout into concrete structures on the ground. The effectiveness of such agencies would be greatly enhanced if housing development were taken hand-in-hand with land development. This would ensure not only the emergence of an orderly market for both land and housing, but also considerable improvement in the aesthetic appearance and environmental conditions of neighborhoods.

It may, of course, be argued that the involvement of such land development agencies in the growth of cities leads to a bias in favor of the middle and elite

classes. While this cannot be totally denied, it is possible for the municipal authorities, through deliberate zoning and density regulations, to ensure that adequate attention is paid to the needs of the poor and of the lower income groups. Moreover, nothing in this arrangement prevents municipalities from establishing their own sites-and-services schemes in specific areas of the city. Indeed, it is conceivable that the development charges for plots in middle class neighborhoods could be used to subsidize the provision of needed infrastructure in low-income neighborhoods.

It must be noted that the integration of the private sector in urban land development programs requires that the sector's capacity be built up; particularly from among the locally based enterprises. This may entail the development of joint ventures with foreign firms, the provision of equipment leasing facilities by local merchants or commercial banks, or even the actual development of specialized financial institutions.

In recent years, the World Bank has adopted a strategy of responding to some demands in the urban development sector through co-opting local banks into the lending process. Since it is more imperative than ever before that the private sector's capacity be greatly enhanced to allow it to play a decisive role in urban land development, it would seem that this is an area where technical assistance could have significant impact. Certainly, by stimulating the growth of private land development and related agencies, a definable and influential constituency could be created, a constituency committed to the orderly development and expansion of African cities. More than this, a situation which results in the more expeditious and orderly growth of cities would invariably stimulate greater activities in the informal economic sector of the cities, leading to considerable growth in urban employment opportunities.

### **Conclusion**

Incontestably, the 1990s are bound to witness renewed and remarkable growth in the urbanization process in Sub-Saharan African countries. Where Structural Adjustment Programs succeed and lead to increased productivity the role of the cities in valorizing this additional production is bound to further attract a higher volume of rural-urban migration. Where these programs fail and economic conditions

become increasingly harsh, more people are bound to escape from the rural areas to the cities. In both cases, the result will be an increasing pressure of migrant population on urban land resources, infrastructure and services.

African cities everywhere can thus be expected to experience remarkable expansion in the decade ahead. Whether this expansion takes place in a more orderly and environmentally more satisfactory manner is the challenge presently before African States, and bilateral and multilateral agencies. The preceding quarter of a century has clearly demonstrated the strength of societies in the different African countries to take this challenge in hand and respond to it adap-

tively. Everywhere, African societies have forced their way through the interstitial weaknesses of legal and bureaucratic processes and procedures to resolve for themselves the problems of survival in modern African cities. The fury of that force is evident in the vibrancy of the urban sprawl and shanty towns that they have created. For the future, it is imperative that the State strive to proceed side-by-side with society, directing and channelling its energy in preferred directions. How the State can achieve this is a matter requiring innovative governance. Clearly, there is considerable room for creative policy formulation and program development, and it is hoped that in this brief monograph, some indications of what such creativity could bring about have been demonstrated.

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