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Land Acquisition in Developing Countries

Policies and Procedures of the Public Sector

With Surveys and Case Studies from
Korea, India, Thailand, and Ecuador

Michael G. Kitay

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A Lincoln Institute of Land Policy Book

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*To Sally and Sidney Kitay
and the Kitay family*

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Foreword

The role of government in the regulation of urban land use is undergoing profound change throughout the world, under the pressure of rapidly evolving demographic forces, and a parallel elaboration of the political and legal ideas underpinning our concepts of property rights. Basic questions affecting the proper balance between individual rights and collective needs impinge forcefully on public- and private-sector decision makers as they address the problem of fashioning mechanisms to facilitate the efficient and equitable allocation of resources. Thus, those involved in urban land problems find themselves confronted with urgent practical problems requiring difficult decisions, despite their inability to resolve puzzling indeterminacies regarding long-term ramifications. In dealing with the area of eminent domain and expropriation, for example, we confront vexing questions concerning the definition of public purpose, creating mechanisms for valuation and compensation, and appropriate administrative procedures, which, if improperly solved, can seriously undermine land development for decades.

While we in the industrial nations often seem to be fighting a two-front battle, with the forces of change arrayed on one side, and the venerable, sometimes obstinate, structures of traditional property law on the other, the developing nations of the world seem less bound by the solutions of previous generations to urban land use problems. They, nonetheless, face an equally difficult task presented by the initial thrust into an urbanized stage of development. Like those thrown into the water

to learn how to swim, they bravely cope with a pressing need to develop and improve techniques for regulating land use practices.

Urban land use policy analysis has grown deeper and broader in the past twenty years, and a substantial body of knowledge stands ready to be utilized by the developing nations as they enter this period of urbanization. The tantalizing prospect of being able, from the beginning, to do things right, glimmers in these vibrant nations. It is with a great sense of optimism, therefore, that I welcome Michael Kitay's book, which skillfully distills a vast body of knowledge in light of the current predicament of the developing nations, and attempts to assist institutions of the developing world to manage urban growth by elucidating thoughtful policy options, models, and programs for land acquisition. It makes a substantial analytic and comparative contribution which can make possible the kind of advance planning that avoids the ill effects of misuse of urban land.

The intellectual process is a bidirectional one, of course. As we attempt to apply the experiences and knowledge of the industrial world to the variety of conditions and policies in the developing countries, we discover by contrast numerous insights on land-acquisition policy that are equally applicable in either area. Thus, studying this book is a rewarding experience for anyone interested in comparative land policy. I am particularly gratified to see this knowledge being made available, in such organized and concise form, to the policy makers in the developing countries, who bear so many of the hopes, not only of their own countrymen, but of all mankind.

Charles M. Haar
Brandeis Professor of Law
Harvard University

Acknowledgments

This book is the result of research and inquiry done over a one-year period while I was a visiting scholar at the Harvard Law School and a Fellow of the Lincoln Institute of Land Policy. I am grateful for the support of Professors Charles Haar and Dean David Smith during this time. Professor Oliver Oldman, Betsy Chamberlain, and the staff of Harvard's International Tax Program provided me with a quiet office in which to work and a ready group of officials from developing countries with whom I could share ideas, and I am indebted to them as well.

The Agency for International Development (AID) and Peter M. Kimm, Director of AID's worldwide Housing and Urban Programs, deserve special thanks. Without Peter Kimm's support and the assistance of AID's housing and urban development officers, this book never would have been written. Other AID officials whom I would like to thank include William Gelebart, Barton Veret, Michael Williams, and Bruce Janigian. The latter three discharged many of my own responsibilities as Chief Counsel to AID's Office of Housing and Urban Programs while I was preparing this book.

Arlo Woolery, Executive Director of the Lincoln Institute for Land Policy, supplied the inspiration for my interest in land issues and later provided financial assistance for the case studies. Donald Gardner's advice on the merits of research coincided with Arlo's introduction to the importance of land issues. Peter Abeles instructed me in the techniques used by private land developers in the United States.

The contributors to the Appendices, Robert Devoy, Gill C. Lim, Gustavo Donoso, Carlos Luzuriaga, Suryakant N. Schroff, Carlos Escobar Armas, and Sidhijai Tanphiphat, taught me much of what I know on the subject of land acquisition. Alfred Van Huyck and the planners at PADCO Inc., and Malcolm Rivkin, all experts in international development issues, supplied me with tables, statistics, and research on specific countries. The materials on Tunisia were taken from Mr. Rivkin's research for AID. Professor William Doebele's work for an AID-sponsored training workshop supplied much of the material on the increased value of land as a result of urbanization. Also, I relied on his work in the discussion of land readjustment. In addition, his comments on the main text were helpful, as well as his editorial work on the Appendix.

Brian Haughton, C. Victoria Simonds, and Cynthia Kassis, as student research assistants, contributed to portions of the research and manuscript preparation. Mr. Haughton's work on eminent domain and expropriation (chap. 3) was particularly useful, as well as Ms. Simonds's work on advance land acquisition (chap. 6).

The worldwide staff of AID's Office of Housing and Urban Programs suggested new ideas and, during my numerous trips to developing countries, introduced me to local lawyers and practitioners from whom I learned much.

Gloria Gordon, Phyllis Moore, Maxine Walton, Daryl Daniels, and Carol Foye provided tireless secretarial support. In addition, Warren Rogers, Rachel Deutch, and Carole Davis worked on the manuscript with great care.

My wife, Evelyn, and our children, Valerie and Alison, deserve special thanks for their support and affection.

The views expressed herein are those of the author and do not necessarily represent the views of the United States Agency for International Development.

M.G.K.

Introduction

A few hundred years ago, it took an entire century to add one million people to the population of the earth. Today, it happens in one week. And by the year 2000, there will be about six billion people on this planet, with more than half living in cities.

This acceleration in numbers is apparent everywhere. From 1950 to 1970, for example, world population grew by 45 percent. More significantly, for purposes of our study, the urban population during that period soared by 98 percent, and the greatest of those increases was in the newly developing countries.

As this trend shows no signs of abating, it is clear that in a very short time, the urban populations in developing countries will be growing twice as fast as in developed countries. By the year 2000, it is expected that 59 urban centers in the world will have populations in excess of five million, and 47 of these will be in developing countries. Barbara Ward has said that, in the next 30 to 40 years, we may see as much building in developing countries as in the whole previous history of mankind, simply to shelter this new urban population.¹

Obviously, the growth in amounts of land devoted to urban purposes will be similarly dramatic. Estimates are not yet firm, but one group of specialists has determined that land given over to urban needs will grow from 16.5 million acres in 1950 to about 41 million acres by the year 2000. Most of the growth is expected where urban areas, whether a town or a thriving city, already are established.² Especially in cramped municipalities of developing countries, significant new quantities of land will be required.

Despite the abundance of evidence that a population crunch and its consequent demand for urban living space are threatening the world, especially in developing countries, little planning for the impact is under way. The developing countries are virtually without laws, policies, procedures, institutions, trained personnel, or the financial resources that must be employed to cope with the inevitable. As we rapidly approach the year 2000, the necessities to acquire even the minimal amounts of land for the urban population explosion are conspicuously absent.

The hypotheses of this book, concerning rapid urbanization in developing countries and the role of land acquisition, are as follows:

1. There will be enormous, unprecedented physical and population growth of cities in developing countries over the next decade.
2. This growth will result in a need for significant acquisition of urban land for public purposes, (roads, schools, housing, and the like).
3. Few developing countries possess adequate laws, procedures, policies, trained personnel, or institutions capable of performing the land-acquisition function in an effective fashion. Major efforts to address these deficiencies are needed now.
4. Once the machinery is in place, it is expected that land-acquisition efforts, including perhaps strategic advance acquisition of limited amounts of urban land by public or quasi-public institutions will enable (a) immediate public needs for land to be satisfied and (b) cities to exercise rough but important land use control functions, when accompanied by targeted use of capital budgets for infrastructure, and other policies.

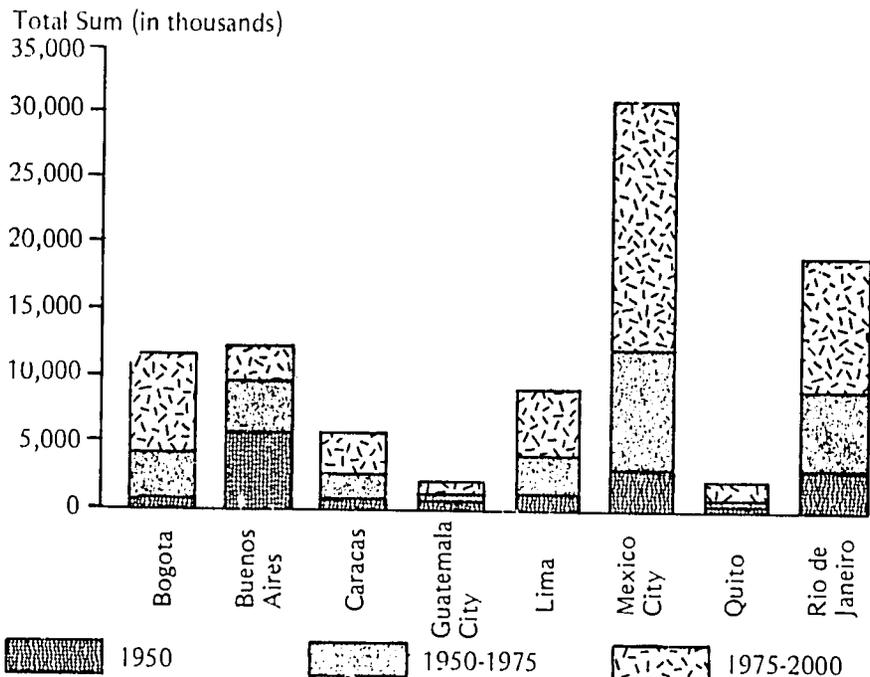
The primary purpose of this book is to provide models of land-acquisition laws, policies, procedures, and institutions. These models, in the context of the inevitable urban-population explosion, are intended to stimulate dialogue and debate that will lead to substantial reform of existing laws and institutions for land acquisition.

Because of the broad geographical scope of this work, much of the research is based on secondary sources. Some of the laws cited and policies noted may be out of date. Accordingly, the examples of laws and policies should be read for the ideas they represent and less as a statement of the current laws and policies in the countries cited.

In the pages that follow, we will take a close look at the rapid growth of urban areas in developing countries and the laws and procedures by which the needed land is acquired and disposed of by public authorities. We will also see models of various public institutions that specialize in land acquisition and examine some ways in which public acquisition of urban lands can be financed. The case studies offered in the appendices examine land acquisition in Korea, Thailand, Ecuador, and India.

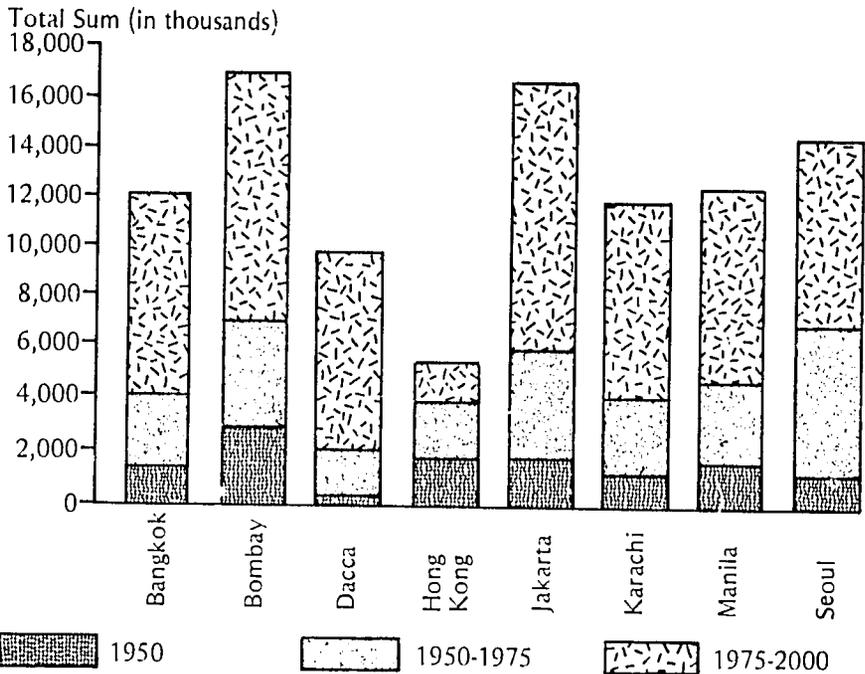
As will be apparent, developing countries have had widely varying degrees of success using the available options and techniques for land acquisition. It is true here, as in any such endeavor, that trade-offs must be accepted with each option, and as even a cursory examination will show, no model fits all. There is no quick fix for this grave problem, no panacea for each and every case. For that reason, generalizations are avoided, and the models should be scanned in the same spirit.

It would be a wonderful gift, of course, if there were some easy way out for the developing countries. Their current high population statistics now present an almost insurmountable problem, but the challenge will be truly enormous in size and complexity over the next 20 years. This is because of the high birth rates among those people already living in the cities of developing nations, plus massive population shifts from rural-to-urban areas. One author has called these rural-to-urban movements in developing countries one of the greatest human migrations in the history of the world.³ Figures I.1-3 illustrate the growth of selected cities in developing countries by including population data for 1950 and 1975, and projected population figures for the year 2000.



Source: AID, Center for Development Information and Evaluation (adapted from UN, *Patterns of Urban and Rural Population Growth*, 1980).

Figure I.1. Population growth in major cities, 1950-2000: Latin America.

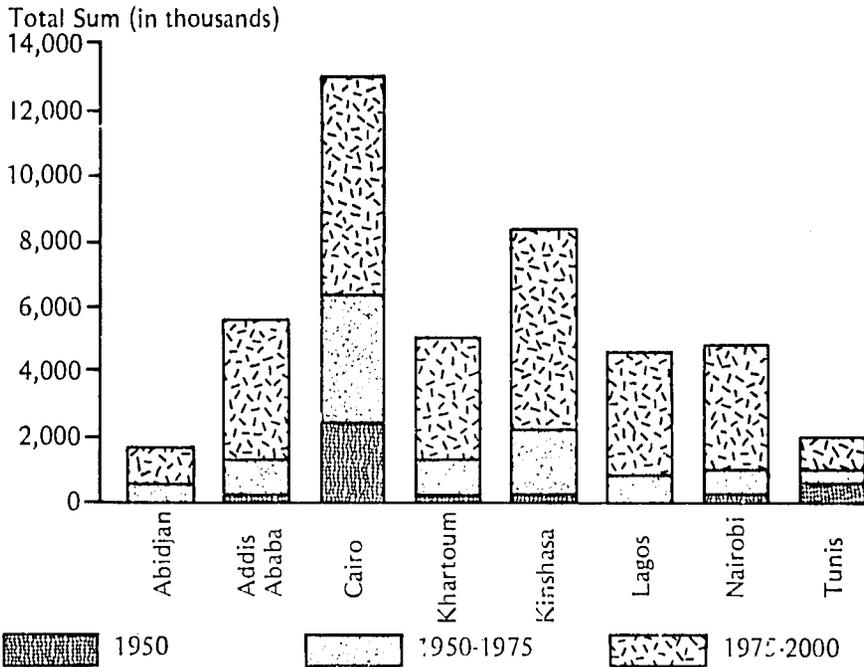


Source: AID, Center for Development Information and Evaluation (adapted from UN, *Patterns of Urban and Rural Population Growth*, 1980).

Figure I.2. Population growth in major cities, 1950-2000: Asia.

Even in countries already developed, this rural-to-urban transformation has been painful at best. Despite enjoying far more time and more abundant resources, developed countries have produced little better than mixed results. In comparison with the industrialized West, the nations of the developing world face almost overnight shifts in their populations from open country to teeming city. With little time and few resources, they must somehow find the capital and train the administrators to adjust to the situation. Because of the relative lack of capital, building materials, and heavy construction industries, the cities are expected to grow horizontally rather than upward in multi-story buildings as has been the case for developed areas. Consequently, the resulting urban sprawl will add to the burdens of urban managers.

We have attempted to estimate the impact of projected population growth on the land needs for Third World cities, assuming differing densities. Table I.1 (p. xx) indicates a doubling and tripling of physical growth of most of the cities listed. It is difficult to project future land needs, and the estimates shown in the table are subject to many variables. Nevertheless the trend is clear.



Source: AID, Center for Development Information and Evaluation (adapted from UN, *Patterns of Urban and Rural Population Growth, 1980*).

Figure I.3. Population growth in major cities, 1950-2000: Africa.

The people flocking to the cities of developing countries over the next decade will be poorer and less equipped to make a contribution than their counterparts in developed areas. They will be, in the main, ill fed and ill educated. They will be, in effect, a mass of humanity in dire need—a political force that must be reckoned with, a “taking” rather than a “giving” element that, by its very size and complexity, presents city managers with a problem of immense proportions.

Furthermore, whether or not the developing countries can provide land and the basic amenities to meet the needs of these demanding migrants will have a profound impact on all the people of the world, an effect rippling far beyond the borders of the countries immediately involved.

The task facing government officials in developing countries is truly overpowering. The rapid urbanization of their burgeoning populations demands the utmost attention. If solutions are not found and applied, all of the dire projections for the 1980s and 1990s undoubtedly will be realized.

Table I.1. Projected Land Needs for Third World Cities

City	Population (000's)	Land		2000 Projection (Odds)	Trend Projection (Km ²)	Land Need at Differing Densities (Km ²)		
		Area (Km ²)	Density (P/Ha)			Low (7.2)	Middle (14.5)	High (25.2)
<i>Cities with High Growth Rates, Small Populations, and Low Densities</i>								
Abidjan	1,750	135	130	5,750	370	666	331	190
Bagdad	2,260	139	163	10,907	460	1,041	517	298
Caracas	1,800	112	161	5,963	205	458	227	131
Cotonou	111	47	24	826	223	73	36	21
Freetown	128	35	37	1,320	263	134	66	38
Kampala	332	268	12	2,506	1,547	226	132	76
Kinshasa	1,323	292	65	9,112	1,078	981	487	280
Nairobi	509	509	10	3,371	2,630	365	181	104
Ouagadougou	135	30	45	787	119	74	37	21
Rangoon	1,927	120	161	7,372	307	685	340	196
Mean	1,028		81		720	474	236	136
Standard dev.	865		65		810	358	178	102
<i>Cities with Medium Growth Rates, Populations, and Densities</i>								
Ahmedabad	1,588	93	171	5,502	201	477	237	136
Algiers	943	210	45	2,861	375	234	116	67
Bangkok	2,050	291	70	11,030	1,101	1,070	532	306
Bogota	2,818	131	215	9,527	284	848	421	242
Casablanca	1,791	113	158	5,242	214	470	233	134
Karachi	4,000	237	169	15,862	675	1,584	787	453
Madras	2,470	128	193	10,375	343	919	457	263
Rio de Janeiro	1,805	130	139	19,383	796	1,537	763	439
Mean	2,183		145	9,973	499	893	443	255
Standard dev.	925		59	5,576	325	495	246	141
<i>Cities with Low Growth Rates, Large Populations, and High Densities</i>								
Alexandria	2,315	193	120	5,599	262	437	217	125
Bombay	3,840	68	565	19,055	212	1,663	826	475
Buenos Aires	2,972	200	149	13,978	313	646	321	185
Cairo	7,000	297	236	16,398	402	1,316	653	376
Calcutta	4,200	127	331	19,663	350	1,608	798	459
Lima	3,600	164	220	12,130	375	1,143	568	327
Santiago	3,700	250	148	5,119	139	286	142	82
Mean	3,947		252	13,136	293	1,014	504	290
Standard dev.	1,482		155	5,933	94	550	278	160

Source: Prepared for the author by PADCO Inc.

Chapter 1

The Land

In 1941 Robert Frost wrote in his poem "The Gift Outright":

The land was ours before we were the land's.
She was our land more than a hundred years.
Before we were her people.*

He was speaking then as an American, about the American people and the land they had colonized a hundred years before they achieved their independence from England in 1776. But the philosophy can apply to any people, anywhere, at any time. There is a bond, an almost mystical communion, that exists between the land and the people living on it.

There are practical considerations of momentous importance, of course, and these are what we address in this work. But any planner, any demographer, any manager must not fail to consider the deep and abiding relationship that exists between people and the land. Declared or undeclared, it exists.

The starting point of all urban development is land. It is the locus of shelter, industry, roadways, and the other devices of communication and

*From "The Gift Outright" from *THE POETRY OF ROBERT FROST* edited by Edward Connery Lathem. Copyright 1942 by Robert Frost. Copyright © 1969 by Holt, Rinehart and Winston. Copyright © 1970 by Lesley Frost Ballantine. Reprinted by permission of Holt, Rinehart and Winston Publishers.

social infrastructure (schools, hospitals, and other public services and facilities). In short, land is the be-all and end-all of what a city is going to be and where it is going to go. The attendant complexities present a formidable bottleneck in the development process.

CONFLICT OVER LAND

Land is unique and limited; it is therefore valuable. And whoever controls the land controls a potentially profitable asset. This is so, whether the land is used for the production of agricultural goods or whether the land is removed from the agricultural realm, (with a consequent economic loss in that area) and added to the urbanized region or yet devoted to some other use such as industrial production, transportation, or recreation. In matters of control, a basic question arises: Who decides on land use—the public sector or the private sector?

Decisions on land use must be considered seriously. For one thing, they create a long-term effect that is not easily reversed. A variation of Newton's law of inertia is at work. Any structures on the land are apt to remain there for great periods of time, and accordingly, the predominant current use of a land area tends to become the predominant future use. For instance, it is difficult to convert an industrial area to a residential area, and vice versa. The paradox is that, even as cities are experiencing rapid change in their overall growth, areas within the cities tend to remain stagnant in their original use.

The financial stakes involved in land use decisions are so high that they heighten the sense of conflict. In each case, there is a winner and a loser. Researchers have found this is true in virtually every major city in developing countries when urban land values are increasing faster than inflation rates generally.

As a result of the urban land values, landowners play a "waiting game." The trick is to keep great parcels of urban land vacant until there is a dramatic boost in the selling price. Shrewd, patient landowners thus are able to get two, three, or more times the amount of money they would have gotten if they had not kept their property off the market until the right time.

In most developing countries, however, such opportunities are open only to a few, those with disposable income. Land investments represent one of the few aspects of the domestic economy in such countries that can absorb excess funds. The small percentage of population who have disposable income almost certainly also have political power. Thus, the most active speculators in land markets invariably would be those holding high government positions or their family members. These

"establishment" figures would not take kindly to any concept that threatened their investment opportunities; they would view public intervention in land markets as anathema.

Thus, a difficult conflict of interest often arises. The result in most developing countries is generally a standoff. Those calling for more public control over land markets clash with those favoring private-sector management entirely. Resolving the conflict can be a long and painful process.

Evidence abounds that this is an important issue to government officials throughout the world. One example arose in the spring and early summer of 1983, when separate international conferences convened in Finland, the United States, and Sweden.¹ Senior public officials and experts from the private sector attended each conference. They represented a wide variety of countries—rich and poor, rural and urban, socialist and capitalist. Each conference was scheduled independently of the others, although each considered the same issue: land policy in a world experiencing a population explosion and rapid urbanization.

Such commonality of concern could not have been happenstance. Rather, it was evidence that the dwindling availability of land, in relation to the growing numbers of people, is regarded as a critical problem demanding solution everywhere on the face of the globe.

GOVERNMENT VERSUS PRIVATE CONTROL

In all societies, except those in which land is totally nationalized, limitations are applied to the use of land, all land. The use of privately owned land for the public good is a principle that has been firmly established. The issue is not whether the government can intervene and exercise control; rather, it is whether there is a proper balance between private and public control—when is government intervention permissible?

In developed countries that have imposed relatively light regulation on private land markets, economic growth and development tend to outstrip that of the more centrally controlled societies. This economic growth is offered as an argument that this approach, despite inequities, better serves the needs of the people. Consequently, the scarce land is rationed by its price, and it is the price that also allocates each parcel to its most valuable use.

Thus, in theory, the private sector has provided benefits to both the public and private sector while bearing all of the economic risk. Those developers clever enough to assemble the pieces of land that best serve

the society are rewarded with financial success. Those who guess wrong fail economically. In either case, the public profits.

But critics of a completely "free" land market argue that, if the system were truly working as it should theoretically, why would there be such an increase in government regulation over speculation? These private systems are perceived as providing neither equity nor efficiency.² It is common practice for the private sector in developed countries to hold vacant land at prime locations off the market until the demand increases the price. And it is demonstrable that, all too often in developed countries, such public necessities as schools and highways are placed on low-priority land that may just happen to be publicly owned already. Private developers acting alone, without public support, in developing countries never have put together vast amounts of land required for major public undertakings like new towns.

A major criticism is that private landowners often benefit from public expenditures that put them at no risk at all. Urban land that is improved with infrastructure—roads, electricity, water, sewerage, and the like—can increase the value of surrounding private properties to a significant degree, at little or no cost to the owners. At the 1976 UN Habitat Conference, there was strong support for increased public intervention to gain benefits for the public from the surplus value thus created, and a number of subsequent United Nations publications have echoed the sentiment.

It is argued therefore that government intervention in land policy and control is valid for two basic reasons:

1. *Greater efficiency in urban planning.* A public authority would be charged by law and government regulation to help the community meet future social needs, such as schools, housing, and health facilities. The private sector, on the other hand, would not have social needs as priorities, since their prime aim is to make a commercial success of the venture. The government's supervision, in this way, could be vital to the success of community adjustment to the rural-to-urban influx.
2. *Greater equity, or social justice.* In directing the acquisition of land, the government could more readily channel the municipality's growth so that it benefits all groups equitably. Public intervention would be expected to have a more stabilizing effect on the prices of land than the unfettered play of the marketplace.

In order for government intervention to work in a relatively free society, private developers will have to be convinced that government ownership or development of land is not necessarily financially bad for them. Eventually, most land developed by the government will be returned

to the private sector. In the meantime, the private sector will have escaped heavy capital outlays, at the price of only some loss of power to say how the land should be used. There will always be some role for the private sector.

The one danger that opponents of government intervention keep pointing to is this: Because governments are large and faceless, often manned by inefficient, careless, mistake-prone bureaucrats, confusions and failures may be more frequent than if the private sector were in charge. Is the tradeoff worth the risk in potential fraud, theft, and abuse, not to mention the loss of property and income taxes, plus demoralization of the private sector?

It is interesting that we could find no examples in developing countries of governments that relied solely on a free market to control land use. Beyond that, there seemed to be no view among the experts that allow a completely free market, given the unique and limited nature of land.

LAND USE CONTROLS

Placement of Infrastructure

There are indirect, noncoercive steps that governments in developing countries can take, however, to control land use, instead of government ownership of land. One such approach involves the targeted budgeting of resources for infrastructure.

It is the government's responsibility in developing countries, generally speaking, to provide the roads, sewers, water, electricity, and other aspects of infrastructure to the urban areas undergoing development. Landowners made aware of plans for such work usually hasten to develop their adjoining areas as well, ready to benefit from whatever increased values that arise. World Bank experts agree that providing infrastructure is the single most powerful tool—short of direct government acquisition of land—to control the use of surrounding land.³

Land Readjustment

Land readjustment (sometimes called land pooling), or some other form of joint venture between the public and private sectors, is another substantial, although indirect, tool.* South Korea, Taiwan, West Germany, Japan, and parts of Australia have practiced this approach. The

* For a more detailed discussion of land readjustment, see chap. 2.

government, by agreement with a group of landholders, develops or improves privately owned land. A portion of the improved property is resubdivided and sold off to the private sector until the government has recovered its costs of development. What is left is returned on a prorated basis to the original owners. Holders of land surrounding such developments react somewhat like those enjoying the benefits of targeted infrastructure—that is, they are stimulated to invest in development of their private properties, too.⁴

Restrictive Controls

Governments maintain the right, of course, to intervene more directly, through a series of restrictive controls such as zoning laws, building and subdivision laws, building permits, tax laws that favor or punish certain land uses, regulations on buyers to affect demand (like nationality restrictions for buyers imposed in Liberia and Papua New Guinea), and ceilings on the amount of land permitted to an individual (India).

Land use controls of this kind can be effective, but they are essentially negative. They prevent landowners and developers from acting freely with the land they control. And they require a sophisticated, well-trained bureaucracy, with a strong enforcement arm, to operate effectively.

As far as we could tell, with perhaps one or two exceptions, no developing country uses such zoning and tax controls effectively at this time. Tax controls are not enforced with regularity in most developing countries or considered worthwhile by themselves in dictating the use of land sought by the controls. Few developing countries can afford the elaborate system of inspectors, officials with police powers, and judicial bodies to resolve disputes to make such systems work well.

In a few cases, land use controls are combined with land-market controls regulating the price and amount of land any individual may own. Rent control is an example. Such controls work poorly or not at all, however, in societies with relatively free markets. India's Urban Land Ceiling Act was passed optimistically, but large landowners circumvented it by conveying their excess land to relatives. Anytime that rent control laws exist, it seems that elaborate gambits exist to avoid the full impact of the laws.

Tax Policy

Tax laws, to control the use of land while producing revenues, have been adapted in some developing countries. The idea is to discourage owners from keeping their land vacant or underutilized, usually by imposing the tax on an assessed value of the site, instead of any income it might

produce. Heavy capital-gains taxes have been levied to discourage speculation, as have public purchases of land through tax incentives on property sold to the government.

In most developed countries, when such tax schemes have been adopted, they usually proved ineffective in contributing to land policy. What happened was that, without land price control, the taxes simply were shifted to the buyer so that the price of the land went up without any compensating effect on land use. Taxing vacant land has not been utilized much, but when it has, it has not always worked in bringing land into the market—although, again, it raised the price of land.⁵

As a result, when governments set out to buy land directly, they often find that the price has gone up because of their own tax policies. Moreover, developing countries seldom find the cadres of trained people necessary to implement the programs. Tax avoidance and poor tax administration compound all the problems inherent in the theories.

The effects of tax policy, at best, are negative. And they tend to deter only the worst cases of unsatisfactory private development. According to a growing number of authorities, only direct, positive government action is likely to control urban growth in most developing countries in a manner that public planners would desire.

LAND ACQUISITION FOR PURPOSES OF LAND USE CONTROL

Direct land acquisition is the method central to proposals for positive action in the area of land use.⁶ This view was expressed in the 1976 UN Habitat Conference on Human Settlements in Vancouver, British Columbia, and in many UN publications. Basically, its proponents feel that, in general, the world's growing need for urban land and land use control can be met better by direct public land acquisition than through other regulatory or tax devices. Land-acquisition laws, effectively implemented with a well-articulated public land policy, can channel growth more intensively, meet such needs as housing and transportation, protect the environment, stabilize land prices, and capture for public benefit the surplus value of land created by public investment. Three types of acquisition are generally considered:

1. Acquisition for specific projects.
2. Excess acquisition in connection with a specific purpose (as with land acquired for a railroad line that is expanded to include an extra 50 meters along the right-of-way for possible future use).
3. Advance acquisition of large land reserves as part of a land-banking plan.

Strategic, limited, advance land acquisition can serve as a key element in land use control in developing countries. Often, it is the only practical way to assure that land will be available for public purposes.

But acquiring land is not automatic assurance of efficient use of the land. Governments sometimes hold land vacant, like private speculators, and then sell it when the price is high to satisfy some requirement in their budgets. Moreover, squatter invasions sometimes cost governments the land they have acquired, not an uncommon occurrence in Latin America and Asia. Policies for the release and management of land, it would appear, can be equally as important as policies for acquiring it.

LAND-POLICY FORMULATION

The debate over control of land—public control versus private control—is not likely to be settled any time soon in most developing countries. Constituents will argue for the sanctity of private-property rights, and their counterparts on the other side will speak of the paramount rights of the state. But the real battle will rage in the marketplace, in the courts, and in the legislative bodies, and points will be won or lost each time the status quo is upset or disturbed.

Despite the difficulties, developing countries, as a matter of utmost priority, should attempt to debate land policy and to adopt a system for allocating land and resolving conflicts over its use—urban and otherwise. The purpose of such an exercise should be to find consensus when it exists, and to work toward a defined policy. This land policy should have a number of clearly stated goals to keep the availability of land in line with the demand for land, and at an acceptable time and price. These goals, which can be tailored and expanded to fit particular requirements, should include:

1. Preventing land from lying idle.
2. Avoiding urban sprawl.
3. Keeping prices reasonable for the private and public sectors.
4. Assuring that the public recaptures a reasonable part of the surplus value of the land created by public investment.
5. Making certain that land is available for essential public purposes at a fair price in a timely manner.
6. Protecting the environment.
7. Guaranteeing equity for all and preventing unjust enrichment of a few.
8. Protecting the rights of private owners to the most efficient use of their land.
9. Maintaining an uninterrupted supply of critical food.

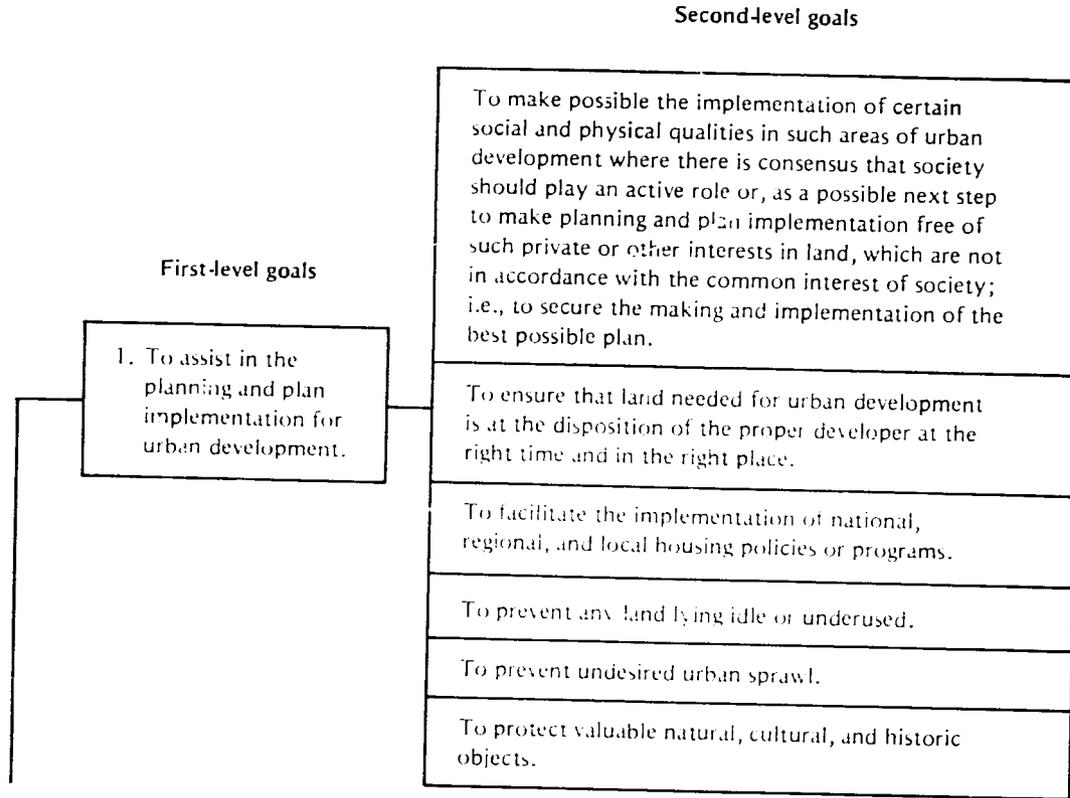
Table 1.1 shows a broad range of land-policy goals: top-level goals, first-level goals, and second-level goals.

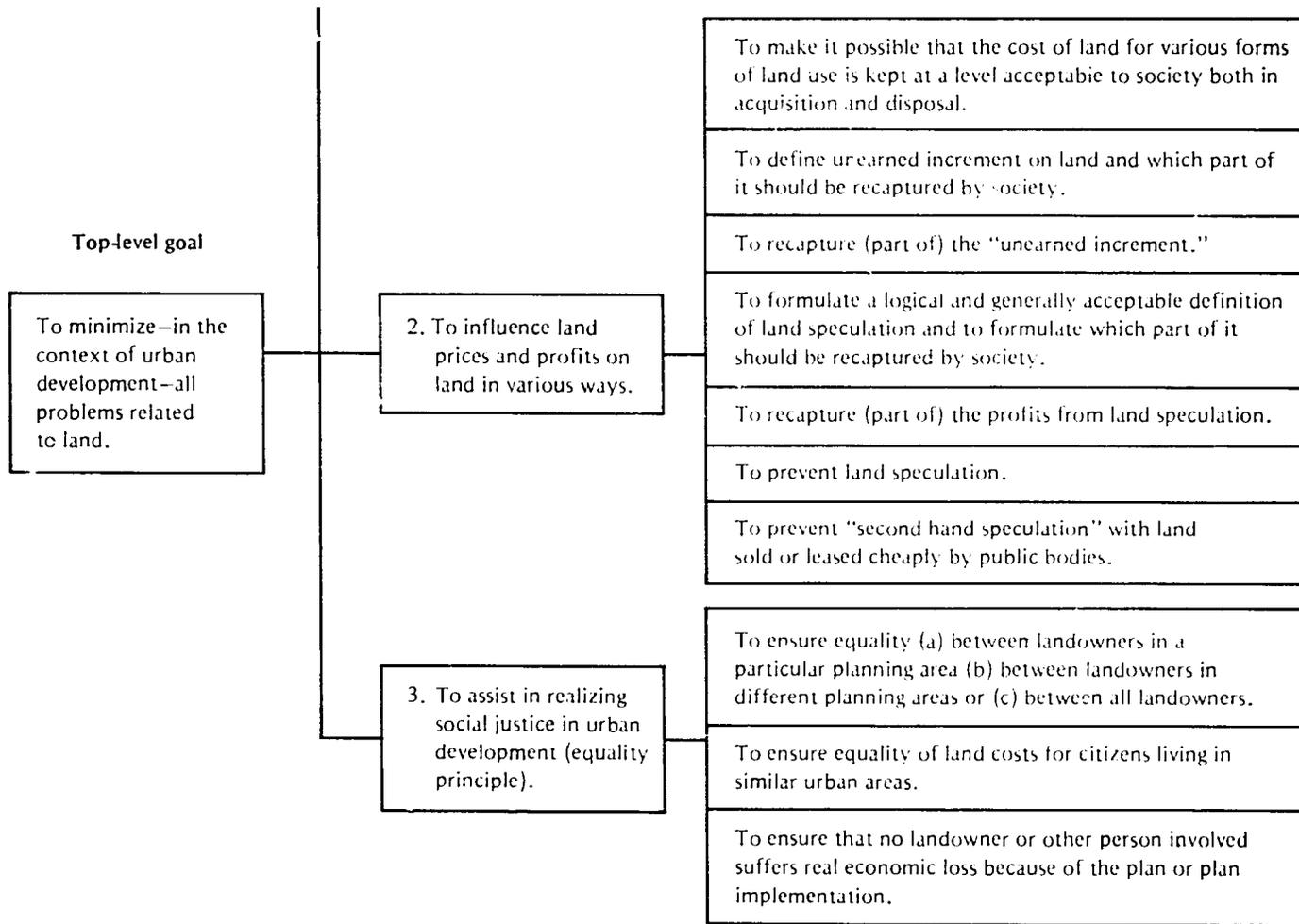
Few developing countries have clear comprehensive urban-land policies which prescribe the desired role of public land acquisition and disposition. Nor have many assessed their urban-land needs as a prerequisite to formulate such policy. Undertaking the necessary policy exercise—to assess the problem and select the appropriate response—is not easy but should be attempted.

And there is little time, really, for ideological argument. The urbanization of developing countries is moving too swiftly, and existing stocks of government-owned land are dwindling rapidly. Each country involved must decide its own ideological policy: Which land function is to be public, and which is to be private, and how much of each? Unfortunately, there may be as many answers to this question as there are developing countries.

It is clear, however, that officials in developing countries ought to have what we offer in the pages that follow. And that is a way to understand their future land needs—at least to the year 2000; an understanding of various policies, laws, procedures, and institutions used to carry out public land-acquisition programs and their relative effectiveness in various settings; and finally, an understanding of the analytical tools and methodologies which can be used in decision making.

Table 1.1. Goals of Urban Land Policy





Source: Reprinted with changes from "IFHP Working Party on Urban Land Policy," Proceedings of the International Federation for Housing and Planning Urban Land Policy, Liege, Belgium, 26-30 September 1981, pp. 16-17.

Land-Acquisition Techniques

All developing countries have some laws and procedures for the public acquisition of privately owned land. But few have genuinely comprehensive laws and procedures and still fewer have institutions and trained personnel to administer the laws they possess.

Those countries that have been comparatively successful in land acquisition generally have a broad variety of compulsory and noncompulsory powers at their disposal. Some may rely heavily on compulsory powers, as India does, and others, like Singapore, on voluntary purchases. Yet, each has a full range of powers to acquire land. As a practical matter, a realistic capability to acquire land compulsorily is necessary to induce citizens to negotiate in good faith. The reverse is equally true. If the public sector can demonstrate to the private sector its good faith and reasonableness by pointing to a broad, successful program of voluntary purchases, the private sector will not object to an occasional use of compulsory eminent-domain powers. A broad array of acquisition powers, including the compulsory and noncompulsory, as well as a system of incentives to encourage voluntary sales, should be sufficient. In addition to traditional legal authority, broad equitable powers also are needed to acquire land on such other nontraditional terms and conditions as are reasonable, necessary, and proper.

When political will to acquire land by compulsion is lacking or if public sentiment is against public land acquisition, there tends to be outdated, ineffective acquisition laws. Often in developing countries, the

result of citizen ambivalence or opposition is manifested in the laws themselves, resulting in laws that are equally ambivalent, weak, and badly in need of reform. Acquisition laws are tools, to be used or not used at the discretion of their owners, and should never be weak. Rapid urbanization in developing countries over the next few years will have a profound effect on attitudes toward public land acquisition. Many Third World migrants to cities will come from tribal or customary backgrounds, where public control of land is the norm. Powerful minority landholding interests now opposing government acquisition of urban land will lose influence as urban populations rise dramatically. For city officials, now is the time to enact broad and varied standby powers for public land acquisition to use when needed.

VOLUNTARY BARGAIN AND SALE

In an ideal system, perhaps 90 percent of all public land acquisition should be done on a voluntary basis. Voluntary bargain-and-sale transactions tend to minimize administrative cost and ill will. Developing countries with relatively free-market systems prefer this noncompulsory method, and undoubtedly this will continue to be the practice.

Required are willing sellers, willing public buyers, and a relatively operable land market where title to land and fair prices are determinable. In most developing countries, one or more of these components are usually missing.

The first requirement—willing sellers—poses a special problem. There is an increasing concentration of urban land in developing countries in the hands of powerful private interests. Because their economies are characterized by weak private markets, highly inflated currency, and absence of alternative investments, land is the best investment in developing countries. Consequently, the land is held for investment or speculative purposes and to store excess income. When selling the land, the owner faces the same problem that prompted the original land acquisition—where to invest excess capital? This lack of alternative investment opportunities cannot be solved in the near future. Even if it could, the demographics of rapid urbanization in these countries generally will ensure that urban-land investments will continue to be comparatively safe and highly profitable.

Furthermore, many citizens in developing countries are unwilling to conduct a commercial transaction with the government when their land-ownership and financial profit become matters of public record. In some circumstances, when tax avoidance or indifferent tax collection is prevalent, the seller is reluctant to disclose records. Others may simply not

want to deal with "red tape," delay, uncertainty of payment, and other problems often characteristic of public bureaucratic procedures not found in a private sale. Indeed, even negotiating an excellent purchase price could create problems for the private seller: His very success could lead to charges of corruption or political favoritism.

As for the second component—willing public buyers—public agencies in developing countries generally surround themselves with rules and practices that have the effect of discouraging or complicating the sale of land. Public laws often require rigid evidence of a good title in any public purchase. Unfortunately, land-titling systems are ineffective in many developing countries. Even if laws permitted officials to take reasonable business risks in purchasing land with less than clear title (and we discovered no such laws), it is doubtful that many would be willing to take the chance. Public officials are rarely rewarded for risk taking anywhere. In developing countries, rewards are fewer and risks greater.

Complicated public procurement procedures are another burden. Public notices, as are generally required, may lessen chance of corruption but they inhibit the assembly of land at noninflated prices. For example, publicly advertised intentions to acquire land tend to escalate prices and tempt owners to wait for higher prices. No private developer would declare his intentions in this way, but most land-procurement laws dictate this practice. Mexico and Portugal appear to be exceptions, in that the identity of the intended government purchaser may be withheld.*

The American Law Institute Model Land Development Code permits a public agency to acquire land without disclosing to the seller the purchaser's public identity!¹ Secret purchases, through private real estate agents, should be considered by developing countries at least in justifiable circumstances and under adequate safeguards. There is precedent for this in developed countries: The city of Stockholm is reported to use private agents to purchase land. Furthermore, the new towns of Tapiola, Finland; Columbia, United States; and Louvain la Neuve, Belgium assembled land secretly in this manner.

One suggestion to control potential abuse would allow a court to authorize a secret government purchase upon a showing of cause in an *ex parte* proceeding. After the sale, the court and sales records could be published. Another suggestion, made in a Joint Land Policy Study for

*In the summer of 1982, letters were sent to 40 members of FIACBI (the International Real Estate Federation) in developing countries. The letters asked questions about the public's use of secrecy and/or private real estate brokers in land purchases. With the two noted exceptions, this practice appears to be unknown.

Egypt, would be to create a land-development agency with authority to purchase land quietly without formally publishing its intentions in advance.² Regrettably, public procurement laws generally do not allow sufficient discretion for the government to fasten an offer meeting requirements of different sellers.

The third component—a vigorous private land market—is lacking in many developing countries. The market value of land thus cannot be easily ascertained. Without sufficient data to compute value, public officials would be imprudent to risk criticism by consummating purchases on their own authority.

The practices in Thailand represent examples of the limitations of a program that depends too heavily on the voluntary sale of land. Its National Housing Authority (NHA) has no effective compulsory-acquisition practices and acquires land almost entirely through a public-bidding procedure. The NHA will publish its land requirements from time to time and invite voluntary tenders. It might publish a call for 1,000 hectares in the northwest area of Bangkok, for instance. After that, it must wait for the private sector to present offers. It often takes months, even years, before the NHA is satisfied that the landowner's price is justified. After months and months of official deliberation over whether to pay the price, the NHA often finds that the landowner has then escalated his demand because of inflation. In recent years, fewer and fewer people have initiated offers in response to NHA invitations. There is some indication, moreover, that private developers and real estate corporations have acquired large tracts of land on the periphery of Bangkok and will use their market dominance carefully.³ Their investment in this land will do more than keep pace with inflation. Rapid urbanization of Bangkok virtually assures a dramatic capital gain in land value for private owners and accordingly, assures that there will be few willing to sell to the NHA.

In contrast, many countries are actively encouraging the private sector to sell land to the public sector. In Sweden, where the vast majority of land comes into public ownership through voluntary purchases, a complicated array of legal and tax-relief mechanisms make such purchases possible.⁴ Norway taxes land sales heavily unless land is sold to the public, in which case there is no tax. In India, a 1 percent transfer tax due on the private sale of land is waived when the public is the purchaser. In Guatemala, tax authorities engage in an unusual fiction to reduce the tax bill of a private seller when the sale of land is to the public: The taxpayer's tax "basis" is recalculated, simultaneously with the sale, so there is no gain or loss on the sale.⁵

Quite clearly, governments of developing countries will not have unlimited funds with which to satisfy every prospective seller. The goal,

therefore, should be to assemble a variety of benefits and inducements that cost the government relatively little but offer significant value to sellers.

The most direct way to encourage voluntary sale offers is through tax-relief or tax-abatement incentives. Governments can induce such sales by lowering taxes on profits in land sales (like in Guatemala), or by delaying or deferring tax payment, or giving tax rebates, or giving tax forgiveness on other landholdings of a size equal to the land sold to the government, and so on.

In addition, other incentives are possible. For example, a seller might be given preference in the title registration for his other landholdings in return for the voluntary sale of a specific parcel. In countries where problems of land-title registration take years to resolve, this could be an effective, cost-free incentive. Also, a government could designate its budget for infrastructure and services to areas where landowners have made voluntary sales. Governments could offer variances from zoning laws or building codes, where they exist, or revise their own procurement rules to reduce the inefficiencies caused by overregulation.

And then, of course, the government could impose penalties for those refusing to sell. Idle or underused land in the inner city is a serious problem. If vacant lands were taxed at appropriate rates resulting in real carrying costs, landowners might be more willing to sell. The same holds true for excess land held for speculative purposes. The Philippines has an idle-land tax of 5 percent on assessed value, although reports are that it is not being vigorously enforced. Taiwan has a vacant-lands tax.

The techniques used by the public sector to purchase land in a voluntary-sale procedure will affect the success of a land-acquisition program. Public officials should study carefully the strategies of individuals and organizations in the private sector who have developed successful techniques for acquiring land in the complicated and risk-prone real estate market. Understanding such techniques may well provide some guidelines for similar ventures in the developing countries. While assuming the same degree of risk may not be suitable for government-directed activities, some of the methods used by the private sector may be suitable for government-directed acquisition programs.

An important general concept of the private land developer (with some exceptions) is that no one piece of land has all the attributes of a perfect site. However, a large number of land parcels may contain at least some of these attributes. This is particularly true for shelter development. Since land for shelter development generally consumes from 50 to 70 percent of the total urban area, a great number of land parcels may be suitable for shelter. In acquiring such land, those in the private

sector will evaluate the suitability of and negotiate on many parcels of land simultaneously. This practice makes land far more susceptible to the laws of supply and demand than when a single piece of land is the subject of an acquisition program. By conducting a multiple-acquisition program, the private sector is able to determine the realistic market for land at a particular point in time and is thus more likely to find the seller who has the greatest incentive for completing a transaction. Basically, by looking at a region for land rather than at a particular parcel, the private sector land buyer will have more options and opportunities.

Under the best of circumstances, compulsory acquisition takes time, causes political resentment, and creates hidden costs. Developing countries, therefore, should invest time and resources to ensure a workable system for voluntary acquisition. It is rare for a voluntary system to work well in developing countries without some positive incentives to sellers. Any attempt to revise laws and regulations for public land acquisition will be seriously deficient unless the bulk of the effort is concentrated on how to make voluntary transactions the major tool of public land acquisition.

PUBLIC ACQUISITION OF LEASEHOLD INTERESTS AND OPTIONS

Public acquisition of land may be facilitated if the government acquires something less than full fee-simple ownership. Instead of purchasing outright, governments may wish to acquire leasehold interests. Private sellers may also find this more acceptable. The advantage to the government is that it can acquire needed land from current operating budgets, without paying excessive lump-sum sale prices that require extraordinary appropriations.

Acquiring a leasehold interest is particularly useful if the purpose of acquisition is short term, as for example, in temporary refugee and relief programs. The government could sublease and the owner-lesor could hold the land or sell the land to third persons subject to the government's lease. The owners of land so leased would have the security of knowing the land will ultimately return to them and their heirs. This practice would help to overcome the reluctance by landowners.

There is considerable usage of this technique in the islands of the South Pacific. The Cook Islands, Papua New Guinea, Fiji, and Tuvalu governments often acquire customary land through the use of leases.⁶ In Tuvalu, the law limits the government to leases of not more than 25 years. In

addition to annual rent, with the rate renegotiated every five years, the Tuvalu government pays a lump-sum compensation at the beginning of the lease for the loss of trees and standing crops. Public acquisition of leasehold interests is not widely used today. It nonetheless deserves careful study by officials in developing countries who are rethinking the alternatives.

Options to purchase land provide another example of less-than-freehold acquisition. Private land developers in developed countries rely heavily on the use of options to assemble parcels of land in large projects. Often, options are acquired by different nominees, each secretly controlled by the same developer. The use of nominees is necessary to avoid holdouts by a few landowners. If the developer is successful in assembling rights to a sufficient number of contiguous parcels of land, the options will be exercised and the land purchased. If, however, for reasons foreseen or unforeseen, the developer is blocked in his efforts to acquire rights to all of the various lots needed to comprise an economically viable parcel, then he can abandon the project. The developer's cost is only the sums paid to secure the options. Without the use of the device of purchasing options, the developer would presumably have to pay the full purchase price of each successive lot until such time as the land-assembly efforts were successful or were blocked—in which case, the costs and risks of land acquisition and assembly would be considerably greater.

Frequently, the cost of such rights (which are in reality a number of options under which the buyer may purchase the land) is related to the present owner's carrying costs of such land. Since the principal carrying costs for land, at least in the United States, are taxes, the annual cost of the option may well be less than 5 or 10 percent of the current value of such land. To make such a transaction attractive to the landowner, the future acquisition price is set significantly higher than the current value. By employing the use of options to acquire land, the land buyer is able, with a limited amount of resources, to control far more parcels of land than if he employed the technique of outright purchase. Since there is a high degree of risk in determining the future use of the land, this strategy can help reduce risk by controlling many parcels of land simultaneously. In addition, the use of the option allows the buyer to drop a particular project when it becomes apparent that the parcel is not suitable for development. The use of options are generally employed for intermediate periods of time, for example, from two to five years. Normally, since land values increase rather rapidly just prior to use, the cost of the options plus the premium on the site itself, are usually offset by the rapid increase in the site's value.

There is little evidence in developing countries of the similar use of

options by public authorities. The reasons for this are fairly clear; it can be traced to the difficulty in recording options on land-title registers and in enforcing the rights to land embodied in the options. The use of options presupposes a relatively sophisticated land market, sophisticated landowners and sellers and importantly, a legal system that can record and protect the rights of holders pertaining to options. Specifically, the holder of an option needs to be able to record the option quickly in a land-title register, thereby preserving the right to acquire the land upon the exercise of the option against the original owner and against any third person to whom the original owner may have wrongfully attempted a land sale. In many developing countries, it unfortunately takes many years to record a land transaction on the official land-title register. This obstacle needs to be removed before options can be used in such countries.

Another obstacle to the use of options is inadvertently created by laws in some countries which limit the damages that courts will allow to buyers or sellers when one party has breached a contract to sell or buy land. For example, in Colombia, domestic law provides that if a seller is unable to honor a contract of sale, the seller must pay the buyer liquidated damages in the amount of twice the down payment received. Likewise, if the buyer defaults, the seller can keep the down payment. The law imposes an equal penalty to both parties for breach of contract, and importantly, no other remedy is available to an injured party. Such laws which limit damages can undermine the use of options, as in the following example: A government purchaser agrees to pay a seller consideration equal to 12 percent of the purchase price for an option to purchase certain land anytime within two years from the date the option is signed. Then, after securing the option, the government purchaser is able to provide the area with roads, water, electricity, and other amenities, causing the value of the land to increase by 300 percent its original value. When the government seeks to exercise its option to purchase, the seller has a choice: either to honor the contract to sell or to dishonor the contract. If the seller decides to dishonor the contract, he will be forced to pay the buyer (the government) *no more* than 24 percent of the original sales price or now, only 8 percent of the fair market value of the land. If the seller then resells the land at the new value, he will make a handsome profit—even after paying the breach of contract penalty as limited by the law. Laws of this type often unintentionally discourage the use of options and should be carefully reconsidered.

Options can present an acquiring institution with an affordable method to assemble land over a period of time at reasonable prices. Every effort should be made to assure that applicable laws and practices facilitate the use of options.

ACQUISITION THROUGH BARTER OR EXCHANGE

In many instances, land sought in developing countries is appreciating so rapidly that sums received from the government in a voluntary or forced sale cannot be reinvested easily in as profitable an asset. Resistance to public acquisition, then, can seriously hamper the ability to acquire land. As a means of compensation, prior-owned government land can be offered in barter.

All too often, governments must use lands already owned to build schools, hospitals, housing, or roads—regardless of their suitability. To prevent this, the government can offer such prior-owned land as compensation for the acquisition of other land more ideally situated. Many countries have allowed specifically for the barter and exchange of land. Guatemala, Peru, Romania, the National Capital Commission of Canada, Chile through the Chilean Urban Development Corporation (CORMU), India, Mexico, Egypt, and Hong Kong—all appear to use this practice with some frequency.⁷

Often, government agencies will trade or exchange land already owned with other government agencies. In Egypt, a law required the ministry of Awkaf to turn over land in its jurisdiction to the governorates in return for whole or partial compensation, depending upon how the land was to be used. If lands were to be employed for public purposes, the governorate was to recompense the ministry of Awkaf up to 50 percent of the value of the property. If not, the governorates were to recompense the ministry up to 90 percent of the value, with an additional 10 percent for administrative expenses. The order does not appear to have been effectively implemented but has led to greater cooperation among these bodies.⁸ More difficult problems have been presented by military-owned land in Egypt. A more effective formal means for transfer of such land is required. Such a plan was worked out in the early 1960s for the development of Nasr City, the planning of which the ministries of housing and defense were jointly involved in.

In Guatemala, barter is provided for as a way of compensation in the acquisition of land. The Purchases Contracts Law⁹ provides that the public acquisition of land shall be done with or without payment and through barter or offset.

Jamaica provides an interesting case study of the use of land exchanges. In the mid-1960s, a decision was made to revitalize the Kingston waterfront area, which had begun to decay following the earlier relocation of port facilities to another area of the city. At this time, pending the establishment of the proposed Urban Development Corporation Law, a new corporation was established under the Companies Act and named

the Kingston Waterfront Redevelopment Company. The company was wholly owned by the government. It was given a mandate to acquire all the land in the redevelopment area and to implement a plan to develop or redevelop the area. The government both gave and "loaned" government land to the company and also provided some capital. The first task of the company was to prepare a landownership map of the area and establish a valuation of each of the parcels owned by private persons. After this was completed, it became apparent that the normal processes of negotiation or compulsory acquisition would be totally inadequate to allow the company to assemble the land at prices that would make the entire scheme economically feasible. The company then decided to exchange land (owned by the government and given to the company) in two new port sites for land on the Kingston waterfront. In some cases, commercial interests were given four square feet of land in Newport East for each one square foot of Kingston waterfront land surrendered. The total value of lands acquired on the waterfront by the company over a three-year period was Jamaican \$7,133,901 (approximately \$3,500,000, at that time). Over 26 percent of the value of lands acquired in this venture is accounted for by land exchanges.¹⁰

Various ministries own or control a considerable amount of urban land in developing countries. For example, in India, the Railway Commissions are reported to own sizable urban parcels alongside railway lines; in Seoul, Korea, the military controls the tops of hills for defense purposes. An important first step for every country is to take an accurate inventory of all land held by the various public agencies. Then, the land should be assessed to see if it is appropriate for the responsibilities and functions of the controlling ministries. The result of such analyses in many countries will be to identify land that is more suitable to other ministries' purposes than those of the holder. Excess land, germane for barter and exchange, can be identified in this way, too.*

To barter, a government will need a system for establishing the value of its tradable lands. Because of the usual difficulties in determining such values, barter may not be useful in compulsory acquisitions. Yet, in a voluntary transaction, it could be extremely important.

There is another land-acquisition technique which is important but does not fit precisely into any one of the categories in this chapter. The technique falls into the category of "intergovernmental transfers" or

*Funding for such studies should be readily available from the international donor agencies. A project of this type would interest a donor agency such as AID, but as an intrinsic part of the exercise, the donor would want to establish a system to maintain and continually revise the data.

exchanges. The actual acquisition of land by one public entity from another in an intergovernmental transfer may occur in a voluntary sale, gift, barter, or even part of a joint venture. In developing countries where national governments are strong and tribal areas and municipalities often weak, and where the national government is often the supplier of services requiring land (roads, hospitals, housing, and the like), there are many instances when land held by the city or tribe is required for the proposed project. If the public owner desires the national government to proceed with the project, a land transfer can take place. Often such land is donated to the project as the owners' fair share of expenses. On occasion, particularly when the national purposes are more remote to the immediate needs of the owner (for example, defense), other land is bartered or exchanged. We have not discovered instances in which expropriation has been attempted by one public agency against another. These problems are usually worked out by the chief executive or through political processes. However, tribal authorities—although public bodies themselves—have litigated against national governments in an attempt to prevent compulsory land acquisition. Liberia, some of the South Pacific Island territories, and Indonesia (with its huge transmigration project involving shifting urban populations to underpopulated islands) provide examples of such litigation.

It is difficult to generalize about intergovernmental transfers and exchanges except to note that the practice is widespread. As governments begin to make inventories of lands held by themselves (as we recommend in chap. 6) and the information becomes a matter of public record, it is expected that the practice of intergovernmental transfers of land through various techniques will increase.

PUBLIC-PRIVATE VENTURES

Background

Public land acquisition programs consume considerable administrative time and public expense. Further, landownership, alone, is not the goal. The government's goal is to devote the acquired land to some publicly useful purpose, such as roads, housing, or marketplaces. It is possible through public-private cooperation to accomplish the public purpose without the public sector actually acquiring the land as a first step. Many developing countries are using this technique of a cooperative joint venture with success. The US delegation at the UN Habitat Meeting in May 1983 has advocated such joint public-private ventures. When there is an active private sector in developing countries, the joint technique

can be as effective as a voluntary or compulsory public acquisition.

The essential element in these ventures is that land is devoted to a public purpose without the government acquiring the land and developing it. Considerable public outlays are saved. The approach varies from country to country. In Korea, most joint ventures have been initiated by the government. In Japan, private landowners have tended to organize first, agree on a site plan, and then petition the government to assist in development.¹¹

Land Readjustment

Joint ventures involving land contributions by the private sector and land servicing by the public sector are referred to as "land adjustment" or "land pooling." In land adjustment, an undeveloped parcel on the periphery of an urban area, is declared a land-adjustment area by appropriate legislation. Landowners are notified of the scheme, which may or may not be compulsory, depending on the percentage of landowners consenting. A site plan, prepared by either the government or the landowners, subdivides the parcel into streets, parks, schools, and sections for other uses. The area to be devoted to public use is measured and compared to the total project area. The cost of servicing the public and private areas is calculated, as well as the probable value of the private lots if they were placed on the market after servicing and land titling. With these figures, it is possible to determine how much serviced land must be sold to the private sector to recoup the cost of subdividing and servicing the land. The object is to create three categories of land in the project area: (a) the public land (roads, schools, and the like) that will remain in the public sector (usually between 15 and 25 percent of the total area); (b) the private land that will be sold by the government at a public sale to reimburse the government for its out-of-pocket costs for servicing the entire area (between 15 and 25 percent of the area); and (c) the private land that will be returned to the original owners in amounts proportional to original ownership shares from the remaining, now-serviced land after the public sector set-aside and after the land sales (between 50 and 60 percent of the area).

An examination of land readjustment in Korea may be informative.^{12*} It is based upon Japanese land reform and consolidation laws of the 1920s that were spurred by new cultivation methods and the increase of motor vehicles and roads. In addition, the following developments made new land use demands on rural areas: land consolidation; rectangularity-

* This information is summarized from Professor William Doebele's excellent work, *Land Readjustment*.

zation and the straightening and widening of rights-of-way for all-weather roads; the extension of education to rural areas; and the building of district and village administrative, health, and police facilities. Land-readjustment procedures involve organizing a voluntary association of local landowners, often under the leadership of a district official acting as executor, who would pool landholdings and give up to public use a small share (10 to 15 percent). Under this arrangement, each participant would get back consolidated land, usually rectangular in shape, with access to a farm lane that connects to an all-weather rural road. Land for schools, police stations, temple sites, and the like would also be included in the small percentage of land taken from each plot holder.

The executor would first determine from the land records the number and size of each owner's holdings and then would draw up a replotting scheme for approval. Landowners would regain plots equal in area to 50 to 80 percent of their original holdings. The executor, through negotiation and adjustment would try to return to each owner a plot located on or near his preadjustment holdings. Cash payments, by landowners to the executor, and by the executor to landowners, could also be used to even out any slight discrepancies in the readjustment process. When the landowners approve the replotting plan and surveyors reestablish the field boundaries, public-use sites and road rights-of-way, the executor issues new certificates of title.

Land readjustment procedures - to regularize and consolidate agricultural plots; widen rural access roads; and create communal land for village schools, central squares, and religious structures - have been accepted in rural Korea since the 1930s. Use in urban areas was not extensive until the mid-1960s.

In August 1966, the Korean government promulgated the Land Readjustment Project Law to modify the existing uses of land readjustment and to enhance its application to urban areas. In the language of the law, the purpose was to contribute toward the promotion of land use planning, adjustment, and consolidation, to enhance fair and balanced development of urban areas, and to improve the general welfare of the citizens by stipulating matters concerning the implementation procedures, processes, and responsibilities.¹³

Local government administrators were quick to see the advantages of using land readjustment in preference to earlier land expropriation laws of 1961 and 1963 for master planning of urban areas. Not only could unplanned settlements be regularized, but land needed for highways, roads, parks, schools, public squares, and the like could be obtained at no acquisition cost to the municipality. Further, land could be held in reserve by the executor (usually the mayor), to be sold to cover

the cost of infrastructure as well as overhead and other administrative costs.

Landowners cooperating in land readjustment projects also benefited. Their land after reduction (subtraction from their net holdings of an appropriate percentage to be used for public purposes or sold to recoup costs) became regularized urban land with basic services. The increase in land value was often four to six times the value of the original land before reduction.

Land readjustment has been used by a number of Korean municipalities to acquire land for major roads and more recently to develop land previously designated as agricultural but changed to urban residential under the city master plans. After the 1966 Land Readjustment Project Law, land readjustment became a primary tool of Korean urban land development. During the period 1966-74, for example, 25 land-readjustment projects were carried out in Korean cities resulting in the development of 327.5 square kilometers of urban land. In Seoul alone, approximately 41 land-readjustment projects completed by 1974 accounted for nearly one-third of the capital's developed area. The land returned to owners has varied from about 80 percent during the formative years of land-readjustment implementation (1966-76) to about 50 percent or even 45 percent during recent years. The willingness of landowners to accept smaller percentages of returned land reflects the progressively improved standard of infrastructure provision and the inflation of land values in newly urbanized areas. Presently, a typical land-readjustment project in urban areas would result in the following land use: about 30 percent for public use (including infrastructure and commercial), 20 percent retained by the executor for market sales to recoup costs, and 50 percent returned to the original owners. Small plot holders of the association, if their holdings are reduced after readjustment to a size too small to be a legal building plot, must accept cash compensation for their holdings.

The Korean Land Development Corporation (KLDC) recently entered into urban land development.* This has resulted in an expanded concept of the meaning and use of "reserved land" in land-readjustment undertakings. The KLDC has proposed that the executors of land-readjustment projects use the highest possible reduction ratio to hold back more land than is necessary for public use (roads, parks, schools, and the like) and for land to be resold (to recover infrastructure construction costs). The additional reserved land would be developed and used for housing construction for low-income families.¹⁴

Several advantages are indicated over outright purchases under the

*See, generally, Appendix A for a case study of the KLDC by Professor Gill Chin Lim.

City Planning Law (CPL). The executing agency—the city, KLDC, or the Korean National Housing Corporation (KNHC)—does not have to purchase the land or use expropriation to force landowners to sell. This reduces the capital flow of the developing agency, particularly during the initial stages of development. Politically, it is not seen as forcing owners to sell but rather as entering into a voluntary agreement for joint land development for urban use.

Land readjustment has great potential as a major tool for development of serviced land for housing low-income families—a function that the legislation in Korea did not originally intend.

Whether land readjustment has been fully successful in Korea is a topic for debate. Clearly, large amounts of land for public purposes have been acquired, at little direct cost to the public sector. The debate on the success of the program is centered more on the actual uses of the public land, however. In Korea's ten-year plan for national urban development (1981–91), up to 30 percent of the estimated land needed for residential sites is expected to be acquired through land-readjustment methods.¹⁵

The problems of land-readjustment methods might adversely affect its attractiveness, however, for use in other developing countries. The legal procedures and negotiations involved are complex and time consuming. Cohesiveness and cooperation between the private sector and the government are essential. The technique has been used, with varying degrees of success, in a number of countries, including India, Korea, Japan, Taiwan, Australia, Canada, and West Germany. Each is relatively more developed than the developing countries; of those developing countries that do employ land readjustment, all are Asian countries.

Does the technique offer anything for the other continents? To answer this, we must first consider that land readjustment has the following prerequisites:

1. National, provincial, and local support is essential.
2. Key ministries must be sympathetic.
3. In most countries, major new enabling legislation is required.
4. A country must possess an efficient system of cadastration or title registration.
5. An adequate corps of well-trained, objective appraisers of real property is necessary.
6. Highly skilled negotiators and administrators are essential.¹⁶

Because of these requirements, many countries may give land adjustment a low priority. Trained personnel, particularly at the municipal level, are one of the great shortages in developing nations.

Charitable Organizations

Other bases for joint venture versus outright public land acquisition should also be considered. Latin America and the Middle East have large tracts of valuable but decaying inner-city areas that are held by charitable organizations. In Latin America, the organizations are called *beneficencias*; in the Middle East, they are called *Waqf*. Both organizations hold properties in trust.

In Quito, Ecuador, the Society of Jesus Foundation owns a large tract of poorly serviced land, occupied by squatters and known as the *Solanda* site. The *Banco de la Vivienda* and the United States Agency for International Development, in a joint project, are upgrading this land with public funds. The foundation is contributing a portion of its land to the low-income people who occupy the land. In Peru, a single *beneficencia* may own up to 20 percent of the *tugurias* of Lima—densely occupied slums in the inner city. These charitable organizations are uncomfortable with their roles as slumlords and would be amenable to some form of joint venture. Public funds could upgrade the land in return for concessions on the part of the charitable organization—perhaps a transfer of a portion of the upgraded land to the public or to the low-income families.

The same basis for joint cooperation would appear to exist in the Middle East countries where *waqf* land, located often in the crowded, underserved *medinas*, is badly in need of upgrading. Here too, landlords have semipublic purposes and large holdings of inner-city land, which seem to supply the foundation for effective joint ventures with the public sector. Such joint ventures could well be in the form of land readjustment.

Development Plans

The Urban Development Act in Malaysia provides another example of a joint venture. When an area is declared to be a designated urban-development area, the landowners have three options: First, they can elect to participate in the venture by pledging their land and accepting a certificate specifying their share of profits or income. Second, the landowners can transfer their land to the public sector and agree to receive land of equivalent value in the redeveloped project area. Finally, they can elect to make a cash sale of land to the Urban Development Authority.

Similarly, in the Netherlands, Sweden, and France, private owners have transferred land to public land-development agencies to participate in development schemes.¹⁷

The willingness of landowners to donate land to a public venture, in

return for a right to share in profits, depends upon how the land will be used. If, for example, the public is acquiring land for use as a public market or industrial park, a private landowner may be willing to donate his land in return for a proportional share of rental income earned by the government. The concept of landowners sharing in the rewards of public acquisition—through a share of rental income or through stock dividend payments—is intriguing. It presumes an economy that is comfortable with notions of securities and has a market for the sale of securities. Not many developing countries fit these criteria, but the idea is worth investigating.

Turnkey Projects

Another type of joint venture is seen in turnkey projects sponsored by public agencies. These often involve the construction of low-income public housing and have been carried out successfully in Honduras, Jamaica, and Hong Kong, among others. The government, as an alternative to public action, encourages the private sector to acquire land and construct housing. The private developers often acquire land more quickly and cheaply than the government. In turn, the government promises to be a buyer of last resort if the houses cannot be sold, and the developer can use this government backing to raise capital for the project. As a practical matter, however, he can sell the houses to private persons at a higher price than the government would pay for the unsold houses. Thus, in return for a promise unlikely to become due, the government manipulates the private sector to design, develop, finance, and market houses that the government wants supplied to low-income families. All of the costs and most of the risk are intended to be placed on the private sector, enlisted for a socially worthwhile endeavor. For a turnkey project to be fully successful, the developer must judge the market correctly and develop units of land economically enough to show a profit. When it works, both sectors profit equally.

Excess Land

Another version of a public-private interaction is found in such public agencies as highway departments which occasionally acquire excess land in connection with their projects. Typically, a ministry of transportation in the course of acquiring rights-of-way to build a road will acquire land at key locations in excess of the strict requirements of the road-building manuals. After the road is built, and the land adjacent to the road appreciates in value, the ministry of transportation will sell or lease the excess land to the private sector. The income from the sale or lease of the excess

land will assist in financing the road and will capture, for the public sector, the increased value of land created by the original investment of public funds. The disposition of this excess land for defined purposes will also allow the public to accomplish some land use controls not otherwise within the grasp of the public sector.

When the so-called excess land is acquired under the eminent-domain powers of the public sector, serious legal issues may arise concerning whether a required public-purpose test has been met. For this reason, public officials contemplating the use of eminent-domain powers will require the advice of counsel. Typically, land that becomes excess land is acquired voluntarily, more by accident than design. In some cases, sites used to store construction materials and equipment become excess after construction is finished. In other cases, the excess land is acquired at the request of the owners or the courts; they ask a public agency to purchase remnants or remainders of property because the major portion of a seller's land has been purchased and the smaller remaining piece, not required by the public, will be rendered uneconomic by its severance from the major parcel. In the United States, the Washington Metropolitan Area Transit Authority owns many parcels of land alongside its newly constructed subway which were acquired in this manner. These parcels are being sold or leased to private developers in a process that earns about \$1.5 million per year for the authority.¹⁸

Land Sharing

Finally, land sharing among landlords and squatters merits attention as a technique when some purposes of public land acquisition might be achieved without the actual public purchase of land. Land sharing is the term used to describe the development and joint use of land firmly occupied by squatters for which the legal owner does not have the practical ability to evict the squatters. In these cases, generally involving very valuable inner-city land, the legal owner will approach the squatters with a development proposal by which the squatters will agree to vacate a portion of the land (perhaps one-third) in return for a package of benefits to be given by the legal owner. Land sharing in this manner has been used successfully on an informal, ad-hoc basis in India and Thailand, to name a few countries.

Legal owners of slum property occupied by squatters are often unwilling to permit public authorities to upgrade these slums. The owners fear that such action will tend to make their chances of re-entry even more remote. Land sharing affords government the opportunity to cause slum property to be upgraded without the necessity of direct public expropriation. Serious considerations should be given to how government can facili-

tate private land sharing as an alternative to direct public land acquisition.

Joint public-private projects require that laws encourage and give administrative flexibility to government officials to engage in such projects while offering the private sector incentives and benefits.

SELECTED REGULATIONS THAT FACILITATE LAND ACQUISITION

Freezing Land Use and Value

One way a government can facilitate land acquisition, through compulsory or voluntary means, is by freezing the use and value of private land preparatory to a government taking. In Sri Lanka, a minister can issue an order, either for a general or a special-interim development, that will hold land in an area for which a land-planning scheme has been prepared. The effect is that no development, subdivision, or construction can occur without permission of the planning authorities. Such freezing orders are especially useful when a country's laws or procedures prevent quick acquisition of land or when disclosing government intentions to purchase might cause a sharp increase in land prices. Turkey has a regulation that enables the freezing of site value for a four-year period during which land acquisition can take place. Malaysian law permits such freezing, too. In France, the minister of building may specify development zones, freezing value for the purpose of government purchase at a price equal to that prevailing one year before the declaration of the development zone.¹⁹

Preemption

Similar to freezing is preemption, which allows public agencies to step in and assume the position of a buyer, once the terms of a private land sale have been set. The right of preemption is usually confined to certain identified areas where government development plans have already been approved. In this instance, the law requires the seller to inform the government of the terms of each proposed sale of land within the defined area. The government may elect to become the buyer on the same terms offered the prospective private purchaser.

In Tunisia, preemption is exercised by the Housing Land Agency—Agence Foncière d'Habitation (AFH)—land bank. No real estate transfer may take place within areas designated for urban expansion by the

council of ministers until the AFH has had two months to exercise its right of first refusal. If the AFH notifies the seller of its decision to purchase and its willingness to pay, the seller has one month to accept the offer, agree to adjudicate its price, or take the property off the market. If the AFH decides not to make an offer, it cannot exercise its right of preemption on the property involved for six years.²⁰

Hungary, Poland, and Sweden have preemption rights that apply throughout the country. Japan, France, the Federal Republic of Germany, and Korea have such rights in restricted, designated areas.²¹ Preemption is the step before expropriation. When used with regulations for freezing land values, preemption tends to control prices.

The preemption right is a tool that limits free trade. It must be used carefully, to avoid an undue chilling effect on land markets. When used without effective steps for voluntary and compulsory acquisition, the procedure is not sufficient to allow the government to acquire land efficiently. Used in conjunction with other techniques, it may help give developing countries time to sort out priorities and implement imperfect procedures for land acquisition.

ACQUISITION THROUGH CONFISCATION AND NATIONALIZATION

Confiscation or Forfeiture

There are various laws in existence that mandate the forfeiture of land as a penalty, when certain laws of the country are breached. Such laws do not appear to be widespread in either developed or developing countries. Yet, such forfeiture laws, when based on the misuse of land or the failure to pay taxes on land, can become useful land-acquisition tools. These laws can be effective in enforcing land use controls, strengthening a country's land-acquisition potential, and in some cases, serving as a substitute for land acquisition.*

The most straightforward laws of this nature will provide for the forfeiture of land when land is used in violation of health and safety codes to the detriment of the public. Abandoned buildings that pose a fire hazard to the entire community would fit into this category. Typically, the laws provide that, if the hazard still remains after proper notice to the owner, then the public may condemn the property and take possession.

* The instruments for land acquisition that fall within the concept of "expropriation" are discussed in chap. 3.

Forfeiture laws, if used for other than the most compelling situations (and then only with proper procedural and judicial safeguards), will always be unpopular and a source of discontent. Given the strong need for a general consensus in favor of fair land-acquisition powers, forfeiture laws that tend to lessen citizen confidence rarely will be worthwhile. In developing countries, where most of the residential units for low-income people are technically illegal and not built to code specifications, forfeiture for building-code violations would be viewed as unreasonable. For this reason, it is important for a developing country to enact such laws that will maximize public goals without threatening public consensus.

The threat of forfeiture for failure to build to prescribed legal codes might induce developers (as opposed to residents) to build properly. If this does not work, however, developers may be more inclined to sell land voluntarily to the public or to form a joint venture with the public, should the public want the land. Considering some of the difficulties of upgrading slums in illegal housing units, the threat of forfeiture might be a useful bargaining tool to gain the developer's cooperation.

An early example of forfeiture legislation is seen in the Swamps Improvements Ordinance of 1863 in Nigeria. It required the owners of certain swamplands on the island of Lagos to fill the swamps. If they did not do so, the penalty was that land would be sold by public auction to anyone who could carry out the requirements of the ordinance. If no purchasers were forthcoming, the government could take possession of the land.

Tuvalu Island in the South Pacific provides another illustration of confiscatory legislation. Under the Neglected Land Ordinance, the government is entitled to seize neglected land and redistribute it to the needy. There is no adequate definition of "neglected land" and no evidence that this ordinance ever has been used.²²

Perhaps the most significant opportunity for land acquisition through confiscation is found in the area of delinquent property taxes. So much urban land in developing countries remains untaxed (for one reason or another) that this topic deserves considerable attention. Most developing countries have difficulty in taxing urban land. Some of the difficulty is traceable to poor land titling and recording systems. Much, however, is due to poor tax enforcement, lack of citizen cooperation, and ineffective penalties for wrongful tax avoidance. If the penalties for tax avoidance were to include forfeiture of the land, it is believed that tax collection would increase and the public would acquire greater reserves of urban land through confiscation.

Forfeiture for tax delinquency is practiced in many jurisdictions in the United States and in Canada. Peru, Indonesia, Sri Lanka, and Bolivia,

and Jamaica are reported to have similar legislation.²³ In most cases of tax delinquency, the land is simply viewed as an asset to be seized in the event of nonpayment; the state acts as creditor to sell the land to raise revenue and discharge the debt. Some United States laws have a slightly different purpose, more like land acquisition.

In the United States, the Ohio legislature enacted a law in 1976 with the purpose of restoring tax-delinquent property to the tax rolls. The law established a land reutilization program to hold forfeited land in a land bank until it was sold. Most of the land acquired under this program is unique, since it is abandoned inner-city land.²⁴

The city of St. Louis and the state of New Jersey have special tax-delinquency forfeiture laws. They permit authorities to proceed against the property itself, in an in-rem proceeding as opposed to finding and obtaining jurisdiction over the delinquent owner. In New Jersey, the law permits cities to foreclose on properties 21 months after delinquency. Such foreclosed property is auctioned to the public at the next annual foreclosure sale. At this sale, and for six months thereafter, the true owner may regain the property by paying the taxes due. After the six-month period, if no one has bought the property (which often is the case), the city can take clear title. Thereafter, the city can hold the land or sell it subject to such conditions as use, rehabilitation, and the like, as it deems appropriate. The Ohio law has special features of interest. The Land Reutilization Authority (LRA) enjoys broad powers to sell, hold, or dedicate the land for public purposes. The law requires the LRA to act with advice of several advisory committees, composed of citizens of the tax district. The Ohio LRA will not acquire property that is actually occupied, since it does not seek to become a slum landlord; nor does it acquire property when an owner is attempting to improve the property and pay taxes.

Utilizing such laws in developing countries should be considered carefully. What is needed is a land-development agency, a land bank, or the equivalent public institution that can effectively hold, manage, and dispose of land acquired by this method. When there is no institution with broad land-management authority, the law could simply appoint a single agency—for example, the national or city housing agency—as beneficiary of the land to take possession of and use it for housing purposes.

If procedural safeguards are assured, tax-delinquency forfeiture laws could add more acquired land. Such laws could augment other voluntary and compulsory land-acquisition laws. Even if rarely used, the threat of foreclosure for delinquency would assist in tax collection and could well induce a voluntary sale or assist in the negotiation of compensation under an eminent-domain proceeding.

Another type of confiscatory law relates to nonland-related crimes per-

petrated by persons having property. In Liberia, crimes of high treason are punishable in part by the confiscation of the real property of the guilty person.²⁵ Historically, laws of this nature have accounted for large tracts of land coming into public hands. Fallen heads of state (e.g., A. Somoza in Nicaragua, Haile Selassie in Ethiopia, and William Tolbert in Liberia) owned significant amounts of land confiscated upon their ouster.

Some confiscation statutes have nothing to do with the failure of owners to comply with any law, but relate rather to the public's need for land: thus, some laws permit the government to seize small portions of private land without compensation for public purposes such as roads. In Zanzibar, up to one-fifth of any owner's land may be so taken.²⁶ Other developing countries permit small seizures without compensation. In Jordan, for instance, up to 25 percent of a person's land may be taken for road or open-space purposes.²⁷ The 20 percent and 25 percent figures used in Zanzibar and Jordan seem high. A lesser percent, say five percent, might be more reasonable, and if adopted, might make laws of this nature more usable as a practical matter.

Nationalization

Some developing countries have sought to control land use through the nationalization of all land. Nationalization is accomplished through general laws which transfer broad categories of land to government ownership. It differs from confiscation because it is generally more sweeping and does not depend upon a concept of punishment or forfeiture.

Tanzania, Ethiopia, and Zimbabwe have issued decrees of nationalization. Zambia has converted all land formerly held by freehold tenure to 100-year leasehold. Land subject to the leasehold may now be transferred only with permission of the head of state, in theory. It is not clear, however, how the law is being applied in practice.

There is no evidence that nationalization across the board has solved land-control problems in countries like Tanzania, Ethiopia, or Zimbabwe. Squatting and illegal land invasions appear to occur with the same frequency as in neighboring countries where nationalization laws are not in force.²⁸ Indeed, the experience of countries that have nationalized all land demonstrates the essential weakness of public land acquisitions—it is not the acquisition per se that accomplishes useful purposes, but rather, the policies and procedures for land use that follow acquisition. While land acquisition permits positive control of land, it does not automatically carry out such control.

In some cases, developing countries have nationalized property owned by noncitizens. Korea has acquired large areas of land formerly owned

by the Japanese. Sri Lanka, India, and Pakistan took over Crown lands of significant size when Great Britain ceased to control these countries. In the Dominican Republic, the estates of a deposed dictator were nationalized. The Federal District of Mexico acquired large estates under land-reform expropriations in the early 1900s.

The decision to nationalize land is rarely made on the basis of careful analysis of land-acquisition goals and the cost and benefit of various alternatives for such acquisition. Rather, decisions are made in a highly political context. Ideology often is deemed more important than analysis. For example, there is an increasing trend toward nationalization of both rural and urban lands in Africa, a region characterized by highly unstable political systems.

ACQUISITION THROUGH GIFT OR DEDICATION

Gifts of land from private citizens to the public, for various reasons, account for a fair percentage of public land holdings. Increasingly, in the United States, developers are giving land to the public in transactions that resemble barter or joint-venture contributions more than gift procedures. In some instances, a developer seeking approval from a zoning commission will be forced to dedicate a percentage of his land to the public, as a condition of getting zoning or building approvals. In other cases, involving large tracts of land, developers may give land to the public for schools, roadways, and the like, thus avoiding taxes on such land and avoiding express or implied duties to provide such public services directly. The gift in such cases, when followed by state-financed school construction, will redound to the advantage of the donor, by raising the value of the remainder of his land.

Tax laws can encourage gifts of land. For example, a developer, having caused the value of his land to increase markedly, may shelter his income through a gift to the public of a portion of the highly appreciated land.

Perhaps the most impressive examples of gifts of land can be found in the Middle East. Individuals there give land to the religious authorities, to be held in trust for the benefit of the donor and his heirs. These gifts, ostensibly motivated by a sense of religious duty, often are administered by the state. In Egypt and Tunis, for example, separate ministries exist for the purpose of administering lands held under these trust arrangements. Much of the inner-city land in Tunis, comprising the *medina*, or old city area, is *Waqf* land, having been deeded to the religious authorities by private citizens.

For developing countries engaged in drafting comprehensive land-

acquisition laws, proper consideration should be given to laws that induce or facilitate the gifts of land to the public.

CONCLUSION

Ideally, developing countries should have laws that permit the use of all the land-acquisition techniques mentioned in this chapter. This would require extensive law revision in most countries. The laws should provide a broad range of options to officials seeking to acquire land. If public sentiment tended to disfavor certain of the options, it should be the goal of progressive elements in the country, nevertheless, to keep all the options in the legislation as standby authority for use whenever public sentiment shifted. In essence, it is recommended that legislative revision go forward at the same time a land-policy debate is occurring. The goal is to have the outcome of the policy debate affect the *administration* of the revised acquisition laws but not the laws per se. By the year 2000, the needs for land acquisition will be markedly different from the needs of today. Those countries best prepared to meet the needs of tomorrow will be those that act today to establish a broad array of legal tools and procedures.

Eminent Domain and Expropriation

No one tool is enough to guarantee a successful public land-acquisition program. Further, no voluntary land-acquisition program will be effective in developing countries unless it is coupled with the real threat of compulsory land acquisition.

The concept of expropriation is based on a sovereign's power of eminent domain; this power is generally accepted worldwide and allows the state to take private land for the good of the state. Much of the laws pertinent to eminent domain in developing countries is inherited from former colonial powers. The cost and time required to implement these outdated laws make them almost useless. According to the World Bank, the majority need drastic revision, if they are to be effective during periods of rapid urban expansion.¹ Furthermore, it is necessary to adopt and modernize comprehensive land-acquisition legislation and policies, through democratic processes, to secure the kind of public support needed for compulsory acquisition.

Following is a broad survey of the various laws of expropriation, as found in selected developed and developing countries. Amid the range of the various laws and the special characteristics of various countries, certain models will appear more effective than others. (The reader can judge which model best suits the historical and cultural characteristics of a given country.) Expropriation laws are as diverse as countries' notions of the importance of private property and social land needs. Certain

features, however, are common enough to justify grouping them under organizational headings for this survey.

The first section of this survey—under the heading “Public Purpose Doctrine”—will discuss how different countries determine when the expropriation power may be used. The second, “Valuation and Compensation,” will explain how compensation paid to landowners is fixed by various laws. The third and final section, “Procedure,” will catalog time, notice, and other procedural provisions, and the manner in which expropriation laws allocate power among the different administrative branches (legislative, executive, and judicial) and government levels (national, state, and local).

The laws and court decisions discussed generally will be referred to in the present tense, although some may be old or outdated. This is done mainly for simplicity, since this survey is designed to illuminate the variety of possible alternatives, not catalog what laws actually are in effect today.

PUBLIC-PURPOSE DOCTRINE

Introduction and Basic Principles

In one way or another, all expropriation laws permit land taking only for the public benefit; that is, all countries have some form of public-purpose doctrine. In each country, the doctrine mediates conflict between a private citizen's right to control his landownings and the land requirements of the public. The form of a country's public-purpose doctrine depends on a balance between these two interests according to the country's cultural norms.

Public-purpose doctrines are expressed in two basic ways:

1. General guidelines, which state merely that expropriation requires a public purpose. Terms can vary: *Public* may become *social*, *general*, *common*, or *collective*. Similarly, *purpose* may be replaced by *need*, *necessity*, *interest*, *function*, *utility*, or *use*. Not surprisingly, these general guidelines, laid down by legislatures, leave considerable discretion in the hands of the executive and judiciary branches of government. Executive power to declare a given project, such as a hospital, within the public-purpose requirement is checked only by judiciary power to interpret the statute.
2. List provisions, explicitly identifying the purposes—schools, roads, government buildings, and the like—that the legislature deems to be public. Purposes not appearing on the list may not form the basis

for expropriation of land. List provisions permit the executive and judicial branches less discretion than general guidelines.

Frequently, the two approaches are combined in a single expropriation scheme. The Labour government of Great Britain in 1974 enacted the Community Land Act (CLA) to promote land banking in localities around the country. Land banking is the public acquisition of land to be held in reserve to meet future public needs. The CLA public-purpose doctrine gave very broad discretion to local authorities. Power was delegated to acquire "development land," which, in turn, was defined as "land which, in the opinion of the authority concerned, is needed for relevant development."² This general expression of power is subsequently restricted in the statute by a list of exemptions and exceptions. First, the land must be needed for "relevant development" within ten years. Second, the act exempts single houses, certain agricultural and forestry land, and certain charitable and church land. Finally, the CLA gives the national administration power to create new exceptions by regulation.

In addition, the combination, list plus general guidelines, is used often in expropriation laws that have "quick-taking" provisions. Such provisions allow possession before compensation is fixed or paid (sometimes immediately upon declaration of public purpose). For example, the law of Guatemala permits expropriation generally "for reasons of the collective good, benefit or public interest."³ On the other hand, it permits quick-taking only in cases of war, public calamity, serious disturbance of the peace, and whenever lands are needed for the construction of roads or highways.⁴

The Guatemalan quick-taking provision is an example of an exclusive list. These are intended to limit the discretion of the executive expropriating agency. That is, the agency is prohibited from straying beyond the bounds of the list. Another type of list—the inclusive list—is designed more to limit the discretion of the judiciary. It always is used in conjunction with a general guideline, so that the entire public-purpose doctrine permits expropriation if the purpose conforms to the list *or* the general guideline. Under such a statute, the executive agency is afforded discretion to stray outside the list (to declare purposes which, although not named on the list, nevertheless fall within the general guideline). But, when the purpose declared is named on the list, the judiciary's discretion to interpret the statute to disallow that purpose is limited (or eliminated) by the explicit nature of the legislative authorization.

Thus, in Brazil, two purposes are recognized as justifying expropriation: (a) "public utility," defined by list to include national defense, public health, construction of public works, and achievement of state

monopolies; and (b) "social interest," a general guideline that permits purposes aiding in achievement of the "social function of property," which includes the just distribution of property.

A variation on this approach can be found in the law of Mexico. There, expropriation is justifiable by a showing of "public utility," defined as: (a) public services, including roads, bridges, tunnels, expansion/maintenance/beautification of villages and harbors, hospitals, schools, parks, gardens, sports fields, government office buildings, and scenic/artistic/historic preservation; (b) national defense; (c) public safety and health; (d) monopoly profits (against); and (e) all other cases provided for by special laws.⁶

Similarly, in the Netherlands, housing and physical planning are listed as acceptable public purposes in the Expropriation Act. Any other purpose must be declared as within the scope of "public utility" by a special act of Parliament.

Nigeria has a list statute, but the categories are broad. It defines public purposes as including: exclusive government use or general public use; use in connection with sanitary improvements of any kind (including reclamation); use for laying of new townships, obtaining control over land contiguous to any port; obtaining control over land whose value would be enhanced by the construction of any railroad or other public works or convenience about to be undertaken, and obtaining control over the land required for mining purposes, rural settlement, development, telecommunications, and other economic, industrial and agricultural development purposes.⁷

There is a noteworthy difference between the Brazilian approach on the one hand, and the Mexican and Dutch approach on the other. Under the Brazilian, the executive may declare purposes outside the list. The executive declaration is subject to judicial review (statutory interpretation of the general guideline, "social interest"). In the Mexican and Dutch systems, the executive must obtain legislative authorization for purposes outside the list. Both approaches limit executive discretion, but they do it in different ways. The Brazilian approach uses equitable principles and is basically reactive (the judiciary may disallow demonstrably bad purposes). Conversely, the Mexican and Dutch approach, which uses democratic principles, is basically active; (e. en a demonstrably *good* purpose must be approved by the legislature before the expropriation may proceed).

*Although this is primarily a list statute, the final catch-all provision (labeled "XII" in the actual law) provides an avenue for ongoing legislative expansion of the definition of "public utility."

Executive discretion may be further restricted by completely removing the power to declare a public purpose. In Argentina, the power to declare a public purpose for a given project resides in the legislature. The executive merely chooses the particular parcel to effect the purpose. The legislature is confined by the constitutional requirement of "public utility," which has been broadly defined in terms of "all those cases in which the satisfaction of a requirement determined by social improvement is aimed at." These guidelines, however, do little to limit legislative discretion. A legislative determination of public utility will be judicially overruled only when seriously arbitrary, as when property is taken from one person to give to another for the latter's private use.⁸

The Argentinian "public utility" requirement is like most general guidelines in that it delegates broad discretion to the entity empowered to make the public-purpose declaration. In most countries, however, this entity is part of the executive, rather than legislative branch. When general guidelines exist, rarely is there an effective legal mechanism for attacking an expropriation on the grounds that it is not for a public purpose. Courts generally are reluctant to undermine the public-purpose finding. The expropriator's discretion under a general guideline provision is frequently bound only by procedural safeguards and standards for judicial review.

Valid Purposes

The purposes permitted to justify expropriation, under the public-purpose doctrines of various countries, derive from three sources: the three branches of government. The legislature may set out certain purposes in a list provision. The executive may, either by regulation or by practice, identify permissible purposes (assuming they are not invalidated by the judiciary). Finally, the judiciary, in the course of many decisions, compiles a list of purposes construed as falling within the statutory or constitutional guidelines.

Various Permissible Purposes. Among countries for which data about particular permissible purposes are available, transportation purposes appear with the most frequency. Roads and canals are listed in the laws of Afghanistan; roads and railways in the laws of Japan; highways in the laws of Nepal; and roads, streets, sidewalks, bridges, ferries, wharves, piers, airports, and canals in the laws of the Philippines.⁹ Similar transportation purposes are approved in Mexico, Panama, Costa Rica, Thailand, Honduras, the United States, Sweden, Venezuela, and Guatemala (the quick-taking statute).

Neither the list of transportation purposes, nor the list of countries

specifically approving transportation purposes (of some form) is intended to be exclusive. The former is meant only to convey a flavor of the kind of transportation purposes some countries have approved. The latter is but a partial list of such countries. These caveats apply as well to the other types of purposes which will be discussed. As a practical matter, however, almost every country approves some form of transportation purpose.

Another class of purposes frequently permitted is the construction of public buildings. A typical country, Panama, defines schools, libraries, hospitals, foundling homes, and sanitariums as within "social interest." Many simply provide for "public" or "government" buildings, as in the Philippines, Afghanistan, and Mexico.¹⁰ Honduras also permits expropriation for charitable buildings. Stadiums in Venezuela, markets in the Philippines and Afghanistan, as well as mosques, plants, factories, and houses for the poor in Afghanistan—all are approved public purposes.

It is not uncommon to see military purposes mentioned, as in Honduras, Afghanistan, Venezuela,¹¹ and Thailand. National defense is always expressly or by implication an acceptable public purpose. Moreover, public utilities—water, sewerage, electricity, and gas—are frequently singled out as permissible public purposes. Again, these may be included only within the general guideline of "public purpose." They can, however, be subsumed under some slightly more specific heading, like "public works" (Republic of Korea and Brazil), or "public health" (Brazil, Costa Rica, and Mexico), or "physical planning" (the Netherlands).¹² Finally, they may be specified in even greater detail. Costa Rica has an entire law devoted to aqueducts and sewers. Afghanistan provides specifically for expropriation for dams and reservoirs, waterways, and canals for irrigation. Panama singles out aqueducts, drainage ditches, and pipelines. And Japan cites electric power lines.¹³

Parks often are defined as within the scope of "public purpose" or its local equivalent. Costa Rica (parks and gardens), Honduras (public squares), Panama (parks), Mexico (parks, gardens, sports fields, and scenic, artistic, and historic preservation), Sweden (recreation), Venezuela (cemeteries), and the Philippines (parks and playgrounds) all make special note of one or more purposes in this category. Other singled-out purposes include telecommunications¹⁴ and monopoly profits.

Misuse of Property. In some cases, the public-purpose test to support an expropriation is not determined by how the public authority intends to use the land. Rather, the determination is how the private owner's existing use is contrary to the public interest.

In Ecuador, the *Municipal Regime Law* says that it is the prerogative of the municipalities to expropriate land that has not been put to a socially

efficient use. This prerogative is awarded to the Ecuadorian Housing Bank (BEV). Under this law, a parcel can be expropriated if not built upon within five years after a notice is given by the BEV. The same applies to structures that the BEV considers obsolete, except that, in the case of houses or buildings, the deadline for improvements is six years. When a parcel is large (10,000 square meters or more), the deadline for parceling, development, and sale is two years after notice.¹⁵ Payment for expropriation in these cases is made at the municipal-assessment value, with 30 percent down payment and 70 percent in 20-year bonds carrying 8 percent interest. Lands or parcels expropriated may be used for multi-family housing construction or by the social security institute. The lands also can be used for other low-income housing programs and can be sold to the beneficiaries.* Similarly, in Bolivia, there are grounds for expropriation when certain property is not being used to fulfill a social function.¹⁶ These kinds of purposes—to prevent misuse of property—have a superficial appeal. Yet, they are not recommended for general adoption. The difficulty of defining which uses are antisocial makes such provisions difficult to apply fairly and tends to interfere with the legitimacy and utility of more conventional expropriation statutes.

Agrarian Reform Laws. Agrarian reform laws are plentiful among the developing countries. But since this study is primarily concerned with urban problems, we will describe only briefly the two most prevalent types of agrarian reform laws as they elucidate the public-purpose doctrine: (a) one, typified by Panama's Agrarian Code, allows for expropriation of agrarian land for redistribution when the land is insufficiently exploited. (b) Another, typified by Chile's Agrarian Reform Law of 1967, provides for expropriation of the excessive portion of very large, privately owned plots.¹⁷

A combination of these two approaches can be found in Costa Rica. Under the Law of Lands and Colonization, the land on which squatters live is expropriated and deeded to the squatters.¹⁸ This is a combination of the principles of the Panama and Chile laws in the sense that, if the owner does not purge his land of the squatters, the land is deemed not sufficiently exploited, and consequently, the law presumes he has more land than he needs.

Housing. Most countries have some provision to make housing construction a public purpose. Sweden and the Netherlands use expropriation for housing for a broad range of the population. Singapore, on the other hand, has limited housing expropriation to serve the low-income

* See also Appendix C, which contains a case study of Ecuador.

strata of the population.¹⁹ Housing, of some form, is also specifically authorized as a proper expropriative purpose in the Republic of Korea, the Philippines, Pakistan, Costa Rica, Panama, Puerto Rico, El Salvador, Chile, Peru, and India. Some countries (El Salvador and the Philippines, for example) allow quick-taking for housing purposes. Others (Nicaragua and Panama) specify "housing for workers" as a valid public purpose. Slum clearance is singled out as a public purpose in the Philippines and in Brazil.²⁰

Many expropriation statutes in developing countries expressly include public, low-income housing within their definitions of public purpose. Countries with list statutes that expressly include public housing, or with specific expropriation statutes dealing only with housing, might consider housing as a valid public purpose, despite its effect on individual beneficiaries.

Many countries have comprehensive expropriation laws dealing solely with housing. Costa Rica has its Law of the National Institute of Housing and Urbanization. Chile, in the late 1960s, empowered the ministry of housing and urbanism to expropriate apartments and resell them to the occupants on subsidized financial terms. Peru has a similar provision for expropriation, redevelopment, and resale of "marginal districts and shanty towns," and a statute allowing expropriation of undeveloped land for "urban development and promotion of economic housing."²¹

Taking property from one private person to give to another can be problematic under the public-purpose doctrine. In the context of public-housing programs, this issue has arisen often when title to the new housing is to be vested in the beneficiaries. Problems have occurred even when the public retains title but the benefits of the expropriation accrue to specific lessees. In West Germany, under the Urban Renewal Law of 1971, power was given to the executive branch to designate a redevelopment zone, to expropriate land, to install new housing infrastructure (upgrading water and sewers), and to resell the land to private persons. This power has been little used for fear of political repercussions.²² In Thailand, the National Housing Authority has never used its expropriation authority, largely because of fears of the legality of taking land compulsorily from one citizen for the benefit of another.*

In India, the legislature has imposed a sort of private-purpose limit. Land expropriated for housing in Delhi is not sold as a freehold, but leased in perpetuity. Conditions on the leasehold prevent change of land use; they also prohibit transfer for ten years and reserve to the government half of the increase in value on transfer.²³

In the United States, the judiciary has been watchful over the private-

* See case study on Thailand in Appendix B.

purpose limit in housing cases. For many years, federal courts held that expropriation for resale violated the "public use" requirement as set forth in the Fifth Amendment to the Constitution. A 1954 Supreme Court decision reversed this trend. The Court upheld the constitutionality of the District of Columbia Redevelopment Act, expanding "public use" to mean "public purpose" or "benefit." Although most federal courts have followed this countertrend, it has been limited to slum-clearance cases, when the public benefit is clear.²⁴

The private-purpose limit is not merely a formal exercise. In Pakistan, the Punjab provincial government passed legislation that conferred almost unchecked power on housing and city planning agencies. This power has been used to take land for minimal compensation (often 25 percent or less of market value), subdivide it, and resell it at highly subsidized prices. One observer has remarked, "Through this sequence, one set of landowners is deprived of market values, and they are transferred through allotments to another set of property owners. It is no wonder that the act has turned into a political and administrative tool to enrich influentials."²⁵

Industrial Development. Some countries permit expropriation for industrial development. Here, the government assembles a large block of land to be resold to private industry for industrial use. This process serves the public interest by allowing industry to avoid the typical problems facing private-land assembly efforts. A business trying to assemble land for a parcel big enough for an efficient-scale plant might go elsewhere, rather than submit to exorbitant demands of a local property owner. Avoiding these problems benefits the public, by providing employment and boosting the tax base. Afghanistan and Puerto Rico expressly include industrial development within the scope of the public-purpose doctrine. In the United States, the Supreme Court of the state of Washington, however, held that such an industrial development plan violated the public-use requirement of the State Constitution. Interestingly, seven years later a State Constitutional Amendment reversed the effect of the decision.²⁶

India, Korea, and Singapore provide excellent examples of states exercising compulsory acquisition powers to benefit private industrial growth. In India, the centralized government's land-acquisition offices go so far as to accept requisitions for land issued by private companies. For example, a company wishing to build a factory will identify a parcel and then request the government to use its powers of eminent domain to acquire the land. The company pays the cost of the land acquisition, as determined by the government office.²⁷

Land Banking and Advance Land Acquisition. Land banking, as noted previously, has the potential for private purpose-abuse in much the same way as other abuses of expropriative power. It creates an opportunity for private gain and thus for official corruption, favoritism, and abuse. Land banking, as the term is used here, is the taking of property before a public purpose is stated or known; it is distinguished from advance land acquisition, under which the future public purpose is announced at the time of expropriation. Sometimes, however, the terms are used interchangeably in the literature and in court opinions.

Advance land acquisition as such is prevalent in many countries. Expropriation for advance acquisition or land banking is less common. Most such actions come through voluntary acquisition techniques. Specific provision for some form of expropriative land banking is made in the Philippines, Cameroon, Sweden, Singapore, India, Great Britain, Puerto Rico, and some US states.²⁸

Land banking was long practiced in West Germany under a 1902 law, but it has been declared unconstitutional by the Federal Constitutional Court, relying in part on the public use or benefit provisions of the Basic Law. The general rule in the United States is that the public purpose of a land-banking program must clearly outweigh any incidental private benefits. Thus, while land banking for urban renewal was upheld in Colorado, land banking for industrial development in Arkansas was not.²⁹

Limits of the Public-Purpose Doctrine

The contours of the public-purpose doctrine are not easily defined. Efforts in various countries to produce workable general rules (as opposed to the specific list provisions) appear to have been less than fully successful, in terms of avoiding disputes and litigation.

When substantive limits to the doctrine have been enacted by the legislature or declared by the judiciary, they have generally been quite vague. We noted the definition of "public utility" in the Argentine Expropriation Law of 1948 as "satisfaction of a requirement determined by social improvement." The Philippine Supreme Court has wrestled with the meaning of "public use," equating it with "public advantage" and "public benefit." The Court has found permissible uses that (a) enlarge the resources, increase the industrial capacity, and promote the productive power of a considerable number of inhabitants in any part of the State; (b) lead to the growth of towns and the creation of new resources for the employment of capital and labor; and (c) contribute to the general welfare and the prosperity of the whole community.³⁰

The Supreme Court of Mexico also has reworked the definition. In 1917,

"public utility" was defined as that which satisfies a public need and redounds to the benefit of the collectivity. Nineteen years later, however, the Court overruled itself, holding that the earlier definition was too narrow. The new definition encompassed strict public utility (tantamount to public use), social utility (redistribution of wealth), and national utility (war, nationalization).³¹

The Supreme Court of Justice of Panama has defined public purpose as that in which the state has a direct involvement and which constitutes an activity of the state, directly or through concessionaires, and which are intended to satisfy needs of general interest in a regular and continuing form.³²

Previously, we described the shift from "public use" to "public purpose" or "benefit" in the United States in the context of urban renewal and the private-purpose limit. The same issue has generated constitutional debate in the Philippines. Both the 1935 and the 1973 Philippine Constitutions have special provisions on the expropriation of land "to be subdivided into small lots and conveyed at cost to deserving citizens." The 1935 provision was severely limited in application by the Philippine Supreme Court in 1949 (*Guido v. Rural Progress Administration*). Balancing the subdivision-resale provision against the public-purpose provision, the Court held that a distribution of land must benefit many people, not merely 10 or 20 or 50 people and their families. The Court declined to give any more guidance on the meaning of "many." Although the *Guido* case was widely followed for many years, there is some question as to whether a 1970 case may have reversed this trend of judicial "unyielding insistence on the primacy of property rights."³³

In Brazil, expropriation may be effected for reasons of public utility or social interest. In the latter case, the goal is the achievement of the "social function of property," which, in turn, primarily means the just distribution of property. The Brazilian Supreme Court has held that property so expropriated may go to private parties so long as it is used in the common interest. If expropriation is carried out solely in the interest of the private transferee, it should be disallowed.³⁴

In contrast to the quantitative approach suggested by the Philippine Court in the *Guido* case, the Brazilian Court in the *Vargas* case seems to adopt a more qualitative, although perhaps equally vague, approach. To demonstrate the latter approach, consider the housing programs of the Netherlands, Sweden, and Singapore. Singapore limits its expropriation-based housing program to low-income housing. The Netherlands and Sweden use expropriation to provide the land to house broader sectors of the population. Singapore's policy may be based on the conviction that only low-income housing constitutes a qualitatively adequate public purpose to outweigh the private-purpose argument against resale.

As we have seen, this is expressly the case in the United States.³⁵

The private-purpose argument may be mitigated by controls placed on the transferee's use and profits. Thus, the industrial-development law of the state of Washington, United States, was struck down in the Hogue case and restricted the use of the expropriated land to be resold for industrial use,³⁶ (although it was effectively reversed later). Similarly, we see the freeze on land use imposed under the Delhi program (prohibiting a person from converting a publicly provided dwelling into, for example, a supermarket). Many countries allow expropriation for concessionaires or public utilities (for the provision of water or electricity) which are private or quasi-public. They, in turn, are typically closely restricted with regard to prices and profits.

VALUATION AND COMPENSATION

Valuation

Expropriation is a forced sale; as distinguished from confiscation, expropriation as used here means that the owner is compensated for the property taken. The valuation process, whereby the compensation is fixed according to law, is generally the most difficult, time consuming, and litigated part of the expropriation process.

The fundamental principle that guides valuation under most expropriation laws is the payment of "fair market value" or "just value." Brazil's practice is typical. The Constitution requires compensation to be just; it should neither enrich nor impoverish the expropriated party.³⁷ The determinants for the just value are set out by statute: (a) assessed value for tax purposes; (b) acquisition costs of the property; (c) profits earned from the property; (d) location of the property; (e) state of preservation of the property; (f) insured value of the property; (g) market value over the past five years of comparable property; and (h) valuation or depreciation of remaining property after the sought land is taken.³⁸

Brazil is unusual in that it considers the profit-earning capacity of the property. Lost profits as a result of the interruption of business are awarded on the basis of the time that the owner could reasonably take to buy a comparable piece of income-producing property with the compensation money.³⁹

The Brazilian valuation process is judicial, as distinguished from administrative. The judge appoints an expert, and each party (the state and the private owner) appoints an assistant to the expert. The expert makes an advisory report to the judge, who is free to reject all or part of it, but he must explain any differences between his opinion and the

advisory report.⁴⁰ If the judge-determined value is greater than the amount originally offered by the state, the state will normally be assessed attorney's fees.⁴¹ Valuation is based on the value on the date of the appraisal; if more than a year passes between the appraisal and the final judicial determination (whether in the trial or appellate court), an adjustment is made to account for change in the value of property.⁴²

Under the India Land Acquisition Act of 1894, the court considers (a) the market value of the land as of the notification date of the compulsory acquisition; (b) damage sustained by the taking of any standing crops or trees; (c) damage sustained by severing the land to be taken from other land; (d) damage affecting other property movable or immovable, or earnings; (e) reasonable expenses in changing the person's residence or place of business; (f) damages resulting from diminution of profits of the land between the publication and declaration of taking and actual taking by the collector; and (g) an award of an additional 15 percent of market value as *solatium* in consideration of the compulsory nature of the acquisition. Matters not to be considered include the increase in the value of the land resulting from the anticipated public use and the improvements made after the notification of the intended acquisition.⁴³

In Mexico, the valuation is based on the value declared or accepted by the owner for tax purposes. The only valuation issue therefore is determining the change in value as a result of property improvement or deterioration after the assignment of a tax value. By contrast, in Singapore, the declared tax value (within the last two years before expropriation) is a ceiling for valuation.⁴⁴ In Guatemala City, the ceiling is the tax value plus 30 percent.⁴⁵

In Venezuela, the price is fixed by a committee of two: an expert appointed by the court and another appointed by the property owner. The decision of this committee is virtually final. It may be overturned only on a showing of bias, open violation of the valuation principles set out in the Expropriation Law, or plainly erroneous data.⁴⁶ The experts are allowed to consider loss of "good will" in their valuation.⁴⁷

Like Brazil, Venezuela provides for the reduction of compensation when the expropriation project enhances the value of adjacent property retained by the owner (when there is only a partial expropriation). Unlike Brazil and Venezuela, however, Honduras does not customarily deduct, from the valuation of a partial expropriation, the increased value of the remainder because of the expropriation project.⁴⁸ Venezuela stipulates, on the other hand, that if the reduction in value of the retained portion exceeds one-quarter of the total compensation, the owner may require the government to expropriate the entire property.⁴⁹ Provisions of this type—"inadequate remainder" provisions—are common, although few have such a well-defined condition of operation. The usual statute, as

in Argentina, allows the owner to require purchase of the whole parcel on a showing that the remainder has been rendered incapable of rational use (because of irregular shape, for instance) by the expropriation.⁵⁰

Many valuation schemes attempt to recover for the state the so-called "unearned increment," that is, value added to property by social improvements or speculation in anticipation of the expropriation. Ghana, for example, ignores the last two years of improvements in its valuation calculations. Singapore has a similar provision that places a burden of proof on the owner to show that any improvements in the last two years were not made in contemplation of expropriation.⁵¹ Another Singapore provision adjusts compensation downward for the value attributable to government improvements over the last seven years prior to expropriation.

Sweden has a flat guideline setting the valuation at the market value ten years before the expropriation application was submitted. There is, however, an exception for expropriation of owner-occupied dwellings. Also the owner must be guaranteed sufficient compensation to buy a new home of comparable quality.⁵²

Value freezing is a technique used to manage prices of public acquisition. Statutes using this device pick a time period before the date of expropriation and declare that the value to be paid will be the value of the land as it existed as of the specified period, for example, two or four years before the date of expropriation. Variations of this device are seen in statutes under which the public can declare certain lands to be subject to potential public purchase. Thereafter, for a specified period of time, the public has a preemptive right to purchase the land, and the value of the land is frozen as of the date the notice is made.*

Some valuation provisions reflect other social concerns not related to property. For example, Sri Lanka—as well as many other countries—ignores value deriving from use contrary to law or public health. New York and Hong Kong deduct from the valuation of expropriated land housing that does not conform to building and public-health standards.⁵³

Some statutes are more generous to the expropriated party. For many years, India provided for a 15 percent bonus (*solatium*) to be added to the market value. In 1976, however, the Urban Land Act created compensation ceilings for expropriation of excessive vacant landholdings. For example, if an individual owns more than 500 square meters of land in a city of more than five million inhabitants, the excess may be expropriated for compensation not exceeding 10 *rupees* (or about US \$1) per square meter. Similarly, the Punjab Provincial Government of Pakistan has established a 20,000-*rupees*-per-acre compensation limit.⁵⁴ Both of

* See discussion in chap. 2 ("Selected Regulations that Facilitate Land Acquisition").

these acts fix compensation at a fraction of market value, and both have generated serious implementation problems.

Of particular interest are the Singapore and Taiwan laws, which compel a property owner to sell to the expropriating public authority at a price equal to declared tax values. Declared or assessed tax valuations are used as a basis for expropriation. For this device to be effective, there must be considerable uncertainty as to whether there will be expropriation and highly developed land-title and taxation systems.

Self-declaration of land value in Taiwan works as follows: First, an Urban Land Value Appraisal Committee is established. It is comprised of elected members of the city or town or local area. Also on the committee are various public officials from tax, public works, and administrative offices. This committee establishes an annual evaluation of land tied to a *Torrens* system of land registration. After the standard value of different types of land has been declared by the committee, each landowner has to declare his own land value, which should not be less than 80 percent of the publicly announced land value. If it is below 80 percent, the government requires the landowner to declare his value again within a certain period of time. Should the redeclared value still be below 80 percent of the appraised value, the government has the option either to purchase the land at the value declared by the owner or to collect land-value taxes according to the higher publicly appraised and announced land value.⁵⁶

In Spain, the Expropriation Act of 1944 governed the expropriation procedure. Failing mutual agreement among the parties, valuation is assessed by an independent provincial expropriation board and, in principle, is based upon the tax assessment of the property. If the board believes that the tax assessment does not reflect the real value, it may take steps to rectify it. A 5 percent "deprivation bonus" must be paid to the owner within six months following expropriation.

This law was changed by the National Housing Plan leading to the Act of 1962, under which the expropriation and valuation of land is to be determined exclusively on the basis of commercial indices of land values. These indices are prepared by cities with more than 50,000 inhabitants, from evaluation of all land under its jurisdiction. This practice represents an attempt to speed up expropriation procedures while still maintaining the safeguards enjoyed by private individuals. This law, intended to secure rapid expropriation, grants compensation based on the use and value of the land and not on speculative value. Under the 1962 Act, land purchased for a 15-year national housing program (1961-1976) was purchased compulsorily, according to the price indices determined by local authorities. When local authorities fail to set prices, a central land authority with its own financial resources and an effec-

tive administration takes over. A local authority is obliged to publish assessments of land prices periodically, irrespective of whether the land is to be expropriated. The valuation serves as a basis for taxation and is revised every few years. The added value of the land resulting from economic and social development is taken into consideration during periodic revisions.⁵⁶

A simple way to calculate compensation is to fix it at the price the owner paid for the property. Singapore and El Salvador have laws that permit this method of valuation as long as the owner purchased the property within two years before expropriation. Commercial property in Maharashtra, India, is valued at 100 times the net monthly income, as determined from an average of the five years before expropriation. Most statutes provide for the inclusion of damages in addition to market value in the valuation. But few provide guidelines for calculating damages. Guatemala, by contrast, adds a flat 30 percent for damages to the market value of land expropriated in Guatemala City.⁵⁷

Various standards for valuation can be combined in a single statute. This may be done by listing the standards as alternative indices, as we have seen in the Brazilian statute. It may be accomplished also by using two standards as alternative ceilings. For example, in the Philippines, there is a provision defining just compensation as the lesser of market value or assessed value. Finally, a list of standards may be provided as shifting burdens of proof. In El Salvador, the law directs valuation to be set by a panel of experts. If the experts cannot agree, the value is set at the declared value for taxes. If the owner fails to produce the declaration, the government has the right to a valuation set at the price the owner paid (if he bought the property within the previous two years). If none of these methods works, another expert is appointed to resolve the dispute in the original panel.⁵⁸

At the other extreme is the Nicaraguan Law of Expropriation, which provides no standards for valuation. And there are statutes that include negative standards, that is, items not to be considered in valuation. For example, Sri Lanka, Nepal, and the Philippines have provisions prohibiting consideration of the owner's sentimental attachment to the land or the expropriator's urgent need for the land.⁵⁹

Time and Form of Compensation

The typical compensation provision requires prior compensation in cash. "Prior" here means prior to the transfer of the property from the owner to the expropriating agency.

Quick-Taking Statutes. Exceptions to the prior compensation rule frequently are made in the form of quick-taking statutes. Such laws allow the government to take possession prior to compensation, when an urgent need is shown. As a practical matter, every expropriation statute should contain some form of quick-taking authority for emergency needs. Otherwise, any landowner could delay the actual taking, through litigation as to proper value, to the point that it would undermine the expropriation. The disadvantage of quick-taking is that projects may be commenced before the real cost of acquiring land is known.

As we have seen, other purposes beside urgency may also justify quick-taking in some countries. For example, roads and highways are cited in Guatemala. Also, the urgency requirement may be broadly interpreted, allowing quick-taking in a high proportion of cases.⁶⁰

A number of examples of quick-taking statutes in developing countries are in effect. In Thailand, there is a special law for expediting acquisition for highway construction. In a particular case of highway construction, work can begin before there is a final agreement on prices. However, the portion of highway construction must be considered to be of a priority nature. In the Philippines, upon filing a petition for expropriation and deposit in the Philippine National Bank of an amount equal to 10 percent of the declared assessment value, the government or its authorized agency acquires immediate possession, controlling disposition of real property.⁶¹ Peru has procedures for quick-taking. After a supreme decree of expropriation is approved, the government occupies the land, usually within three months.

Even Indonesia, which has laws that may be characterized as fairly weak regarding the powers of the state to expropriate, has a quick-taking statute. In case of an emergency, when lands are needed immediately, the minister of internal affairs can issue a decree authorizing the agency who applied for the expropriation: to take possession immediately. Although the expropriation law defines emergency as an epidemic or natural disaster, in practice the meaning of an emergency is broadly interpreted to include the implementation of development programs. The taking of possession of land for the Jakarta sports facility for the Asian games of 1962 was based on such an "emergency decree."⁶²

In Ecuador, there is no quick-taking authority. The issue of compensation must be settled before the government can take possession. This has rendered the device of expropriation of little use, either directly to acquire land, or indirectly as a potential weapon to make voluntary negotiations proceed more smoothly.

Deferred Compensation. In addition to the quick-taking exceptions to the prior-compensation rule, there are rules allowing payment of compensation in installments. For example, in El Salvador, for expropriation cases involving war, public calamity, water supply, electricity supply, housing, and highways, compensation may be paid in installments spread over not more than 20 years.⁶³ A similar exception is provided by statutes that allow payment in the form of bonds. This also is an exception to the requirement of cash payment. These provisions are especially common in agrarian-reform laws.⁶⁴

Whenever there is a form of deferred compensation, the question remains: When should compensation be paid? Frequently, under quick-taking statutes, the expropriator is required to deposit with a court some security against the eventual compensation award. The law may require payment of compensation at the end of the valuation proceeding (as is often the case), at the end of the final appeal (as it once was in Mexico), when the emergency passes (as in Panama), or some time after the emergency passes (two years in Costa Rica.) Most provisions allowing bond or installment payments place a time limit on the compensation plan. The issues involved in the time consideration include the urgency of the expropriation, the ability of the government to pay, and the burden placed on the landowners by the delay.

In some instances, the form of payment is related to the reason for expropriation. In Ecuador, the Municipal Regime Law says that it is the prerogative of the municipalities to expropriate land that has not been put to a socially efficient use. This prerogative is awarded to the Ecuadorian Housing Bank (BEV).^{*} Payment for expropriation in these cases is to be made at the municipal assessment value with 30 percent down-payment and 70 percent in 20-year-bonds carrying 8 percent interest.

Trade or Exchange Provision. The most common exception to the cash requirement is the trade or exchange provision. Such a law allows the owner to be compensated with another piece of property. In Malaysia, the collector is given the authority to make equitable arrangements in lieu of monetary compensation. The collector also has the authority to make an oral offer and to conclude the nonmonetary awards when the land area is small, the number of persons are few, and it is expedient to do so.⁶⁵

In Cameroon, where plots acquired are more than five hectares, the

^{*} See chap. 2 ("Selected Regulations that Facilitate Land Acquisition").

families are to be given other compensatory plots to live on, plus some indemnity for resettlement. This also is true in Indonesia, although it is not clear that these barter and exchange provisions are a practical alternative to monetary compensation.

PROCEDURE

Authority

Expropriative authority may be allocated in two ways: (a) horizontal allocation, which determines the balance of power between the three branches—legislative, executive, and judicial—of government and (b) vertical allocation, which apportions power among the various levels of government and nongovernment agencies. Thus, authority may be allocated to federal, state, or local governmental entities, to quasi-governmental entities (like utilities and land-development agencies), or to private entities.

In Nicaragua, the vertical allocation of authority depends on whether the expropriation is part of a plan. If it is part of a plan, then the planning agency (whether local, regional, or federal) is authorized to make the declaration of public utility or social interest and to designate the particular parcels to be expropriated. When there is no plan, and when, for example, only one city or village will benefit, then the municipal corporation makes the declaration. If more than one locality will benefit, the declaration must be made by the national district.⁶⁶

The horizontal allocation of authority in Nicaragua is more typical. The legislature sets out the procedure, including the vertical allocation of authority. The executive decides when a project is of public interest, designates the property to be expropriated, and appoints an expert to evaluate the property. Then, a judicial proceeding resolves any dispute over the "indispensability" of the particular parcel and the amount of compensation. There can be no judicial review of the executive declaration of public utility or social interest.⁶⁷

In Venezuela, on the other hand, the declaration of public interest is ordinarily made by the legislature. Thereafter, choice of the particular parcel to expropriate is left to the executive. Thus, the legislature retains control over the decision to expropriate and broad control over the amount of land expropriated. Although the executive undoubtedly has some discretion in the latter regard, it would not be permitted to expropriate 100 acres of urban land for a legislatively approved project to build an elementary school. The executive has discretion to choose the location of the property. Further, the executive's discretion is greatly expanded

by an exception to the legislative declaration requirement; in an emergency, the executive may make the declaration of public interest in lieu of the legislature. The authority to declare an emergency rests solely in the executive, and so it is difficult to imagine how the executive's emergency power is checked.

Like many other countries, Venezuela has a list of specifically approved public purposes in its Expropriation Law (highways, schools and airports). For these purposes, the decision to expropriate becomes an executive decision, because the purposes have been generically declared of public interest by the law. Otherwise, the legislature has a role in making a declaration of public purpose. The legislative declaration also is waived in cases in which the expropriation is part of a city plan.⁶⁸

It should be apparent by now that there are two kinds of authority involved in an expropriation procedure: the power to make a decision and the power to constrain the decision-making process. When we speak of authority here, we generally mean the power to make a decision. Power to make the public-purpose declaration, to designate the particular parcel to be expropriated, and to determine valuation are, in a larger sense, allocated to all three branches. For example, an executive's declaration power may be constrained by the legislature's power to make a list of permissible purposes and the judiciary's power to interpret the list (as well as check it against some constitutional standard). Designation authority—which land to take—is also, typically, the executive's decision. In the case of comprehensive planning, as in the Netherlands, designation of the purpose for each plot of land may be effected through a quasi-legislative process of public hearings and council votes.⁶⁹ In Sri Lanka, citizen comments are solicited, but they play much less of a role in determining the outcome than in the Netherlands. Thus, the line between legislative and executive branches is blurred. By comparison, the designation power is clearly legislative in Guatemala, where both the declaration and the designation must be made by act of Congress.⁷⁰ We found no countries that allocated to the judiciary decision-making power with respect to declaration or designation.

Valuation authority is generally the power of the executive. When this is so, the valuation process is frequently assisted by a panel of outside experts, like in Guatemala.⁷¹ Alternatively, there may be staff organs within the executive to evaluate the property. In Indonesia, an evaluation committee is formed with members drawn from the tax service, public works, the land-registration service, and the provincial assembly.⁷² In Guatemala, where the legislature makes the declaration and designation, the executive handles the valuation. In Indonesia, the executive does all three.

The valuation may also be made by the judiciary. In Costa Rica, the

amount of compensation is fixed by a judge on the basis of opinions of experts appointed by each party. The value may be lower than either opinion, but it may not be higher than the highest opinion.⁷³ We found no country in which the legislature was given authority to make valuations.

Vertical allocation of authority is chiefly a question of centralization. At one extreme, Indonesia requires each expropriation to be approved by the President. At the other extreme is India, which has a system of well-developed political subdivisions, each with broad land-acquisition authority. In India, the public's expropriation authority may be invoked by both public and private persons or bodies that can provide sufficient assurances that the land sought will be put to the uses specified in various land-acquisition laws.

Brazilian law offers a typical example of vertical allocation. The executive normally holds declaration power that is delegated sometimes to the level of government that benefits from the expropriation. Thus, if the expropriation is for the benefit of the nation, the declaration is made by the President (or his delegate). If expropriation is for the benefit of state or municipal subdivisions, the appropriate state and municipal authorities make the public-purpose declarations. In addition, concessionaires (public utilities like telephone, electric, and gas companies) may initiate expropriation proceedings in the courts. If good cause is found, the courts may direct the appropriate level of the executive to make a declaration.⁷⁴

In most developing countries, concessionaires probably do not have this power. In Argentina and Chile, private persons and concessionaires may not initiate expropriation, although they may be the beneficiaries of it. In Honduras, a private company may both initiate and carry out an expropriation.⁷⁵

Some countries have centralized the expropriation power to some extent. This may be done to enhance uniformity of standards, to achieve a coherent state or national land policy, and to increase efficiency by establishing a centralized body of expropriation expertise. In the Philippines, provincial and municipal governments and public corporations may exercise expropriation power only after approval by the central government.⁷⁶ This approval system mainly serves the goal of coherent centralization. India's Urban Land (Ceiling and Regulation) Act of 1976 centralizes the valuation function.* This also serves the goal of uniformity. The central land expropriation committee in the Republic of Korea has jurisdiction over expropriations that cross provincial boundaries.

* See Appendix D, which illustrates the centralized functions performed by collectors of revenue in India.

Expropriations of purely local concern are the jurisdiction of local committees. Both the central and local committees are composed of expropriation experts and together they comprise a federal system serving all three goals—coherence, uniformity, and efficiency.⁷⁷

Procedure

There are two main types of procedure in expropriation: administrative and judicial. Administrative procedure may be quicker and more efficient. Judicial procedure tends to be somewhat more formalized and better equipped to assure fairness. But, in some cases, the only difference between the two is that one takes place in the executive office building and one takes place in the courthouse.

A single expropriation scheme may use both types of procedure. In Peru, expropriation procedures consists of two stages. The first stage is administrative and results in the declaration of public purpose, the designation of the particular parcel to be expropriated, and an initial appraisal of its value. The second stage is judicial and results in the final valuation of the property and the order transferring title.

The judge must notify the owner within 24 hours after the first stage is completed. If the owner cannot be found, notice is given by publication for three days in the newspaper of the provincial capital. If the owner fails to respond within three days of either the delivery of actual notice or the last publication date, the executive's appraisal is deemed accepted. If the owner responds within the three days, he has eight days to submit a counterappraisal. If no counterappraisal is submitted within 20 days after the court's first notice (either actual or by publication) to the owner, the executive's appraisal is deemed accepted. If a timely counterappraisal disagrees with the state's appraisal, the judge appoints two experts to resolve the discrepancy. The judge routinely approves these experts' valuation and orders the expropriating agency to deposit the amount within three days. Failure to do so constitutes an abandonment of the expropriation, and the agency must start anew if it still wants the property. If the compensation is deposited timely, the court will order title transfer. If the original owner still occupies the property, he must leave immediately. Third-party occupants have 60 days to vacate, if residential property is involved, and 90 days for commercial property. Before the court will release the compensation funds to the owner, all secured creditors must be paid and claims against the property must be disposed of.⁷⁸

Honduras employs a two-stage expropriation procedure similar to the Peruvian model. The administrative stage in Honduras, however, provides for notice and hearing for the owner. In the judicial stage, each party appoints an expert, and by agreement they appoint a third expert.

In the absence of agreement, the judge appoints the third expert. If the first two experts agree on a valuation, it is accepted. If they do not agree, but one agrees with the third expert's valuation, then that valuation is accepted. If none of them agrees, the valuation is fixed at the average of the three, subject to the judge's discretion to modify it according to fairness.⁷⁹

In both Honduras and Peru, third parties are given rights against the compensation fund only. They have no rights against the property or the state. This is a particularly useful provision in countries where title records are inadequate. It tends to quiet title and facilitate the transaction. In India the law is similar, in that land conveyed under the expropriation statutes takes clear title to the acquiring entity. Persons claiming a former right to such land may not seek to attach the land or otherwise challenge title of the new owner; their right of redress is limited to the seller. Assuming proper notice to third parties is given in advance of an acquisition, it seems fair and useful to have laws that produce a clear, noncontestable title in land conveyed. Such laws are recommended for all developing countries.

Some expropriation procedures are primarily administrative in nature. In Singapore, the declaration and designation are made by the President. Then the collector of land revenue, a presidential appointee, gives the owner and the other interested parties notice, conducts an inquiry, pays the compensation, and takes possession. The function of the inquiry is to determine the area of the land, the compensation, and the apportionment of the compensation among the parties interested in the land. The collector may at any point ask the High Court to answer any question. The entire process usually takes about one year.⁸⁰

Other countries have more judicially oriented procedures. In Nicaragua, for example, both the indispensability of the property to the project (the designation) and the valuation are the subject of a judicial proceeding. When the expropriating agency begins its initial pleading (the demand), the court with jurisdiction over the property notifies the owner and other interested parties and puts a notice of the action in the *Public Register of Immovable Property*. Soon thereafter, a hearing is held. The owner appoints an expert; if other interested parties are involved, they must agree with the owner's choice of expert, or the court will appoint one for them. The owner then challenges the indispensability of the property, if applicable, and makes any "inadequate remainder" argument he may have if the expropriation is only partial. An inadequate remainder, as noted before, is the remaining portion of the owner's property after a partial expropriation, which is practically useless. Under Nicaragua's and many other countries' law, the owner may insist under these circumstances that the expropriation include the whole property.

Under Peruvian law, urban expropriation must include the whole property unless the owner agrees otherwise.⁸¹

The hearing phase of the Nicaraguan procedure is limited to three days. It is followed by a proof phase, limited to eight days. If the parties' experts disagree on valuation, the judge appoints a third expert, whose opinion is conclusive; the judge has no discretion to change it. The judgment phase follows: If the expropriating agency fails to deposit the compensation within 30 days of the court's order to do so, the expropriation effort will be considered abandoned.⁸²

Nicaragua also has a retrocession, or reversion, provision. It gives the owner the right of first refusal if the expropriator fails to use all or part of the property and wants to sell the unused portion. This type of provision is common. Many countries give the owner the right to demand such a resale of the property if it is not used within a statutory time period or not used for the declared purpose. In Brazil, the time period is five years, if the project is of public utility, and two years, if the project is of social interest. Honduras and Guatemala permit the owner to buy back the property, if it is not put to the declared use for expropriation. In Honduras, the owner pays the same amount he received in compensation. In Guatemala, the former landowner pays such compensation as he received, plus the value of any improvements, less any damages.⁸³

Some laws require the expropriating authority to attempt to negotiate an agreement with the property owner before commencing the formal expropriation procedure.⁸⁴ In Indonesia, obtaining land for any purpose, whether by private person or the government, must be carried out through negotiations with the owner of the title.⁸⁵ For government purposes, a permanent local committee of government officials is in charge of conducting negotiations. Should there be no agreement, the state is entitled to take land by force, provided the land is required for the public interest. The Indonesian law states that expropriation must be a last resort, to be used only if negotiations really have failed. The President alone is authorized to declare expropriation; he acts by decree, issued following consultation with the minister of justice, minister of internal affairs, and the minister whose jurisdiction covers the operation or service for which the land is required. These consultations determine whether there is a public interest and whether it is possible to acquire the land in some other way. The presidential decree fixes the form and the amount of compensation; it is based on the recommendation of a committee of experts, which consists of governmental officials who act under oath. Compensation need not be in the form of money, but may be in the form of facilities that can bring material benefits to the former owners. Presidential decisions to carry out expropriation may not be questioned, although the compensation issue may be litigated.

In Argentina, negotiation is not forced, but it is recognized as an alternative preferable to the expense of expropriation. Unfortunately, the law limits the state to offer no more than the value of the land as specified in tax records, plus 30 percent. Because this is always below market value, negotiations are never successful and are no longer even attempted.⁸⁶ In Sweden, preliminary negotiation is encouraged and has been very successful. This is because of Sweden's strong expropriation law and the strong public support of the law. Landowners are induced to negotiate in good faith, since they are assured that the government may expropriate the land with reasonable dispatch if negotiations break down.⁸⁷

The Constitution that the Solomon Islands acquired with independence in 1978 aimed to make compulsory acquisition of customary (tribal) land more difficult than it had been before, but to make compulsory acquisition of land owned by non-Solomon Islanders easier. Chapter XI of the Constitution allows compulsory acquisition of customary land only if there has been prior negotiation with landowners and they have had access to independent legal advice. The law further provides that, as far as possible, only a lease should be compulsorily acquired. Customary land must be registered before it can be sold or leased to the government. The process of fieldwork, adjudication, and survey required to register customary land must take at least seven months to allow for appeal, but in fact it takes several years.⁸⁸

In the Cook Islands, the government can acquire land by various means. The first procedure is by warrant. The High Commissioner (pursuant to section 357 of the Cook Islands Act, 1915) can take land for a public purpose. The purpose needs to be specified in the warrant and, once taken, the land becomes absolutely vested in the government and free of all estates, rights, and interest from any other person unless expressly stipulated in the warrant. The following procedure is used: When a government department requires land (for a road, for example), it checks the title with the land registry and the survey department, and makes a submission to the Cabinet outlining its proposals. If favorably viewed, the proposal is referred to the advocate general, the legal advisor of the government. After consultation with the appropriate government department, the advocate general files an application with the land court calling for a meeting of owners. If the results of the public meeting are favorable, the appropriate warrant is drawn and submitted to the Cabinet for final approval and recommendation to the high commissioner to exercise his authority for this purpose. Lands taken are subject to compensation and lands can be given back to the owners by simply revoking the warrant. A second method used in the Cook Islands is acquisition by order of executive council. The procedure is the same as for

warrants and is applied often for customary land when titles have not been ascertained. The consent of the persons who are understood to be the owners is obtained. The legislature may also expropriate land by legislative decree. However, this device has not been used since 1915.⁸⁹

The government of Tunisia has the right of eminent domain (in accordance with the Law of March 8, 1939), which is exercised for projects in the public interest, including housing projects. Condemnation proceedings can be instituted by the ministry of public works and housing, with the approval of the minister of interior and the Prime Minister. Acquisition is accomplished through a decree of the council of ministers signed by the President of the Republic. Armed with this decree, the acquiring agency exercises the right of eminent domain by paying the value of the property taken, as determined by its appraisal and as stipulated in the decree. Property owners may appeal the compensation to a court. Under the appeal proceedings, the court appoints three experts to make a final determination of value. Government application for the right of eminent domain is difficult in Tunisia, primarily because of a basic Tunisian philosophy against depriving citizens of their property under any circumstance. Because of this basic attitude, it is difficult to get the numerous officials' signatures to activate the procedure.⁹⁰

The government of Gabon may acquire land by expropriation, as stipulated in legislation passed May 10, 1961, for public uses that must be defined or determined by the Supreme Court. The ministry securing or initiating an expropriation action must obtain an ordinance from the court.

Judicial Review

Judicial review is a constraint on decision-making power. The three most important decisions in expropriation are the decision to expropriate (the declaration), the decision of what to expropriate (the designation), and the decision of how much to compensate (the valuation). Following is a discussion of the circumstances under which these three decisions are reviewable:

The declaration of public purpose is generally either unreviewable or reviewable only for gross abuse of discretion or demonstrable bias. In Argentina, the test is "serious arbitrariness."⁹¹ In Brazilian expropriation proceedings, the courts may not consider the question of the existence of public utility or social interest. They may, however, cancel an expropriation if it is shown to be a mere pretext to seize the property of a particular individual.⁹² In the United States and in Mexico, there is still some room for challenging the declaration, on the grounds that it serves private purposes more than public purposes. Courts and legis-

latures, however, are gradually diminishing the significance of this argument.⁹³

Less judicial deference is sometimes paid to the designation decision. In El Salvador, the court may review whether all or part of the property is necessary and whether other property owners should share the burden of the expropriation in question. Mexican law puts the burden of proof on the expropriating agency to show the particular property is "suited and necessary" for the purpose declared. In Indonesia, the President's designation "is final and irrevocable and is not justiciable." The result is that its designation, like the declaration, is largely viewed as a matter outside the judicial realm of competence.⁹⁴

The valuation decision is most frequently held to be judicially reviewable. In Peru, the amount of compensation may be attacked in a new judicial proceeding within six months of the original determination. Any such review, however, is procedural only.⁹⁵ In Nicaragua, the valuation may be reviewed "for fraud, for errors in the measurements, or for notorious and serious errors in calculating the amount of indemnification."⁹⁶ In Honduras, the valuation judgment may be appealed as may any other judgment (pursuant to the Code of Procedure); the appeal does not stay the effect of the expropriation order, but if the appeal is successful, the property reverts in the owner.⁹⁷ There are countries, on the other hand, in which the valuation proceeding is administrative and therefore, judicially unreviewable. Nepal is such an example.⁹⁸ Normally, when the valuation proceeding is judicial, some opportunity for judicial review is available.

In many countries there are extraordinary means of securing judicial review. In Guatemala, there is the *recurso de inconstitucionalidad* procedure, which raises constitutional questions to the court. Not surprisingly, however, that extraordinary remedy is rarely used, unless there is an extraordinary injustice. In 20 years there has been no *recurso* review of an expropriation in Guatemala.⁹⁹

SUMMARY

In summary, most developing countries have fairly extensive laws for expropriation. And while they vary a great deal in terms of power and authority, too many exist in name only and are rarely used. One theory for the hesitant or infrequent use of expropriation statutes is that many have been imported and enacted alone, without the support of a broad scheme of complementary powers of acquisition. In such cases, the expropriation laws have been undermined by private opposition to public land acquisition. Skillful advocates for private-sector

interests have been able to use the safeguards in expropriation statutes (the public-purpose doctrine, just compensation) to frustrate and delay the use of such authority.

Our recommendation in these cases is much the same as our recommendation in chapter 2: A serious, comprehensive, exercise to revise acquisition laws should be undertaken in most developing countries and should result in broad-based laws that do not rely unduly on compulsory powers.

Institutions for Land Acquisition

INTRODUCTION

Public agencies responsible for acquiring land need more than a broad array of instruments, powers, and authorities to act effectively. They also need properly constituted institutions with trained personnel, as well as goals and plans specifically designed for the country. In developing countries, land acquisition often is performed inefficiently, on a hit-or-miss basis, because for a variety of reasons, there are no well-developed institutions able and willing to implement the land-acquisition requirements of the public. Thus, an orderly approach to land-acquisition is stymied for lack of the first step.

A country's fundamental policy on land acquisition is the major determinant of what types of institutions are necessary, or even desirable. If there is no national consensus on goals, and if public land purchases are sporadic events—by individual agencies for specific projects without consideration of broader objectives—there will be no effort to create specialized institutions. Individual government agencies will exercise such land-acquisition authorities as they now possess. They might go so far as to set up subdivisions or bureaus. In time, modest institutional reforms, to increase efficiency, could be expected in some countries. But generally, the existing institutions will handle land acquisition in addition to their regular functions.

This is the prevailing pattern in most developing countries. Existing

ministries (such as those engaged in health, education, defense, housing, and the like) each manage their own land acquisition, financed from current operating budgets and restricted to current and immediate project needs. In such cases, the institutions often are poorly organized and staffed to execute the occasional land acquisition and are easily frustrated by private landowners who might oppose them.

To create effective institutions specifically designed for land acquisition, it is best that developing countries first adopt, formally or informally, policies that clarify the public control over land use. But, even when national policies for land acquisition and control are ill formed, or favor a modest project-by-project approach, it is still prudent to build an institutional framework for the purpose. There are ample reasons, for example, to strengthen the land-acquisition division of the National Housing Agency of Thailand, even though the agency's mandate is to acquire only such lands as are needed for defined housing projects. Existing institutional subdivisions like the NHA should not lack the training, manpower, and authority to carry out their goals when conditions change.⁴

Institutional strength in developing countries will become far more important as governments face extraordinary growth of urban areas during the next decade. The choices of how to organize, staff, and finance necessary institutions will be critical; sooner or later, all developing countries will realize the need to strengthen their institutions to acquire needed land.

INSTITUTIONAL OPTIONS

When a developing country decides to engage seriously in land acquisition, the first questions are: Are our existing institutions organized well enough to accomplish our future goals? Or should new institutions be established? The decision to establish any new institution—whether a land bank, land development agency, or any other entity, never should be considered hastily. In developing countries where skilled manpower is scarce and government institutions tend to proliferate, the creation of yet another institution is not usually recommended. Yet if the goals are real, the government should seriously consider establishing an institution whose sole function is to acquire, develop, and dispose of land for public purposes.

⁴ See discussion of Thailand's NHA in Appendix B.

Newly Developed Land Institutions

Ideally, such an institution should be self-financing, once capitalized with assets in the form of cash or excess government land. The institution should be large enough so that it can assemble an experienced staff (appraisers, lawyers, financial analysts, and all the rest), who are experts in all laws and regulations affecting land, including zoning bylaws, building codes, property-tax laws, and landlord-tenant laws. Moreover, the institution's scope of operations should be broad enough so that any failures are outweighed by successes in land purchases. There is little purpose in creating an institution so small that it will not achieve economies of scale and specialization, or even have an impact on the very problems it was created to solve.

The chief officials of land institutions should be decision makers, or at least have a voice in government decisions affecting land markets—such as, for example, where water lines and sewers will be located. The capital budget of an urban area, particularly in developing countries, can be the single most important tool in land planning. Infrastructure location is a powerful tool in the utilization of unserved, marginal lands at the fringe of urban areas. The ability to control, influence, or at least predict the installation of infrastructure is essential to a successful land-acquisition program. It is expected that land agency officials who are part of the capital budget processes of government or who have access to decision makers would argue for the right decisions and, through communication with other agencies, would assure setting budget priorities to the maximum advantage of everyone.

Common problems associated with many land-development agencies can and, of course, should be avoided. These include: uneven sources of financing, limited goals not linked to national-development priorities and strategies, less-than-efficient administrative mechanisms, and lack of widespread political support within and outside the government.

In developed countries with established land-development agencies empowered to engage in broad land-acquisition programs, a major issue has been whether to organize such institutions on a municipal level, or whether to create national or regional entities with broader jurisdictional bases. Jurisdictional authority becomes important when a rapidly growing municipality is considering land at its periphery. If municipal institutions lack authority to expropriate land outside the municipality's legal borders, a major function cannot be exercised. In countries such as the Netherlands, Sweden, Norway, and Denmark, which have a long history of municipal agencies for land development, the lack of

regional authority is regarded as an obstacle to the rational expansion of cities and towns.¹

Advocates of maintaining such agencies at the municipal level argue that this is the only way to know the local market, keep track of prices, influence the government's capital budget, and make effective decisions at the local level. Proponents of regional institutions argue that only regional units would be able to assemble the expertise needed. They say that only national or regional institutions would have the resources to make the necessary economic, sociological, and statistical assessments required for long-range decisions and that funds usually can be raised more easily on the national or regional level.

Both sides have valid arguments, and it is dangerous to generalize in this area. However, in many developing countries, the municipal government itself is characteristically weak, and national governments dominate. Often, municipalities have limited taxing power and do not control their own capital budgets. In these cases, it seems clear that newly formed institutions would best be formed at the national or regional level.

The major problems faced by land agencies in most developing countries arise on the periphery of cities, where rapid urban growth takes place. If, as we predict, most of the larger cities will double in size during the next decade, it will do little good to invest major human and financial resources in municipal agencies that are powerless to act outside existing municipal boundaries. Further, the national role of transportation and environmental issues increasingly points to national institutions for land use control. Finally, acquisition and control of land at the local level by many independent authorities may increase administrative cost, duplicate efforts, overwork scarce personnel, and frustrate creation of comprehensive national or regional policies. Organizing at the local level tends to perpetuate many of the problems faced by multiple institutions today at the national level. National or regional agencies inevitably conflict with those at the local level.

Single-purpose land agencies with broad authority to act for all public agencies would avoid current inefficiencies arising from the proliferation of ministries with authority to acquire land for individual needs and vying to discharge the same functions.

Coordinating Mechanisms

As national policies begin to coalesce, some countries, at least as an interim measure, may opt for coordinating agencies rather than seeking to merge land-acquisition offices in various ministries into a single, new institution. Such an idea has been recommended for Thailand. The idea was recommended at a January 1982 conference sponsored by the

Asian Institute for Technology.² The Asian Institute for Technology has suggested that representatives of Thai agencies with experience in land acquisition form an advisory group to assist all agencies. Such a group could coordinate the activities of various agencies and avoid duplication of effort. Also it might help promote a national inventory of lands already owned by various public agencies and foster barter and exchange transactions among them. Such coordinating entities could arbitrate intragovernmental disputes and encourage cooperation in acquisitions. Planners in this institution would be expected to bring a broader perspective to the process.

It would seem advisable in nearly all cases to establish some form of coordinating mechanism. Enormous benefits could be derived from avoiding duplication of effort and explaining to landowners how public acquisitions will work. This could prevent whipsawing landowners between competing agencies.

Government Body Acting as Agent

An alternative to a coordinating body is a system by which various government bodies have the right to contract with another more-expert government body for purposes of relying on the latter's personnel and skills in land acquisition. This practice, sometimes called a "Joint Exercise of Power" practice in the United States, generally is based upon legislation that allows any government agency to use the resources of another to accomplish its legitimate goals. Transportation and road departments usually have the most experience in land acquisition (in the United States). They maintain large staffs of surveyors, appraisers, lawyers, and engineers who are expert in land acquisition. Their laws and powers generally are most up to date. Under a joint exercise of power agreement, a government agency with only an occasional need for land acquisition—say, the health ministry—could agree to send all of its requisitions for land to the transportation ministry, providing it with a budget for the desired work. The health ministry could reimburse the transportation ministry for its administrative expenses and have approval rights at various stages of the land acquisition. In effect, the land-acquisition division of the transportation agency, using its own laws and procedures, would serve as agent for all other government agencies that need to acquire land but lack the necessary manpower skills and procedures.

Specialized Quasi-Public Agencies

Several issues need to be determined: Should any new land agency be

totally part of the public sector? Should its employees be civil servants drawing the same pay as other public servants? Should its officials be obliged to operate within the same bureaucratic and regulatory framework as government agencies in general? Land acquisition in most developing countries is now performed by offices or departments already within a number of public ministries and agencies and by regular civil servants in accordance with established public procedures. But countries establishing specialized institutions for land purposes often create quasi-independent corporations or authorities with varying degrees of governmental trappings. The Malawi Housing Corporation, the Delhi Development Authority, the Tunisian Agence Fonciere de l'Habitat (AFH), the Urban Development Corporation (UDC) of Jamaica, and the Urban Improvement Corporation of Chile (CORMU) are examples of specialized land agencies that possess staffing and operational flexibilities not generally accorded government agencies in those countries.

One advantage of a specialized institution that is not wholly public is that it avoids salary and recruitment restrictions common to the public sector. In most developing countries, civil servants' salaries are woefully inadequate to attract and retain qualified personnel. There is a tremendous turnover rate as more able civil servants are lured into the private sector at salaries often triple what they formerly received. Even if government salary scales were at an acceptable level, government-recruitment practices can cripple the staffing efforts of a new institution. Neither civil service examinations nor politically oriented job placement results in hiring the kind of expertise that is needed. Yet, these methods predominate in typical government hiring. Land agencies, dealing with large sums of money and highly sophisticated markets, need a high-caliber staff. Furthermore, the opportunities for corruption and favoritism demand a staff with sound morals and high morale. The technical skills of lawyering, engineering, and appraising require that a staff remain in place long enough to gain experience and earn public confidence. Many believe that only specialized agencies that set their own personnel policies can attract and retain such qualified personnel.

Equally important are workable, flexible procedures. Land institutions need the tools to operate in highly secretive, competitive land markets. They need to have their own funds to free them from time-consuming requests to legislative or budgetary authorities. In addition, they need to be able to move quickly and to act confidentially through agents so that sellers and buyers will not take advantage of their public mandate. In a survey conducted in the summer of 1982, members of the International Federation of Real Estate Agents located in developing countries were asked (a) if they had ever represented public agencies in land transactions in which their principals' identity was held secret and (b) whether

such a secret procedure, if used, would have produced a more advantageous price to the public agency. None of the brokers responding indicated having served in such a manner. Most, citing custom and precedent among large, private land developers, who act secretly through nominees assembling large tracts of land, hypothesized that this procedure would be advantageous to public agencies.

Governments generally require that all purchases of personal property be accompanied by public notice, and to the extent practical, by public bidding or auction. When applied to land, these procedures are most often costly to governments. It might be said that this higher cost is simply a burden that governments must bear and should be accepted as the price for assuring fairness and honesty. However, land is different from other government purchases; it is highly expensive and unique. If other safeguards on honesty and fairness exist, institutional procedures that allow secret acquisition and assembly of land on occasion may well be the better choice. Specialized agencies are better able to gain such authority than generalized public agencies.

If specialized, quasi-public institutions are to be established, they must be kept faithful to their public mandate. This requires a fairly clear articulation of the public intention (acquire sites for housing and industry, help influence city growth in desired directions through infrastructure-related acquisition, and so on).

It also calls for checks and balances on the authority of these specialized agencies. First, any such institution should have some degree of financial self-sufficiency, with land or funds. It should be structured to acquire and dispose of land to avoid the need for extra budget supplements. Normally, this will entail borrowing authority, with borrowings collateralized by property acquired and government backing. An index of how well the market approves of the unit's operations is if the banks are willing to lend on the land offered. Another safeguard could be broadly based boards of directors or advisory committees. Coordination with government agencies having capital budgets is important. Therefore, land-institution boards should include key decision makers in public-works agencies, as well as other powerful government officials. Adequate representation from the private sector is also indicated, of course. Religious and business leaders should also be included in broad citizen participation. Finally, when secret transactions are necessary, and when public confidence in such transactions may be historically weak, the institution could adopt special procedures. These could include (a) sealed court orders issued upon application, and affidavits ruling out conflicts of interests, (b) compulsory publication in the news media of secret court orders within six months after a transaction is completed, and (c) independent audits by government or private experts.

INSTITUTIONAL MODELS

Chile—CORMU

The Chilean Urban Development Corporation (CORMU) has been viewed as one of the most important public land-acquiring agencies in Latin America. Established in 1964, CORMU is part of Chile's newly created ministry of housing and urbanism. Its main function was to acquire and develop urban land in conjunction with housing and urban projects. It was given wide powers of expropriation. From 1964 to 1967, CORMU acquired approximately 1,500 hectares per year, half by outright purchase and half by expropriation.³

Jamaica—UDC

The Urban Development Corporation (UDC) of Jamaica provides another example of a centrally organized agency with extensive land-acquisition operations.⁴ Its current portfolio comprises more than 38,000 acres. The UDC engages in a wide variety of activities; it has senior officials assigned to land acquisition and a competent legal department, plus technical offices employing engineers, architects, and surveyors. Projects include land planning; subdivisions; land development; sales of "finished" parcels (serviced with infrastructure and ready for construction of suitable buildings); and office, meeting, and auditorium structures. The UDC is called upon at times to operate as a public-works agency, constructing elements of infrastructure, such as roads and sewerage facilities. In some instances, it also manages and maintains the infrastructure systems it installs until resources can be found by the local parish councils to enable them to assume maintenance responsibilities.

The estate department of UDC periodically appraises the value of UDC holdings. At the end of the first quarter of 1980, the valuation stood at Jamaican \$93,776,000 (approximately US \$33,000,000). The UDC five-year capital-investment program, covering the period April 1982 to March 1987, comprises 15 on-going projects, 26 new projects, and maintenance of public facilities in five locations. The projected cost of the program is US \$300,000,000.

In essence, UDC develops (or redevelops, as in the case of downtown Kingston) raw land into serviced parcels, through the application of development funds and professional management. This process is supported by market demand, which sets the pace at which development is feasible, and by the participation of commercial lending institutions, international agencies, and the government in the necessary financing arrangements. In terms of its projected 1982–87 capital budget, UDC

is looking to increase its accessibility to commercial lending institutions and private joint-venture investors, anticipating that about one-half of its requirements would come from these sources. The UDC, while pursuing broad land-acquisition programs, carries out many other types of programs as well. It is a prime example of a fully integrated, multipurpose institution in this field.

Tunisian Agencies

More than most developing countries, Tunisia has perceived that availability of urban land, in appropriate locations and at reasonable cost, is a critical element in urban development and a legitimate subject for national policy. Tunisia has established a basic approach to ensure land availability and dampen speculation. An array of organizations charged with preparing land for economic activity, housing, and community facilities has been operating for about a decade. The agencies differ somewhat in their missions and methods of finance, but the two principal organizations, Agence Fonciere Industrielle (AFI) and Agence Fonciere d'Habitation (AFH), share the following basic characteristics:

1. Entrance into a community at the community's request or in response to national-development objectives endorsed by the community prior to entrance.
2. Site selection in accordance with the community's development plan, but modification of that plan if detailed feasibility analysis proves first-choice sites impractical.
3. Land acquisition through direct purchase, preemption, or expropriation.
4. Site planning, site assembly, and development on their own account and by coordination with other central agencies and municipal authorities.
5. Disposition of finished sites on a cost-recovery basis at prices that set the pattern for area land sales and seek to block speculation.

In addition, each agency has tested its methods on projects in the greater Tunis region, but has increasingly moved into the secondary cities and smaller communities. Each is now being regionalized in some fashion, with field offices in various parts of the country. Each will be relied on heavily to meet objectives of decentralized development during the sixth five-year-plan period.

Before reviewing the missions and operations of these agencies, it is important to underscore their role as the creators of *new* development areas. They operate on undeveloped land in and outside of existing urbanized areas, and with the single exception of AFI's present upgrad-

ing of an existing industrial park in Tunis, they are not being deployed to redevelop existing urban areas at all.⁵

Agence Fonciere Industrielle, Industrial Land Agency (AFI). The AFI was created in 1973, (as was the AFH) with the express purpose of assembling and developing land for industrial parks throughout the country. Since then, AFI has completed work on approximately 1,000 hectares of land, partly in Tunis and partly in the secondary cities. The sites are strategically located to take advantage of existing transportation systems, proximity to commercial areas, and concentrations of population.

The AFI began with 3,000,000 dinars of capital from the state (approximately \$3.4 million) but receives all other financing through borrowing. Most recently, it negotiated a seven-year, \$20 million loan at commercial rates. Although AFI is a nonprofit institution, it is charged with obtaining complete cost-recovery for its investments. As a quasi-public agency, it can pay its employees wages above the normal government scale and thus has assembled a highly skilled managerial and technical staff.

Typically, a municipality asks AFI to initiate a project. Many such requests are the result of the activities of the Industrial Promotion Agency (API) of the ministry of industry which has the dual responsibility for promoting industrial investment domestically and overseas and for conducting surveys in communities to identify their industrial potential. In the course of these tasks, API meets with governors and municipal councils, and they in turn request the intervention of AFI.

The AFI begins its site-selection process by reviewing the area's development plan. Land suitable for industry (either within the municipal boundaries or in the peripheral area covered by the plan) is targeted for initial investigation and discussion with central government and local authorities. Before definitive selection, however, AFI deploys its engineering staff or consultants to perform detailed feasibility analyses of candidate sites. In most cases, suitable land in the amount desired is identified from the plan.

The AFI and the other parastatals have land-acquisition powers. While they can negotiate directly with landowners, they routinely invoke a right of preemption for the desired site and surrounding area. This decision is approved initially by the municipality and then goes through central government channels, including the ministry of justice. Once AFI receives the right of preemption, it can effectively stabilize land prices by exercising first-refusal rights on any offer of sale.

It is at this point that AFI begins negotiation with landowners. Apparently, most owners come to terms during this negotiation period, since

most sites are in agricultural use, and the only buyer for higher value is the AFI. The negotiation process may take several months, however, because the AFI and the other parastatals are reluctant to exercise powers of expropriation. Although expropriation procedures can be pursued through the courts, the AFI has done this rarely.

The AFI begins detailed site-planning, once the land is identified. The process includes coordination with other parastatals (water, power, and the like) and the ministry of equipment and housing, which will provide trunk utilities and access, if required. Within the agency itself, AFI handles parceling; builds internal roads and sidewalks; and installs electricity, street lights, and potable water, according to set standards. Telephone and teletypewriters are installed as well.

The AFI usually builds for specific industrial clients or proceeds on the basis of a market assessment that identifies a reasonable demand for finished land within the near future. Because of its cost-recovery character and its limited capitalization, the agency does not have the capability to operate a land bank.

Agreements are negotiated with specific customers in accordance with a basic formula. Total costs, including land acquisition and site-development, are roughly the same throughout the country (about \$10 per square meter). Finished prices for the customer are set, however, at three levels, depending on location. For the most-preferred areas (Tunis, Sfax, Sousse), the price is fixed at about \$40 per square meter. For the least preferred (Beja, Jendouba), the price is set below cost, at roughly \$7 per square meter. For centers in between, with some viable economic activity, the price is about \$10 per square meter.

Thus, there is a cross-subsidy for the least-developed centers in the most-dynamic urban areas—a practice completely in keeping with national policy to discourage continued concentration of industry in the major cities and to distribute it elsewhere.

Because the municipalities have responsibility for building-permit approvals, the AFI follows through with a client to the final-permit stage. It coordinates with other parastatals and ministerial agencies to ensure that all services are in place. And it works with municipal authorities to obtain the necessary permits.

Once the plants are completed and the ownership is transferred, the finished properties are eligible for municipal taxes. These revenues become a major resource for the economically deficient towns. Officials of AFI say there is no reluctance by the owners to pay these taxes because once the services and facilities are installed, people understand the need to maintain them.

By setting the selling price for finished lots, AFI has a secondary objective of controlling speculation in industrial land. When the agency began

in 1973, raw land sold by the private sector for industry in Tunis and Sfax cost about 12 dinars per square meter (about \$5) and was so high it deterred development. The agency assembled and finished certain government-owned sites at a total cost of 2.5 dinars per square meter. The agency then marketed these at 6.5 dinars per square meter, slightly above half the price of unfinished private lots. New plants moved onto the government sites, and private owners were forced to drop their land prices. Now, there is a rough equilibrium. Private finished industrial lots are running about 31.4 dinars per square meter, versus the 28.5 dinars of AFI in Tunis. Clearly, AFI intervention has worked.

While speculation has been dampened, the three major cities continue to attract the bulk of industrial growth. Even the considerable differential between site prices in the next tier of the major cities (a factor of four) is not sufficient to move a significant portion of new industrial growth to the less-developed areas. This redistribution, clearly, is an issue that AFI will be confronting under the next five-year plan.

Major AFI decisions on land sales and site planning continue to be made in Tunis, but the agency has begun to decentralize its operations into five regional offices (Sfax, Sousse, Gabes, Beja, and Gafsa), each conducting liaison with three to four *governorates*. The objective is to direct growth out of Tunis and to provide the closest possible on-site coordination of projects outside the capital.

A June 1981 industrial-incentive law is geared to the most important objective of the new five-year plan, creation of industrial jobs. There are two incentives: One will be applied to all firms, regardless of location, that create new jobs—a tax reduction based on the number of new employees hired. The second incentive is direct capital grants to firms, based on the number of jobs created and the location of their sites. No grants will be forthcoming in the most-preferred areas, but at the established sliding-scale, the direct capital assistance available for the lowest-income areas would represent a significant subsidy incentive for decentralized industrialization.

Agence Fonciere d'Habitation, Housing Lands Agency (AFH). The AFH is also a land-assembly and land-development agency, created in 1973 (at the same time as AFD), with a similar initial capitalization of 2,000,000 dinars. Its purpose is to produce housing sites for citizens at all income levels who can afford to repay the land and services costs. Thus, it focuses on middle- and upper-income production—although 60 percent of its output is to be for “social housing,” roughly synonymous to the public-housing activities of *Societe Nationale d'Immobilier de Tunisie* (SNIT).

Although SNIT is a major customer, it handles most of its own land

assembly and development. The AFH differs from SNIT in that it does not build shelter; nor does it continue to maintain projects after development. It merely prepares the land and supervises its servicing for transfer to private and public home builders.

Like AFI, AFH is a parastatal with a skilled technical staff that it can pay at higher wages than typical government scale. Unlike AFI, however, it is not empowered to borrow for development financing and must, therefore, finance its development activities through advance sales and cash payments of its programmed output.

One of AFH's greatest strengths is its commitment to design and to develop "communities." Each project contains provisions for a range of income levels and housing types, from apartment blocks to private builder subdivisions and individual lots upon which owners build their own units. Each also—depending on the project's scale and proximity to existing residential areas—has space for commercial services and a complement of community facilities, from dispensaries to schools and mosques, along with land for parks and recreation space.

This agency is a powerful organization with a broad mandate. Thus far, it has exercised that mandate primarily in and around metropolitan Tunis, although it has begun to expand in secondary cities and to decentralize. Under the forthcoming five-year plan, the AFH is expected to operate more extensively outside of Tunis and shift its emphasis toward greater accommodation of lower-income households.

Normally, the provincial governor or the municipality initiates requests for AFH services. In practice, most of the agency's activity has been within the Tunis district, where the greatest unfilled demand for middle- and upper-income housing exists. During 1977 and 1978, for example, AFH developed sites for 33,519 housing units, of which 22,245 (72 percent) were in the Tunis area. AFH also works within the city's general-development plan and normally selects a location within the programmed residential zone.

The AFH acquires land by a method slightly different from AFI but with similar results. Decisions are made in consultation with provincial governors and local mayors, and sufficient land is identified to meet an estimated two-year production schedule. Once the site is chosen, AFH asks for a preemption decree covering both the desired land and a significant surrounding perimeter of land (a means of blocking speculation). A special commission then establishes a price that reflects market conditions; this amount is put in escrow by AFH, pending negotiations with the owners.

If the owners challenge the asking price, they have redress to the special commission on the amount of compensation, but not on the transfer of ownership. The AFH has what is termed in the United States a "quick-

take" power, which provides for immediate expropriation and possession of the property. Meanwhile, three independent appraisers assess the land for court proceedings that will award a final sum. The quick-take power reflects the urgency of AFH's mission, and the agency tries to proceed with development within the two-year period.

In the case of smaller, less-favored communities, the physical project-development time tends to be longer, and AFH, whether by design or by accident of market, must act as land banker. Even though AFH may hold a fairly large parcel, it develops in the short run only those sections for which it has definite buyers.

Once land is identified, AFH's staff prepared detailed site plans for both the residential units and associated services. Coordination must be maintained with the infrastructure agencies, because they handle construction of both off-site and on-site facilities. They too are responsible for maintaining the utilities they have built and for levying user charges when the projects are completed.

The scale of the AFH projects and their strategic locations on undeveloped land attract additional urban growth on private land nearby. Sometimes, in anticipation of this, the infrastructure agencies size their trunk systems to accommodate future development outside the AFH projects. In such an event, landowners bordering the trunk lines are charged a proportionate share of the cost, reflected in an increased property tax. This permits recapture by the municipality of some benefits from the original public-capital investment.

The AFH has a particularly interesting approach to land sales. Even before development, the agency establishes prices for the various sites, from large-scale subdivisions and apartment land to individual homeowner plots. The land is then presold, with all the private buyers paying the full stipulated price in advance. (Only SNIT is empowered to make installment payments.) This permits AFH to utilize funds for actual project development, especially important because AFH lacks access to loans. Housing demand in Tunisia has been so high that prospective developers are willing to make such prepayments. This system is, of course, self-limiting, for in effect, it narrows the range of available buyers to those who have sufficient capital resources. In addition, the payments are provisional, and if development costs prove higher than the original estimates, additional charges are levied on the buyers before they can gain access to the land they have purchased.

If demand for subdivisions or apartment sites is so intense that there is more than one prospective buyer, AFH draws lots to select the successful bidder, rather than permit the land to be bid up beyond the established selling price. When demand exceeds supply for individual house lots, AFH asks the municipality to choose the purchasers. Such choice

is generally based on chronological order of buyer registration. All the finished housing sites (including those earmarked for SNIT) are priced at cost plus 10 percent, which covers AFH's operations.

On commercial sites, the agency is allowed to make a profit. These sites are sold at auction above a minimum price. Sites for public facilities, such as hospitals and schools, are transferred to the responsible ministries at cost. Meanwhile, the municipality receives, at no cost, parks, parking areas, and finished streets. As with AFI, all privately owned land then goes on the municipal tax rolls.

Despite professed efforts to complete all work in two years, AFH projects have been subject to delays that have distressed buyers, who put up the entire purchase price in advance. Now, the agency is trying to hold project development to eighteen months and is encouraging builders to use that period to prepare construction drawings for implementation immediately after transfer of finished plots.

Countering land speculation is one of AFH's most important tasks, since inflation in residential land was one of the precipitants of its creation. Here, AFH claims considerable success and contends that its pricing program has caused private landowners to cut back on their profit expectations—or risk being left with unmarketable sites.

The considerable success of AFH has been in the major cities, principally Tunis. The agency now has two regional offices (in Sousse and Sfax), which can negotiate land sales but have limited developmental authority. Further decentralization is expected. The agency has been criticized for concentrating on serving higher-income groups, to a great degree a result of its limited capitalization. It contends that it will seek ways to accommodate low-income groups and has begun to explore cross-subsidies from higher-income purchasers.

The AFH is expected to play an important role in the decentralized-development program, but like AFI, it is struggling to figure out how this can be accomplished in view of the restrictions in its charter, lack of significant experience in the outlying centers, and the constant problem of finding a paying market for its output in smaller cities.

Africa—Lagos Executive Development Board (LEDB)

One of the early land agencies in Africa is the Lagos Executive Development Board (LEDB), created in 1928 in Nigeria by a Lagos town planning ordinance.⁶ The immediate circumstance resulting in its creation was the bubonic plague that broke out in Lagos in 1924. There were many unsanitary conditions and consequently the LEDB was set up to perform some urban planning and solve problems. Many powers and

duties formerly exercised by the town council and the director of public works were transferred to the board.

In its early days, the board was designed to improve physical infrastructure conditions in Lagos. In 1958, a series of amendments to the Lagos Executive Development Board statute brought in the definition of public purpose and marked the beginning of the board's entry into major, direct industrial and commercial development, in addition to residential and general town planning. Under the 1958 acts, the board could designate and recommend that a land area be declared a town-planning scheme. This enabled the board to acquire lands within the area. The board could then acquire land for a specific planning scheme or for general public purpose. It was authorized to acquire land compulsorily or by agreement. It also has power to lease, sell, or exchange any land it acquired. The public Lands Acquisition Ordinance (secs. 6 and 7) gave blanket powers to the LEDB to take control of any land for public purposes "notwithstanding any native law or customs to the contrary."

The board has departments responsible for administration, legal issues, town planning, engineering, architecture, land surveys, real estate management, evaluation, and finance. These departments allow the board to act as a self-contained developer.

The LEDB is principally financed by government loans and grants. It also has borrowed limited monies from commercial money markets. Funds never were certain because of government difficulties. A significant source of the board's internally generated revenue is known as the "general development expenses." This is a fixed percentage charge that the board levies on all capital work and land acquisitions: that is, a certain percentage fee is charged on all work the board undertakes for the government, whether on behalf of other agencies or authorities or even third-party individuals. There is a 6 percent surcharge on the cost of acquisition of land or buildings and a 15 percent surcharge on the cost of civil-engineering works and building construction. (For example, if the total cost of the capital works of a project is 100,000 pounds, the board would add 15,000 Nigerian pounds as the general development expense). Other funds are raised by lease income on property owned and leased by the board.

The board is required by the federal government to provide certain subsidized social services, such as rehousing. Thus, the board cannot charge the economic price for all of its services. Leases do not return cash quickly.

The board has had a history of financial problems. Its dependence on collecting general development expenses is in turn dependent on the government's willingness to carry out expensive capital projects. If the government cuts back, as it does periodically, the board's income is

reduced. Further, the LEDB is not good at collecting its debts.⁷ One observer credits this to a "combined" problem: People do not like to pay debts owed to governments, and government employees do not like to collect such debts. Another problem of the board is that it cannot operate on a large enough scale. Its purchases have been isolated, uncoordinated, and incremental patterns of acquisition. By not buying enough land at one time, the government tends to raise the price of the surrounding land. When the board receives money later to purchase such land, it finds that its own actions have caused price increases.⁸

In 1967, with the creation of the Lagos state, the board underwent a transformation—from housing jurisdiction for the capital territory of Lagos alone, to jurisdiction for the state, as a statewide urban development agency. This gave the board an expanded jurisdictional area for operations, and it also provided more authority to borrow. Moreover, it continued its industrial, commercial orientation, which was considered more profitable. Not surprisingly, financing improved at this time. The LEDB did not attempt land banking, however. Rather, acquisitions were for project-specific purposes.

In the 1928–35 period, the LEDB acquired land and then returned 80 percent to the original holders; the remaining 20 percent was devoted to infrastructure, which has results similar to land-readjustment techniques. For some reason, the board stopped this practice even though it appeared to have public support.

Land-Acquisition Offices under the India Land Acquisition Act of 1894.* Perhaps the most unusual institutional model of a land-acquisition unit is that created by the India Land Acquisition Act of 1894, as amended. In this Act, and in various auxiliary authorities, special land-acquisition offices are created at the district level of government.⁹

To understand the role of land-acquisition officers in India, it is useful to describe their relationship to the various levels of political organization. The Indian state of Maharashtra, for example, has a number of departments, including finance; law and judiciary; industries; energy and labor; education and employment; rural development; revenue, forests, and rehabilitation; and so on. The revenue, forests, and rehabilitation department is important for purposes of land acquisition. It has changed over the years, but its roots are in revenue-collecting at the village level. Today, Maharashtra state is partitioned into seven divisions. Each division is further divided into several districts. Each district is headed by a collector, who is in charge of revenue administration

* See case study on India in Appendix D.

in the district and, historically, has been very powerful. His revenue functions include collecting taxes, providing relief and rehabilitation in floods and cyclones, and storing and distributing food, among many other functions. Districts break down politically into subdivisions with deputy or assistant collectors. Subdivisions include smaller units of villages, with village officers called *Talathis*, the beginning links in the revenue-administration department. *Talathis* maintain records of rights and titles, inspect crops, collect revenue, and so forth.

The collector and his deputy collectors perform a wide variety of revenue, magisterial, statistical, welfare, and coordinating functions—including heading the state's land-acquisition machinery. The collector in each district reports to divisional commissioners, who act as chief executive officers for the division. Final awards under the Land Acquisition Act are made by divisional commissioners on the recommendation of the collectors.

Each collector has a land-acquisition unit in his organization. These units are headed by special land-acquisition officers, who report to the collector. The units generally have seven to ten employees with training and expertise in land surveying and appraising, and administrative and clerical skills. There are more than 250 special land-acquisition officers in the state, each heading his own land-acquisition unit.

The acquisition officers and their staffs act upon requisitions from central government departments, state government departments, semi-government organizations, parastatals, and from private corporations, which on occasion, may invoke certain rights to acquire land under the India Company's Act. The law centralizes all compulsory land-acquisition powers in the hands of the collectors and their special land-acquisition units. Individual departments may conclude voluntary purchases of land from the private sector on their own, directly, but even in these rare cases, the purchase price must be approved by the collector to assure uniformity.

The requisition to the collector contains a description of the land the petitioner wishes to acquire, details about the current and anticipated use of the land, and a certificate regarding the availability of funds that the petitioning department will pass through the collector to pay the necessary compensation. The collector has no funds for land acquisition budgeted directly to him. Rather, each petitioning department will use capital-budget funds for this purpose, with the collector acting as agent for the acquiring department.

The strength of this centralized system is that it avoids providing each government department with its own machinery for land-acquisition, with attendant inefficiency, duplication, and conflicting policies. It creates one, presumably expert body that manages the entire land-acquisition process. Further, the work is performed relatively close to

the community (at the district level), thereby avoiding some criticisms that centralized institutions are too remote to perform effectively. On the other hand, despite the long history of this organizational approach through the powerful and relatively flexible Land Acquisition Act administered by the collectors, backlogs of unfulfilled requisitions are enormous. In the state of Maharashtra, in recent years, the land-acquisition officers have not even met the quota set for each officer, let alone handled the larger number of requisitions received.

Reasons given for the backlog include lack of manpower and funds, plus apathy among government employees due to low wages. Interestingly, institutional weaknesses are not cited as a cause of backlogs. However, there is at least one hint that the institutional framework in India may not be so trouble-free; that is that many government departments have set up their own land-acquisition offices, to back up the collectors' special land-acquisitions officers. Still, other requisites for a successful land-acquisition program—political will and broad statutory powers—exist in abundance in India, which makes it worth special study. (In Sri Lanka, there is a similar centralized land-acquisition institution which services the needs of various public bodies).

DISCUSSION

It is difficult to recommend any model as clearly superior. Too many variables affect the utility of each. Historical and cultural preferences often combine with more tangible variables to dictate what will be most successful in any specific country. For example, when a government does not have the will, the legislative authority, or both, to mount a serious program of compulsory acquisition, success will elude a wholly public institution with its staff struggling to negotiate voluntary purchases. In such a situation, governments should give serious consideration to private or semiprivate, specialized land-acquisition units with the authority to act as their private-sector counterparts would act. However, when compulsory acquisition is a major tool in the public inventory, it will normally be difficult to delegate compulsory, public-purpose dependent powers to other than fully public institutions. In such cases, the public-agency model, perhaps with some degree of centralization and specialization, is in order. This is not to suggest that vesting a private or semiprivate corporation with eminent-domain authority is wrong. Indeed, there are circumstances in which, with safeguards and proper legislation, it would make sense for ministries to delegate their eminent-domain authority to specialized land-development corporations—such as Jamaica's Urban Development Corporation or Tunisia's AFDH. More likely, a government could contract with such corporations to handle

the details of site appraisal and valuation as agents for the public ministry, limiting to itself the necessary public-purpose findings and formal decisions.

Such a contract might combine the efficiency of private or semipublic land-acquisition corporations and the public ministries' use of eminent-domain authority. Contractual arrangements for implementing compulsory purchases might help public officials be more willing to exercise their powers of eminent domain. They might feel a lot more decisive if they knew that day-to-day confrontations with landowners would be borne by somebody else. Costs saved by the presumed efficiency of such agents should cover the fees the governments would have to pay them. In the United States, private land developers assembling land for major urban projects routinely employ the services of private contractors as real estate brokers. If this is cost- and time-efficient for private developers, it would seem that it should be equally productive for government developers.

Any arrangement between government and private contractors, for land-acquisition purposes, could even go beyond this. Government could theoretically contract with real estate professionals to perform a number of services—locating parcels of land that are purchasable, checking on titles, securing options to purchase (which government could exercise or not), and providing survey, appraisal, and legal services, and more.

The demands for land in new areas of heavy population are growing at an unprecedented rate throughout the world, especially in the developing nations. So far, there is no concomitant urgency by the government to confront this impending crush. Various public agencies try to contend with the problems of land use and land acquisition by using available, "catch-as-catch-can" bureaucracies and half-trained and largely unskilled staff personnel. The inefficiency and waste are enormous. These agencies are finding that, far from influencing the overall growth of their cities, they are not even able to meet their own internal needs.

A centralized, specialized, land-acquiring institution, servicing a government's various ministries with some powers to act as a private corporation engaged in land developing, would seem to provide the best answer for many developing nations. When there is a political will, a national consensus supporting land acquisition, and strong laws to support them, such a centralized authority can act with speed and efficiency in a climate of acceptance.

Finally, for those countries in which a single centralized institution for land acquisition is not feasible, serious consideration should be given to the alternate device that accomplishes many of the goals of a new, specialized unit: One government agency can contract for the skills and manpower of another, more-expert agency on a more or-less regular basis.

Financing Land Acquisition

In most developing countries, land-acquisition functions are carried out independently by the various government agencies (education, health, housing, defense, and so forth) and are financed out of each agency's annual operating budget. These annual budgets are almost always less than adequate for ordinary and usual recurring costs. Land-acquisition expenditures, costly and generally extraordinary, are hard to justify when they are competing against such recurring, nonpostponable expenses as salaries and supplies. In other words, salaries must be paid, but a parcel of land can be purchased now or put aside indefinitely. The result is that land acquisition often tends to be financed only when it can be postponed no longer, when an emergency need exists. Of course, that is exactly when the price of the land will be the highest. A primary goal of public authorities, therefore, must be to make sure that necessary financing is available for land acquisition in a timely manner.

Officials responsible for devising national land-acquisition programs face two broad financial problems. The first is how to accumulate enough cash and noncash government assets to pay for specific parcels of land, and second, if the government is determined to begin a major acquisition program, how to mobilize financial resources on a continuing, self-sustaining basis.

To find the resources to purchase land, governments have relied on a number of techniques. Tax laws can provide incentives to sellers and can permit the government to pay compensation to landowners by tax

forgiveness. Many developing countries in effect force the landowners to help finance the government's purchase by taking bonds as part of the government's purchase payment. Some countries use a combination of debt and equity financing to support an acquisition. Others have experimented with a wide variety of additional techniques, including tax expenditures, debt financing, equity financing, zoning variances, and external financing. In the pages that follow, we will discuss some of the financing techniques used in developing countries.

TAX EXPENDITURES AND OTHER TAX POLICIES

When a government or ministry pays cash to an owner for his land, the funds used for this payment, in most cases, will come from general tax revenues previously collected by the government. Usually, the landowner will have to return to the government part of the payment received, in the form of taxes on the profit from the land sale. The taxes paid can be used by the government to buy more land, the profits from which will be taxed, and the cycle will continue. Taxes-receivable are assets that the government may use in lieu of, or in addition to, cash to finance a land purchase. The government, for example, may forgive a landowner's obligation to pay taxes of a specified value, as part of the purchase package. Or the government may defer taxes to some extent. It may also, as part of the compensation, issue promissory notes or bonds which may be used by the landowner in satisfaction of his future or existing tax bills. The debt obligations may be used at par or at a premium; for example, a landowner is permitted to satisfy a tax liability of \$100 by the surrender and cancellation of government bonds, with a face value of \$90, which was given to the landowner as compensation for land acquisition.

When a government, through tax deferral or reduction, seeks to use this asset to pay for goods and services, the term is "tax expenditure." In countries where tax collection is highly efficient, the cost of compensating a landowner by a direct cash payment or by an equal tax reduction should be about the same. In other words, tax forgiveness and tax rebates, as a source for financing land acquisition, do not ordinarily represent new resources. Yet in developing countries characterized by a weak tax administration and taxpayers' tax avoidance, the use of tax expenditures may indeed represent a largely cost-free, or additional, asset with which governments can fairly compensate landowners. Such countries lacking revenue to acquire needed land may turn to tax expenditures as an important source of compensation. Even if taxes are routinely

collected and a tax expenditure is "real" expenditure, the use of this device may serve valid purposes when a government is in effect borrowing future income that is due, to meet an immediate need. Most developing countries, however, have too little taxing power to make tax expenditures for land acquisition a major source of compensation. But every developing country should give careful consideration to this potential source of funds in planning for land acquisition.

In Korea, the use of tax policy has been closely and carefully coordinated with land acquisition, through the Korean Land Development Agency. The tax system gives a seller incentives to do business with the government and also allows the government agency a source of non-cash compensation with which to carry out its programs. The tax benefits take the form of a deduction or exemption on real estate transfer taxes, residence taxes, and special excise taxes. The tax breaks allow a total exemption from some taxes and a 50 percent deduction from other taxes. Ecuador is experimenting with tax forgiveness for government purchases.⁴ Guatemala has an informal system under which the tax authorities will cooperate in a private sale of land to a government agency: At the time of the sale, the government boosts the seller's investment in the land to equal the amount of the sale price. In this way, the seller experiences no taxable gain or profit on the sale to the government, because the records now state that he acquired the land at the same price at which it was sold.⁵

A separate set of considerations arises: Should governments create a separate tax to support land acquisition? Should revenue from certain existing taxes—such as on property, capital gains, land sales, or real property transfers—be segregated and maintained in a separate fund? Should governments create something like a "new areas development tax," to recapture, for use in public acquisition of land, some of the excess value created by the urbanization of lands? Such ideas tend to complicate tax administration and establish special treatment or priorities. Yet, segregating income from a specific source and using it to acquire land clearly benefits a land acquisition program, especially when it is just getting under way.

Tax policy in countries with a fairly successful history of tax collection may have a significant indirect, as well as direct, effect on land acquisition financing. Governments may be able sometimes to manipulate tax policy to produce direct or indirect pressures that cut financing costs of their land acquisition. For example, tax policy can dictate, in large measure, the price of the land a government may wish to purchase. If landowners pay little or no annual property taxes and have negligible

⁴See Korean and Ecuadorean case studies in Appendices A and C, respectively.

carrying costs, speculators and hoarders may force up land prices. Conversely, annual taxes on land might discourage speculation and hoarding, and foster moderate prices. Great caution is advised in this area. Land markets are complex, and tax policy usually is but one determinant among many influencing land prices. Further, taxing land could boost prices if owners pass tax costs on to the purchaser. Careful analyses of land markets and tax policy is indicated before any action is taken.

DEBT FINANCING

A number of developing countries have used debt financing to secure resources for acquiring land. Techniques vary from country to country, but a common practice is to borrow the purchase price from the seller—often involuntarily—by issuing government bonds as part or whole compensation for an expropriation. There seems to be general acceptance of the government's practice of compensating landowners with interest-bearing bonds, at least in part. When the property sought is excess land (for example, as with India's Urban Land Ceiling Act) or is vacant or underutilized, the legitimacy of paying in the form of bonds seems even greater.

Governments may choose also to raise funds for land acquisition through general bond issues, which are sold to the public at large, and through specific borrowings from international donors or banking institutions. The rationale for such financing by borrowing arises primarily from a government's lack of immediate funds for the purchase, plus the hope of a high rate of return to the borrower. Borrowers anticipate that the annual increase in value of the land acquired with borrowed funds will be greater than the annual interest payments on the loans.

In Taiwan, when the government expropriates land, it pays cash up to the amount of NT \$100,000. Between NT \$100,000 and NT \$400,000, payment may be in certain negotiable land bonds, depending upon the type of transaction involved. When compensation exceeds NT \$400,000, all payment above that amount is made in land bonds. These bonds may be discounted on the open market, and they appear to be fairly liquid and negotiable. In Taiwan, some classes of bonds are tied to the cost of inflation—dependent for value upon the price of rice and sweet potatoes, for example.

In Ghana, when communal or tribal land is compulsorily acquired, tribal or communal owners receive annual installments of interest on government bonds used in payment. Landowners in Peru may be compensated by the issuance of government bonds, too.

In the Philippines, under agrarian reform laws, owners whose land has been taken may elect to receive 10 percent of compensation due in

cash, with the rest in tax-free bonds issued by the Philippines Land Bank. The bonds mature in 25 years and pay interest at a rate of 6 percent per annum. Other forms of compensation authorized include offering owners shares of common stock in the land bank.

Debt financing to acquire land in developing countries is probably unavoidable, because few of the countries have sufficient capital for land-acquisition programs of any appreciable size. Yet, there is great potential for undercompensating landowners by using bonds that fail to engender investor confidence. When this occurs, and such bonds are viewed by holders as virtually worthless, the public consensus needed to support a government's expropriation powers is seriously undermined. Landowners may then find ways to block government acquisition, or to delay compulsory acquisition until it no longer is a useful tool. Accordingly, governments contemplating debt financing should first generate confidence in their bonds.

One way to do this is to keep the maturity of such bonds within reason. Bonds with 25-year maturity dates, at fixed interest rates, are hardly reasonable securities. Developing countries are notorious for high rates of inflation and weak credit markets. Except perhaps in expropriations based on underutilization of land, government bonds probably should have maturities no longer than 10 to 15 years. Interest rates should also be reasonable. Rates could be adjusted based on an index of the cost of living or as in Taiwan and Chile, linkage to certain commodity price scales. Every effort should be made to make the bonds negotiable, perhaps by designating them as eligible collateral for loans from government banks and as legal tender for paying taxes and other debts owed to the government.

If public confidence can be established in bonds issued to landowners, a general climate of public acceptance may be created for other government bond issues, floated to the public at large. The development of a solid local credit market for government bonds, based upon a good history in land-acquisition proceedings, would be of inestimable value to any developing country.

EQUITY

Urban landholdings in developing countries generally are excellent investments. Land tends to keep pace with inflation, and indeed appreciates rapidly as urbanization grows and infrastructure develops. Thus, government cash may not entirely satisfy the landowner's investment motives. Expropriation, although compensated, forces the owner to forego his appreciation potential. The cumulative effect of disgrun-

tled landowners is a dangerous political force: governments should be careful that their land acquisitions remain generally free of such backlash.

One way to satisfy landowners' investment needs and still ease cash demands is to offer equity securities backed by landholdings. Land against which such securities are issued usually increases in value, which means the securities also increase in value. In this way, owners can benefit from land appreciation without facing tax payment on the land, having disposed of that responsibility.

This process can be accomplished in a number of ways. Governments could create land-development agencies or land banks as public or semi-public corporations. They could sell stock to the general public, and any profits could be distributed as dividends to stockholders, including landowners who are given shares as whole or partial compensation for their purchased property. Another approach would be the transfer of undivided interests in government land *per se*: certain public land would be appraised by independent appraisers; nonvoting, undivided interests in the land would be sold to the public; all or part of a tract of government-owned land would be conveyed; a prospectus would describe the land, its location, and the date and place of its auctioning to the private sector; the prospectus also would disclose other relevant facts, such as government budgets for urbanization of the land and adjacent areas, for road building, and so forth; and trustees would distribute proceeds of the sale to public and private stockholders according to their interests. The underlying assumption is that individuals would pay a premium above market value if they were assured that government decisions and actions would increase the value of the land. If the government is a stockholder in the enterprise—as is recommended—it could easily ensure appreciation of the land affected by targeted budgeting of public funds for road building, water, and so on.

With equity financing, a government can raise needed cash for land acquisition without spending its limited cash or incurring more debt. The principles and decisions leading to the issuance of stock can be much the same as those in a private corporation. Few private corporations relish opening their books and sharing ownership with the public. But to accomplish worthwhile goals, some seek funding from the public even at the cost of sharing anticipated profits. If successful, such a venture benefits everyone. If not, the loss is shared more widely than it would have been otherwise. The same principles can apply to government.

Hong Kong uses a form of equity financing under which sellers of land to the government may opt for cash or "Letter Bs." These Letter Bs are securities that entitle the seller to an interest in other land owned by

the government. The Letter Bs are bought and sold in securities markets.*

Probably it is unrealistic to expect that such equity devices would be used to finance ordinary acquisitions of land by regular government agencies in the course of business. But when special land banks, or other parastatal or quasi-public corporations, are established to facilitate land acquisition, equity financing may well be an important device to capitalize such institutions and assure their success.

OTHER FORMS OF FINANCING

The goals of developing countries seeking financing to acquire land generally will be the same: to acquire as much land as can be purchased with limited funds; to provide sufficient compensation to landowners so as to assure fairness and speed up acquisition; and to cut down on cash outlays as much as possible without creating citizen ill will. Tax expenditures, debt financing, and equity financing are useful alternatives to cash payments. So are other devices, all worthy of consideration.

One such alternative involves governmental regulatory power. A government could grant a landowner variances from building and zoning codes, applicable to his other property holdings. These variances could be of significant value to the landowner. It is not usual for a government to use its regulatory power to accomplish broader purposes rather than solely to achieve health, safety, and other specified ends. No doubt, laws and regulations might have to be changed to allow use of zoning powers in land acquisition. But in limited circumstances, and under adequate safeguards, governments can grant or withhold regulatory permission having significant value to the private sector, depending at least in part on the government's financial interests.

The Saskatchewan Land Bank in Canada finances some of its purchases through a purchase and lease-back arrangement. Under this system, sellers have the first option to lease back the land, but if they elect not to, others may do it. The income from the leases helps defray the purchase price of the land.

Also, the direct sale of excess land can help finance government acquisition of needed land parcels. In Hong Kong, the government raises considerable sums through land sales. In Pakistan, after their independence, lands that were formerly controlled by the British Crown were sold to

*Recently, however, the government has stopped using this technique.

private persons on a large scale. Mexico celebrated its independence in much the same way. The United States also has sold public lands for general-revenue purposes.

Furthermore, the city of Toronto has financed much of the cost of its subway system through sales of excess land it purchased along the subway right-of-way years before construction began. After the lines were built, the value of land adjacent to the subway appreciated greatly. Thereafter, the lease of such adjacent lands to the private sector brought significant profits to the city.²

Some governments have sought to create special funds to finance land acquisition. Tunisia is considering a contract-savings scheme for land called "Epargne Terrains." This would be modeled along the lines of Tunisia's contract-savings system for housing. Under this system, an individual contracts with a bank to deposit a certain fixed sum every month or so for three or four years, entitling him to borrow a predetermined amount from the bank. The assumption is that a growing base of contract depositors, in addition to the interest earnings, would permit the bank to meet its loan demands. In fact, however, the Caisse Nationale Epargne Logement, which administers Tunisia's contract-savings program for housing, has had difficulty in meeting its contractual obligations to make loans.³

Singapore is understood to have a forced-saving scheme under which a percentage of employee earnings is deposited in a National Land Development Fund. This in effect has many of the same characteristics inherent in a special tax for land acquisition. Presumably, if land acquisition is a top priority, general, unsegregated tax revenues can be used for this purpose. The creation of special funds for limited purposes may seem attractive to special-interest groups, but the idea should be considered carefully.

EXTERNAL FINANCING

General Policies of Donor Agencies

In Germany, municipal land banking has been financed by private lenders. Municipalities with considerable experience in land acquisition, such as those in Sweden and Norway, generally have relied on medium- and long-term loans from their central governments. But most developing countries cannot help their cities that way, because their national governments already finance municipal governments and have no additional financial resources to spare.

Instead, long-term financing from international donor agencies and

development foundations may be a useful funding source in the future. To date, however, the World Bank and the leading regional development banks in Asia, Africa, and Latin America have shied away from directly financing land acquisition.

The policies of the Asian Development Bank (ADB) are fairly typical of the policies of the other donor agencies. The ADB believes, for the most part, that the borrowing country should finance its contribution to the project with local currency. Since land financing involves the use of local currency as opposed to foreign exchange, the ADB views its role as supplying needed foreign exchange to assist in project financing.⁴

This view, which allocates foreign-exchange financing to the external donor agencies and local costs to the recipient country, is in part traceable to the perpetual scarcity of foreign-exchange reserves in developing countries and the interests of the donor nations to foster international trade.

All donor agencies strive to secure the largest possible host-country financing in each project. Donors rarely like to have their share of all project costs exceed 50 percent. The prevalent view is that the greater the share of host-country resources to a given project, the greater the prospects for host-country concern and thus project success. Applying these policies (to maximize the host-country contribution and to assign first priority to donor financing of foreign-exchange cost), the general result is that the host governments finance the costs of land acquisition as part of their share of project costs.

The donors also have general policies against financing the procurement of goods and services by the host country when procurement has occurred before the project was authorized by the donor. In many cases the sites for a proposed urban project already will have been acquired or exist as part of government-owned stocks of land. In these cases, the prior costs of land acquisition will not be eligible for reimbursement by the donor, even though some donors may be willing to consider the prior costs of land acquisition (or today's market value of the land) as part of the host government's required share of project financing.

In a Sector Policy Paper on Land Reform, the World Bank expresses a broader view that compensation paid for land acquisition is essentially a "transfer payment" from the public sector to private landowners. The policy paper further states that since such investment does not create any new productive capabilities in the host country, international lending institutions have refrained from financing land purchases.⁵ This policy, however, was not repeated in the author's numerous discussions with key staff members of the World Bank and other donor institutions, and consequently, it is not clear how important this theory is today.

The institution with the strongest policy against land financing appears

to be the Inter-American Development Bank (IDB). We were advised by IDB officials that there is a stringent policy to avoid this area, due in large part to fears of corruption and political sensitivity.

Some recent developments indicate a somewhat more favorable climate in which land-financing decisions will be considered. The current Shelter Policy Paper issued by AID states that programs of strategic land acquisition for low-income shelter will be eligible for financing under AID's housing guaranty program.⁶ In addition, an increasing number of bilateral AID project agreements under this housing guaranty program expressly include the costs of land acquisition as "eligible costs" for reimbursement. Under this AID guaranty program, the US government facilitates direct-dollar loans from private lenders in the US capital market to developing countries for development projects approved by AID. The US lenders are encouraged to make long-term loans by receiving guaranties of repayment from AID. In most of the AID-approved shelter projects, local currency costs account for from 85 to 95 percent of all projects costs, and AID policy is to freely permit the disbursement of private-lender dollars to reimburse for these local currency costs. This is not the policy for direct-AID loans and grants but it does operate in the guaranty program to remove one barrier to donor financing of land costs.

Obstacles to Donor Financing

In addition to the more theoretical obstacles to donor financing mentioned previously, there are some practical reasons why donors are reluctant to get involved in financing land transactions.

The first obstacle, mentioned by all persons interviewed, is lender fears of corruption or associated political problems. Urban land sales typically involve large sums of money. Land is unique and there is a perception among donors (arguably a misperception) that the true value of land cannot be ascertained in many developing countries. The donor institutions are afraid that the compensation paid for land will be either too high or too low. If the first occurs, the donor will have financed a windfall for a few, probably well-connected, individuals at the expense of the public. If the latter occurs, the donor will have angered those same few politically powerful individuals—a problem that could seriously affect the donor's overall country goals and programs. The fairly typical occurrence of litigation in land expropriation cases reaffirms the lender's fears that differences of opinion over a fair price for land will always exist.

Unfortunately, corruption and favoritism are a fact of life in every country. Yet, with protective controls, donor agencies may find the risks manageable. This author believes that the donor agencies which are

forced to see these potentials in their everyday dealings in developing countries tend to exaggerate the obstacle of corruption for land dealings. The price of urban land is fairly well known by the general population of a city; even the most humble slum dweller often has a fairly accurate understanding of the worth of his land. Clearly the public at large has a greater interest in and knowledge of the domestic land markets than the external markets for goods and services which are the major recipients of donor financing. This knowledge should tend to check extreme incidents of corruption so long as the donor agencies exercise the same degree of supervision over the procurement of land as they do for their other donor-financed procurements. Lenders will have standing to police a land purchase they are financing when other local institutions may not. The number of parties to a land purchase are generally small, the sums involved are large, and with proper appraisal techniques, the problems of corruption should be fairly manageable.

Lenders also fear involvement in realistic political problems related to land tenure. As stated previously, often those who own large amounts of land also hold considerable political power. For such persons, continued control over land may have political as well as economic ramifications. Both the international donor and the national development agency can anticipate significant political problems in transferring land owned by the powerful and wealthy into public ownership. Undoubtedly, the ultimate price paid for such land as well as the amount of time needed to carry out the process of acquisition will underscore such a problem. There are cultural problems too, that donors fear. While land in developed countries may have important cultural values, such values are usually not a serious impediment to acquisition. For example, in the United States, when a family-run farm is condemned for public purposes, a very good opportunity usually exists for an attractive farm to be acquired elsewhere. Thus, the strong attachment to land felt by the owners often can be overcome by the availability of other reasonably priced lands elsewhere. In developing countries, attachments to land may be historically based, and the land itself may hold important cultural values to its owners. In these situations, other parcels of land equally suited for farming may not be an adequate substitute, even when adequate compensation is made for acquiring such land. Donors will need to learn to find solutions for these problems.

Another constraint is the lack of experience in land transactions among the professionals who staff the donor agencies. The traditional educational background of professionals utilized by international lending agencies are in the areas of housing, engineering, planning, economics, and political science. Few people who come from the public or private sector into international development have experience and familiarity with

land transactions. For example, in the United States, where there are large numbers of trained people in the development professions, only a very few are in the position to be directly involved in real estate transactions involving large tracts of land. In the public sector, the role of principal in land transactions has been reserved for highly specialized groups of professionals. Often because of their high degree of specialization, such professionals have not been brought into the international lending community. Furthermore, since the termination of urban-renewal programs in the US and new-town development in Europe, there have been relatively few opportunities for the professional to gain experience in this field. This lack of experience also exists among the professionals of the borrowing country. Given the absence of resources for land acquisition, there have been relatively few opportunities for local staff to develop the skills and confidence necessary to undertake land transactions. In view of this lack of training, it is understandable why the conservative donor agencies are not eager to enter this new area of lending.

Until recently there has been no compelling need for the donors to finance land or otherwise get involved with land-acquisition problems. Land for urban projects of the donors has not always been a serious problem. There is, however, always a certain amount of inertia in the donor agencies that makes it difficult to change policies. No one likes to be first. There are risks to land financing, and it can be expected that donors will move slowly before policies change. Likewise, in developing countries, the processes of efficient land acquisition will be curtailed by a shortage of trained personnel. Not only is there a severe shortage of professionals trained in the science of land evaluation and appraisal, but any new program requiring the reallocation of manpower resources for this purpose usually has an adverse impact upon other essential programs which require these same professionals. In addition, personnel with specialized legal training in the process of land transfers are required. The process also requires that an effective system of identifying and recording title to land has to be established. Experience in the United States has shown that it takes a substantial number of years to establish a sufficient quantity of personnel to operate this system.

The donor agencies need intermediaries in the developing countries to actually carry out the land-acquisition processes. The donors cannot act on their own. Unless and until the donors have confidence in the host country professionals, they will not be inclined to include ad hoc land acquisition costs as eligible components in their urban projects. Of course, this attitude will change when the object of the donor assistance is to improve the machinery of land acquisition per se.

Potential Role of Donor Agencies

Assuming international donor agencies both recognize the need for land-acquisition programs and are willing to finance these programs through loans and grants, there are a number of important contributions that the donors can make. The first is the transfer of the funds required for land acquisition. These funds can have a wider and more important effect than that of solely acquiring the land needed for specific projects. The timing of funds' availability and the promise of a fairly certain supply of funds over a long period of time—*aspects which only donors can assure*—will permit planning actions that can make programs of land acquisition truly successful. Assured funding sources will permit the procurement action to occur when the time is right—not (as is often the case) the moment when scarce funds are available. The sustained availability of funding for land acquisition is important to strengthen local institutions. Without committed resources, a program of land acquisition in a developing country cannot succeed.

Donor agencies can mobilize the private sector and arrange that their knowledge, skills, and experience with land acquisition be available to developing countries. While the methods used for land acquisition in developed countries are not necessarily the best or the most efficient, the very substantial body of knowledge developed through experience can be highly useful to developing countries. In the United States, for example, there are a number of periodicals and professional organizations which concentrate exclusively with this specialized activity. At the university and professional levels, there are a variety of professional training courses, both in short- and long-term public land acquisition, designed to train public and private-sector personnel to carry out various roles in public land acquisition. From an educational point of view, the utilization of experience in the field of land acquisition in developed countries can save a very significant amount of time and help to avoid potential mistakes that can occur in the development of institutions for land acquisition in the developing countries.

At an operational level, assistance in the field of land acquisition for urban projects could be enhanced by drawing upon this body of experience and by including some of the following components. First, personnel trained in land acquisition, both on the administrative and technical levels, could be made available to the developing country. Moreover, operating methods developed by local governments in developed countries could be reviewed and in many cases adapted to fit the needs of similar institutions in the developing countries. By making administrative procedures used in the lending countries available to the develop-

ing countries, local institutions can be developed in shorter periods of time than would be otherwise possible.

Donors such as AID would be interested in facilitating the skill transfer of private-sector land-acquisition techniques. There are individuals and organizations in the private sector who have developed successful techniques for acquiring land in the complicated and risk-prone real estate market. Understanding such techniques may well provide some lessons for similar ventures in the developing countries. While assuming the same degree of risk may not be suitable for governmentally directed activities, some of the methods used by the private sector, as pointed out earlier, may be suitable for government-directed acquisition programs. It may also be possible and even desirable that in certain instances the private sector be utilized directly as an agent for large-scale land acquisition.

An important general concept of the private land developer (with some exceptions) is that no one piece of land has all the attributes of a perfect site for shelter development. However, a large number of land parcels may contain at least some of these attributes. By conducting a multiple-acquisition program, and negotiating for many sites simultaneously even though only one parcel is to be purchased, the private sector is able to determine the realistic market for land at a particular point in time and is thus more likely to find that seller who, at that particular time, has the greatest incentive for completing a transaction.

Another method of land acquisition used by the private sector is the purchase of rights or options to buy land at some later period of time.* By employing the use of options to acquire land, the land buyer is able, with a limited amount of resources, to control far more parcels of land than if he employed the technique of outright purchase. Since there is a high degree of risk in determining the future use of the land, this methodology can help to reduce risk by controlling many parcels of land simultaneously. In addition, the use of the options allows the buyer to drop a particular project when it becomes apparent that the parcel is not suitable for development. Normally, since land values increase rather rapidly just prior to use, the cost of the options plus the premium on the site itself, are usually offset by the rapid increase in the site's value.

When land acquisition for future residential development is an important part of a national housing scheme, these as well as other methods of land acquisition by the private sector may well have useful application. The public sector accordingly can undertake programs utilizing

*For further discussion of multiple acquisition and the use of options, see chap. 2, under "Voluntary Bargain and Sale."

some of these techniques. The donor agencies can help to bring these techniques to the attention of developing country officials.

A potential role for donors in the land-acquisition process is to be able to have an important effect upon the sensitive political aspects of land acquisition. Donor agencies should investigate the possibility of working at higher governmental levels and political structures in a land-acquisition program. In many instances, the international donor is in a better position than local administrators and technicians to work with the existing national or regional governmental and political structure to build the necessary institutions and to train the required personnel. This role would be particularly useful for housing programs for low-income families. The international donor can help to demonstrate to local governments that land acquisition, in combination with the appropriate institutional structure, is essential to providing shelter for the lower-income population.

The donor institutions can play an important role in dealing with special problems of corruption and favoritism. As stated previously, donors have a unique standing for treating the problem of corruption and misuse of funds which local institutions may not have. Local governments are especially concerned that lending programs, through international donors, be accomplished in an effective and efficient manner to maintain a good relationship between borrower and donor. This concern can be utilized by the international donors in land-acquisition programs to deal with the potential misuse of public funds.

Precedents have already been established for international donors to oversee the implementation of local projects. Since land acquisition is an important and visible part of any project, local borrowing institutions are likely to agree with this role. Finally, because the process of land acquisition involves highly specific values, it lends itself to just such an arrangement. In exercising its supervisory responsibility, the international donor can make a significant contribution to improving the process of land acquisition.

Overcoming Obstacles/Future Prospects

The obstacles to donor financing for land acquisition will not disappear overnight. Although the policies and practices of the major donors are similar, it is not reasonable to expect that changes in their attitude will occur in a similar fashion. The following, however, is a discussion of the kinds of practices that in various combinations could persuade the donor agencies to take a second look at proposed land-acquisition projects.

First, to attract the interest of a donor, the project proposed to the donor must involve more than a request to transfer funds to finance a one-

time land-procurement exercise for a given project. Donors do not like to engage in mere resource transfers without being able to influence policy, effect technology transfers, and engage in institution building. Adding a fourth general category of private-sector involvement, AID refers to these practices as the "four pillars" of development. In this sense, all donors will look for an opportunity to contribute something of lasting value to the overall processes of land acquisition, making them more efficient and equitable. This presumes that there is a demonstrable need in the developing country for an improved urban land-acquisition capability caused by increasing scarcity of land, poorly trained officials, inadequate laws, or inadequate policies.

Moreover, prior to financing a land-acquisition program, donors will want to study the land markets and other land-related issues to better set development goals and priorities. One methodology for this, recently developed and published by AID is its "Guidelines for Urban Land Studies: Issues, Data, and Methods."⁷ This methodology, among other purposes, is designed to produce information from which a land-acquisition strategy could be developed.

Other conditions of interest to the donors are (a) a climate conducive to law and policy reform; (b) an attitude of acceptance to outside advisors; (c) high-level political support for the goals of the land program; (d) a prospective intermediary institution with which the donor could work; (e) a willingness to set up the intermediary with at least some private-sector powers to play the land market; (f) a plan under which the intermediary will seek a status of eventual financial self-sufficiency; (g) prospects for the intermediary institution to be a player in urban capital-budget decisions; (h) policies in the country that favor low-income urban families; (i) prospects for studying the domestic land markets to learn the facts; (j) prospects for donor influence on capital-budget decisions (which dramatically affect the value of urban land); and (k) limited initial goals of the intermediary to acquire land for projects planned rather than for general land-banking purposes.

If the projections on high urban growth in developing countries are true, and if current trends continue, both donors and the developing countries increasingly will face problems associated with the inability of the public sector to control land use or acquire urban land for essential public projects at prices and within time periods that are reasonable.

It is logical to believe that developing countries increasingly will ask the donors for assistance and that these requests will be increasingly honored—as the donors themselves acquire the necessary expertise to respond intelligently.

Moreover, external financing need not be in the form of direct loans and grants. It could be in the form of guaranties attached to govern-

ment bonds, for example. Full subscription to a bond issued by a newly formed land bank or land-development agency could be assured by the donor's guarantee of full or partial repayment of the bonds. The donor, of course, must have a good reputation in the country involved. This guarantee might insure full sales through a comparatively inexpensive act of donor assistance.

Donor loans for carefully organized land-acquisition projects in many developing countries can be "bankable." After some experiences point the way, it is probable that private bankers can be induced to follow the lead of the donor agencies in underwriting self-financing land acquisition.

In the meantime, the donor agencies will continue to hear of the pressing need for such financing in developing countries as rapid urbanization gives way to demands for strategic land acquisition to manage the cities' growth. It is believed that, increasingly, the donor agencies will respond with the means to finance land-acquisition needs.

SUMMARY

Inadequate financing for land acquisition is expected to be a serious obstacle for developing countries in the foreseeable future. Many such countries simply cannot finance immediate necessities, such as food and fuel, let alone consider purchases when the benefits are realized in the future. A long-term investment in land, no matter how attractive the investment may be, is simply beyond the reach of many countries. There are, however, some promising areas to explore: The first is the use of noncash compensation, such as barter of excess land, granting zoning waivers and development rights to sellers, and giving preferential tax and land-titling treatment. Another device, called "excess condemnation," also deserves consideration. Under this device, the government will acquire slightly more land than it needs along corridors when roads and infrastructure construction are planned. The resale of such excess land, after it has appreciated significantly from government investment in infrastructure, will help finance both the original acquisition and some of the improvements. For example, in the United States, the Washington Metropolitan Transit Authority sold or leased parcels of land alongside its newly constructed subway to private developers for about \$1.5 million per year. If governments can acquire the seed capital for the first excess acquisition, the profits realized might create the capitalization for a continued, rolling effort. A third avenue to explore is seeking external donor financing from the World Bank, regional development banks, and the bilateral donor agencies.

Advance Land Acquisition

As urban growth soars in developing countries, enormous quantities of new land will be required for public purposes—roads, housing, schools, hospitals, parks, markets, and other public facilities. Planners who seek to control where and how new urban centers will grow will make even greater demands for public land accumulation. Government authorities must contrive efficient acquisition strategies to carry them past all the difficulties certain to arise. One of the first questions to be answered is this: Should future land needs be anticipated through advance acquisition and is this possible? It is common knowledge that, if governments wait to acquire land until the need is imminent for a specified purpose—for example, as the site for low-income shelter—the most desirable land will have been preempted by the very population pressures that caused the public's need for land.

Understandably, if a developing country's government delays its decision to acquire needed land until it is drastically needed, acquisition costs will be significantly higher. Also, the administrative time and effort expended to consummate a hurried purchase will be considerably greater than for a timely one. One answer obviously is to anticipate the needs for land and to purchase it in advance.

It may be useful at this point to explain the term "advance land acquisition" in this context. We are considering here the strategic advance acquisition of limited amounts of land. The purposes of such acquisitions are primarily to acquire the best sites for planned public facilities

at a time when such sites are within the financial reach of the government. A term sometimes used to describe this is "project land banking." A secondary purpose, which is dependent upon a strong and skillful institutional base, is to acquire land along growth corridors and thereby (with targeted budgeting of capital resources) effect growth and land use patterns in a modest manner. We are not considering in this chapter advance land acquisition that could be described as general land-banking activities. When the term connotes large-scale efforts with a serious goal of affecting land prices, we are not sanguine about general land-banking activities in developing countries. Few if any developing countries will have the will, financial resources, or expertise to carry out land-banking activities on a creditable scale.

For all kinds of advance land acquisition, a caveat is necessary. Regardless of the rapid escalation of land prices in rapidly growing urban areas in developing countries and the general consensus that it is difficult for purchasers to lose great amounts of money through improvident acquisitions, each proposed advance land acquisition should be subject to rigorous cost-benefit analysis before decisions are made. Nothing in this chapter should be construed to downplay the importance of careful economic analysis.

A major obstacle to strategic advance land acquisition is a prevailing public attitude that land acquisition and disposition is particularly susceptible to fraud or failure, and therefore major initiatives in this area are to be avoided. This view is shared by many and deserves some serious investigation. This author, however, does not subscribe to this view. Officials in developing countries manage their annual budgets and engage in sophisticated procurement activities daily. They purchase food on international commodity markets, they sell raw materials, they purchase sophisticated machinery and textiles, and they generally purchase items that are sold in highly specialized external markets. Critics, on occasion, may point to procurement errors and corruption, but few suggest that sophisticated government procurement activities should cease. Contrary to external markets for goods and services, the domestic land markets are generally well understood by local buyers and sellers. Government officials and indeed even the poorest slum dwellers, know the domestic land market perhaps better than any other market. In societies where corruption is endemic, the possibilities for fraud and corruption in local markets that are well understood (for example, land) are probably considerably less than in external markets. Homeowners in developing countries, as they do in the West, have an uncanny knack of knowing the value of parcels for sale. So long as proper publicity is assured, it will be unlikely that highly inflated land purchase prices will be paid to powerful private citizens without the general public being

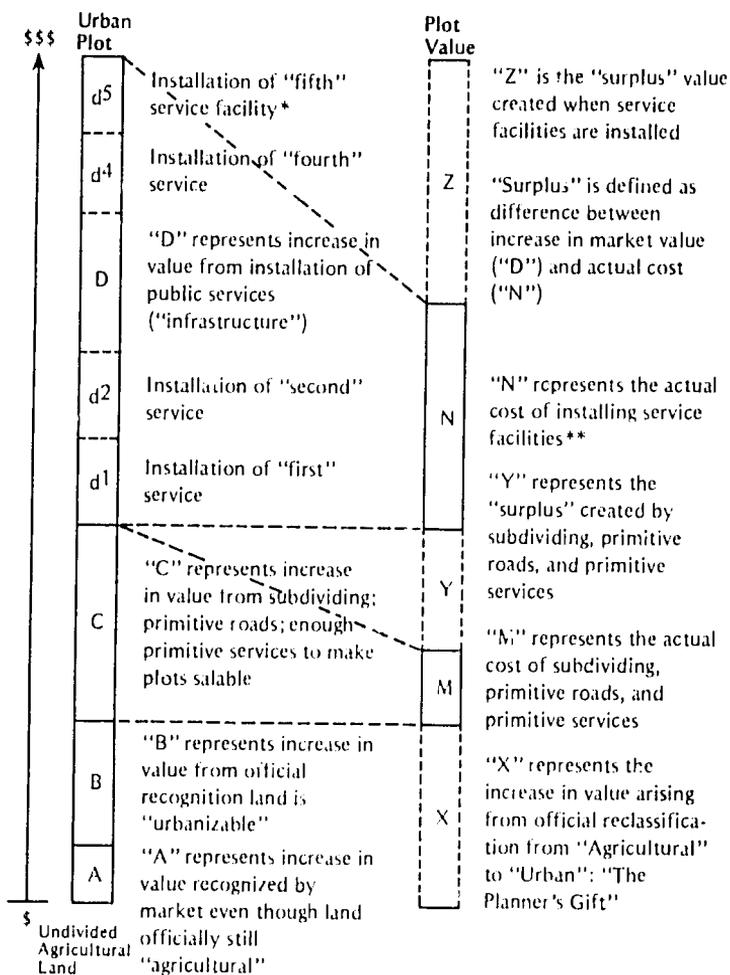
aware of it. With publicity and at least moderate democratic traditions, it is believed that government officials will conduct land purchases with equal or greater knowledge and skill than other large government purchases and that they will be held accountable for their actions by an intelligent—equally knowledgeable—public. The skepticism that nourishes the fear of corruption in land transactions is not to be dismissed, however, but probably is exaggerated, particularly when viewed in the broader context of the daily procurement responsibilities of developing country officials.

ADVANTAGES OF ADVANCE LAND ACQUISITION

Surplus Value Benefits

A strong argument for advance acquisition—and the earlier the better—is that land prices go up increasingly as the time approaches for the intended public use. Darin-Drabkin estimates, for example, that advance land acquisition could cut two-thirds from the percentage of land costs compared with the total costs of public housing.¹ Therefore, the financial implications of advance land acquisition are enormous, and they affect every aspect of urbanization, which is essentially a wealth-creating process.

Land at the periphery of urban areas, once it is urbanized and improved with roads, infrastructure, and parceling, may appreciate in value at a rate of two or three times (or more) the actual cost outlay of these improvements.² In most cases, the roads, sewerage, electricity, and the rest are installed at public expense: Thus, the dramatic appreciation of privately owned lands is the product of public investment—"surplus value" that is really an "unearned increment," as economists describe the phenomenon. In simplified terms, the process is as follows: Population increases and migrations from rural to urban areas result in larger urban populations that require land for settlement, social facilities, jobs, commerce, and an almost endless list of other municipal needs. The amount of land available in cities (particularly land with urban services) is limited. Thus, heavy demand affects a limited supply, forcing drastic increases in prices. Increasing the supply of urban land, by extending transportation lines, and servicing new areas with water, sewerage, electricity, and the like, is costly and slow. In almost all countries, governments have not been able to increase the supply of urban land at a rate equivalent to the demand created by natural increase and migration. Supply has always lagged behind, and prices always have increased accordingly.



*We assume five services in this diagram. An actual project may have many more (or fewer).
 **Like "D," "N" and "Z" may occur in steps, with each service. (Each step not shown, as in the case of the "five" steps represented in "D.")

Source: William A. Doebele (from materials prepared for an AID-sponsored workshop held in Washington, D.C., January 1980).

Figure 6.1. Schematic diagram of the increase in the value of land (per square meter) as it proceeds from large, undivided, unserved parcels of agricultural land (base line) to small, subdivided, served plots ready for urban construction (top line). (Actual proportions of all items will vary greatly in different countries, different cities, and different projects.)

This process is presented in more detail in Figure 6.1. It reveals that urban land markets are extremely imperfect: Demand is very high and continuous, and subdividing (C and M) falls far behind demand, complicated by speculative withholding of land in the expectation of even higher prices in the future, and by failure of public authorities to grant permits fast enough. In some cases, clouded titles and outmoded recording systems also constrict supply.

The demand-supply discrepancy is great between demand for land and availability of parcels subdivided into lots. But the discrepancy is even greater between the demand for serviced urban lots, which require the actions of many public agencies as well as the developer, and their supply. Virtually no major city in any developing country has been able to provide serviced lots at the rate demanded by urban population increases. Thus, while the cost of installing services, is high (especially for sewer systems)—see N in Figure 6.1—the resulting increase in market value is almost always much higher, causing surplus value (Z).

If N, the cost of installing public services, is borne by public agencies, with no mechanisms for recovering these expenses from the land that benefits from it, surplus (Z) (or profit to the owner or developer) is correspondingly greater.

Surplus (X) is the increase in land values that occurs when urban growth causes people to perceive the possibilities of future urbanization: Not only are they willing to pay more for the land, but the value surplus that is created increases when the original perception is legitimized by an action of the appropriate public land-control agency. Designating on a zoning map, or official master plan, that a particular area is now legally eligible for urban uses—is the kind of action to cause land values to soar.

What is even more attractive to the landholder is that both—the installing of public service and public perception of urbanization—create surplus value without any cost to the owner or even investment by him, even though the financial benefits may be substantial.

This is known as the “the planner’s gift”, and it is a major reason for government planners to emphasize advance land acquisition. Early acquisition can bring a major bonus to government negotiators. If land can be bought before urbanization progresses to a point that triggers an upward spiral in real estate prices, savings to the government might well cover the initial acquisition costs plus carrying expenses of the entire parcel.

All increases in land costs, whether caused by public decisions affecting the land and public investment in it, or by the natural progression of demographic events, can be avoided to some extent by early acquisition. This is the principle behind Korean “land readjustments” proce-

dures.* An owner whose land undergoes urbanization inevitably will reap a windfall, as his land value appreciates. This increase often will accrue without effort, risk, or investment on his part. The public can share in such benefits only by the speedup of land ownership—that is, advance acquisition. Repeated UN resolutions, beginning with the Vancouver resolutions in 1978, argue strongly for such public gains from the benefits of the unearned increment to land values.

Predevelopment Benefits

There are other advantages of advance land acquisition. Land acquired before it becomes densely populated or developed, for instance, can be assembled more easily into tracts large enough for major development. Economies of scale then can be realized in the assembling, grading, and servicing of large tracts. Public costs can be minimized by providing infrastructure before other structures have been built, often only to be torn down. It is almost always less expensive to put water and sewerage into vacant farmland than into developed slums. The same is true for roadways that, if installed before large settlement activity, can be completed with adequate rights-of-way.

Furthermore, acquiring land that is already developed can upset a lot of individuals, including owners, tenants, and squatters. If the land-acquisition decision is made at the same time a specific project is launched, disruption usually is even more painful. The land being sought will have been previously developed by the owners and occupiers, usually. Tenants or squatters will exhibit considerable emotional objections, along with a financial interest in the land. The result is that attempted acquisition of developed land generally is more economically burdensome and politically disruptive than a case involving, say, some peripheral, undeveloped land used entirely for agriculture. When the public acquires agricultural land in advance, usually fewer private interests are at stake and the solidification of vested interests has not yet begun.

Administrative Benefits

Advance site acquisition can save time and administrative expense. Many development projects involving international donors, such as the Agency for International Development and the World Bank, have experienced costly delays arising from problems of site acquisition. Contractor, equipment, and supplier costs continue to escalate while site-acquisition procedures drag on. Often, sites are chosen for development,

*See also chap.2 and Appendix A.

not on pure merit, but simply because the government happens to own the land or can get it easily and expeditiously. This adds to project costs and often leads to forced acceptance of second-best sites instead of top-priority locations. This unhappy situation might be avoided, at least in part, by well-planned advance acquisition.

Impact on Land Markets

Practiced on a large scale, advance acquisition, together with appropriate land-disposition strategies, can have a profound effect on the price of land and on land markets in general. However, few developing countries with free-market economies have the will or resources to engage in advance acquisition to a degree that would influence land-market prices. But this is an option as a potential defense against unchecked land speculation. Most likely, advance acquisition will be used to purchase site for projects that are planned for construction in the foreseeable future, perhaps in a two-to-five-year time span. This practice is sometimes called "project land banking" to distinguish it from more general advance acquisition programs. The benefits to government deriving from a purchase five years in advance may not be as great as a purchase ten years in advance. But then, too, the risks are not as great. Case-by-case cost-benefit analysis will guide the decision making about how early the land purchases should be made.

Impact on Land Use

Advance acquisition also can be an important tool in controlling land use. As migrants stream into cities from the farmlands over the next decade, shelter and employment for these people will be a central concern to all developing countries. While urban populations are expected to double by the year 2000, the greatest growth will occur in cities of seven million or more in population. Indeed, some metropolitan areas are expected to reach well over 20 million (Sao Paulo) or even in excess of 30 million (Mexico City).⁴ The environmental, economic, and social impacts of rapid urban growth are compounded by this concentration in relatively few urban areas. The rate of urban growth and its skewed distribution threatens to overwhelm urban and national governments. Their capacity to plan and influence long-range changes will determine whether their systems can control land use and cope with unprecedented population pressures.

⁴See Figs. I.1-I.3 in the Introduction.

The tools available are fairly limited. Zoning laws in most developing countries are either nonexistent or poorly enforced. Few, if any, experts are confident that zoning laws can guide the growth of major cities in developing countries over the next decade. Building codes and tax laws are similarly ill suited for land use control in the expanding cities of developing countries. The effectiveness of such laws directly depends upon a highly literate, disciplined, and organized population and bureaucracy. Developing countries cannot meet these criteria.

What are the tools, then? What instruments exist that can make a difference? Of all the possibilities for land use control, land acquisition is the most promising. By acquiring strips of land in corridors where planners believe growth can be better accommodated and served, and by using capital budgets and other governmental powers to make those expectations a reality, governments should be able to influence generally the settlement of a large segment of urban migrants to areas acquired by the government and deemed most suitable.

Dramatic examples of advance acquisition to influence urban growth can be seen in new towns built in Great Britain, Brazil, and elsewhere. By acquiring land and establishing housing, schools, churches, and transportation in selected areas, governments can control the direction of the growth of new populations. Moreover, by dedicating industrial parks and providing other amenities, governments can divert growth to where industry will locate. It must be stressed, though, that advance acquisition can have this effect only if it is done intelligently and skillfully.

PROBLEMS OF ADVANCE LAND ACQUISITION

Drawbacks to advanced acquisition in developing countries can be summarized as lack of funds, lack of institutions that can correctly manage the endeavor, lack of political foresight and will, and lack of efficient laws and powers.

Lack of Funds

It is simply too expensive for most developing countries to acquire large quantities of land in advance of perceived need. Many of these countries have difficulty in meeting their critical current needs, such as payroll and import bills for food and fuel, let alone budgeting for future investments. When a government is in this financial condition, investing for future profit and advantage simply is not a justifiable course. In some cases, the lack of funds will be insurmountable. In others, advance acqui-

sition may already have been tried and abandoned as a failure after unwise investments of funds. In these cases, ways may be found to borrow, seek donor support, or otherwise make adjustments to try again. Once the initial capital investments are made in land acquisition, the goal of the programs should be to achieve self-sufficiency, with profits from the first land purchases and sales going to finance succeeding purchases, and so on.

The costs include more than direct costs of the capital to purchase land. They also include opportunity costs of capital; loss of taxes in replacing private, tax-paying ownership with public, taxless ownership, and operating expenses of the program. A less tangible, but no less real, cost may be the adverse reactions of powerful investor interests, who may feel threatened by public intervention in the land markets. These adverse reactions may take the form of threatened or actual litigation, or the enactment of legislation designed to impede land acquisition.

Lack of Confidence in Government Institutions

Once the problem of initial funding is solved, the next problem may be skepticism among land experts whether any government agency can manage advance acquisitions or land banking in a developing country. Problems of political favoritism, corruption, and simple bad judgment often arise. An often-voiced concern is that private land speculators will either corrupt or outmaneuver their public counterparts. The fear is that, while government should have an advantage over private speculators to protect land investments, the reverse too often is true. The general inefficiencies of government in developing countries, it is argued, defeat the best efforts of institutions engaged in advance land acquisition. Experience in developing countries should allay some of these fears. Many of the same concerns were voiced about the capability of developing countries to manage their schools, hospitals, and budgets. Yet, to greater or lesser degrees, agencies in developing countries manage these endeavors as well as their counterparts in developed countries. Some may argue, too, for more dependence upon the creation of specialized institutions to avoid some of the more visible shortcomings of government. Yet, on balance, if modest goals are sought, and the experiences and advice of experts freely sought, governments in developing countries can avoid the obvious pitfalls and can set up judiciously planned and wisely administered programs.

It is true, nonetheless, that errors by public institutions and officials could defeat the purpose of advance acquisition. For example, paying too much for land could negate any profit at its disposal. The wrong land could be bought—land that proves unusable. The land could be sold or

leased for too little consideration, or for the wrong purposes. Moreover, officers might fail to develop or dispose of the land properly, thus contributing to the very problems of vacant, underutilized land that government ownership was intended to solve. And finally, corruption and favoritism are always threatening, ready to discredit and disgrace entire governments.

Lack of Foresight

Another problem has to do with time. Advance acquisition offers future, not present, results. By the time the advance acquisition reaps benefits, the officials responsible are unlikely to be in office to enjoy the approval that their foresight and courage might deserve. Hence, an ambitious politician might find incentives for directing his energies elsewhere, in areas that are rewarding in the short term. But such a problem is common to all government decision making.

Lack of Law and Authority

Much more importantly, land-acquisition laws and other tools in most developing countries are badly in need of reform and revision. Many seem designed more to checkmate acquisition than to facilitate it. When each intended public acquisition of land involves years of litigation, only a truly optimistic official is cheerful about launching an advance acquisition effort.

STUDIES ON ADVANCE LAND ACQUISITION

A number of studies have been performed on the results of land banking or advance land acquisition. Professor Ann Strong's book on the European experience is an excellent example.³ Yet, it remains difficult to generalize on successes and failures. Too much depends upon the goals of the government involved and the skills and financial resources available. When the major goal has been to control speculation and regulate land prices, the success stories appear concentrated in northern Europe. When the goals have been more modest—for example, to acquire land for public housing, highways, schools, or other limited sectoral purposes—purposeful results appear more widespread. Thus, Chile, Guatemala, India, Singapore, and Hong Kong, each has had some programs of advance acquisition and appears reasonably content to continue their efforts. Ireland attempts to acquire land for public housing

roughly eight years ahead of construction, and the reported continuation of this policy suggests that the results are acceptable.

In Chile, the various major municipalities have formal policies of advance acquisition. They hold their land reserves for public housing and other public purposes. The city of Manila in the Philippines has a large land-reserve area. New Delhi and Bombay boast policies of massive compulsory advance acquisition.⁴

When developing countries or their cities have engaged in advance acquisition, the record shows largely brief, episodic ventures, as opposed to sustained, carefully planned efforts. This is particularly true with fully public agencies, rather than quasi-public, specialized corporations.

ANALYTICAL TOOLS TO EVALUATE ADVANCE ACQUISITION

Any successful program of land acquisition requires rigorous technical analysis and a skilled and dedicated bureaucracy. Advance acquisition calls even more for these requisites, and no analytical tools are more important than cost-benefit analysis and land-needs assessments.⁵

Cost-Benefit Analysis

Purpose. Cost-benefit analysis is useful in its capacity to uncover, focus, and study the aspects of total benefit and cost of a proposed course of action. When fundamental land use and development decisions are based largely on political considerations, or when other noneconomic issues interfere, a cost-benefit analysis of advance land acquisition is indicated. Such an analysis cannot help but improve the quality of the decision-making process, the ultimate choices, and the resulting patterns of growth and development. Any thoughtful analysis of alternative courses of action is better than none. The more data-supported and comprehensive an analysis is, the greater the chances for correct decision making. This discussion of cost-benefit analysis is not intended to be a formal methodology, but rather is offered to give a perspective on what concepts are actually involved in cost-benefit analyses.

The benefits of advance land acquisition vary according to the objectives of the acquisition policy and the scale of the program. These are related to each other and are primarily determined by what the government can budget for the program. Three basic objectives can be achieved by a government-sponsored advance land-acquisition policy:

1. Acquisition of specific parcels of land for public purposes in a more economical and efficient manner. Actual land acquisitions, serving this basic objective, may be small or large, depending upon whether their intended use is for schools, housing, airports, and so on, or for roads and other infrastructure. The frequency of acquisitions also will vary with the intended use. For example, extensive tracts of land for airport use would be acquired on a one-time basis, but small parcels for schools and roads might be acquired on an almost-continuous basis to provide for the needs of a growing population.
2. Control of the land market to influence land prices. To achieve this objective, the government must control a substantial portion (maybe as much as one-quarter) of the developable land in and around existing urban areas. A land acquisition program of this magnitude would be extremely expensive and probably beyond the financial reach of most developing countries. This objective is not recommended.
3. Control of urban growth and land use patterns. In programs designed to meet this objective, the sale and disposition of public land becomes of critical importance in evaluating the benefits of the original acquisition. An example of acquisition to serve this objective can be seen in the city of Toronto. It purchased excess land in advance along the site of a proposed subway route, and then, after the subway was built, it sold the excess land to commercial interests. The profit from these sales was significant and helped to finance subway construction. Of equal importance, however, was the effect of the transaction on directing the future growth of Toronto which was judged to be beneficial from an urban-planning perspective.

Often, there will be overlapping objectives. Land acquisition for future, specific public use can be planned and implemented in a manner that influences urban growth, land use patterns, and prices. In fact, it is often the consideration of such additional benefits that determine whether acquisition of land in advance of need is cost-effective.

A major benefit of advance acquisition, serving the first objective noted, is that it can lower the ultimate cost of providing services and facilities for which a future need has been established. This is accomplished by anticipating land price increases, as a result of inflation and speculation, and by purchasing the needed land prior to substantial increases in market price. Government thus captures the appreciation in land value caused by its own actions, as we noted earlier, by preventing new construction and development on optimal sites.

In addition, by carefully locating infrastructure, services, and facilities, the government can control development patterns. Ultimately, it offsets the cost of providing such services, through elimination of urban sprawl. By renting or leasing the land acquired, and continuing productive agricultural use (or any other use compatible with the intended public use), the government can earn returns on the land during the period before public use. This will help defray some of the holding costs. In formal cost-benefit analysis, the value of these cost-reducing, acquisition, and planning techniques must be established and compared with the costs of applying them in the social, economic, and political climate within the government.

Even though a proposed acquisition proves cost-effective, it may not be prudent to rush into acquisition. Other courses may be more cost-effective. Or there may be instances in which the government has no capital to invest, even at a high rate of return.

The length of life of the program and the governmental unit involved may affect the choice of method of evaluating a program or particular purchase. For example, if the program is just starting, it may be desirable to evaluate its effectiveness step by step. For an established, continuing program, averaging the results over a period of time may be more appropriate. Further, when cost-effectiveness indications differ, perhaps because of the government units administering the program, it may be appropriate to do at least two analyses to compare the benefits of one unit over another.

Benefit Determination. The benefits of government land acquisition, to be measured against costs, are those associated with the advance aspect of the acquisition program. Some benefits and costs are easier to measure than others, and thus, easier to compare. However, all advantages and disadvantages, no matter how intangible, should be considered and quantified in some manner. To compare the value of costs and benefits accurately, it is necessary to put a monetary value on them and to convert the values to a single point in time. A benefit received or a cost incurred today is not equivalent to those received and incurred in the future. Thus, every benefit and cost should be converted to its "present value,"—that is, its value at the time of decision making. Future values may be discounted at the local government borrowing rate to reach present values. Once discounted, benefits and costs can be added and subtracted to give useful estimates of cost-effectiveness.

To justify a particular purchase, the benefits must exceed the costs, and the net benefit must be greater than alternative actions. If costs of a proposed parcel are, for example, 15 percent per year (10 percent interest payment plus 5 percent lost tax revenues), and land prices can

be predicted to rise at least at this rate, or the cost of demolishing new construction would exceed 15 percent, then advance acquisition is cost-effective, since the benefits outweigh the costs. The addition of any other less tangible benefits would make the venture even more worthwhile. Furthermore, by assigning a monetary value to benefits and costs and comparing them, one can determine the minimum monetary value of the intangible benefits (such as, better sites and improved planning), necessary to make advance acquisition desirable. In making a decision, the governmental authority should have concluded, on the basis of evaluations, that all the results that are real possibilities are at least acceptable, and the most likely results are very desirable.

Future Land Values. As future land values may be particularly difficult to predict, substitution of a range of land values, in place of a single value, may help reduce the element of uncertainty. Clearly, the best and worst cases should be analyzed. In addition, group land-acquisition values should be evaluated and distinguished from land to be evaluated in isolation. This is because the net result of a group of acquisitions need be only cost-effective for the group as a whole, not necessarily for individual acquisitions. When individual purchases are large or infrequent, or both, the success or failure of the advance-acquisition program, as a whole, may depend on the result achieved in a single project. Thus, the impact of error in such predictions is greater. To reduce the risk of error, each element of the cost-benefit analysis should be measured in terms of a range of possible values.

Future land values are determined by long-term trends in land prices, the rate of development of rural areas, and chance events affecting prices in particular areas. Long-term trends in prices are a function of the rate of inflation and the scarcity of (appropriate) developable land. In turn, scarcity is affected by population growth and migration as well as such indicators as economic growth and speculation in the land market. The actual impact on land values of any one of these variables may be unavailable, because it may be impossible to separate cause and effect. Further, the rate of changing land values may vary somewhat over time and among localities. It is important to consider whether the price changes are a product of location, size of lot, development costs, or raw land values.

Information regarding trends in population growth and migration, personal income, zoning, private development, and government provision of services and facilities will be compared against land-value trends. The statistical measurement of the relationship among these variables and land values could make forecasts more accurate. If past trends regarding these variables are expected to continue, it can be expected that the

trend in land values also will continue. Even without specific statistical information, it is possible for individuals who are familiar with the forces influencing prices and who have experience in the land market to make fairly educated determinations about the trend of future land values.

For advance acquisition to be profitable, prices must be expected to rise over time, and they must rise enough to cover at least the costs of interest and lost taxes. The more likely and greater the rise expected, the more advantageous advance acquisition will be. The presence of certain conditions makes a rise in prices more likely. Thus, when there is a rapid rate of urbanization and almost permanent inflation, substantial increases in land prices are common. The change from rural use to urban residential or industrial use will cause large increases in price. The change to commercial use would cause an even greater increase in price. In areas undergoing or likely to undergo rapid urbanization, the government would have to acquire the land before the value of development boosted its price to capture the entire increase in value as a result of its conversion in use. This usually requires that the acquisition occur far in advance of the intended use, as we have discussed earlier.

Prevention of Development. Governments that can prevent inconsistent or premature private development realize savings on the best site available for a particular service or facility. That saving is measured by the cost of acquiring and demolishing any buildings on the site at the time of its intended public use, discounted to the present value (this is in addition to the increased value of the land itself). This can only be considered a benefit for acquiring the land in advance. Otherwise, the benefit might be more accurately measured by the amount above the price of the undeveloped land that the government might pay at the time of use, rather than settling for a different site (i.e., this represents how much the one site is preferred over other viable alternatives). Furthermore, if the government were to consider changing the scale of, or doing entirely without, the proposed service or facility, the measure of the benefit of preventing inconsistent development is different; it is that amount over the price of the unimproved land that the government might pay, rather than do without. Any of these three measurements of benefit might be further reduced if either private development of the optimal site is unlikely or ultimate public use is unlikely.

Other monetary and political savings associated with the prevention of new construction are those of relocating the would-be inhabitants of the site. Depending upon whether the land is purchased on the open market or expropriated by the government, and depending upon who or what occupies the site acquired, however, costs of relocation may not

be incurred at all. Thus, the avoidance of such costs would be of no particular benefit. However, if the land is acquired at the time of its intended use, and new construction must be demolished by the government, public and private resources are likely to be wasted. And moreover, the political costs of such government action may be high. Avoiding these costs is a benefit that is difficult to measure, but it should be considered.

Land Use Planning. An advance land-acquisition program can be planned and implemented to affect the timing, location, type, and scale of development in and around urban areas. The government can influence the cost to the public and the pattern of urban growth through careful planning for the location of future public services and facilities. Government participation in advance land acquisition requires detailed advance planning, analysis, budgeting, and policy making. The institutionalization of these procedures is another benefit of advance land acquisition. It is difficult to measure the monetary value except perhaps to the extent that it would eventually reduce the cost of managing the acquisition program. Better land-acquisition planning can reduce the piecemeal and sporadic acquisition and development practices that drive up land prices in the area of planned development. The more comprehensive the process of public land acquisition, the less rapid and steep the increase in land prices—and the less the government will have to pay to assemble parcels for any one project or group of projects.

Temporary Use. Once acquired, the land often can be put to or left in productive use to bring in some revenue during the period before it achieves its intended use. Income produced and use of the land become more important if the time of intended use is distant. The land can be leased back to the seller or rented to someone else, subject to use restrictions, depending on its intended use. Farming or grazing may bring in low rents. Other uses may reduce the likelihood of squatters occupying the land, which could save the political and economic costs of evicting them. However, management costs may be incurred in collecting rents, finding tenants, and maintaining the property. These must be subtracted from the rental income to determine the net return on the temporary use of the property. To measure the present value of this stream of payments, the annual net returns expected must be discounted from the year in which they were generated, back to the date of the acquisition.

If the land is put to a temporary public use, the value of the benefit is more difficult to measure. There are two methods. For the first, the benefit of public use must be greater than, or at least equal to, the benefit or return on the land in private use. The second method is used to determine the government cost to rent another site suitable for public

use. The first method sets a minimum value on the public use, and the second establishes the maximum value to be expected from public use. Thus, the benefit from public use of the land, on a temporary basis, can be estimated to be somewhere between the minimum and maximum values established. The estimate of annual return should then be discounted to its present value.

All the benefits of advance land acquisition—the difference between the purchase price now and the purchase price at the time of intended use, the amount saved by preventing the acquisition and demolition of new and incompatible construction, better land use planning, and the return on temporary use—must be added together and compared with the costs.

Cost Determination. The acquisition and holding of land for a future public use may well be a profitable enterprise in the long term. In the short term, the government may face some difficult financial problems. The larger the scope of the land-acquisition program, and the sooner the government acquires the land in advance of its actual use, the longer the time period before the program will become self-sustaining. In the early stages, funds may be needed for land acquisition, improvement, administration, taxes, and carrying costs on government borrowings. However, to evaluate the cost-effectiveness of advance land acquisition, only those "advance" costs of acquisitions should be measured and compared against the benefits previously discussed.

Capital Costs. The major cost to be incurred by the government will be the cost of capital, usually measured by the interest owed on money borrowed for land acquisition. As in the discounting of benefits, the discount rate used to determine present value is the government's average borrowing rate during the landholding period. Thus, the total cost of interest is the present value of the stream of interest payments over the holding period. In countries where there are limited funds available for public projects and the competition for the funds is great, it might be more appropriate to use lost-opportunity costs (the foregone benefit to be derived from other public use of the money) as the measure of capital cost, rather than the interest payments on borrowed money.

Interest rates will greatly affect the cost-effectiveness of the projects. High interest rates will adversely affect the evaluation results of marginal projects and long-term projects compared with short-term projects. Total interest costs will be affected by land prices paid by the government, which are in turn affected by acquisition practices (such as the use of options, installment purchases, and so forth). The method of financ-

ing land acquisition, whether through government loans, bank loans, bonds, or land-sale revenues, also will affect the cost of capital. Payment schedules on loans may be structured for the overall financial benefit of the land acquisition and development program. For example, the loan principal can be divided into portions, to be associated with certain parts of the development (basic infrastructure). As those parts are completed and disposed of, the loan principal associated with those parts can be repaid and the amortization installments reduced to reflect the lower principal balance. Another option would be to continue payments on the entire principal balance and retain sales revenues for ongoing operational and development expenses. A creative approach to financing can do much to reduce capital costs, increase the general flexibility of the land-acquisition program, and thus improve its chances of success.

Lost Property Taxes. Lost property-tax revenues may be another cost of advance land acquisition that must be measured. When privately held land is subject to property taxes, the transfer of land from private to public hands results in a direct loss of revenues to the government from property taxes.

The amount of taxes foregone when land is removed from the tax rolls is measured by the present value of the stream of lost tax payments. The amount of tax payments expected depends upon the assessed value of the land and the property tax rate. Agricultural or pasture lands should be assessed at agricultural value, not development value. However, tax assessments should be based on rising land values. To accomplish this evaluation, the land value expected at the midpoint of the holding period is applied to the whole period, producing a conservative figure. It should be noted that if the land remained in private ownership, improvements might be made that would increase the land value and consequently, the amount of lost taxes. On the other hand, the private development might well be directed to another location, with no resulting loss in tax revenues associated with the value of new construction. Furthermore, better government land planning and development might also improve the quality, or increase the quantity of private development in the project area, thus adding to land values and property tax revenues.

Administrative Expenses. In addition to causing the loss of property tax revenues, advance land-acquisition costs will include administration expenses. Administration expenses include the costs of organizing the institutional framework for the land-acquisition program; gathering staff and data, conducting analyses; and preparing plans for acquisition, management, and development; as well as managing and maintaining property once it is acquired. Some of these costs will be

one-time, start-up costs, and others will be incurred as part of administering the acquisition program as a whole. All such costs are considered overhead, and should be calculated when evaluating the overall cost-effectiveness of the advance-acquisition program. These expenses will vary, depending upon the level of organization and resources that exist in current agencies for performing necessary functions. Moreover, certain costs will go down over time, as experience is gained. Other costs are not attributable to overhead, such as those variable costs closely associated with the management of particular parcels. These costs should be charged to those properties as a means of determining the cost-effectiveness of their acquisition. To determine this figure, the costs can be deducted from any rent obtained from the land while in temporary private use or from the value attributable to temporary public use of the land during the holding period. If there is no particular use of the land during this period, the stream of future payments necessary for its maintenance should be discounted to its present value. Some expenses are incurred at the time of decision making and actual acquisition. These costs do not need to be discounted, for they already are at present value.

Relocation and Demolition. The occupation of public lands by poor people presents special problems. The eviction of squatters may be costly—financially, because of the costs of relocation and demolition of houses, and politically, because of great local opposition. On the other hand, failure to evict squatters would cost the government the value of property lost. It could also defeat the government's ultimate goal of providing better public services to the very people who have taken up residence on the government land.

Corruption and Inaccurate Predictions. Graft and corruption in land-planning and acquisition processes will raise government costs. The great value of advance knowledge about government land acquisitions and developments increases the likelihood of corruption and land speculation. The government may be forced to pay increased prices for land, unless it can establish safeguards to protect the confidentiality of the planning and acquisition process, as well as to limit the compensation to a reasonable amount.

Moreover, by purchasing land in advance of public need, the government will always run the risk of buying land that is later found to be either inappropriate or unnecessary, because of site characteristics, market conditions, or unexpected shifts in population and migration trends. If, at the time of the intended use, another site equal to the first is available for a price less than the first (at its expected value), the first site should be disposed of and the alternate site should be purchased. If the

land originally acquired is retained and used for the intended purpose, despite the availability of a cheaper suitable site, the government fails to earn the full benefit of the land's appreciation in value. The benefit is then limited to the difference between the purchase price of the land acquired and the market price of the cheaper equivalent land, at the time of use, discounted to present value. Since public needs and land values may be difficult to project precisely, government's flexibility in land acquisition and sales is a very important way to reduce the cost of inaccurate predictions.

Land Assessments

General Purpose. Cost-benefit analysis, as discussed above, will assist authorities to evaluate the relative merits of specific proposed acquisitions of land. A land assessment is another analytical tool, which is broad in scope, and therefore allows for long-range planning in land acquisition. Ideally, a land assessment would be undertaken first, when a government is deciding whether a land-acquisition program should be part of its national policy. A land assessment will examine a broad range of forces affecting supply and demand for land. If the results of the assessment demonstrate that demand for land will far outstrip supply, then the officials should give serious consideration to a program of land acquisition, as well as to the advance acquisition of specific parcels. When the latter is considered, then a cost-benefit analysis is also required.

A methodology for preparing land assessments, as well as researching other land issues, has been recently prepared by the United States Agency for International Development (AID).⁶ This methodology will be field-tested in a few developing countries, to assess its usefulness.

Information Sought. The basic information sought from an urban land assessment would center on demand and supply of urban land in a given area over a given span of time, for example, 20 years. The types of analyses that comprise a specific assessment can vary widely.

It is important for officials to understand how much urban land is available now that can be used for major categories of purpose, such as for housing, industry, schools, parks, roadways, and commercial establishments. A land assessment, if performed properly, could tell how land currently is used and how much vacant or underutilized land is available in an urban area.

An assessment also can inventory land already owned by the public. Many developing countries do not have comprehensive registries of public landholdings. A land assessment can fill this need.

Using sophisticated satellite scanning devices, together with some base data from census reports, maps and overlays can be prepared to illustrate the current uses of land in an urban area and the current population density. The same data virtually can be produced by using hand-held 35-mm cameras and light aircraft. By researching satellite data, available back to 1972 for almost every city in the developing countries, urban planners can trace the growth of these cities and by extrapolation make predictions for future growth.

Predictions and projections of urban growth are an important part of urban land assessments. The methodologies for this are well known to urban planners. Existing population densities, gathered from censuses and satellite data, will provide a starting point for determining how much land is required to hold the anticipated urban population growth in any developing country. The role of the urban land assessment is to calculate population growth, urban migration projections, and other data, and evaluate the implications of such figures for land-needs planning.

More elaborate land assessments will discuss a variety of relevant issues, such as land tenure, land use standards, land pricing, institutions and their capacity to influence land markets and land use, and the legal and policy framework for controlling land and land use. However, regardless of the degree of complexity of the work, an urban land assessment is recommended for every developing country. Financing for such studies should be readily available from international donor institutions.

CONCLUSION

Often in the past, advance land-acquisition programs have been the result of energetic individual leadership, as opposed to careful cost-benefit or needs analyses by land-planning agencies. Today, faced with difficult economic conditions, developing countries need to prepare careful analyses before embarking on any advance land-acquisition program. It is certain that strategic advance acquisition of urban land can account for significant savings for most of these countries. But whether even greater savings (or gain) will occur from public investments in other areas must be left to careful analysis.

The experience of countries practicing advance land acquisition shows that such policies can cut down on public spending and provide an effective tool for carrying out development schemes.⁷ The success of land-acquisition programs as a whole, or the net benefit derived from particular land acquisitions, will depend upon the existing social, economic, and political climate in individual developing countries. Success will

be greater when the program has strong public and governmental support. The success of public land projects also will vary with different market conditions. The economics of projects in fast-growth, high-price markets may provide the government with a larger profit with which to cushion experimentation. In slower market conditions, public land activities will have less of a margin for error. The institutional framework of the program also will affect its chance of success. The administration should be flexible enough to tackle issues of overlapping geographic and topical jurisdictions and to view land use problems from a regional perspective. Furthermore, the administrators must understand that there are limits to long-range planning; they must be willing to monitor changes of public need and to reevaluate and modify unrealistic goals or timetables. Clearly, decisions should not be made in a vacuum; nor should they be cast in cement.

Decision makers should evaluate the costs and benefits of all the actions considered, in light of various possible economic conditions and their likelihood of occurrence. The net results of all alternative plans should be compared. The decision maker should choose the one resulting in the greatest net benefit (weighted by likelihood).

The decision to acquire a particular parcel, however, is not the end of the decision-making process. Once land is acquired, the conditions upon which the decision was based may change. Several methods for mitigating the impact of inaccurate predictions have been discussed previously, such as: preserving land by means other than paying the full purchase price (through purchase options or installment payments); disposing of land, if it is no longer needed, or if a cheaper, more appropriate site is available; changing the basis of evaluating the success of the program (evaluate purchases as a group, letting more profitable acquisitions counter the loss of less profitable ones); and purchasing land in excess of need, to sell off at a profit to subsidize other intended land uses. As needs have an upward trend, there are additional ways to affect the results of a land-acquisition program. An original overestimation of needs may turn out to be just the right amount, when the time for intended use occurs, or thereafter. However, overestimation of needs may add to holding costs. If there has been an underestimation of needs, the productivity of a limited amount of land may be improved by increasing the facilities on the land and intensifying its use. Thus, in many ways, the government can attempt to alter the ultimate results, through fine-tuning.

The government also can shape the conditions that affect what land will be needed for public use. The results achieved by a particular policy are a function of its effective implementation plus the impact of other policies. Even though the government may not be able to control the

forces of overall growth, it may well be able to influence the land use patterns where growth does occur. This influence may take the form of zoning controls, subdivision regulations, land and development taxation, and careful location of government-provided services and facilities. The government need not wait for the private market to decide land use issues. Affirmative public action can greatly impact land use and urban growth patterns.

There is, as stated at the outset, very little time for the public and private sectors of the developing countries to engage in protracted ideological or political debate about land acquisition. Urbanization of the developing countries is moving so rapidly that, as municipalities begin to accommodate booming populations, each country must also decide rapidly which land will be for private and which will be for public use. Furthermore, each country must devise the policies, procedures, laws, and institutions to acquire the land needed.

The main issue, though, is for all concerned to move, to make the hard decisions, and to carry them through to execution. The tools are outlined here, and in other works of this nature. All that needs to be added is a national will and the skill and integrity of dedicated public servants. The need is clear and present, and so is the danger.

APPENDICES

**Surveys and Case Studies on
Land Acquisition: Korea, Thai-
land, Ecuador, and India**

- A. Korea: Land-Acquisition Policies and Procedures of the Korean Land Development Corporation
Gill Chin Lim
- B. Thailand: Land-Acquisition Activities of the National Housing Authority
Robert S. DeVoy and Sidhijai Tanphiphat
- C. Ecuador: Land-Acquisition Policies and Procedures in the Shelter Sector
Gustavo Donoso and Carlos Luzuriaga
- D. India: Land-Acquisition Policies and Procedures with Emphasis on the City and Industrial Development Corporation of Maharashtra (CIDCO), India
Suryakant N. Schroff

NOTE TO THE APPENDICES

The surveys and case studies appearing in the appendices were prepared at my request. The authors submitted papers that were long and detailed on the understanding that the papers would be edited to meet the requirements of the publisher. In fact, most of the case studies were reduced considerably as a result of the editing process. From time to time, material edited out of the appendices appears in the text of the book.

The case studies may not be of interest to every reader because of their detailed nature. However, they give a flavor for the realities of the land-acquisition process in different settings and should be of value to those who wish to gain a deeper understanding.

I was required to make difficult decisions in the editing process, often without time or opportunity to consult with the authors. If errors appear or if the meaning is less than fully clear, I take full responsibility.

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Appendix A

**Korea: Land-Acquisition Policies
and Procedures of the Korean
Land Development Corporation**

*Gill Chin Lim**

INTRODUCTION

Scarcity of land is one of the most visible problems of urbanization and development in developing countries. The process of urbanization, industrialization, and population growth has led to a phenomenal increase in demand for land. Unfortunately, limitation in land supply and imperfections and failures in land markets have prevented many countries from providing an adequate amount of serviced land efficiently. Furthermore, the issue of basic needs for shelter and the distributional implications of land use have added urgency to the debate over land policy in developing countries.

Policy responses to the problems of land use have varied substantially. Some countries have opted for a nonintervention strategy, while others have attempted a high level of public control over land use decisions. One of the emerging institutional approaches to land use in recent years has been an establishment of public or quasi-public agencies responsible for land acquisition and disposal. This approach seeks to provide a large quantity of land through strategic planning, and a combination of market transactions and public intervention undertaken by a public or joint public-private institution. Neither the effectiveness of this approach to achieve land policy goals nor the operational aspects of land-acquisition practices has been subject to a detailed investigation.

The main objective of this study is to investigate the major issues in land use policy in the Republic of Korea, with special reference to land-acquisition poli-

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cies and procedures. Specifically, the study addresses three distinct but related items. First, it examines the overall trend of urbanization and population growth in Korea which has led to a substantial increase in demand for land. Second, it examines the detailed aspects of policies and procedures of land acquisition as practiced by the Korean Land Development Corporation (KLDC), the single most important public agency responsible for land acquisition and disposal. Third, the study analyzes the effectiveness of the current policies and practices of the KLDC within the overall context of land use policy in Korea.

URBANIZATION AND LAND IN KOREA

Korea (South Korea) had a population of about 39.9 million in 1983 with land area of 99,022 square kilometers.¹ The population density was 403 persons per square kilometer - one of the highest in the world. The population of Korea is heavily concentrated along the urban industrial axis connecting the two largest cities in the country - Seoul and Busan. To the east of this axis is mostly mountainous and the west is agricultural. The national capital, Seoul, had a population of about 8.4 million in 1980. The rest of the country is divided among nine provincial governments and the city of Busan.

Korea has achieved a remarkable record of economic growth during the last two decades. The real GNP grew at an annual rate of 8.1 percent between 1961 to 1982. During this period, the government implemented a series of five-year economic development plans emphasizing industrial development and exports of manufactured goods. In the meantime, the Korean government has been successful in slowing down the overall population growth rate to 1.58 percent by 1983. As a result of this combined rapid economic growth and slowing population increase, the per capita GNP has risen from \$87 in 1962 to \$1,678 in 1982.

The growth and structural shift to an industrial economy has been accompanied by a high concentration of population in large cities. In 1960 only 38.2 percent of the total population resided in cities over 20,000 in population. In 1980, the figure reached 66.7 percent; about 25 million of the total population of 37.4 million lived in urban areas. Furthermore, urban areas, with advantages coming from scale and agglomeration economies, have attracted a large number of rural-urban migrants. The "net city increase" - defined as the growth rate of city population - is highly correlated with the growth rate of GNP.²

One of the important features of urbanization in Korea as in other developing countries is the phenomenal growth of two major cities, Seoul and Busan. The share of the population of Seoul in the nation was 9.0 percent in 1960, which increased to 22.3 percent in 1980. Busan, the second largest city has also grown faster than many other cities. Busan's share of population in the nation was 4.7 percent in 1960 and rose to 8.4 percent in 1980. The share of other provinces has remained stable or declined over the last two decades.

A sharp increase in land prices has been also observed. On the average between 1963 and 1977, the land prices in Korea rose at an annual rate of 33.8 percent. This is far faster than the growth rate of per capita GNP and the consumer price

index for the period—less than 18 and 20 percent respectively. As a result, the price of land increased beyond the reach of a large portion of the population, and the housing sector suffers from a critical shortage of housing units, a multiple occupancy, and a high residential density. In 1980, on the average of two persons shared a room and 6.75 people resided in a dwelling unit.³ The persistent problem of housing in the midst of economic growth has become a frequent topic for heated public debate.

KLDC: EVOLUTION, ORGANIZATION, AND PROCEDURES

Evolution

In an effort to deal with the problems associated with land and housing, the Korean government over the last two decades has formulated several national-level plans and implemented a variety of policies and programs.⁴ Overall, land policies in the 1960s and 1970s can be best characterized as a mixture of market incentives and public regulation to influence locational decisions of firms and households. A marked departure took place in 1979 with the creation of the Korean Land Development Corporation (KLDC). The KLDC was established as the single most important public agency to engage directly in acquisition and disposal of land. The establishment of the KLDC reflects not only the increasing concern of the government over the problems of land but also the recognition of the limited effectiveness of incentives and regulatory approaches to land markets.

Authority and Function

To promote desirable national economic growth, the KLDC seeks to facilitate efficient use of land by acquisition, development, and supply of land. It can exercise the powers of preemption, eminent domain, and designation of idle land which are necessary for acquisition, development, and disposal of land. The KLDC has the following powers:

1. acquisition, development, and sales of land
2. preemptive purchase of land
3. residential sites development, industrial sites development, land-readjustment projects, and reclamation projects
4. residential land development
5. borrowing funds through the issuance of land debentures
6. buying and selling land upon request by the national government, local governments, government-funded agencies, private corporations, and individuals
7. construction of public facilities within project areas

³A brief discussion of Korean land policy is presented elsewhere in this study. For a detailed analysis of Korean land policy up to 1977, see W. A. Doebele and M. C. Hwang, "Land Policies in the Republic of Korea," memorandum (Washington, D.C.: The World Bank, 1978).

8. collection of information, research, and consulting for formulation of land policy
9. other activities which are deemed necessary to conduct the business items described above.

The KLDC is authorized to deal with foreign lenders and loan projects of foreign-donor countries. The initial amount of paid-in capital for the KLDC was 38.9 billion *won* in 1979.* The government gradually increased the paid-in capital to 203.9 billion *won* by 1983. Total assets of the corporation also increased from 41.7 billion *won* in 1979 to 626.7 billion *won* in 1982. The government has made a total of 25 billion *won* of profit and paid 11.4 billion *won* in corporate taxes. Liabilities due to land debentures reached 434 billion *won* by 1982. The legal authorized capital of the KLDC (as of 1985) is 500 billion *won*, or almost \$625 million, based on January 1985 exchange rates. It is expected that the government will continue to contribute to paid-in capital to expand the operation of the corporation.

Instruments and Procedures for Land Acquisition

The KLDC uses several instruments to acquire land, including the following: (a) normal purchase; (b) purchase of nonbusiness purpose land; (c) purchase of idle land; (d) preemptive purchase of land; (e) consignment purchase; (f) eminent domain.

Different procedures are employed to purchase land for the six different instruments. The normal purchase deals with acquisition of land through market transaction procedures using appraisal and negotiation. The procedure is as follows:†

Normal Purchase. Normal purchase involves the following steps:

1. Preliminary discussion between a seller and the KLDC. In most cases sellers seek opportunities for a deal with the KLDC, although the KLDC also searches for potential sellers.
2. Receipt of an application for sales from a potential seller.
3. A survey by the KLDC of the qualification of the land. The KLDC studies the size, location, and marketability.
4. A study by the KLDC of restrictions and regulations, such as zoning, which affect the land.
5. KLDC notification to the applicant of the KLDC's interest in further dealings. (At this step, the KLDC may decide that the land in question is not suitable for purchase and discontinue the deal).
6. Preliminary sales contract. Methods for price determination, means of payments, and conditions for sales are specified at this stage.
7. Survey of land, upon request of the KLDC. Conducted by the Korean Survey Corporation.

*\$1 US = 484 *won* in 1975-1979. For the ensuing years, \$1 US = 607 *won* (1980); 681 *won* (1981); 713 *won* (1982); 778 *won* (1983); 800 *won* (1985).

6. Preliminary sales contract. Methods for price determination, means of payments, and conditions for sales are specified at this stage.
7. Survey of land, upon request of the KLDC. Conducted by the Korean Survey Corporation.
8. Appraisal, upon request by the KLDC. Conducted by the Korean Appraisal Board and a private assessor.
9. Negotiation between the KLDC and the applicant for a final price.
10. KLDC staff application to its board of directors to approve the intended purchase.
11. KLDC notification to the applicant of board of directors approval.
12. Sales contract.
13. Finalization by registration of the transfer of land title and payment of sales price.

The entire procedure usually takes less than two months.

Nonbusiness Purpose. Purchase of nonbusiness purpose land deals with the acquisition of land held by companies in excess of their operational needs. The procedures are as follows:

1. The minister of treasury identifies a parcel of land as nonbusiness land. He makes a request for possible purchase to the minister of construction.
2. Notification by the minister of construction to the KLDC for possible acquisition of the land.
3. Notification to the landowner.
4. A study of qualification of the land. This includes an examination of size, location, development potential, marketability, regulations, and other qualities of the land.
5. Appraisal.
6. Negotiation for price.
7. Final contract.
8. Registration of the land-title transfer.
9. Payment to the seller and notification of relevant financial institutions. (These include banks which lent money to the landowner.)
10. Report to the minister of construction by the KLDC about the result of the sale.

Idle Land. The third type of land purchase by the KLDC deals with acquisition of idle land in accordance with the National Land Use and Management Act. Idle land refers to land, held by a owner for at least two years, which can be used or developed. The purpose of acquiring idle land is to discourage land-ownership for speculative rather than productive purpose. The procedure for this type of acquisition takes the following eleven steps:

1. Identification of idle land by the governor of a province.
2. Official notification to the landowner by the governor.

3. Designation of a buyer for the land. The KLDC and other public entities such as the central government and local governments may be designated as a buyer.
4. Field study of the land.
5. A study of restrictions and regulations affecting the land.
6. Negotiation for price.
7. Preliminary contract for sale.
8. Survey.
9. Application to the KLDC board of directors for an approval of purchase.
10. Final contract signed.
11. Transfer of title and payment.

Preemptive Purchase. The fourth type of acquisition takes a form of preemptive purchase. Provincial governors can designate the KLDC or other public entities as a buyer of land to be used for public purpose. The details of the procedures are as follows:

1. A governor of a province designates a piece of land as a possible candidate for preemptive purchase.
2. KLDC receives a request.
3. A field study is performed.
4. Notification of the KLDC to the landowner of the intention of the government through the KLDC to purchase the land.
5. A study of restrictions and regulations affecting the land.
6. Appraisal of the land.
7. Negotiation for land price.
8. Preliminary sales contract.
9. Land survey.
10. Application to the KLDC board of directors for an approval of the purchase.
11. Preemptive purchase contract.
12. Transfer of the land title and payment for the seller.

Consignment Acquisition. The fifth type of purchase by the KLDC is consignment acquisition. Under this type of land acquisition, the KLDC handles the purchase of land on behalf of various public and private agents. The procedure is as follows:

1. Application for consignment purchase received by the KLDC.
2. Examination of the application.
3. A field study of the land.
4. A study of restrictions and regulations affecting the land.
5. Notification to the landowner.
6. Preparation of consignment contract.
7. Appraisal of the land.
8. Final contract.

Eminent Domain. The last type of land acquisition is performed by eminent domain. The KLDC relies mostly on negotiation for land purchase. However, it may resort to the power of eminent domain to acquire land for public purpose when negotiation does not lead to a successful deal. Nevertheless, most transactions have been made through negotiation. Until 1980, all purchases were made by negotiation. In 1981, about 1.6 percent of purchases were made through eminent domain, and in 1982 11.9 percent.

To facilitate acquisition, sellers to KLDC are authorized to benefit from tax privileges. The tax benefits take a form of exemption on real estate transfer tax, resident tax, and special excise tax.

LAND POLICY, PLANNING, AND IMPLEMENTATION OF THE KLDC

The KLDC is best characterized as a policy-implementing agency for the supply of land—particularly residential land. As an implementing rather than policy-making agency, it is subject to the overall direction of the Korean land policy. Consequently, the basic direction of KLDC's land policy is derived from the residential construction plan formulated by the government.

Master Plan

One of the most recent and important documents for national land use policy is the Master Plan for Public Housing Construction and National Urban Land Development, prepared in 1980.⁵ The ambitious goal of the original plan is to increase the housing-supply ratio to 95 percent by 1991. In order to achieve this goal, it aims at building a total of five million housing units between 1981 and 1991, two million of which are to be built by the public sector and three million by the private sector. The government also plans to expand its investment in housing—to 6 percent of housing investment as a percentage of GNP. With respect to land supply, the plan proposes a price-discrimination system, to provide the lower-income population with residential land at lower prices. It also suggests zoning changes where inexpensive nonresidential land may be converted for residential purposes.

In the area of housing finance, the plan proposes: (a) to increase the housing funds provided by the public sector and the private sector and to establish a secondary mortgage system, (b) to allow tax shelters to residential construction companies, residential land developers, and individuals purchasing land for their residential needs.

Finally, the master plan discusses rental housing policy briefly. It suggests legal action to extend the current six-month lease period to over a year, and an enactment of a law to protect rental occupants.

Long-Range Land Supply Plan. The master plan of 1980 just discussed was made when the Fifth Economic and Social Development Plan was being

drafted. In 1982, it was reviewed in light of the completed Fifth Economic and Social Development plan; the revision of the master plan is called the Long-Range Land Supply Plan.

The Long-Range Land Supply Plan is essentially an implementation scheme for the 1980 master plan with special reference to land supply. It provides a brief description of basic directions for land policy, summarized by the following four points:

1. efficient use of land
2. establishment of a long-term plan for land supply to maximize the use of land for public purpose
3. establishment of an institutional system for a large-scale supply of land
4. active involvement of the public sector in land development to achieve the system of supply of land

As a planning document mainly concerned with land supply, the plan is devoted largely to estimation of demand for land up to 1995 and land availability. The basis for this estimation is the revised version of the 1980 master plan, which aims at increasing the housing-supply ratio to 84.4 percent by 1995. Using this goal and an analysis of population growth, urbanization, and household formation, the government has established target housing construction units for each year through 1995. Land-need estimates are made by multiplying average lot size by target housing units. For private residential construction, an average of 80 *pyongs* is used for need estimates.* For public construction, a size of 25 *pyongs* is used to estimate land need for smaller unit public housing, and a size of 80 *pyongs* for larger units.

According to the above procedure of needs estimates, a total of 290 million *pyongs* will be needed for the nation as a whole by 1995 to achieve the goal of 84.4 percent of housing-supply ratio. For urban areas, as defined by cities and *eups* (rural towns) with populations greater than 20,000, a total of 262.64 million *pyongs* will be needed. This accounts for over 90 percent of the total needs. The 50 large cities in the nation would need 215.1 million *pyongs*, and *eups* would need 47.5 million *pyongs*. Land need for rural area would be much smaller—about 27.36 million *pyongs*. (See Table A-1.)

An important and extremely useful portion of this plan bears upon an analysis of land availability in the 50 major cities. According to the data collected by the KLDC and the ministry of construction, the total amount of land available for residential development in the 50 cities is 114,754,000 *pyongs*. Therefore, using the urban land-need projections described above, there will be a shortage of 100,349,000 *pyongs* of residential land. For 18 cities, demand for residential land will be met solely by developing available land in residential zones designated by the ministry of construction. If land in greenbelt areas is converted for residential purpose, 20 other cities will be able to meet the estimated needs. Thus, the plan recommends relaxation of growth control in green-

*One *pyong* is approximately 3.24 square meters.

Table A.1 Korean Land-Needs Estimates (in thousands of *pyong*)

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	Totals
<i>Nation</i>																
Public																
sm. units	2,000	2,500	2,750	2,750	3,000	3,250	3,500	3,750	3,750	3,750	4,000	3,750	3,750	3,750	3,750	50,000
lg. units	3,200	4,000	4,400	4,400	4,800	5,200	5,600	6,000	6,000	6,000	6,400	6,000	6,000	6,000	6,000	80,000
Subtotal	5,200	6,500	7,150	7,800	8,450	9,100	9,750	9,750	9,750	9,750	10,400	9,750	9,750	9,750	9,750	130,000
Private	10,400	9,600	9,200	10,000	9,600	10,000	9,600	9,200	10,000	10,800	11,200	12,400	12,400	12,400	13,200	160,000
<i>Grand Total</i>	15,600	16,100	16,350	17,150	17,400	18,450	18,700	18,950	19,750	20,550	21,600	22,150	22,150	22,150	22,950	290,000
<i>Urban Areas</i>																
Public																
sm. units	2,000	2,500	2,750	2,750	3,000	3,250	3,500	3,750	3,750	3,750	4,000	3,750	3,750	3,750	3,750	50,000
lg. units	3,200	4,000	4,400	4,400	4,800	5,200	5,600	6,000	6,000	6,000	6,400	6,000	6,000	6,000	6,000	80,000
Subtotal	5,200	6,500	7,150	7,150	7,800	8,450	9,100	9,750	9,750	9,750	10,400	9,750	9,750	9,750	9,750	130,000
Private	8,480	7,680	7,280	8,080	7,760	8,160	7,760	7,360	8,160	9,040	9,440	10,640	10,640	10,640	11,520	132,640
<i>Grand Total</i>	13,680	14,180	14,430	15,230	15,560	16,610	16,860	17,110	17,910	18,790	19,840	20,390	20,390	20,390	21,270	262,640
<i>50 Cities</i>																
Public																
sm. units	1,906.5	2,384.2	2,623.5	2,622.2	2,861	3,098.2	3,338.5	3,575.7	3,576	3,574.7	3,813	3,576.7	3,576.5	3,576.7	3,576.7	47,680.2
lg. units	3,050.4	3,814.8	4,197.6	4,195.6	4,577.6	4,957.2	5,341.6	5,721.2	5,721.6	5,719.6	6,100.8	5,722.8	5,722.4	5,722.4	5,722.8	76,288.4
Subtotal	4,056.9	6,199	6,821.1	6,817.8	7,438.6	8,005.4	8,680.1	9,296.9	9,297.6	9,294.3	9,913.8	9,299.5	9,298.9	9,298.9	9,299.5	123,968.6
Private	6,848.8	5,835.6	5,327.2	5,973.2	5,467.2	5,608.4	5,095.2	4,596.4	5,235.2	5,881.2	6,017.6	7,151.6	7,152.8	7,152.8	7,791.6	91,134.8
<i>Grand Total</i>	11,805.7	12,034.6	12,148.3	12,791	12,905.8	13,663.8	13,775.3	13,893.3	14,532.8	15,175.5	15,931.4	16,451.1	16,451.7	16,451.7	17,091.1	215,103.4
<i>ELP</i>																
Public																
sm. units	93.5	115.7	126.5	127.7	139	151.7	161.5	174.2	174	175.2	187	173.2	173.5	173.5	173.2	2,319.7
lg. units	149.6	185.2	202.4	204.4	222.4	242.8	258.4	278.8	278.4	280.4	299.2	277.2	277.6	277.6	277.2	3,711.6
Subtotal	243.1	300.9	328.9	332.1	361.4	394.5	419.9	453.0	452.4	455.6	486.2	450.4	451.1	451.1	450.4	6,031.3
Private	1,631.2	1,844.4	1,952.8	2,106.8	2,292.8	2,551.6	2,664.8	2,763.6	2,924.8	3,158.8	3,422.4	3,488.4	3,487.2	3,487.2	3,728.4	41,505.2
<i>Grand Total</i>	1,874.3	2,145.3	2,281.7	2,438.9	2,654.2	2,946.1	3,084.7	3,216.6	3,377.2	3,614.4	3,908.6	3,938.8	3,938.3	3,938.3	4,178.8	47,536.5
<i>Rural Areas</i>																
Public																
sm. units	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
lg. units	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Subtotal	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Private	1,920	1,920	1,920	1,920	1,840	1,840	1,840	1,840	1,840	1,760	1,760	1,760	1,760	1,760	1,680	27,360
<i>Grand Total</i>	1,920	1,920	1,920	1,920	1,840	1,840	1,840	1,840	1,840	1,760	1,760	1,760	1,760	1,760	1,680	27,360

belt areas and development of areas in the vicinity of cities with limited quantities of land for residential development.

Implementation: Land-Acquisition Record

By the end of 1979, after about nine months of operation, the KLDC acquired a total of 1,552,000 *pyongs* of land, or 1,242.5 acres. This represented 99.6 percent of the planned amount of land acquisition. Of these 1,193,000 *pyongs* were industrial land, or 76.9 percent of the total land acquired in 1979. The volume of land acquisition in 1980 was reduced to 1,271,000 *pyongs*, with 63.5 percent consisting of residential land. The volume of land acquisition increased substantially in 1981. A total of 11,905,000 *pyongs* of land was acquired; 2,935,000 *pyongs* were residential, 49,000 were industrial, and 8,921,000 were for nonbusiness purposes. The volume increased further in 1982. During the first half of 1982, the KLDC gained a total of 14,295,000 *pyongs* (11,444.8 acres). A breakdown shows that 678,000 *pyongs* were residential; 1,000, industrial; and 13,616,000, for nonbusiness purposes (see Table A-2).

EVALUATION

Framework of Evaluation for Land-Acquisition Policies

Land acquisition by a public institution in Korea is a recent addition to many powerful existing instruments of national land policy in that country. Formulation and implementation of national land policy involves, both directly and indirectly, a number of public agencies and a diversity of private interests. The economic planning board and the ministry of construction are directly concerned with major decisions affecting national land use and are actively involved in formulation and implementation of explicit land use policies at the national level. However, these two governmental agencies do not engage exclusively in land-use issues. For the economic planning board, the most important goals have been overall economic growth and industrialization. The ministry of construction has to deal with a number of urgent problems of construction to support the objective of economic development. Thus, many of the activities of these two ministries are not primarily concerned with land use issues. These other activities are often carried out without clear reference to their impact on land use. The policies, which do not directly deal with land use issues but inevitably affect the result of land use decisions, may be termed, "implicit land use policies."

There are a number of other public agencies whose activities also affect land use by their implicit land use policies. Activities of the ministries of home affairs, transportation, treasury, commerce and industry, agriculture and fishery, and almost all other governmental and quasi-governmental agencies implement policies and programs which create significant impacts on land use, but their priorities in the past have not been given to land use issues.

In a country where the market plays the major role for resource allocations,

Table A.2 Korean Land-Acquisition Record
(in thousands of pyong, with millions of won in parentheses)

	Until 1979			1980			1981			Until June 1982		
	plan (A)	actual (B)	B/A (%)	plan (A)	actual (B)	B/A (%)	plan (A)	actual (B)	B/A (%)	plan (A)	actual (B)	B/A (%)
<i>Residential</i>												
Site-development	207 * (3,771)**	207 (3,716)	100 % 58.5	482 (13,635)	491 (11,760)	101.9% 86.2	2,278 (102,297)	2,450 (97,919)	107.6% 95.1	410 (21,220)	481 (19,020)	117.3% 89.6
Normal purchase	156 (13,026)	152 (12,983)	97.4 99.7	350 (35,053)	316 (26,076)	90.3 74.4	623 (60,000)	485 (60,058)	77.8 100.1	270 (32,400)	197 (20,830)	73 64.3
Residential total	363 16,797	359 (16,699)	98.9 99.6	832 (48,688)	807 (37,836)	97.0 77.7	2,901 (162,927)	2,935 (157,977)	101.2 96.9	680 (53,620)	678 (39,850)	99.7 74.3
<i>Industrial</i>												
	1,196 (5,405)	1,193 (5,286)	99.7 97.8	269 (7,651)	263 (7,589)	97.8 99.8	50 (4,425)	49 (4,400)	98 99.4	1 (42)	1 (41)	100 (97.6)
<i>Nonbusiness</i>												
	—	—	—	250 (4,600)	201 (2,501)	30.4 54.4	4,000 (200,000)	8,921 (78,868)	223 39.4	3,000 (99,391)	23,616 (86,417)	453.9 86.9
<i>Grand totals</i>												
	1,559 (22,202)	1,552 (21,985)	99.6 99.0	1,351 (60,939)	1,271 (47,926)	94.1 78.6	6,951 (367,352)	11,905 (241,245)	171.3 65.7	3,681 (153,053)	14,295 (126,308)	388.3 82.5

Source: KLDC, unpublished records

*Unit: 1,000 pyong.

**Unit: 1 million won.

many decisions are made by private agents who strive to achieve their private goals. In deciding their location and land use, they seek private profitability and personal preference, which are not necessarily compatible with the public objectives of land use. Thus, a pursuit of the public objectives of national land policy by private agencies is not always welcomed by the general public.

Therefore, an evaluation of land use policies and procedures should be based on a clear recognition of the nature of conflicts and the impacts of various explicit and implicit decisions affecting the pattern of land use.

Public Land Acquisition as a Land Use Policy Instrument

The Korean government's interest in land use policy emerged during the 1960s with a number of major acts concerning land use. However, the government did not develop a comprehensive land use policy until 1971, when the first National Land Development Plan appeared.⁶

Although this plan (1972-81) specified a set of objectives, spatial-development strategies, and implementation plans, it was not vigorously pursued. The implementation of the policies and programs outlined by the plan was severely limited because of the national priority on aggregate economic growth.

In this context, the government frequently revealed inconsistencies between its policy statements and actual program implementation. For example, while the government claimed that it encourages decentralization of population and supports policies aimed at furthering regional equality, many government investment decisions favored the already prospering Seoul-Busan industrial axis. Paralleling these decisions was the enactment of a number of laws aimed at industrial development which paid little attention to spatial issues. It is not clear whether these decisions were made with firm understanding of the nature of efficiency-equity tradeoffs or were mainly reached through political processes. What is clear is that many of the government decisions were made with economic-feasibility studies, usually a variation of cost-benefit analysis, which focus on efficiency criteria of projects, and without much attempt to assess other land-related project impacts.

The 1970s marked a beginning of a number of explicit land use policies and programs. Many of these programs were designed to redistribute industries and population, one of the basic factors determining land use patterns. A number of both demand- and supply-side instruments for land use policy were employed during this period. The demand-side instruments include financial incentives for industrial relocation, land taxes, and others. To facilitate or regulate land supply, industrial estate development, greenbelts, zoning variation, land reclamation, and the like were utilized.

An extremely important shift in government policy on land use was noted recently. In 1981, the fifth Five-Year Economic and Social Development Plan (1982-85)⁷ recognized the importance of land use issues for the first time by devoting a substantial portion of its text to national land use policies.*

*Note that previously the five-year plans were simply called "Economic Development Plans" without the additional term "Social."

This effort was paralleled by drafting the second National Land Development Plan 1982-1991."

In contrast to the first plan, the second plan puts its emphasis on population redistribution and urban and rural environmental planning. Land use in relation to economic development is also considered but not as important an element of the plan as it was in the first plan. A considerable effort is also devoted to conservation of the environment.

The apparent shift in these plans suggests that the issue of national land use policy has gained increasingly more recognition among policy makers and that the priorities concerning national development might be changing.

The effectiveness of public land-acquisition policy depends heavily on the overall structure of decision making for land use. Specifically, the extent to which land acquisition can be successful in providing land more efficiently and equitably is determined by (a) the direction and management of implicit land use policies, (b) the structure of the demand- and supply-side programs, and (c) the relationship between land acquisition and other policy instruments.

In view of the importance of the implicit policies and programs, it would be quite desirable to mandate "land use impact statements" for major governmental projects. The Environmental Conservation Act of 1977, which requires environmental-impact statements for major governmental projects in the area of urban development, industrial estate development, energy, transportation, water, tourism, etc. could be extended to address to spatial impacts of various projects in detail and evaluate land use implications of implicit policies.

Moreover, at present, Korea has few demand-side land use policy instruments. Several financial incentives have been used to relocate firms. But, households are not supported by strong demand-side programs. Although the Korean Housing Bank was established in 1967 to extend loans to home buyers, Korean households currently rely in large measure on private sources of fund, and there is no income tax deduction for homeowners. The weakness of the demand-side programs is that the low-income population, whose private funds are highly limited, cannot benefit from the program.

One of the supply-side instruments being used is the greenbelt system, which bans new growth in the outlying areas of cities. The supply restriction imposed by greenbelts, however, tends to increase land prices and further limit the access by the low-income people to land. The government has considered adopting a price discrimination system to provide land to the low-income groups at lower prices. But, this may entail inefficiency in land markets.

Furthermore, exactly what proportion of the very poor can afford the price set by the government under current programs is quite uncertain. If the price discrimination system reaches only a fraction of low-income families, its performance in terms of equity should be called into question.

Long-Range Planning

The National Land Development Plan sets forth the basic direction of the long-term strategic planning for land use. However, no single agency is charged with

the responsibility and perogatives to enforce the implementation of the plan. This ambiguity regarding the legal mandate for implementation of the National Land Development Plan has been one of the prime weaknesses of the overall institutional structure of the Korean land use policy.

The KLDC's Long-Range Land Supply Plan is an ambitious planning document for the development of residential land through 1995. Perhaps the most important element of the plan is its attempt to forecast land demand and to estimate availability of land for the 50 individual cities which will absorb much of the new demand for land during the next 15 years. However, the current forecasting is seriously flawed by neglecting price effects on land supply and demand.

The government has announced a price-discrimination system as a possible policy measure to make land prices affordable for low-income households. But, if lands are sold by the government at a price much lower than the market commands, the demand is likely to exceed the available supply of land. The situation may require some sort of rationing practice by the government, which normally involves serious efficiency and equity problems.

It should be noted also that the land availability is calculated by using the existing boundaries for cities, unnecessarily limiting the amount of total available land. The total amount of land in a nation is fixed, but the supply of urban land is not always limited. Therefore, the estimation of urban land availability should employ a more flexible boundary definition which incorporates a notion of commuting fields, geographical and geological suitability, and the existing political landscape.

In addition, the plan estimates the demand for land with an assumption of 25 *pyongs* of a site for a smaller public housing unit and 80 *pyongs* for other housing units, and excludes the possibility of developing high-rise residential structures. Alternative assumptions about the land size of average housing units and structure types could lead to substantially different estimates.

Quantitative Achievement to Date

The KLDC has been in operation only for a few years, and therefore it is too early to offer a comprehensive evaluation. Nonetheless, some of its achievements to date are discussed here. As previously noted, for 1980, the KLDC planned to acquire 1,351,000 *pyongs* of land and actually purchased 94.1 percent (1,271,000 *pyongs*) of the target. In 1981, the actual acquisition recorded 11,905,000 *pyongs*, an amount equivalent to 171 percent of the planned target of 6,951,000 *pyongs*. For the first half of 1982 the acquisition record again far exceeded the goal. In each year, the KLDC acquired about 45 percent of estimated land needs. This is a remarkable record considering the following. First, in recent years about 50 percent of new residential construction was carried out by the private sector. Second, other public agencies are also engaged in development of residential land.

Procedural Aspects

The procedures of the KLDC described above are not uniform among all types of land acquisition. The most important element of the acquisition procedure

relates to the process of price determination. To guarantee fairness, negotiation and appraisals must be used. Negotiation is an intersubjective process, and therefore some objective guidelines for price determination is often needed to mediate any difference in opinion between the seller and the buyer. Appraisal serves the purpose of providing guidelines for an objective evaluation of land prices. It is required that the KLDC call in a public appraiser from the Korean appraisal board and a private assessor. Using two appraisal reports certainly reduces the possibility of abusing the appraisal system. Since the negotiation comes after the appraisal, the potential seller can withdraw from the agreement if he feels the appraisal is biased. However, the current procedure does not provide reappraisal by a third appraiser when the initial appraisal and negotiation does not lead to a consensus. Reappraisal in case of a failure in a successful negotiation may increase the fairness as well as the likelihood of a successful contract.

CONCLUSION

Korea has made significant efforts in recent years to promulgate comprehensive land policies and to estimate future land needs. Moreover it has established a central land development institution, the KLDC, that has been able to operate in the land markets without undue constraint. Korea's land-policy formulation and the KLDC institutional model are worthy of a review by other developing countries. Unlike many developing countries, Korea has established land-policy framework, institutional capacity, and laws and procedures to accomplish land acquisition. The machinery for land acquisition is largely in place.

It is too early to judge whether this machinery has been well used to accomplish the intended goals. Nevertheless, existing evidence indicates that the quantitative goals in land acquisition has been satisfactorily met. This fact demonstrates that the KLDC is basically capable of attaining its most essential objective—an achievement which few other public land agencies in developing countries can match. However, there are two additional issues KLDC must deal with in the coming years for its successful operation. The first is development of appropriate mechanisms for disposal of land, and the second is a careful coordination with other land use policy instruments.

Thailand: Land Acquisition Activities of the National Housing Authority

Robert S. DeVoy and Sidhijai Tanphiphat***

SCOPE OF SURVEY AND CASE STUDY

The purpose of this study is to describe the land-acquisition policies and procedures of Thailand's National Housing Authority (NHA). After a brief description of urbanization trends in Thailand and some background information on the organization and function of the NHA, there follows a description of land acquisition procedures and policies. A case study of site acquisition in Khon Kaen is included. Some recommendations for future action are also included.

POPULATION AND URBANIZATION TRENDS

Since Thailand's population broke the 10 million mark in the 1920s, the population growth rate began an upward swing, which peaked at about 3 percent per year during the decade between 1965 and 1975. The total population of the country at the end of that period was 42 million, of which about 14 percent, or six million, resided in urban areas. By 1980, the overall growth rate had declined to about 2.4 percent, with the total population at 47 million. Growth-rate estimates expected a decline to 2.1 percent by 1982, and a further decline to 1.5 percent by 1986. The World Bank estimates that Thailand will achieve zero growth in 2073, by which time the population is expected to be 103 million.

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In comparison with other Asian countries, Thailand's level of urbanization today at about 18 percent is relatively low—despite urban-population growth that is generally higher than the average growth rate of other Asian countries. The reason for this is because the rural economy's mainstay, the agricultural sector, has been able to expand its production at a high rate (averaging about 5 percent per year), mainly by expanding the land area under cultivation (averaging some 5 percent each year) and thus absorbing much of the increasing workforce. This agricultural growth has enabled Thailand to be one of the few food exporters today.

The dominance of Bangkok over other urban centers is overwhelming, however, and is showing no sign of abatement. Today Bangkok is about 40 times larger than the next largest urban center and contains 5.2 million people—52 percent of the national population. Existing and emerging economic growth will largely determine the future urbanization of Bangkok and other cities. Moreover, the government is initiating the development of infrastructure and facilities in so-called growth center cities to further encourage investment and job creation. Notwithstanding these and other government plans, most observers believe that Bangkok will continue to grow rapidly and that the government's target of limiting the size of Bangkok's population to six million is grossly optimistic.

THE LAND MARKET

Ordinary citizens were not permitted to own land until 1932, when the constitutional monarchy was formed. Today, the land market is very much in the hands of the private sector. Of the current 430 square kilometers of the built-up Bangkok metropolitan area, less than 10 percent belongs to the various government institutions; the Crown Property Bureau, however, which manages royal household properties, holds about another 4 percent. With the lack of any significant government intervention by means of land use controls, the only government influence in the land market is through the impact of public works projects, and indirectly through property taxation. Zoning is ineffective because it must be based on a master plan, and thus far none of the master plans proposed have been adopted.

THE NATIONAL HOUSING AUTHORITY (NHA)

Background

The Royal Thai government created the National Housing Authority (NHA) in 1973 by combining several organizations which were then involved in public-housing production. It grew rapidly from 1973 to 1978, when it reached its present size of approximately 2,400 persons. In 1978, the government directed the NHA to disallow staff increases and to redesign its housing program to reduce government subsidy substantially. This resulted in a major redirection from highly

subsidized middle-income apartment projects to low-cost housing solutions (sites-and-services projects) and slum upgrading. Both the Agency for International Development and the World Bank agreed to finance this new approach.

The NHA acquired substantial amounts of land in 1977, including two sites near Bangkok for new towns, which produced 8,000 sites-and-services plots. Five regional cities were also selected for similar projects, but in attempting to acquire additional land near regional cities, the NHA experienced difficulties with its own bidding procedures, board reluctance to act on a proposal, and staffing inadequacies.

In 1982, a permanent staff or committee replaced an ad hoc working group (technical evaluation committee), which was appointed to evaluate the sites offered by landowners in response to NHA announcements. Appointment of a permanent, technical staff was considered an improvement, because the previous evaluations required the site evaluation process to be repeated three times—first by the original working group, second by the land purchase committee, and third by the board. The section chief of the land procurement section is trained as a lawyer, but few of the seven technicians he heads have college degrees. There is authorization to add two lawyers, one architect, and one engineer from elsewhere in the NHA.

Land Acquisition Process

The NHA identifies which cities and parts of Bangkok should have housing projects and recommends a multiyear plan, subject to approval by its board. It then seeks sites in accordance with the approved land-purchase program.

The basic procedure to acquire land involves a public solicitation, in which the NHA advertises for landowners to offer land which meets specified criteria. Then a committee conducts an analysis of each site offered. Next, a land-purchasing committee is created—often chaired by the governor and including both some board members and department heads—to decide which site to purchase. This recommendation goes to the governor and board of directors for approval and authorization to purchase.

The next steps are the negotiation with the landowner regarding the purchase price or other terms, and a survey of the site. This process commonly requires about one year. If no satisfactory sites are offered or acquired, the process is repeated, involving another year or more.

The NHA board has been reluctant to act on site purchases because of their concerns about allegations of corruption, which were associated with previous acquisitions. The governor has the power to make purchases without board approval for up to 10 million *baht* (US \$435,000). This power is useful in buying small sites in regional cities but is of limited use in Bangkok.

Policy on Land Acquisition

The NHA has a policy and program to provide low-cost housing for urban poor households on a cost-recovery basis except for the costs of major infrastructure.

Land costs and construction costs are recovered by rents and hire-purchase payments.

When the NHA buys a site, it sets maximum prices it will pay, usually 100,000 *baht* per *rai* in regional cities and 200,000 *baht* in Bangkok.* These limits preclude the purchase of well-located sites with roads and utilities already provided.

Standards for NHA sites provide that the sites be located within a certain distance of the municipal limits (usually 3–5 kilometers), that piped water and electricity be close (1–2 kilometers), and that no more than one meter of landfill be required. The price limit plus these standards nearly always results, in sites being offered which are at the urban fringe or beyond and which entail major offsite and onsite capital investments in infrastructure and landfill.** Moreover, frequently these sites are far from major employment centers, secondary schools, and hospitals. Thus, the potential travel costs to occupants are considerable.

The NHA seeks sites which are at least 50 *rai* (20 acres), on which 400–500 housing units can be constructed. If the asking price is low and a second project in two to five years seems appropriate, sites of 100 *rai* (40 acres) and more will be purchased. The NHA has purchased several sites in Bangkok and regional cities for multiphase projects. However, it does not buy sites for projects to be initiated more than a year or two in the future.

Eminent Domain Act

Although the NHA has land-acquisition power under the 1954 Eminent Domain Act, it has not used this power and consequently its legality has not been tested. The concern of NHA board members and legal counsel is that low-cost housing may not be a sufficient "public purpose" to sustain this power under judicial review. The procedures under the Eminent Domain Act are the following:

1. *Determination of the area to be expropriated.* This step usually takes 4 to 6 months for approval after an agency decides which area is needed. During this stage, landowners cannot sell land or change the use of land for two years, but not to exceed five years, unless extraordinary circumstances justify a longer extension. NHA officers can enter the land to survey and can summon landowners for negotiation of compensation for (a) immovables on the land, (b) cost of the land, and (c) fruit trees and similar income sources. An arbitration committee may be sought to help conduct the negotiation.

2. *Enactment of a law to expropriate the land.* If any particular landlord refuses to sell, or a negotiation is unsuccessful, it is necessary to enact a law to expropriate the land. The agency drafts an Eminent Domain Act including an attached map showing the area proposed for expropriation and sends it to the ministry of interior legislative review committee for consideration. This committee then

*There are 2.5 *rai* per acre and 23 *baht* per US dollar; thus 100,000 *baht* per *rai* is \$10,900 per acre, and 200,000 *baht* per *rai* is \$21,800 per acre.

**Much of the Bangkok metropolitan region is very low-lying land and subject to flooding.

proposes the act to the ministry of interior committee (chaired by the minister) and then to the cabinet. When approved by the cabinet, the proposed act is sent to the juridical council for their legal opinion and back to the cabinet for their acknowledgment. The cabinet then sends it on to the national assembly and the legislature.

This process takes a minimum of one year, with an average of 18 months.

3. *Establishment of an expropriation committee.* An expropriation committee is established, usually consisting of officials of the agency needing the land. Among its functions are establishing compensation levels; informing all landowners of the time and date of entry to their land by officers, requesting them to propose compensation levels, and inviting negotiation with the landowners. When a negotiation is inconclusive, the agency can make a definite offer. If landlords do not reply within 15 days, a request for arbitration could be made and an arbitrator appointed within six months either by the landowners or by the agency. If disputed parties do not appoint an arbitrator within six months, the expropriation committee can deposit the compensation amount the agency is prepared to offer with a court of law. When recipients of compensation cannot be located, the compensation can be deposited with a court of law. Officers can take over the land within one year of the deposit if recipients do not come forward. Those who obstruct the process of expropriation can be fined 2,000 *baht* (\$85) and/or be sentenced to one year of imprisonment.

SITE ACQUISITION CASE STUDY: KHON KAEN

Khon Kaen is the principal city in northeast Thailand. A rapidly growing city, its 1981 population was 100,210. As a result of a housing-market study, the NHA determined that there was a substantial housing demand that was not met by private builders.

The NHA planned a sites-and-services project with core housing. A total of 500 housing units were to be built on a site of 50 to 60 *rai* (20 to 24 acres). A feasibility study concluded that an urban-fringe site would cost about 50,000 to 100,000 *baht per rai* to purchase the land (US \$2,200 to \$4,300). Landfill approximately one meter deep would double this cost.

In accordance with its procedures for land acquisition, the NHA advertised for bids from landowners on September 21, 1979. The required specifications were as follows:

1. The land must be 50 to 100 *rai* of contiguous parcel(s).
2. The site shape should be regular (not have unduly irregular boundaries) and should not have severe undulations (ponds or hills).
3. The land must be in Muang District (central urban area of province) and not farther than three kilometers from the Khon Kaen municipal boundary.

Twenty offers were received from landowners and their representatives. Two committees were required to evaluate the land offers: (a) a technical evaluation committee (TEC) and (b) a land purchase committee (LPC). The TEC evaluated

the 20 sites and identified those which were unsuitable based on the specifications. It presented its findings to the LPC, which subsequently proposed three sites to the NHA board for the final selection.

The board decided on September 23, 1979, that none of the sites were acceptable, because they were either too far from main roads or the prices asked were too high compared to the assessed value (generally accepted to be grossly below market value). This decision reflected its unwillingness to make any land-acquisition decisions which could be the least bit controversial. This attitude stems from allegations of wrongdoing by previous board members regarding the land purchase for the Na Bang Plee New Town project outside Bangkok. As a consequence, scarcely any land was acquired between 1978 and 1982.

On October 7, 1980, the NHA instituted a new land-acquisition procedure (NHA Procedure No. 38). In accordance with this new procedure, another attempt was made to purchase a Khon Kaen site. On February 25, 1981, the NHA officially abolished the old land purchase committee and established a new one (with mostly the same members). The following site specifications for this second attempt were announced:

1. Land located not farther than three kilometers from the municipal boundary.
2. Price not to exceed 100,000 (*baht*) per *rai*.
3. Contiguous land area not less than 50 *rai*.
4. Unflooded land or needing no more than one meter of landfill.
5. Good road connections with access to a road at least 15 meters wide or not farther than 500 meters from a public road connected by a 15-meter (minimum) wide access corridor.
6. Not more than two kilometers from existing water-supply network. If not, landowners must provide evidence that acceptable alternatives are available to the site.

Seventeen landowners offered their lands in response to this second NHA bid request. The previous ad hoc technical evaluation committee functions were taken over by a new permanent committee. Following the new procedures, the land purchase committee proposed two sites to the governor for his determination. The governor can make land purchases of less than 10 million *baht* (US \$435,000); more expensive sites continue to require board approval.

Under this provision, the NHA governor negotiated the price with the two proposers of the selected site. He acted to purchase both the adjoining sites on September 2, 1981, and to fix the date for transfer of ownership on January 12, 1982. The total price was 8,618,975 *baht*, including compensation for other property.

The governor decided to purchase small parts of adjoining parcels to improve the overall site. Because the price was much lower than anticipated, the NHA had enough money available and the governor had the power to purchase a site twice the size necessary for the planned project of 550 housing units. Thus, in Khon Kaen, the NHA now owns enough land for either a second-phase, sites-and-services project, or a middle-income apartment development.

This was not the first time that the NHA effectively engaged in land banking

on a modest scale (for example, in the city of Chaing Mai in 1977). However, it was the first time the governor exercised his power to purchase under this provision. By so doing, he ended the four-year hiatus of no land acquisition. Subsequently, other sites have been acquired using this procedure. Moreover, the board's attitude on land acquisition has changed to cautious aggressiveness.

COMMENTS AND RECOMMENDATIONS

The process which NHA now uses to acquire land is cumbersome, time consuming, and expensive. A major revision of existing laws and procedures is necessary and should be performed. In the meantime, what the NHA can and ought to do is to identify land need as early as possible and acquire the land well in advance of need. In other words, land acquisition must be removed from mere project implementation. Another high-priority action should be for the NHA to use its eminent-domain power to test its validity.

The NHA needs to consider the following goals: (a) to prevent preemption from the land market by other users; (b) to purchase sites at the best possible locations considering both initial costs as well as day-to-day costs to occupants; and (c) to make the most cost-effective use of limited financial resources. These goals can be implemented by adopting several long term strategies.

First, the NHA should develop and maintain a long-term (10-year) plan for housing projects by sub-areas of major cities and all other cities. It would be wise to identify land requirements by one-year or at least two-year increments. This plan should be updated every two years.

Next, the NHA should prepare and implement a five-year revolving land-acquisition budget to implement this long-term plan. This budget should be updated and adopted each year. It should include sources of funds as well as budget allocations by city and major projects. Moreover, the land-acquisition process should be streamlined and centralized with a full-time staff of highly competent professionals (as the NHA recently has been doing). Legislation and procedures should be changed to permit the NHA to acquire and use land quickly while the compensation to landowners is determined by a separate administrative and judicial process. Quick possession becomes less important when land is purchased far in advance of need. However, the separation of land-need decisions and compensation determination continues to be important to reduce both the reluctance to act and threat of corruption.

Furthermore, multiphase projects should be emphasized because they permit economies of scale and internal cross-subsidies created through well-planned advance-land acquisition. Also, joint ventures of various kinds with the private sector should be pursued to leverage public investments by using privately owned lands, development capabilities, and financing. This is particularly important in Thailand, where 80 percent or more of the land is privately owned and builder and developers are strong and efficient.

Finally, to implement its program, the NHA needs to acquire sites for at least ten projects each year, including five regional cities for sites-and-services projects. In fact, the NHA has been slow in acquiring these sites, thus severely delaying and hindering its sites-and-services program.

Ecuador: Land-Acquisition Policies and Procedures in the Shelter Sector

*Gustavo Donoso and Carlos Luzuriaga**

SCOPE OF THE SURVEY AND CASE STUDY

In Ecuador, the problem of land acquisition is just beginning to have a serious impact on local and national development. Land prices traditionally have been heavily influenced by speculation of the private sector; yet, public sector agencies which purchase land have heretofore generally accepted high land prices as project costs that cannot be reduced.

This attitude is beginning to change, particularly in the area of low-income housing. It is becoming increasingly difficult for the public sector to provide shelter solutions that are affordable to lower-income groups as a result of increases in land and construction costs. Ways of reducing such costs are urgently needed.

Urban growth in Ecuador is occurring very rapidly, making this problem more difficult. Hence, in the case of large metropolitan areas, it is becoming more and more difficult to find easily accessible lands, at reasonable prices, for purposes of social housing and other public purposes.

The purpose of this study is to discuss population and urbanization trends in Ecuador, and their relationship to rising land values; procedures for public land acquisition; and the land-acquisition activities of two institutions that play a major role in this area—the National Housing Board (JNV) and the Ecuadorian Housing Bank (BEV). Finally, we conclude with some observations and recommendations.

**Lawyer and urban planner, respectively.*

POPULATION TRENDS AND LAND VALUES

The rural areas of Ecuador have been witnessing the exodus of much of its population to urban areas. The process is part of a universal pattern of transfer from "underdeveloped" to "developed" areas. The effect of this rapid population growth on land values in Quito, Guayaquil, and other urban areas is not hard to imagine. The cost per square meter of central city land in Quito today is approximately US \$100. Land at the urban periphery had an approximate value in 1980 of US \$12.50 per square meter, compared to a cost in 1979 of \$10 per square meter. These high prices in Quito are expected to increase substantially in the next few years.

It is against this background of population growth and land-value increases that the public land-acquisition policies and procedures take on special importance.

LAND-ACQUISITION MECHANISMS

Voluntary purchase and sale transactions account for the vast majority of public land acquisition in Ecuador. Expropriation procedures are used by the public from time to time. Other mechanisms for acquiring title to land include (a) donations, (b) inheritances, (c) barter, and (d) prescription ("adverse possession").

Land Transfer

Land transfer is carried out through a legal document, known as a contract of purchase and sale. Following are the steps necessary to transfer the land:

1. The written contract must be publicly registered and notarized.
2. Taxes, both central and local (and "value added" tax, if appropriate) must be paid on public transfer of titles.
3. The new title must be registered and filed in the real estate property register.
4. The seller must deliver the property, verifying that it complies with all agreed stipulations and that the seller will be responsible for all hidden defects it may have.
5. The buyer must pay the stipulated price.

When public agencies are participating in the acquisition of real estate, a statement of public benefit or of social interest has to be proclaimed. An expropriation follows, whenever it has not been possible to settle directly on the price with the property's owners. If there is such an agreement, it should be formalized through the pertinent public contract of purchase and sale. The price cannot exceed the appraisal carried out at the request of the acquiring agency.

Expropriation of Lands Not Put To Socially Efficient Use

Another legal provision is the prerogative of expropriation of urban lands, when these have not been put to a socially efficient use. In fact, the Municipal Regime Law (*Ley de Regimen Municipal*) awards this prerogative to the Ecuadorean Housing Bank (BEV), one of the agencies examined in this study. A parcel can be expropriated if not built upon within five years of a first notice by the BEV; the same applies to structures which the BEV considers to be obsolete, except that for houses or buildings, the deadline for improvement is six years. When the parcel is large (10,000 square meters or more) the deadline for parceling, development, and sale is two years.

Payment for such expropriation is to be made in accordance with the municipal assessment value, with 30 percent as a down payment, and 70 percent to be paid in 20-year bonds at 8 percent interest.

The parcels or properties expropriated for these reasons must be used for multi-family construction by BEV or, through sale, by the Social Security Institute (IESS). The lands can also be used for other low-income housing programs of governmental and private savings and loan institutions. Moreover, when this requirement is met, the lands then can be sold for residential, commercial, or industrial purposes.

INSTITUTIONAL OVERVIEW OF THE NATIONAL HOUSING BOARD (JNV) AND ECUADORIAN HOUSING BANK (BEV)

The National Housing Board (JNV)

The JNV was created in 1973 to establish a national housing policy, coordinate with municipalities on urban development through rational land acquisition and housing programs, and construct projects. Its board of directors includes a cabinet-level officer who functions as the president of both the JNV and the BEV and representatives of the ministers of finance and health, the Social Security Institute, the national planning board, the municipal government association, and the savings and loan associations.

Until recently, the JNV has been dependent upon the Ecuadorean Housing Bank (BEV) to cover its administrative costs from the BEV's budget. While the JNV and BEV will remain closely coordinated institutions, the JNV now has an independent budget. It recently shifted its orientation to an increasingly more participatory and decentralized one through a series of institutional objectives. These objectives affect the following four principal areas:

1. Administrative—to add two regional offices; to coordinate with municipalities and other public and private institutions and organizations regarding

- provision of project sites, infrastructure, and community facilities for BEV-financed projects; to improve its programming and monitoring; to carry out pilot shelter programs in priority rural areas; and to seek technical assistance from international organizations and other countries to improve its methods of planning and project design for urban development.
2. Financial—to increase lines of credit for the implementation of programs directed to the low-income sectors of the country; and to adjust the finance systems to fit the intended beneficiaries.
 3. Legal—to broaden current policy to establish new urban land policy, and to analyze and modify the relationship and controls that exist between JNV/BEV and the savings and loan system.
 4. Technological—to maximize the supply of shelter solutions through the use of appropriate technologies, new construction systems based on small-scale prefabrication concepts and components that support self-help construction efforts; to decentralize shelter programs to include all the provinces of the country, especially urban areas outside of Quito and Guayaquil; and to increase its production level by contracting project implementation with private sector construction companies.

To carry out its new objectives, the structure of the JNV has been reorganized and expanded. A new administrative and finance directorate will manage the JNV accounts, keeping track of and control over administrative and project costs. A new legal directorate will be charged with facilitating the legalization of tenure, determining procedures for contracting project construction and land acquisition, and coordinating with the BEV legal division on matters such as loan criteria, forms of guarantees, and collective and individual mortgages.

The most important effort of the new planning directorate to date in asserting its role at the policy level has been the completion of the *National Study of Housing and Demand for 1980–1984*. This study served as the basis for evaluation of how the different housing financing institutions will invest their resources with JNV/BEV focusing on the lower-income groups. This study is the first attempt in Ecuador's housing sector to rationalize the application of shelter funds by the public and private sector at different income levels. Regional offices will cover all 20 provinces of the country. The JNV is increasing the monitoring and technical-assistance visits to the regions to strengthen relations between the JNV central office and the regions and to prepare regional staffs to absorb a larger share of responsibilities. Special emphasis is placed on techniques for producing shelter programs for families with incomes well below the income levels of previous beneficiaries of JNV projects.

Presently, the JNV has a staff of 394, with 263 professionals, mostly architects and engineers, who reflect its past production and construction orientation. The decentralization and participatory orientation in effect has obliged the JNV headquarters to review its staffing patterns and skills and train its regional office personnel to include a stronger social work and community-participation capacity and better coordination with the private sector.

The Ecuadorian Housing Bank (BEV)

The government of Ecuador established the BEV as an autonomous public-housing institution in March 1961. Its original mandate was to provide houses for low-income families, and its responsibilities included the planning, financing, and construction of housing projects as well as the development of a savings and loan system and support for cooperatives. It has since been endowed with broad powers to determine housing-credit policy, issue bonds, collect savings, and conduct other banking activities.

By 1973, the year in which the JNV was created, the BEV had sold approximately 360 million *suces* in bonds.* Since 1964, the government had increased its support for the BEV by providing 1.9 million *suces* annually (approximately US \$22,000 at the current exchange rate). The BEV had established a loan portfolio of 456 million *suces* and assets of 775 million *suces* as of 1972. Its support at that time for the savings and loan system had reached more than 205 million *suces*.

In the early 1970s, the BEV began a program to increase its capital. In July 1972, it was empowered to receive savings, and 5 percent of contractors' guaranty funds was required to be deposited with the BEV. The result of these operations was to increase the BEV's loan portfolio from 456 million *suces* in February 1972 to 4,098 million *suces* in 1980. Support for the savings and loan system had been raised to more than 444 million *suces* in 1976 and 476 million *suces* in 1980.

The BEV has four main branch offices—in Guayaquil, Cuenca, Loja, and Portoviejo—and 14 agencies outside of Quito, the central office. The BEV's central office recently has been reconstructed to reduce its dependence on dwindling government resources and to carry out its policy of full cost recovery.

Central to the responsibility of the BEV's headquarters is the determination of financial policy that includes interest rate considerations; loan terms and guaranty requirements; resources acquisition, allocation, and recuperation; and project evaluation and monitoring of project accounting. The quality of the BEV's staff (919) is generally high since the BEV, as an autonomous bank, is not bound by civil-service salary levels and can pay competitive salaries. In each of the BEV's branches and agencies, the JNV has placed its own technical and social staff to complement BEV staff skills for JNV projects.

The Guayaquil branch office has the most experience with low-income groups. Personnel in the other branches are being trained by this branch through seminars and publications.

The BEV is also revising its policy regarding beneficiary selection criteria for home-improvement programs, and new construction projects to accommodate the characteristics and limitations of low-income families, a group with which the BEV has had limited experience. Project standards, types and levels of loan guaranties, payment cycles, the use of intermediary groups to assist in payment collection, and other issues are now under consideration.

*US \$1 is 90 *suces* (April 1984).

Comment. Even though JNV and BEV officials recognize the difficulty of the land-acquisition problem, it is clear that the agencies have not yet structured offices or divisions to confront the problem.

POLICIES AND PROCEDURES OF LAND ACQUISITION IN ECUADOR

Government Policies

Although the 1980-84 National Development Plan specifically mentions land reserves for urban development programs, no clear funding is allocated to it. Under the plan, an urban development program is one by which municipalities would progressively acquire land, setting up targets in quantifiable terms, such as 12 percent of the land needed for urban development in 1980, 17 percent in 1981, 22 percent in 1982, 28 percent in 1983, and 33 percent in 1984.

Further, municipalities would control ownership in such lands, would control urban development, and would help curb land speculation. Later, these lands would primarily be used for JNV/BEV housing projects, for other public agencies, and for small entrepreneurial purposes.

Unfortunately, this is just theory; nothing has been done about the practical way municipalities will acquire those lands, let alone the source of funding for this ambitious goal. Little is known about the amount of resources that municipalities in Ecuador devote for purposes of land acquisition, although large municipalities like Quito and Guayaquil do, in fact, own substantial amounts of land in about-to-be-developed areas.

JNV Policies on Land Acquisition. Although the JNV has no specific policy in print which addresses land acquisition as a discrete activity, its attitude on land acquisition has been very clear: to try to acquire lands for housing projects at the lowest possible costs to make the housing programs better accessible to low-income groups.

Both the JNV and the BEV have had to confront the problem of increasing land costs, since land is largely in the hands of private individuals and subject to speculation. There are no land controls or mechanisms available to the JNV which lower land prices for social purposes.

Studies have been made on the feasibility of the JNV acquiring large amounts of land in various cities in the form of "land reserves." Unfortunately, it has not been able to implement such advance land acquisition because of a scarcity of financial resources.

The process of land acquisition is carried out by the JNV in connection with individual housing projects. As a public agency, the JNV must follow certain procedures for land acquisition. The most common, not disregarding barter or donations, are (a) direct market purchase from landowners in areas where the JNV considers that housing program should be carried out; and (b) expropriation, where land parcels are declared needed for the "public benefit."

Steps in Land Acquisition. The JNV has established regulations which describe the procedures to be followed in land acquisition. The following are the specific steps for expropriating land under the eminent domain legislation:

1. *Legal requirements.* As a prerequisite to the implementation of low-income housing programs, the pertinent research and studies must be carried out. The land must be declared of "public benefit." The acquisition of land as reserves for future housing programs, if necessary, should be made an item in the JNV annual budget submission.

2. *Land selection.* The process of land selection, has the following aspects: location; capacity to install and provide services and utilities; future expenses and capacity to function for the proposed objectives; and initial acquisition.

3. *Declaration of "public utility."* With all the necessary documentation, the general directorate of JNV, through the president of the agency, requests to the board of JNV/BEV that the lands be declared of "public benefit."

4. *Documentation.* Documentation that must accompany the request for a "public benefit" declaration are the following:

- a. Assessments: municipal assessment of the cadastral values over the last two years, and JNV assessment, carried out by a technical staff concerning the approximate prices per square meter in the areas where the land is located.
- b. Certifications: of existing public utilities; of the area's master plan, including zoning regulations and land use, and whether or not the land is to be affected by future developments; and of location and of the possession of the land during the last 15 years, its boundaries, and its taxes.
- c. Technical report on land location; total area of the parcel, and the parts of it which are useful for development; availability of utilities, such as electricity, potable water, and sewerage, or a feasibility and costs study for their provision; topographic survey of the land parcel; kinds of housing units that are intended and their approximate costs; and pertinent conclusions and recommendations.
- d. Legal reports on the name of the owner(s); background on possession of the land; and whether the land has burdens, such as rentals, tax payments, or other limitations.

5. *Procedures at JNV headquarters.* After all the previous steps have been complied with, a report on the convenience or inconvenience to acquire the land parcel is prepared, recommending whether or not to continue the process, according to the following procedures. First, an official letter requests an appraisal of the land parcel. Once the appraisal has been submitted, a report is requested from the BEV on the availability of financial resources, either for the acquisition of the land, or for the financing of the whole housing program. An analysis of all available documentation and legal criteria on the acquisition is then presented to the JNV board of directors. The board considers all the documentation, and if it deems so necessary, enacts the declaration of "public benefit," determining whether the expropriation is urgent, and determining whether the occupation of the land is imminent for the needs of the institution.

6. *Procedures after the declaration of "public benefit."*

- a. **Notices:** Once the parcel has been designated as one of "public benefit," such declaration must be notified to the following persons: the general manager of BEV; the manager or agent of the branch of BEV having jurisdiction; the owner or owners of the parcel; and the property register of the political subdivision where the parcel is located.
- b. **Costs:** The general manager or branch manager, in accordance with the instructions delivered by the JNV president, seeks an agreement with the landowner on its price. The price cannot be greater than that specified in the assessment.
- c. **Purchase:** If an agreement on price has been reached between both parties, the process of settlement can be initiated.
- d. **Expropriation suit:** If no agreement has been reached on the price and other conditions of the land acquisition at market, the lawyer commissioned for this purpose initiates demand for expropriation on behalf and in representation of the president of the JNV. In this suit, the agency establishes a favorable price through its legal officials.

7. *Payment.* If the acquisition is made through the market process, the price agreed will be registered in a settlement contract. Once the seller submits certified copies of the notarized registration, and of its inscription in the property register. In an expropriation suit, the judge will specify the definitive price. If demanded by the JNV, the initial price will be determined and certified so that the judge will be able to allow for the immediate occupation of the parcel. If this price is not paid within three months after the official notification, the expropriation can be disallowed.

8. *Payment of taxes and registration.* To complete the acquisition, taxes on the land must be paid up to date. If the land has access to utilities, such as electricity, potable water and telephone, these must also be paid.

Once these legal preconditions have been completed, the acquisition must be registered in the property register. A copy of the title and a plan of the parcel will always be available at JNV headquarters.

ESTIMATE OF JNV/BEV LAND NEEDS AND PAST ACQUISITION PATTERNS

Overall Programming

Projections and programmatic activities of the JNV/BEV are short range rather than medium range in scope. The government, as a whole, prepares five-year development plans, the last of which was prepared to coincide with the new democratic regime, expected to run from 1980 to 1984. Accordingly, in 1980 the government initiated a housing program seeking to resolve, at least in part, the housing shortage. In the five-year period, 68,000 units were estimated to be the responsibility of the JNV/BEV. This estimate was later refined.

According to JNV/BEV projects, the average annual need for land during its 1980-84 program far exceeds its land acquisition during the 1977-81 period. Moreover, the JNV does not appear to be making strides to resolve the issue. The JNV has projected the need to use much more land than it may be able to acquire according to its budget, even if lands are donated by a private, non-profit institution. From this perspective, it is clear that the JNV may have to use other forms of land acquisition, such as donations, or use municipally owned lands for land-reserve programs. In fact, Ecuador's total housing needs (not only the JNV's contribution) are roughly double the JNV program in lands and money.

Land Costs and Budgeting

In Ecuador, fluctuations in prices of urban land are significant. For example, in a recent housing-guaranty program sponsored by the Agency for International Development (AID), working with the JNV/BEV, it was estimated that urbanization land cost US \$100 per square meter in 1979, while unurbanized land was estimated at US \$10. To put land costs on the basis of 1980 prices, we estimate a 25 percent increase, bringing unurbanized land costs to \$12.5 per square meter, a figure that will be maintained here. The previous analyses suggest that, as an average, in Quito alone, the JNV/BEV needs 355,098 square meters every year. This implies that, in 1980 prices, the JNV and BEV would need to allocate over \$4.4 million (132 million *suces* every year) for land purchases alone. For example, it is our estimate that no more than eight million *suces* (9.7 million in 1980 prices) were spent in 1978 to purchase land in Quito. The 1980-84 plan suggests that more than 30 million *suces* in land acquisition for the city should have been used in 1981.

In a recent study carried out to design an AID-financed, low-income housing project in Ecuador, it was found that land represents about 50 percent of the cost of the proposed solutions, although some projects can count on parcels at very low cost, which are donated by municipalities. Since land costs cannot be expected to drop in the future, the JNV must work closely with the municipalities, must encourage acceptance of small lot sizes, must consider expropriation as a method of land acquisition and, when possible, must engage in land banking.

Regional JNV offices are constantly negotiating for the purchase of land parcels on which new construction projects can be built. Another manner of acquiring land is through joint-venture projects with municipalities such as in Cuenca and Jipijapa. Land costs on the coast tend to be lower than those in the Sierra, but site preparation procedures escalate costs to four or five times the raw land value.

Interagency Committee on Urban Land and Housing

Recently, the government called for an interagency committee to be set up by representatives of the President's advisors office, the board of architects, the school of architecture at Central University, and the JNV/BEV to study the problems of acquiring land for low-income housing projects. This committee sug-

gested, among other policies, certain legal measures to set up land banking to allow for rational urban growth and low-income housing.

Legal Measures to Set up Land Reserves

The 1980-84 National Development Plan includes a Program on Land Reserves, to be carried out mostly by the country's municipalities. Municipalities are expected to increase the lands owned by them, creating a reserve of urban lands. In turn, municipalities could make these lands available to government agencies to use them in the implementation, for example, of low-income housing. Municipalities would continue to hold legal possession of the lands, although its use and the improvements would benefit the land's occupants. The legal measures that allow for this are either the "contracts of law and restitution" (*comodato* is the process of lending gratuitously for a limited time) or the process of "emphyteusis."

Comodato laws allow for land reserves to be transferred to others (for example, to housing agencies generating a supply of shelter for low-income groups) for a certain period of time. Thus, the JNV/BEV could build units and transfer title to beneficiaries, for only the life of the units, to be estimated for purposes of definition of the *comodato* contract. Once this period elapses, the owner of the land reserve (the municipality) would decide whether to extend the *comodato* contract or to cancel it, considering matters such as the condition of the units, urban development needs, and other forces of demand for the land.

Emphyteusis is also being considered as a new part of the Municipal Administration Laws. This new procedure, not applicable to immovable municipal goods but only to those belonging to other groups or agencies, is defined as "the transfer of a parcel to a beneficiary, who maintains direct domain of that property, while he pays rent for it." Thus, it would be possible to "rent" land for extended periods of time during which the owner of a house would pay rent for maintaining his house on somebody else's property.

A third mechanism being considered to make land accessible for purposes of low-income housing construction is the incorporation of rural lands into what is to be then considered "urban." This would allow use of landholdings presently administered by Ecuador's Agrarian Reform and Colonization Institute (IERAC). For this purpose, legal dispositions need to be created—and possibly also some process of political or institutional negotiations—to allow municipalities to expand their region of coverage and to hold full possession of their newly incorporated lands. For example, the municipalities possession of these lands could be operated through the *emphyteusis* or *comodato* procedures.

CONCLUSION

In Ecuador, the problem of land acquisition, particularly for purposes of low-income housing, is becoming increasingly difficult. Land is probably the source of greatest speculation, and the public sector does not seem yet to be quite

ready to enforce existing laws, or to set up new mechanisms to enable agencies, such as the JNV/BEV, to acquire lands to provide low-income shelter. To make this problem more difficult, urban growth is such that the competition for lands is increasingly greater. Solving this problem will demand the greatest level of initiative and imagination. The government would be wise to start research now, probably with technical assistance from countries where the problem has been already addressed.

India: Land-Acquisition Policies and Procedures with Emphasis on the City and Industrial Development Corporation of Maharashtra (CIDCO), India

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INTRODUCTION

Scope of the Survey and Case Study

The purpose of this study is to discuss some aspects of public land-acquisition policies and procedures in India. Special emphasis is given to the City and Industrial Development Corporation of Maharashtra (CIDCO) and the new town of New Bombay. There is also a section summarizing the India Land Acquisition Act of 1894. This unique law establishes central land-acquisition units which act as a service agency for the various public sector agencies seeking to acquire land. Finally, there is a critique of the system.

Urban Population Trends

Migration of people from villages to urban centers primarily for economic opportunities is a continuing phenomenon. The urban population of India in 1981 was recorded as 156 million compared to 109 million recorded in 1971. According to 1981 census data, urban population as a percentage of the total population was 23.73 percent. This represents a growth rate of 46.02 percent in urban population from 1971.

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The geographic region considered for the purpose of this study is the state of Maharashtra, of which Bombay is the capital city. The state of Maharashtra has an area of 307,762 square meters and has a population of about 62.6 million (equivalent to 9.9 percent of the total population of the country). It is the third largest state, both in area and population, and is situated on the western coast of India. About 70 percent of the people in the state depend on agriculture. It is the most urbanized state in the country, with an urban population of 35.03 percent compared to 23.73 percent for the entire country.

Various Public Agencies Involved in Acquisition of Land in Maharashtra

The following public agencies operating throughout Maharashtra acquire very large areas of land for their use, from time to time: the Maharashtra Housing and Area Development Authority, the Maharashtra Industrial Development Corporation, the City and Industrial Development Corporation of Maharashtra (CIDCO), and various other public agencies. Moreover, in India, eligible companies may use compulsory land-acquisition power for industrial purposes.

CIDCO

CIDCO was constituted by the state government of Maharashtra in March 1970 for the explicit purpose of planning and development of New Bombay.

Under the Maharashtra Regional Town Planning Act of 1966, CIDCO can be designated as a New Town Development Authority for developing any new town for any part of Maharashtra. Accordingly, the state government has declared CIDCO as the new town development authority for the new towns of New Bombay, New Nashik, New Nanded, and New Aurangabad. CIDCO's geographical area of influence in New Bombay covers an area of 344.80 square meters in the two districts of Thane and Raigad. This includes an area of 192.87 hectares of private and salt pan lands spread over 95 villages. In 1971, the state government notified landowners of CIDCO's intention to acquire all private lands in the New Bombay area.

The broad objectives of CIDCO for the development of New Bombay are to decongest South Bombay and to provide a well-planned new town with good amenities and employment opportunities. CIDCO's role in the development is primarily that of a catalyst, developing the base for attracting private investment opportunities as well as for encouraging complementary public investments by other agencies. More specifically, CIDCO's role includes preparation of a master plan, development of and provision of industrial and residential infrastructure, and planning and development of public transportation and a communication system.

CIDCO's Land-Acquisition Activities

CIDCO as a government-owned agency is totally dependent on government funds for land acquisition. Its entire policy on land acquisition is based on the regional plan for the establishment of New Bombay. The plan strongly recommends bulk acquisition of lands as the keystone of the operational strategy of CIDCO. Furthermore, it recommends that large parcels should be acquired in one operation to avoid subsequent increase in land value resulting from CIDCO's activities. Under Indian law, the notification of an intended public acquisition of private land has the effect of "freezing" the value of the land as of the date of the notice. Private landowners are only entitled to receive compensation based upon the value of their land at the time of notification. Although not all land was acquired in one transaction, acquisition proceedings had begun for much of the required land before public knowledge of the development of New Bombay caused land prices to rise dramatically.

Accordingly, a notification was issued by the state government on March 20, 1971, declaring certain areas as the site for the proposed city of New Bombay. Simultaneously, the government also issued notification declaring its intentions to acquire these areas. On August 16, 1973, certain additional areas were covered by similar notifications. Thus the entire geographical area of 343.70 square kilometers was frozen to protect CIDCO against payment of very high market rates.

CIDCO handles the temporary management and disposition of large landholdings by leasing out various earmarked plots in developed or partly developed conditions to private parties and also to various other government agencies to be used for certain specific purposes as indicated in the lease agreements. Thus under this method, CIDCO retains ownership as well as control of how a particular site is used. CIDCO leases are given for periods of 60 years initially, with renewal provisions.

Beside finance, CIDCO's other concern is taking possession of vacant land immediately. The process of land acquisition is rather slow, because of resistance from landowners for various reasons. Consequently, many projects have remained incomplete for long periods. Others have not been carried out because of lack of land availability.

In 1979, concerned officials of CIDCO realized that a major hurdle in acquisition was that landowners were not prepared to accept grossly low compensation, such as 6,000 *rupees* per acre.* Moreover, the delay in acquisition or possession of lands was adversely affecting CIDCO's various programs as well as its budgets and projections. Thus, CIDCO decided to pay more realistic compensation at a minimum of 15,000 *rupees* per acre, and when the statutory award was less than 15,000 *rupees* per acre, the difference was paid by CIDCO as *ex-gratia*. Since 1971, a sum of 30,100,000 *rupees* has been paid as *ex-gratia* compensation.

As an added incentive, in 1979 the state government, at the request of CIDCO,

*12.20 *rupees* = US \$1 in 1984.

decided to relax the application of the Urban Land Ceiling Act of 1976 in the New Bombay area so that acquisition in New Bombay would be carried out only under the Land Acquisition Act of 1894. Under the 1976 act, vacant land in excess of the prescribed ceiling is acquired by the government on payment of nominal compensation.

THE LAND ACQUISITION ACT OF 1894

The Land Acquisition Act of 1894 is the primary law for acquisition of private lands where land is acquired by the state for public purpose. Private lands also can be acquired for private companies, if the company is engaged in any industry or work which is for a public purpose.

Moreover, the Land Acquisition Act of 1894 is the basis of all central and state laws relating to compulsory acquisition and compensation.

Procedures Prescribed in the Land Acquisition Act of 1894

In accordance with the Land Acquisition Act, 1894, the government must first publish a preliminary notice identifying certain land required for a public purpose. An authorized government official then surveys and investigates the land in question. (The government is required to pay for any damage done by such entry.)

Objections to the land acquisition may be made by any person interested in the land, within 30 days of the notification. Persons objecting are invited to meet with the collector, who hears the objection, makes necessary inquiries, and submits a report to the appropriate government official, whose decision is final.

The secretary to the government or some officer duly authorized certifies that the land is required for a public purpose. This declaration is published and is conclusive evidence that the land is marked for a public purpose or for a company. After this declaration, the collector obtains the order for acquisition from the appropriate government officer. The collector then has the land marked out, measured, and planned. The collector serves notice on all persons interested in the government's intention to take possession of the land, stating that claims of compensation for all interests in the land may be made to him at a time and place specifically mentioned (at least 15 days after the date of publication). Public notices are also affixed at convenient places on or near the land to be acquired. The collector has the power to take oaths or statements of a person's ownership or interests in the land. (False statements are punishable under the Indian Penal Code.) The collector makes inquiry into measurements, value, and claims, and determines the final award.

After the award is issued, the collector can take possession of the land, which is vested absolutely in the government free from all encumbrances.

The collector has special powers in cases of urgency to take possession of land when only notice had been issued but where the award had not been yet given.

In such cases title to the land will also vest in the government, free from all encumbrances. Notice of 48 hours, however, is required to be given to the occupants of such land.

Any interested person not accepting an award may apply in writing to the collector to refer the matter to the court with respect to any controversy over the measurement of the land, the amount of compensation, or the apportionment of the compensation among the various persons interested. The application should be presented to the collector within six weeks from the date of the award if the applicant was present at the inquiry. Otherwise, the time limit is six weeks from the receipt of the notice from the collector. The collector also has to submit a statement in writing to the court.

Thereafter the court notifies the applicant, persons interested in the objection, and the collector (if the objection is in respect of the area or amount of compensation).

The criteria for determining compensation are (a) the market value of the land at the date of the notification; (b) damage sustained by persons from the taking of any standing crops or trees; (c) damage sustained by reason of severing such land from other land owned by the person concerned; (d) damage affecting his other property, movable or immovable, or his earnings; (e) reasonable expense in changing his residence or place of business; and (f) damages from diminution of the profits of the land between publication and declaration of taking and the actual taking by the collector.

Apart from the market value of the land so assessed, the collector is required to award an additional 15 percent on such market value as "solatium," or bonus, in consideration on the compulsory nature of the acquisition. Matters not to be considered include the urgency of the acquisition, the disinclination of the owner to sell, damage to the land after the declaration, increase in land value resulting from the anticipated use to which the land will be put, increase in value of the owner's other lands, or any improvements made by the owner after the notification of the intended acquisition.

The amount awarded should not be in excess of the amount claimed. The court should not grant an amount in excess of the collector's award when the applicant had refused to claim or omitted to claim it for no sufficient reason.

Calculation. It is obvious that if 100 plots of land are to be acquired and if a broker privately approaches some of the owners on behalf of any unknown client and obtains agreements to sell, in a fair and open market, at a certain rate for even 20 or 30 of the plots, it would be difficult for the owners of the remainder to hold out for extravagant increases upon these previously negotiated prices. The government has therefore approved, in some cases, the institution of preliminary negotiations without divulging its intention to acquire when the local officers consider that a better price will result. When this is done nevertheless, the act subsequently should be employed and, to those persons who have agreed, the prices agreed should be awarded. It should be made clear in the agreement that the price is inclusive of everything, including the "solatium." In other words, the price should be divided by 115: 100 as market value and 15 as the

statutory "solatium." Thus the party will get the actual price agreed upon, and the government will get an indefeasible title. The broker's fee will require the sanction of the government, and it should also be counted as part of the cost of acquisition.

Comments on and Analysis of the Land Acquisition Act

The inordinate delays in land-acquisition proceedings cause hardships to both the government and the public. The government feels it should be able to take possession of the land needed to carry out works of public utility without delay. And the public is unhappy with unconscionably slow compensation to landowners and other hardships created by large-scale acquisitions. Many have lost their family occupation and have been completely uprooted. Moreover, the public complains that in many instances land has been acquired and left unused by the government for long periods. Yet another public complaint is that the government uses the emergency provisions indiscriminately.

It is clear that suggestions for expediting land acquisition and any attempt to identify problem areas must be sensitive to both government needs and the former landowner.

The Land Acquisition Act does not contain any exhaustive definition of "public purpose." Moreover, it makes the executive determination of the existence of a public purpose final and nonjusticiable. These two situations make it easy for the acquiring authorities to abuse the provisions of the act. Although it is well recognized that the act cannot have an exhaustive definition of the term "public purpose," as the concept has been changing in all countries of the world, the government should at least clarify certain policy so that both the landowners and the acquisition authorities know for what purposes private land may be acquired. Such clarification is needed because in many cases where landowners have challenged in the state high courts or the Supreme Court of India the public purpose declared by the government, the courts have upheld the landowner's contention that the impugned acquisition was not for a "public purpose."

There are also no guidelines for the determination of the area required for a particular public purpose. Often excess land is acquired, more than what is actually needed for a public purpose, resulting in court proceedings, which in turn ultimately result in long delays even for lands that are genuinely required for public purpose.

Because the government has not made any policy on what is a public purpose or which area is to be acquired, it forces one to conclude that the government fears, and perhaps rightly so, that any guidelines or policy might be held against the acquiring authorities by a contesting landowner. There are fears too that today's definition of "public purpose" might not fit tomorrow's needs. To solve this problem, appropriate amendments could be made in the existing policy from time to time.

The declaration of the government for the existence of a public purpose is supposed to be final except in cases involving fraud. The existing law places serious restrictions on the right of a person to challenge the acquisition of his land on

the ground of a public purpose. There is little justification for continuing the existing provisions of the Land Acquisition Act, which makes the government the sole judge of whether the purpose of acquisition is a public purpose. The government at best only can be presumed to be a good judge of whether the purpose of acquisition was in the general interest of the community; but to make the government the absolute judge is to deny to the person, whose property is taken without his consent, a valuable right of an objective determination of the existence of public purpose. There are innumerable cases in which the government has not been as careful and restrained in interpreting the term "public purpose" as it should have been. Therefore, it should be left to courts in their ordinary jurisdiction to determine whether the power conferred for acquisition is being exercised properly. Public Purpose therefore should be made justiciable by amending the provisions of the act suitably. Such a provision would act as a deterrent restraining the acquiring authority to have acquisition proceedings only in respect of genuine public purposes, thereby cutting down on the enormous time, efforts, and money expended on unnecessary acquisition.

Today, the authorities exercising the power of compulsory acquisition have considerable discretion as to the quantum of land to be acquired. Very often lands become superfluous because they are acquired on the basis of a careless or wrong estimate. Often it is found that land is acquired merely as a reserve fund for expansion of an existing project and for projects which have not yet been conceived. It is recommended when the land acquired, or any portion thereof, is not used for the purpose for which it was acquired or for any other declared public purpose, within reasonable time, that the government should offer to sell the land back to the original owner. It also should be made possible for the owner in such cases to compel the government to return the land by an appropriate court proceeding.

In land acquisition for public purposes, there is an absence of a central body to monitor and advise the central and the state governments on all matters relating to the land acquisition. Such a committee or body should be constituted for advising the government with respect to land use policy in large-scale acquisitions for any public purpose, including the implementation of projects. The functions of the committee would be to ensure that

1. the land which is already in the possession of the acquiring body is put to optimum use before permitting the proposed acquisition.
2. an excessive acquisition does not take place.
3. the acquisition of good agricultural land does not take place if it can be avoided.
4. the proposed acquisition is justified from the point of view of the location of the project.
5. the acquisition gets proper and expeditious support from all concerned authorities at all stages.

Other various steps may be taken for streamlining the process of acquisition. The revenue department of the state government, which is concerned with the subject of land, its classification, settlement, and land records (mutation register), should be the appropriate department to formulate policy for land acquisi-

tion. It can also coordinate, initiate, and exercise supervision and control. Furthermore, the revenue department is in a position to be objective regarding land acquisition, particularly because acquisition is made by this department mostly for other departments. Land-acquisition cells should be set up at the local, district, and state levels which should collect necessary data from the revenue department as well as from the offices of the subregistrar. The cell at the state level preferably should be under the charge of a trained valuation officer. Full-time staff (including clerical) should be appointed for land-acquisition work for expediting the various stages involved in acquisition. Suitable training courses may be designed for training the staff to conduct surveys, measurements, valuation of land and more, if considered necessary.

Furthermore, a directorate of land acquisition under the supervision of the member, board of revenue, should be set up with high secretariat status and made responsible for the speedy completion of all land-acquisition proceedings in the entire state. A regular system of bi-monthly review at the state level and monthly review at the level of collector and land-acquisition officer should be introduced.

The multiplicity of laws has greatly added to the hardship that is caused to a landowner whose land is being acquired. A simple and single piece of legislation relating to land acquisition would be very helpful to avoid confusion.

Yet another problem is that the acquiring authority is different from the authority for which the acquisition is made. The user authority has to depend upon the state government's revenue department, which in turn has to depend upon the requiring authority for various information from time to time during the course of acquisition. This problem can be ameliorated by having periodic meetings between the offices of the two authorities under the supervision of the collector or the deputy collector of the district.

Compensation is required to be determined on the basis of market value of the land at the date of publication of the notification. There can be no argument against selecting the notification date as the base date for determining the market value. However, to make acquisition proceed more expeditiously, the government should consider taking into account the "potential value" of the land or the base date. In this context, it is suggested that the land should not be valued merely by reference to its use at the time of valuation, but also to any future use which is reasonable.

Another possible approach to facilitating acquisition is the *solatium*. A solatium at the rate of 15 percent on the market value is payable to the sellers. Some states either have deleted this provision or reduced the quantum of 15 percent to 10 percent, with an additional provision for even no payment in cases such as "possession of an area certified to be unhealthy as declared by a district magistrate." It is felt that the omission or reduction of solatium in state amendments is not fair to the persons deprived of their properties in these states and is a clear violation of the spirit of the Land Acquisition Act. It must be remembered that it is not enough for a person to get the "frozen" market value of the land as compensation. Because of inflation and costs of relocation, the landowner may have to spend considerably more to be in the same position as before.

Yet another way to make a more "useful" compensation is to pay compensation in kind, rather than in cash, or partly in kind and partly in cash. While the Land Acquisition Act contemplates payment of money to the persons entitled to the award of the collector, there is also a provision that the collector may, with the sanction of the appropriate government, grant other lands in exchange, grant a remission of land taxes on other lands held under the same title, or make other equitable arrangements having regard to the interests of the parties concerned.

Some provisions allot land after development to the same persons whose lands had earlier been acquired so that these persons are not rendered homeless. This method of settlement has been found useful and convenient to all parties.

Finally, under the existing provisions of the Land Acquisition Act, the land-acquisition office first decides the amount of compensation. Then the collector makes the final award. Often the courts make a final decision on compensation. The present practice of getting the compensation determined first by the land-acquisition officer and next by the collector, both being revenue department officers, and then getting it reviewed by the civil court is an unnecessarily long process and from the acquiring public agency's view, often uneconomical. While the compensation issue is in progress, the costs to the public agency for developing the land are rising. Often the litigation cost to the state is more than the value of the land itself. If the determination of the compensation is left to the civil court from the very beginning, it would be less costly and much faster for the state to acquire a piece of land than to prolong the process.

There are no easy answers to the problem of making the land-acquisition process more efficient while protecting the rights of the landowners. Taken as a whole, the Land Acquisition Act has enabled the public to assemble considerable quantities of land. Unlike procedures in other countries, the act has worked and resisted efforts of landowners to paralyze its operation. Moreover, the centralization of the land-acquisition functions in land-acquisition offices has allowed various technical skills to be available to many public agencies without each creating its own land-acquisition units.

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