Regularizing the Informal Land Development Process

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Prepared by:

Mona Serageldin
Unit for Housing and Urbanization
Harvard University Graduate School of Design

for:

The Office of Housing and Urban Programs
U.S. Agency for International Development
Washington, D.C. 20523

Harvard University
Graduate School of Design
48 Quincy Street
Cambridge, MA 02138

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Research Team
John Driscoll
Maria Luisa Fernandez
Laurent Perrin

Graphics
Randa Tukan

Production
Phoebe Manzi

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Phone: (301) 951-7191

ABSTRACT

Regularizing the Informal Land Development Process

This study served as a background paper for a workshop held in November 1990, entitled "Regularizing the Informal Land Development Process" sponsored by USAID's Office of Housing and Urban Programs. The study is based on an extensive review of the literature and the identification and assessment of relevant regularization policies and experiences. The first section of the study, an overview of regularization policy, identifies elements common to the regularization process and indicates regional and country differences. Four regional reports cover Asia, Latin America, the Middle East and North Africa and Sub-Saharan Africa. Each section examines the legal background and the evolution of development regulations. The widening gap between formal requirements and informal development processes is assessed, especially as it affects growth patterns on the urban fringe. Descriptive case studies are provided for each region, focusing on those factors which promote or impede the fulfillment of program objectives. This document should proves useful for public officials and practitioners charged with the complex task of defining and implementing land policies and programs, as well as donor agencies involved in supporting decentralization and municipal management.

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Preface

In the late 1970's, informal land development emerged as a major issue with soaring land prices denying an increasing number of limited income households access to home ownership. Real estate speculators siphoned off savings, draining the economy of the capital it badly needed for investment in development projects. The runaway land markets promoted haphazard and wasteful patterns of urban expansion, difficult to integrate and expensive to retrofit. Rapid densification undermined the use of low-cost infrastructure options. Unserviced sub-divisions grew 2 to 3 times faster than the overall urbanized zone, consequently depriving a growing numbers of informal activities of the support infrastructure needed to help them evolve into sustainable micro-business. More critically, chaotic development spread on valuable agricultural land, marshlands and forests encroaching on protected reserves.

The public interest demanded that a process of regularizing informal land development be formulated and institutionalized to sustain a coherent land management policy within a framework adapted to the particularities of the legal administrative and cultural context.

The Office of Housing and Urban Programs has been concerned with issues related to the informal development process and has sponsored regularization programs since the late 1970's. The new economic realities in the developing world will make it harder to face the urban challenge in the coming decade. There is an urgent need to seek new approaches to promote economic activity while avoiding the adverse impacts that unregulated development can have on the environment and on valuable natural resources. It is therefore pertinent and timely to focus on regularizing informal land development.

This study is primarily intended to serve as a background paper for an agency sponsored workshop on Regularizing the Informal Land Development Process. It will be of use to public officials and practitioners charged with the complex task of defining and implementing land policies and programs, as well as donor agencies involved in supporting decentralization and municipal management.

The study is based on an extensive review of the literature and the identification and assessment of relevant regularization policies and experiences. It is divided into five sections. The overview identifies elements common to the regularization process and indicates regional and country differences. The four regional reports cover Asia, Latin America, the Middle East and North Africa and Sub-Saharan Africa. Each section examines the legal background and the evolution of development regulations since independence. The widening gap between formal requirements and informal development processes is assessed, especially as it affects growth patterns on the urban fringe. Descriptive case studies are provided for each region to illustrate the workings of selected regularization experiences, focusing on those factors which promote or impede the fulfillment of program objectives. The overview highlights the major challenges to be faced in institutionalizing a successful program for the regularization of informal land development.

1.0 Overview

1.1 Informal land development process

The surge in commodity prices in the 70's changed the character of urban development by providing liquidity to support a massive infusion of capital in urban real estate that was sustained over a whole decade. The built up area of cities doubled or tripled in extent so that, even in overcrowded cities like Cairo, land consumption per capita actually increased and residential densities declined, particularly in the central zones. The most spectacular results were achieved in Bangkok where a thriving private sector managed to keep housing production ahead of population growth. With the exception of Latin America, the growth of squatter settlements slowed down or declined. Families in the 30th to 40th percentile of the income distribution who had sought shelter in the shacks of squatter areas for lack of a better alternative could now find affordable accommodations in the new extensions.

The price of land and the cost of servicing it at the standards required by subdivision regulations per force limit the range of incomes that formal sector developers can build for. Driven by the aspirations of newly affluent segments of the middle classes to own real estate, a vigorous informal land market developed and managed by a mix of small scale entrepreneurs, local brokers and contractors in conjunction with local officials and court clerks, who have traditionally been involved in real estate transactions. The unavailability of legally marketable land within reasonable commuting distance led to the selection of locations where quasi-legal building plots could be offered at attractive prices. Tenure is considered to be secure and code violations relatively inconsequential and unlikely to lead to a confrontation with public authorities. These violations involve one or more of the following: illegal occupancy of land, illegal transfer of title, illegal conversion of land to urban use, unauthorized subdivision of land and noncompliance with subdivision regulations. In addition to these infractions which relate to tenure and development controls, the property can cumulate violations of other regulations. The most common are: building without a permit, unauthorized construction of rental accommodations, illegal renting of premises, contravention of rent controls and noncompliance with building codes.

As land prices soared the seed capital needed to enter the market increased steadily in relation to income, forcing a growing number of limited income households into the rental sub-market provided by informal settlements. This new demand in turn affected the character of informal development. Asides from opening up new avenues for speculative investments, the income generation potential of real estate acquired new importance as owners sought to capitalize on rentals to accelerate the process of incremental construction. At the other end of the market, a variety of joint ownership and tenancy arrangements emerged to structure financial cooperation between kin groups, associates, and holders of subsidiary rights. Social heterogeneity is a striking characteristic in most informal settlements.

High demand and rampant inflation channelled expatriate remittances and local savings alike into the informal real estate market. The rapid appreciation of land values in turn fosters densification, speculative development of rental units, resale of lots, turnover of resident population and, over time leads to the consolidation of property and an increase in the number of absentee landlords. The widening rift between a shrinking formal market, gridlocked by overregulation, and a dynamic informal sector, unencumbered by controls, is not sustainable and has undermined the legal strengths of development regulations. In many countries they have broken down altogether.

The absence of a land management policy allowed development to proceed in a haphazard and chaotic manner. Informal areas proved difficult to integrate and expensive to retrofit. Their rate of expansion exceeded the managerial and budgetary capacity of local authorities to service new extensions. Furthermore the larger centers spilled over jurisdictional boundaries, compounding the legal and administrative problems of control and regularization of land development on the fringe. In sub-Saharan Africa, informal development is occurring on state lands, protected reserves (mostly rainforest) or private lands held under customary law. In Latin America, it is occurring on large private holdings mostly through planned invasions of vacant idle lands. In the Middle East and North Africa, urbanization is spreading on valuable agricultural land through the subdivision of small private holdings or by appropriation of state lands left lying fallow. In Asia, uncontrolled urban sprawl is taking over privately held farmland and occupying illegally the land reserves owned by public agencies or religious institutions.

Since 1986, construction costs have stabilized in real terms or sometimes even declined as a result of the economic recession. However, demand pressure has kept the price of urban land high. The share of the land component in total housing cost has increased steadily since the mid 60's from under 15% to over 50% by the late 80's. This gave rise development dynamics that constantly displaced limited income households to more distant locations. Rental accomodations affordable to lower income groups were lost to gentrification and the conversion of premises to more lucrative commercial uses. When the ratio of property value to income reach a critical level, less affluent owners tend to cash in on the appreciation in land value and move further out where land is cheaper. Runaway land markets and unrestrained speculation have undermined planning efforts and eroded prospects of broadening affordability through lowering standards, adopting low cost technologies or improving cost recovery. Land has been rising 5 to 10 times faster than the consumer price index, forcing an intensification of use that is reflected in a higher rate of build up. In the larger centers, densities can rapidly exceed 500 person per hectare generally considered to be the maximum level that can be serviced economically by affordable infrastructure options.

The evolution of the informal land development process into a planned and highly lucrative business operated by specialized agents and bringing together lawyers, brokers, land officials, court clerks, kin groups, and local civic and political leaders should not be overlooked. It is all the more important at a time when economic retrenchment limits the political

sustainability of regulatory action. The public interest dictates that regularization be formulated, structured, and institutionalized as an instrument of land policy.

1.2 Regularization of informal land development

Land regularization did not emerge as an issue until the late 70's when informal subdivisions and squatter settlements became the dominant forms of urbanization. Urban growth spilled onto private land held under a variety of tenure forms ranging from outright preemption to legal but unregistered property rights. Subtle and complex distinctions between ownership and possession, and primary and subsidiary rights, have shaped this development. The urban fringe became the geographic setting for the challenging interface between codified real estate legislation and traditional property rights, between formal rules and informal practices. Regularization of informal land development processes involves setting up the mechanisms needed to structure and regulate this interface.

Public projects trigger a wave of speculative investments in surrounding areas. Land values in impacted zones can rise by a factor of 3 to 4 in a matter of months. Speculators and developers reap huge profits in excess of a 25% return on investment by shifting to the State the social and environmental cost of informal development. The inability of governments to control or restrain speculation is particularly disturbing. The measures enacted thus far to discourage speculation have been disappointing. Taxes on vacant land or profits from property transactions are too low to be effective. Attempts to freeze prices in India's Urban Land Ceiling Act, which allows compulsory purchase at below market rates for low cost housing projects, proved difficult to enforce. In the Philippines, the Urban Land Reform Law put a cap on unreasonably high prices but generated challenges which led to protracted litigation. In Malaysia, the steep taxes imposed on transfers within 2 years of purchase were bypassed by keeping land for a slightly longer period. The reluctance to tax land in relation to its real market value is perplexing. Land is the most rapidly appreciating commodity in developing countries, yet the yield of real estate taxation is disappointing. With few exceptions, tax rates are low and undervaluation rampant, undermining the use of taxation as an effective instrument of land policy and as a deterrent to the holding of vacant buildable sites.

The decentralization of administrative functions did not provide municipalities with effective instruments to cope with the spread of informal land development or control the conditions fostering its proliferation. Having failed to eradicate slums, resettle squatters, or arrest the spread of uncontrolled urbanization, central directives shifted the focus of public intervention towards regularization and servicing. Municipalities are particularly ill equipped to fulfill their new mandate.

1. Their technical and managerial capabilities are overwhelmed by the pace and geographic spread of informal land development. Plans rapidly fall into obsolescence for lack of updating, databases are incomplete and cadastral records cover a declining proportion of the urbanized area.

2. They lack the resources required to extend to informal areas the infrastructure networks and services to which regularization would entitle them. Since the mid 80's, the front end investment required to build them has not been available, impeding the progress of regularization even when procedures for legalization and cost recovery are in place.

Upgrading projects have provided the impetus for the enactment of legislation to formalize procedures for land regularization. Attempts at regularization highlighted the importance of defining an optimal degree of control over land development and initiated an overdue debate on the appropriate roles of the public and private sectors in this process. However, linking between regularization and cost recovery in upgrading programs confused the two issues. Legal procedures for regularization remained entangled in jurisdictional disputes, disagreements over the allocation and application of receipts and the political debate over the equity of plot charges. Nevertheless, upgrading programs did demonstrate that in spite of serious environmental drawbacks, informal land development does generate and help support activities which make an important contribution to the economy and the society. Investment in urban infrastructure allows these activities to evolve into micro enterprises. Their potential contribution to the national and local tax base may or may not hinge on regularization, depending on the specific tax system.

The challenge for regularization becomes to structure a planning framework capable of guiding and directing rather than controlling land development in order to minimize adverse impacts on the environment and depletion of scarce natural resources.

1.3 Legal framework for land regularization

In most countries a strict application of development regulations would deny the legality of land and buildings developed on the urban fringe, which account for over 60% of housing starts. The codified laws governing property rights, land acquisition, registration, and transfer of titles, development regulations, taxation of real estate and municipal institutions were all introduced during the colonial period by adapting European models to the particular requirements of colonization. They set in motion profound and irreversible changes in the urban and rural land markets ensuing from the shift to private ownership of land, the consolidation of individual property rights and the removal of constraints on the free transfer of titles. The private sector took firm control of urban development and to a large extent of the rural land market also.

Traditional systems were marginalized, restricted to spheres of influence deemed to be of secondary importance or inconsequential significance. In Africa, customary law was limited to the perimeter of designated village lands. In the Middle East and North Africa, Sharia law continued to govern tenure, inheritance and the transfer of property rights. In most Asian countries, customary practices proved equally resilient and continued to govern popular land transactions. The notable exception is Latin America where the precolonial legacy was completely obliterated.

In countries which were not directly colonized, as in Thailand, and in the post colonial period elsewhere, developing nations continued to adapt western land policy instruments, planning mechanisms, management techniques and regulatory procedures to meet the objectives and requirements of socio-economic development. In many countries, as in India and the Philippines, current systems reflect more the particularities of the European codes on which they were modeled rather than the indigenous urban traditions. In Latin America, colonial legislation and land ownership patterns have remained unchanged. Elsewhere, nationalization, repossession of colonial estates and land reforms eliminated large private holdings and expanded the scope of the public domain. Under socialist regimes in countries like Burma and Guinea, the State was given sole proprietary ownership of land which is held by individuals under various forms of leaseholds.

Since independence, the reaffirmation of cultural identity had led to a resurgence of traditional rules and precepts whose legitimacy could no longer be challenged. Governments had to incorporate them in civil codes and alter inherited colonial institutions to accommodate them. However the difficulties encountered in the formulation of a legal framework for their integration in the modern land administration and management apparatus has resulted in the coexistence of two parallel systems. Official attitudes regarding this parallelism vary from rejection of unregistered titles to validation of unregistered rights. Yet it is precisely Sharia law and customary law that have provided the legal foundation for the regularization of informal land development through the differentiation between ownership and possession, the recognition of a diversity of property rights, the legitimation of prescription, based on the ability to demonstrate possession and adequate utilization, and the wide acceptance of flexible leasing arrangements.

Irregularity of tenure takes precedence over any other category of infraction since tenure must be legalized before any other violation can even be addressed. Regularization procedures cannot be initiated until there is agreement on the methods by which the legality of tenure is to be established. Violations of development regulations affect the registration of titles for both land and structures. Infractions invalidating the registration of land holdings are the only ones of real importance in the regularization process. They include: unauthorized conversion of land to urban use, violation of subdivision regulations and illegal fragmentation or transfer of property rights. Code infractions are so widespread that they have ceased to be a significant factor in the regularization process. Since the status of the structure does not affect the status of the land on which it stands, the two can be dealt with independently and sequentially.

In squatter settlements, land is preempted from the legal public or private owners. Occupants are in violation of tenure laws as well as development regulations. Regularization requires first a legalization of tenure rights for the entire community and then the demarcation and registration of individual holdings. It is a lengthy process involving feuding among private parties as well as confrontation between public authorities and private interests. The majority of squatter settlements are located on government land or land owned by semi public agencies and institutions as,with the exception of Latin America, private unused land on the urban fringe is rare. The intensity of open

conflict depends on the degree of direct public sector involvement in urban development activities. Governments have to exercise judgement and carefully balance public and private interests in considering the regularization of squatter settlements on state lands and making decisions regarding the conditions under which they ought to be regularized. The degree of control local authorities have on the administration of government land within their jurisdiction can act as an inducement or a deterrent to regularization. Central agencies are more inclined to enforce eviction than units of local government that are more sensitive to the political leverage of squatter communities.

In Latin America and in many countries of Asia, squatters have also invaded privately owned land. Regularization is complicated because there is no way in which property rights can be usurped under the rule of law. Accommodation is only reached on a case by case approach whereby owners and illegal occupants resolve tenure issues by negotiated agreement as is happening in Venezuela. Yet the process does not lend itself to institutionalization since it is difficult to envisage legal and administrative procedures which enable citizens to gain rights by violating the rights of others.

Ambiguous situations arise when settlement occurs with the acquiescence of landowners who view the occupancy as a source of temporary income and assume that it can be terminated when an alternative use for the land is found. Thailand's land sharing program evolved as a response to this particular situation. In Latin America, owners actively participate through selected intermediaries in the irregular sale of building plots without acknowledging the subdivision process, intending neither to transfer title nor contest the occupancy. This gives rise to a situation which lies at the hinge between squatterization and informal development.

In informal settlements, property is acquired and held legally, but titles remain mostly unregistered. There is no serious challenge to the tenure status of landholders by other private parties or public authorities for that matter. Irregularities mainly arise from violations of development regulations. Remedial action involves retrofitting and rationalizing the layout to bring it in line with minimum standards specified in the codes. In the process, plots are often mapped and property owners may be recorded and enjoined to register their titles. In practice this is not mandatory and many owners prefer to defer the costly and time consuming procedures since their security of tenure is not threatened. The complexity of registration procedures forces them to retain the services of specialists, lawyers, brokers and clerks who charge fees. The potential benefits of the operation are not apparent and its urgency unjustified.

The absence of conflicts with fundamental tenure principles render informal subdivisions easier to regularize. Indeed governments have been implicitly doing so through the extension of infrastructure services to newly developed zones as part of their capital investment programs without being involved in the registration of titles. It is precisely the inability of budgetary resources and managerial capabilities to keep up with the pace of development in the 70's that has created a crisis situation in the management of urban land, with a growing backlog of unserviced subdivisions increasing at a rate 2 to 3 times faster than the overall expansion of the urbanized area.

The basic elements of the regularization process already exist but the institutional framework within which they functioned has collapsed in the face of mounting pressure on urban land. The challenge is to restructure procedures, create new linkages and rebuild a framework better adapted to the particularities of the socio-cultural context.

1.4 Institutional framework for land regularization

With very few exceptions, units of local government do not have the powers to deal with land related issues. Land administration has remained a central responsibility even when managerial functions have been delegated to the local level. Registration of titles, authentication of deeds and taxation of real estate are discharged through regional and local offices of central ministries. Development controls and subdivision regulations are applicable within municipal boundaries but these boundaries have no impact on land tenure or land transactions. Infractions affecting tenure require legislation at the national level before they can be addressed at the local level.

In Latin America the political unwillingness to confront the issues of concentration of landownership and rampant speculation has impeded the implementation of coherent urban development strategies and land regularization policies. For the majority of the population access to land is limited to two equally undesirable options: settlement on marginal sites and invasion of public or privately owned land. Public land reserves have been lost to squatterization while the government's ability to interfere in conflicts between owners and illegal occupants is per force limited.

In socially cohesive groups, from central city neighborhoods to fringe villages, there are accepted practices governing individual and collective discretionary rights over land and property to which people constantly refer, irrespective of legal stipulations, administrative rules and official pronouncements. Having failed to abolish or contain them, public authorities have come to recognize precepts and customs which are meaningful within their particular socio-cultural context. Imbalances arise when legally recognized rights and prerogatives are not integrated in the institutional framework for land administration.

Perceptions of regulatory procedures in relation to accepted practices and self interest will determine the popular response to regularization processes. As long as the legal basis for land regularization procedures is unclear, or is misinterpreted because it remains enshrouded in formulas linked to development standards and cost recovery, general indifference or reluctant compliance can evolve into widespread disregard and open challenge. Cultural acceptability is as important to the success of regularization efforts as the more widely quoted criteria of simplicity, expediency and affordability. For the individual, the hassle and cost of regularization must be balanced by prospects of immediate benefits. Experience has shown that access to housing or small business credit finance alone, is often not a sufficient incentive to prompt title registration. More tangible benefits are needed namely: improved security of tenure; validation of inheritance rights; and, most importantly

higher property values. Despite past successes, there is a growing resistance to land readjustment which substantially reduces the size of holdings.

When security of tenure is no longer in question, registration of titles is not a catalyst for home improvement or active participation in upgrading the community's living environment. For this, the determinant factor seems to be social cohesion. In sub-Saharan Africa, and elsewhere, ethnically homogeneous groups have banded together to layout an informal subdivision, to contract the construction of an access road and to successfully negotiate with utility companies the supply of water and electrical connections to the community, when the necessary trunk infrastructure was already in place.

Attempts to deal with regularization of informal land development have ranged from blanket legalization to complex procedures for a case by case review. In Latin America, laws legalizing squatter settlements limit their scope to publicly owned land, and mandate servicing prior to the issuance of titles. Elsewhere national agencies have been entrusted with the responsibility of upgrading these settlements. Throughout the 80's, high land prices, currency devaluations, lack of foreign exchange, and budget cuts due to the economic crisis, have prevented the allocation of funds needed to service settlements which, therefore, remain unregularized. In the Middle East, informal land subdivisions raise few issues related to tenure, unless the seller's claim is contested. Their problems arise from violations of various developments regulations. Until the mid 80's, the issue has been addressed by blanket legalizations decreed at intervals, whenever the situation became untenable, as happened in Egypt in 1966, 1981, and 1984. Each law legalizes the violations or illegal occupancy which occurred prior to a specified date, usually the date of promulgation, and prohibits any new infractions after this date.

Blanket legalization is a static approach to a highly dynamic situation, one that considers the proliferation of squatter and informal settlements as a short term abnormality that can be somehow contained by official pronouncements. Informal land development is viewed as the temporary consequence of a strategic failure to exercise control at a critical moment in time rather than the symptom of a fundamental and worrisome imbalance in the urban land markets. The underlying causes which gave rise to the situation in the first place are not addressed. Furthermore, government intervention occurs without reference to the official legal and administrative framework of the country. Irrespective of specific formats, blanket legalizations are not conducive to the elaboration of administrative procedures. They undermine the strength of regulatory controls without amending existing frameworks.

The institutionalization of new processes for the regularization of informal land development is a far more constructive approach. Where public authorities take a lead role, as in many countries of sub-Saharan Africa and Asia, who rely on land replatting and readjustment techniques, well structured functions and procedures have been formulated. Elsewhere, the regularization process is left purposefully unstructured to give ample leeway for accommodation at the local level in response

to particular situations or on a case by case basis. In general, overly cumbersome systems discourage compliance and promote corruption.

Complex procedures and ill adapted regulations run the risk of being too costly and time consuming to public authorities and private beneficiaries alike, in comparison to the potential benefits to be derived from regularization. This is the case in the Ivory Coast. The administrative burden of regularizing informal subdivisions and the cost of prefinancing the infrastructure to service them is most often not counterbalanced by the revenues generated from taxation of formerly untaxed properties now duly entered on the cadastral records and tax rolls, even in cases where there is an institutional capacity to collect real estate taxes.

Irrespective of their own inclinations, decision makers throughout the developing world are keenly aware of the contribution of informal land development to the alleviation of the housing shortage and to the relief of the frustrations of the middle income households squeezed out of the conventional market for land and housing. However, political instability ambivalent attitudes among technocrats and divergent viewpoints among politicians responsive to different constituencies have prevented the formulation and implementation of coherent land regularization policies. Contradictory strategies have caused official policy to fluctuate between stringency in legislation and leniency in enforcement. Different agencies sometimes embark simultaneously on programs with conflicting objectives. Constant tensions between central and local authorities are heightened by overlapping jurisdictions and ambiguities in statutory and actual assignments of responsibilities in the newly decentralized administrations. In Latin America, excessive politicization of administrative procedures has tended to subvert the regularization process.

Decentralization can give units of local government the opportunity to capitalize on the dynamics of the informal sector and respond to the heterogeneity of urban growth patterns at the community level, where social cohesion can support concerted action. Active community participation is the basic ingredient of successful regularization experiences. A situation of crisis management places a high premium on creativity to devise responses able to keep pace with a fast changing environment. Municipalities need flexibility and discretion to formulate and enforce regularization procedures that are adapted to the character of development within their jurisdiction.

Public authorities will increasingly find it untenable to assume sole responsibility for regularization. They will find it far more fruitful to redefine their role as catalysts bringing about land regularization through negotiation and integration. The challenge is to create an enabling institutional framework within which activities at the local level can be structured and coordinated in support of a coherent land management policy.

2.0 **Asia**

2.1 Legal background

Coastal commercial settlements established by European trading companies in the 16th century have had a major impact on subsequent urban development in the region. They attracted population and activities away from older centers in the interior and introduced new modes of land development and new urban patterns.

Direct colonization brought a sharp break with customary rights and systems of land utilization. New legal codes governing property rights, registration and transfer of titles, development regulations and taxation of real estate were introduced copied on the laws and administrative procedures of the colonizing powers. Indigenous urban traditions were stamped out or allowed to recede to the background eclipsed by the dominance of European settlements and the reluctance of colonial administrations to let customary practices impede colonization and the exploitation of natural resources. Current systems in each country reflect more the particularities of the european regulations on which they were modelled rather than the influences of pre-colonial practices.

In the British colonies urban land policy drew on English common law and land management on the home rule administrative structure. Regulations were modelled on British planning standards and procedures. Urban parcels were held under various forms of long term leaseholds which carried restrictions on utilization, transfer, and access to full ownership rights.

In India, the geographic expanse of the subcontinent and the diversity of its population promoted administrative decentralization. The state governments were authorized to formulate land policy, adopt development controls and otherwise manage their land resources. Since the early 20's Town Planning laws were enacted by the states delegating land planning and regulatory functions to the municipalities. Locally enacted land development regulations only applied within municipal boundaries. Outside municipal jurisdictions regulations were enforced by the States.

The Central Land Acquisition Act of 1894 provided the enabling legislation granting the Union and the states powers of eminent domain and gave all levels of government wide discretion in the definition of public purpose for which land can be appropriated. This flexibility has been sustained by the courts. An array of state agencies were also empowered to use compulsory purchase for urban development, slum clearance and housing projects. Claims to rights and interests in the property were compensated at full market value plus 15% to make up for the dislocation imposed on owners and additional payments for incidental damages and expenses incurred.

In the Philippines, the civil code introduced by the Spaniards in the 16th century institutionalized private freehold ownership of land whereby landowners enjoy unconstrained freedom in terms of utilization and disposition of their property. The state granted land holdings to individuals in fee simple ownership but could only acquire land for public projects by judicial expropriation. Land titles had to be registered with the registrar of deeds in the Bureau of Lands.

In Indonesia traditional land tenure systems referred to as "Adat" were based on islamic sharia principles and incorporated customary practices regulating rights of occupancy and use of land. During colonial rule, large tracts of agricultural land belonging to the state were granted to Dutch colonists in fee simple ownership. To facilitate cultivation of these large estates owners were given the right to enter into tenancy agreements with sharecroppers. Urban settlements were thereby surrounded by privately owned land over which the government could exercise little control. Population pressure and rapid urbanization prompted conversion from agricultural to urban use. Land owners granted indigenous populations occupancy rights in the form of long term leases for specific land parcels. This tenure pattern came to characterize a growing proportion of the urbanized zone. The Town Planning law of 1948 and subsequent regulations enacted in 1949 were based on Dutch legislation and relied on units of local government assuming broad responsobilities for land management within their administrative boundaries. Municipalities were empowered to prepare and implement plans, adopt zoning and subdivision regulations and enact building codes.

In Thailand, which was not under direct colonial rule, the state retained sole proprietary ownership of land, until 1932, when the nation's first constitution authorized private ownership of land and recognized private holding and transfer of property rights. Within two decades, a thriving private sector had taken firm control of urban and rural land markets and government was unable to regulate or influence land development. In 1952, the Urban and Rural Planning Act was promulgated. Administered by the Ministry of the Interior, the act permitted the preparation of development plans for subareas specified by decree under the supervision of a planning official named in the decree. Plans remained valid for a 10 year period. Proposals presented by the land owners in each subarea could be adopted with or without modification. Implementation was entrusted to units of local government; the Act authorized municipalities to issue special by-laws, expropriate land and redistribute land as indicated. By 1954 the Eminent Domain Act was promulgated to allow public agencies to appropriate the land needed for public projects. The Act provides for arbitration and negotiations of sales agreements with landowners prior to the initiation of expropriation procedures. Expropriation must be approved by the legislature and the procedures usually take 3 years to complete. Low cost housing is not considered a public purpose for which eminent domain powers can be used.

2.2 Land development regulation since independence

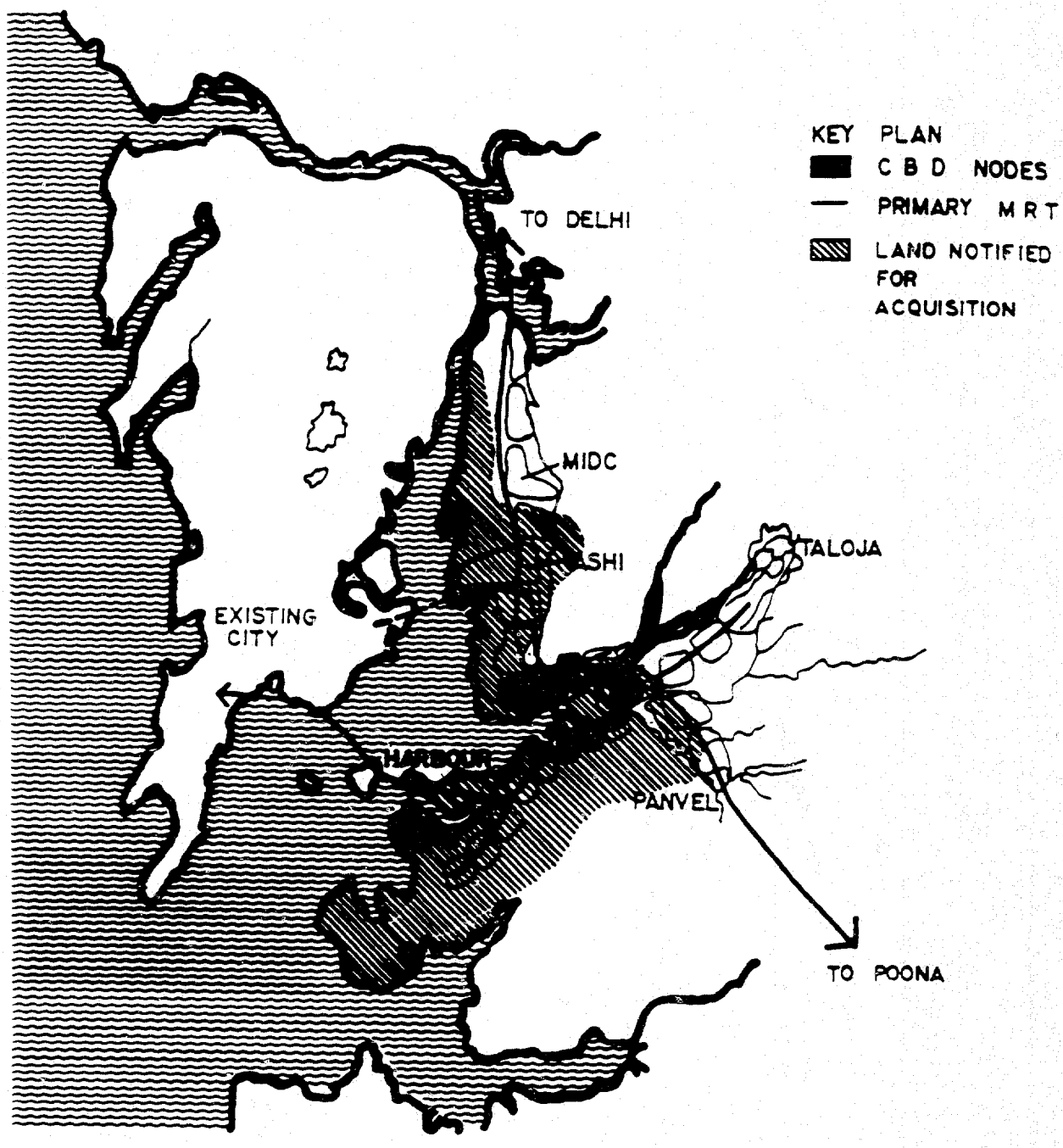
Independence led to a reassertion of deeply ingrained customs and practices. The colonial institutional structure had to be altered to varying degrees in order to accommodate the indigenous legal heritage. The revival was selective and the accommodation partial. Practices ill adapted to the contemporary urban scene were discarded. Those which enjoyed wide acceptance were reformulated to permit their integration in the codified legislation and institutional structure needed to meet the requirements of modernization.

In India, the Model Town and Country Planning Act was enacted by the central government to promote consistency among the different states. Based on the British Country Planning Act of 1947, it provided the model legislation for all subsequent acts by the states. To implement their urban development and housing programs, local agencies turned to land acquisition, a centrally supported policy, as the choice instrument to obtain the land they needed for current projects and reserve land for future use. A large-scale land acquisition program was launched in Delhi to ensure that the city developed according to the master plan. Of the 66,000 hectares identified for acquisition, 32,123 were actually acquired and redistributed among government agencies. The agencies could redevelop the land and grant it to new users on a leasehold basis only. The Delhi Development Authority which received 17,000 acres released the land for commercial as well as residential developments under a peculiar form of perpetual leasehold. The lease entitled the Authority to receive up to 50% of the increase in land values at the time of a transfer. Approved land uses could not be changed nor could the lease be transferred for a minimum period of ten years following allocation.

Since the mid 70's land prices have soared, and are increasingly squeezing out middle income households from access to conventional housing options. In 1976 the central government enacted the Urban Land Ceiling Act to restrain land speculation and permit State Governments to acquire private undeveloped urban land for low income shelter needs at prices below market value. Attempts to use the Act in Bombay and other centers met with resistance. Several thousand hectares of vacant land were withheld from the formal market by land owners fostering the emergence of an illegal real estate market. Informal subdivisions proliferated and squatting became widespread. In the late 70's it was estimated that fifty percent of Bombay's population lived as squatters in "hutments" located on both public and privately owned land. The vast majority did not have access to utilities and municipal services. In 1985 a World Bank slum upgrading program set out to upgrade 200 hutments. Because the program aimed at legalizing tenure, almost all of the sites chosen were located on government land. Invaded private lands were to be purchased under the Urban Land Ceiling Act or the Land Acquisition Act prior to their redistribution to the occupants. Recent land policy in India reflects the growing concern over middle income households being priced out of the housing market altogether. Private developers in Delhi are trying to broaden the reach of the lower end of the market by reducing plot sizes. Public agencies are making a distinction between initial and long-term planning and building standards, and adopting incremental servicing schemes to improve affordability.

Fig. 1

LAND ACQUISITION FOR NEW BOMBAY STRUCTURAL PLAN



Source: Correa, Charles. The New Landscape. Bombay, 1985

In Indonesia the colonial estates were abolished at independence and the land reverted back to the state. The edict authorized units of local government to manage the repossessed land but made no reference to the status of the occupants who leased the parcels on which their houses were built. The leases were legal under the Dutch colonial system of land rights which was still in effect up to 1960. Its subsequent abrogation left them in a state of informal partial legality. As the urbanized zone expanded, these unregistered leasing arrangements became the predominant form of urban land tenure on both publicly and privately owned land.

The basic Agrarian Law was enacted in 1960 to provide a legal framework for the integration and administration of land rights derived from accepted customary practices, formal colonial statutes, and the new codified legislation. It defined the overall principles of land tenure, the registration of titles and the management of private holdings and state lands. Master plans developed at the municipal level and ratified by the Home Minister were considered legally binding documents. Throughout the 70's they continued to incorporate inappropriate building codes and subdivision regulations drawn from the Dutch Town Planning Law. Few plans were actually ratified. Since 1980 there has been a sustained effort to draft and enact a new urban planning law responsive to current needs and concerns. A draft law was prepared in 1982 but has yet to be submitted for ratification.

In contrast to India, use of eminent domain powers in Indonesia was restricted to public purpose projects, mostly the layout of rights of way and the construction of community facilities, and required the issuance of a presidential decree. Enforcement of compulsory taking of property conflicted with a strong tradition of communal decision making by deliberation and consensus. Regulations issued in 1975 authorized land acquisition by negotiated agreement with property owners. Negotiated purchase prices were always above market values with the notable exception of land takings required for public rights of way for which only token compensation is traditionally granted.

In the Philippines the power of eminent domain is defined in the constitution. Private land can only be taken for a "public use" and upon payment of compensation. Housing for lower income groups is considered a public use. Yet since the very first upgrading program in Tondo, Manila, land acquisition problems have plagued urban projects. The Urban Land Reform Law was enacted by presidential decree in order to facilitate land acquisition by freezing prices in locations identified as Areas for Priority Development. In actuality the law had only limited effectiveness. Protracted litigation over price ceilings ended in prices being set by the courts much closer to real market values than expected. The National Housing Agency gradually shifted away from the cumbersome and unreliable judicial expropriation procedure towards negotiated purchase agreements. The process was more expeditious but also more onerous and just as unpredictable. To support decentralization efforts, new upgraded sites were turned over to local authorities. Their performance in terms of tax collection and maintenance of infrastructure was unsatisfactory because of deficiencies in the administration of property taxation.

In Thailand, the regulatory framework includes zoning, subdivision regulations and building codes in addition to the Planning Enactments for specific subareas, but enforcement is generally lax. There is practically no control on land subdivision and construction activities. In the urban centers large holdings dominate the land ownership patterns. Public ownership within urban centers is limited; in Bangkok it does not exceed 15% inclusive of royal property. Land transactions have to be registered with the Registrar of the Titles in the Land Office but otherwise are not subject to controls and there are no instruments to curb the land speculation that is rampant in the Bangkok region. Transfer fees are low, capital gains on land transactions non existent, and the tax on vacant land is too low to have an impact. Property taxation is ineffective as assessments are well below market value, rates low, and collections poor.

Since 1973, private developers have capitalized on the substantial capital inflow into the real estate market generated by the remittances of expatriate workers. They moved quickly to meet the new demand for moderately priced housing. They provided an array of packages which can be grouped under three major options: building plots on informally subdivided land; low cost houses, and large scale turnkey projects, the most popular of the three options. From 1974 to 1987 housing production outstripped population growth and helped broaden affordability as rising incomes kept well ahead of increases in house prices. The improvement in living conditions has affected approximately half the urban households and the availability of alternative options has allowed a significant number of slum dwellers to move out to the new urban extensions.

2.3 Land development and regularization on the urban fringe

The pace of urbanization and the dynamics of urban growth have far exceeded the administrative capacity of local authorities to monitor development and register new land holdings.

In the Philippines urban extensions housing limited income communities are developing through illegal occupancy of privately owned land. Regularization of these marginal settlements entails government acquisition of the land prior to the transfer of titles to occupants. Lengthy and expensive land acquisition processes have thus far hampered the effectiveness of regularization programs, delayed the implementation of public projects and significantly driven up their costs. The MMINUTE municipal development program financed by the World Bank in 1980 attempted to circumvent the legal entanglements of land regularization. The program focused on infrastructure provision along public rights of way without regularization of tenure, by relying on property tax assessments for cost recovery. As it turned out, municipalities failed to recover costs or recapture part of the substantial increase in real estate values along the 150 Km of improved roads and infrastructure service lines for lack of adequate and up to date property tax records. Assessments could not be collected because informal holdings were not listed on the tax rolls. Furthermore, the public investments gave residents a sense of security which removed any urgency to initiate costly registration procedures.

Public authorities and private developers alike are seeking a streamlined procedure to expedite the transfer and registration of real estate property. Meanwhile central and local agencies have been experimenting with alternative approaches enabling them to provide services and low cost housing while avoiding involvement in regularization of land tenure. Only the National Housing Agency continued to regard land regularization issues as part of its mandate in as much as it has to deal with upgrading large holdings invaded by illegal occupants. In 1985, the Ministry of Human settlements initiated a program to provide serviced land for limited income groups without having to acquire it. It offered short and long term credit to finance land subdivision projects on the urban fringe on condition that 70% of the building plots marketed be affordable to 70% of the urban population. The public sector thereby redefined its role to become a catalyst bringing together land developers and landowners and exercising control over the character of development through financial instruments.

In Indonesia sustained economic growth and the inflow of foreign capital has fostered investment in real estate and intensified land speculation particularly on the urban fringe. A strict application of existing regulations would deny the legality of 80% of current land development activities. Two different permits are required in order to develop a parcel:

1) A development permit is required for any land development activity. It legally authorizes the proposed development and insures that it conforms to the locality's master plan. Applicants must submit a document certifying their rights to the land.

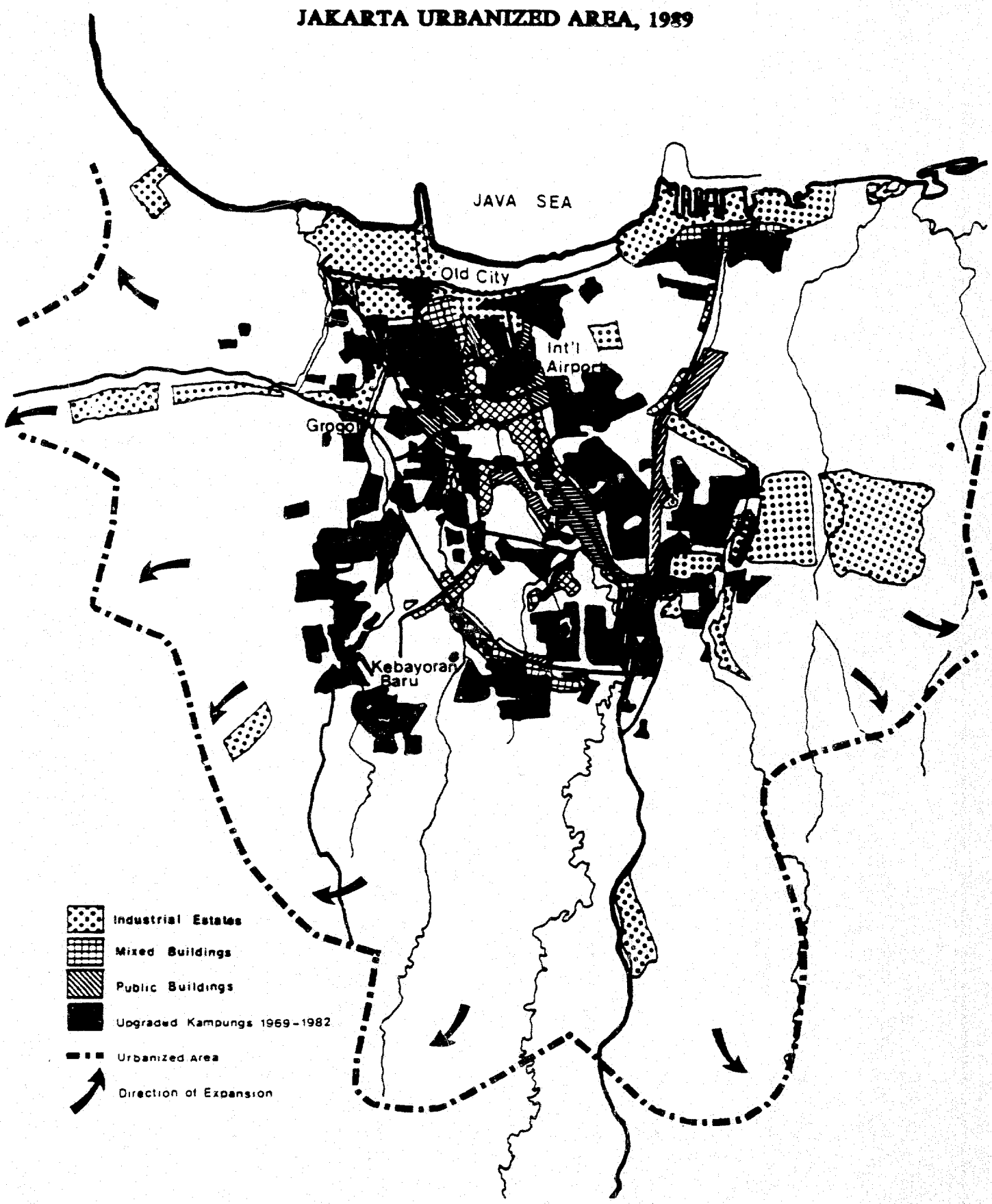
2) A building permit is needed for certain categories of buildings. Applicants must have registered title.

Seeking to convert agricultural land to urban use adds more cumbersome and time consuming procedures to the permitting system, further discouraging compliance. Agricultural land is allowed to remain unutilized for prolonged periods until it no longer qualifies as agricultural but rather as vacant land or wasteland. To overcome the obsolescence of land development regulations local authorities routinely approve variances and modify master plans in order to accommodate requests for land development. However the required documentation of titles, the high cost and long delays involved deter holders of unregistered rights from complying with permitting procedures. In 1986 it was estimated that 85% of housing starts were constructed without permits.

In 1985 it was estimated that no more than 10% of the total jurisdictional area of municipalities was actually covered by registered land rights. In the outlying district where expansion is occurring, the proportion is only 5% and almost all development activities take place informally. Private developers are buying large tracts of agricultural land from villagers at cheap prices. They accumulate significant reserves around urban settlements which they hold until the land can be urbanized. When opportunities materialize, developers will release land quickly, marketing moderately priced building plots in densely laid out and practically unserviced subdivisions,

Fig. 2

JAKARTA URBANIZED AREA, 1989



Source of base map: World Bank. "Cities in Conflict". 1985.
Source of data: K.I.P. Jakarta

perpetuating haphazard and wasteful patterns of urban development which are difficult and costly to service. A private deed is drawn, signed by the 2 parties, attested to by witnesses and notarized. The transaction can also be recorded with the local district head or Kampung settlement chief, who are far more accessible and flexible than land registry officials. However successive unregistered transfers of land and buildings can quickly result in confused ownership patterns and unclear titles, a serious problem, given that 80% of urban households select ownership as their preferred housing tenure.

In Thailand, The National Housing Authority (NHA), created in 1973 to provide low cost housing for the urban poor is also active on the urban fringe. A policy of cost recovery of on site infrastructure, land, and construction costs through rents and lease-purchase payments, imposes limits on the price that can be paid for land without eroding affordability. NHA does not use the powers of Eminent Domain for land acquisition. It advertises for bids from landowners for sites meeting its required specifications in terms of size, shape, and location. Invariably the offers received concern parcels in outlying zones. Since the infrastructure is brought to the project sites, NHA activities can have an impact on the land market in the urban fringe.

The private sector's massive involvement in large scale developments of low cost housing options since 1974 has dwarfed NHA activities. It generated a sustained demand for large parcels on the urban fringe and accelerated the conversion of farmland to urban use. Informal subdivisions typically market building plots with minimal services: unpaved roads, electricity, and on site water supply.

The unrestrained expansion of the urbanized area through haphazard sprawl carries a public cost in terms of providing infrastructure networks to service wasteful settlement patterns. It also carries a private cost in terms of distance between housing and work locations, which forces wage earners to travel an average of 13 Km to reach their work place.

2.4 Land regularization

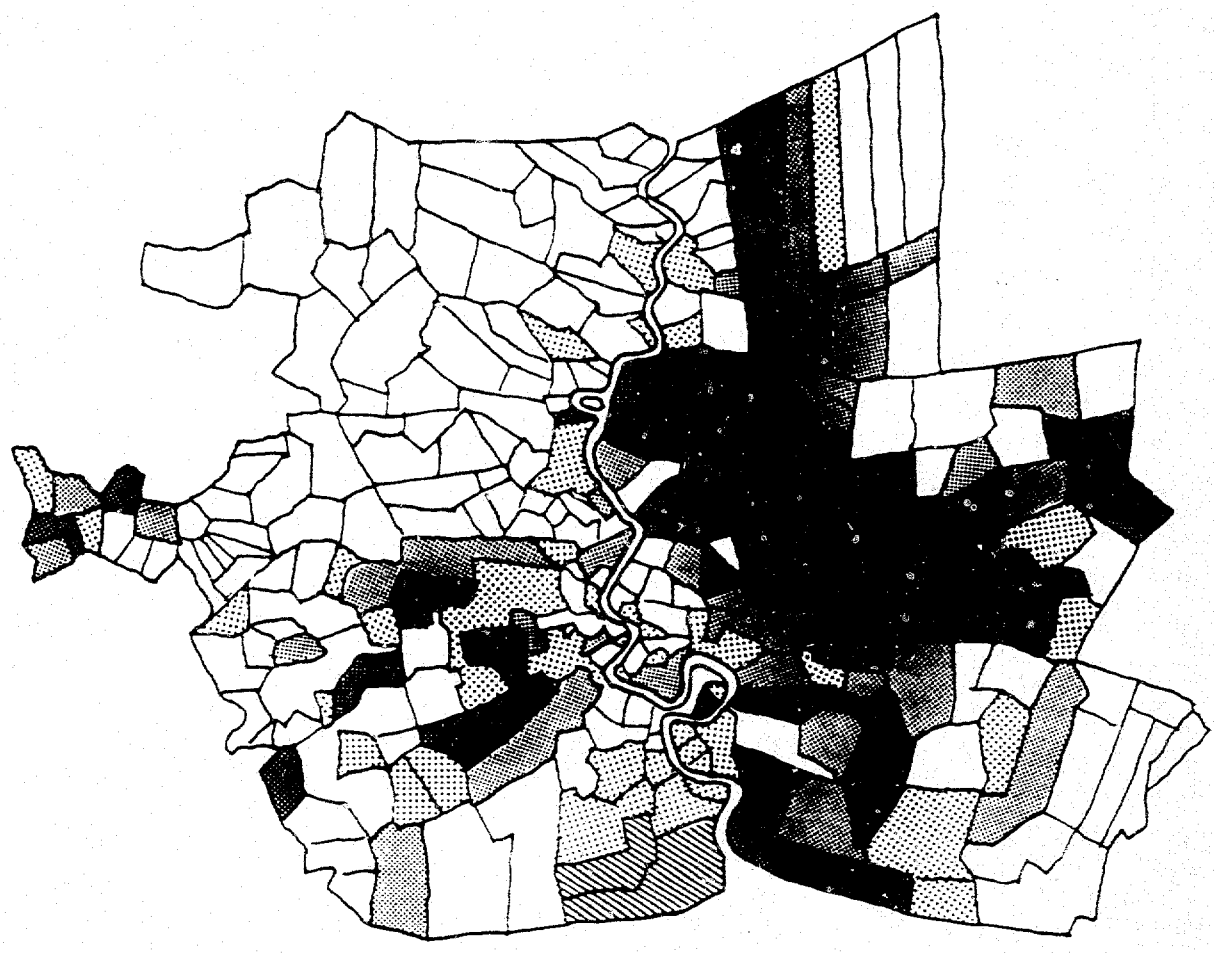
2.4.1 Land regularization in Thailand: Institutionalizing negotiated agreements to regularize land tenure

The success of the land sharing program developed in Bangkok in the 80's sparked widespread emulation. It is therefore pertinent to consider the context and determinants of its success.

There is a long standing tradition of landowners allowing families to occupy land without formal tenure where they are only allowed to build makeshift shacks. The occupants are informal tenants at will who pay rent but have no security of tenure. When the owners want to use the land,

Fig. 3

BANGKOK: RATE OF URBANIZATION 1974-1984



Urbanized Area by Subdistrict

Km²

- < 0.2
- 0.2 - 0.7
- 0.7 - 1.8
- > 1.8
- No Data

SOURCE: BANGKOK LAND MANAGEMENT STUDY, 1987

the occupants will be evicted. A survey of slum areas undertaken by NHA in 1985 showed that close to half the households rented land and another 27% rented houses. Only 13% claimed to own the land they occupied. The remainder lodged without tenure agreements.

The slum communities are mostly located on land owned by government, religious institutions, or mixed public/private organizations. Conflicts arise when the landowner decides to sell or develop the parcel, and the occupants decide to oppose the proposed development and fight eviction.

Land sharing entails the redistribution of land between informal occupants and landowners unable to regain control of their land. The negotiation process involves: landowner, the occupants, and local public authorities. The negotiated agreement is arrived at with reference to a legal and administrative framework to bring about formal regularization to the benefit of all parties concerned. With the exception of the illegal occupancy of some crown lands, there are no legal impediments to regularization. Residents form a community organization to defend their occupancy of the land and select leaders capable of representing their interests and winning the support of public authorities and political structures to block eviction procedures.

Government authorities intervene in a constructive manner to resolve the conflict by getting owners and occupants to agree on a division of the land between them, thereby legalizing tenure on the site. The National Housing Authority is entrusted with the preparation of reuse plans for the project area, completing the regularization of the site. Land sharing projects are considered special zones which do not have to comply with development regulations. This exemption was necessary to ensure affordability and speed of implementation. Legalized occupants receive serviced sites much smaller in size than their original holdings, under leasing agreements of up to 20 years. Security of tenure encourages valorization of the land. Investment in housing bring about a marked improvement in the quality of construction, and an increase in floor area. Densities in the rebuilt zones increased by a factor of 2 to 3. On his part the owner recovers a considerably reduced portion of the site which still has a market value far in excess of the original price he paid for the land. Furthermore, the land is vacant, free from occupants and immediately available for development.

The following examples illustrate the workings of the land sharing process:

Bangkok has developed on lowlands subject to flooding. The city is surrounded by agricultural land holdings interspersed with ponds and demarked by irrigation canals. The expansion of the built up area follows the extension of the road system, but development is driven by the dynamics of a vigorous private sector unrestrained by regulatory controls inoperative on the urban fringe. Land sharing projects can only succeed in the inner city on highly valuable land in prime locations.

Klong Toey is a large tract of land belonging to the Port Authority, which was reserved for future expansion of the port. Day laborers working in the docks started to settle on the land and The Port Authority tried unsuccessfully to evict the occupants. In 1980 NHA started the construction of 1440 rental units on a site west of the settlement to relocate the occupants but by then Klong Toey housed over 6000 households. It became apparent that neither relocation nor eviction would be feasible solutions. In 1983 NHA proposed its first large scale land sharing project, on the eastern portion of the site. the project area covered 11.2 hectares. The land was protected by dams and filled to develop 1300 serviced sites. The 60 m^2 lots were offered to the residents under a 20 year leasing agreement. In 1985 recipient household took possession of their plots and started to build their houses.

The Ban Manangkasila area belonged to the Treasury Department. Occupants had started to settle on the vacant land in the 1920's. In 1978, the department decided to lease the land to a developer for commercial use. The developer offered compensation to the occupants to induce them to move voluntarily, but the majority refused the offer and decided instead to organize and fight displacement. It took three years for the Treasury Department, the developer, and the occupants to work out an agreement. The land sharing agreement reached in 1982, allocated to the community the rear half of the site for its housing needs. The owner recovered the portion fronting on the major artery for the commercial development. The households who had remained on the site throughout the protracted negotiation period received 40 m^2 lots the others half as much. The community organization was formalized into a credit union to secure long term financing for housing loans. The Treasury Department offered the occupants the regular 20 year leases but the regularized occupants feeling a new sense of security opted for renewable annual leases which require less seed capital.

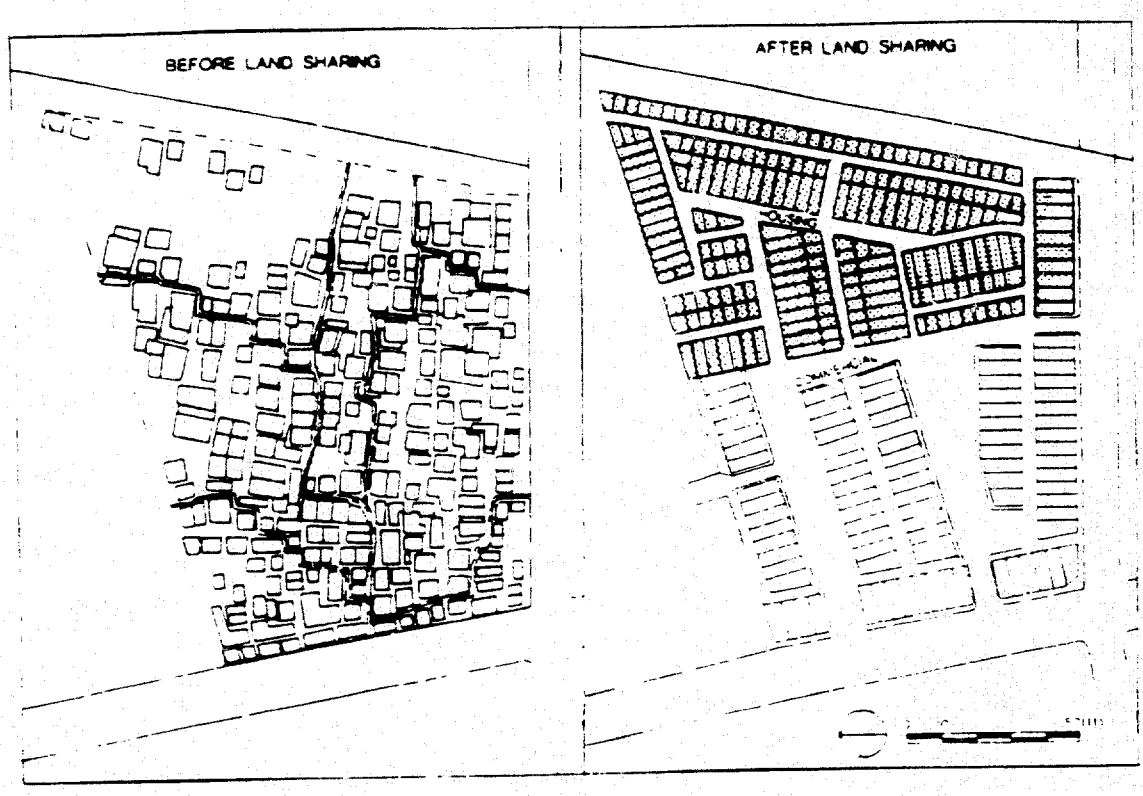
The success of the land sharing program is in large part attributable to the fact that only one landowner is involved in the negotiation process, and that public authorities can exercise leverage to influence the outcome. The higher the potential value of the vacated land the more the owners are inclined to be conciliatory. the informal tenure arrangements granted by owners to the first occupants give rise to situations more conducive to mutual accommodation than the confrontational attitudes which ensue from forceful invasion of land. Although legalized occupants pay on the average 6% of the real market value of their serviced plot, there is a significant turnover in the land sharing projects. In 1986, 23% of households involved in land sharing projects sold their legalized occupancy rights to middle income families, another 18% were seriously considering selling, reflecting priorities and choices made possible by the availability of alternative housing options on the urban fringe.

2.4.2 Land regularization in Indonesia: Integrating customary land rights and practices in the formal land administration system

The basic agrarian law of 1960 established 5 categories of recognized and transferable land rights: building ownership, utilization, exploitation, and management. In the built up areas, the

Fig. 4

BANGKOK
THE MANANGKASILA LAND SHARING PROJECT



Source: Angel, Shlomo and Boonyabancha, Somsook. Land Sharing as an Alternative to Eviction". 1988.

predominant land tenure is either full ownership or building rights. The latter represent a right of land utilization, derived from traditional leaseholds and considered a form of ownership. It allows the holder to build and possess a structure on land owned by another party for a period of 30 years which can be extended for another 20 years. The two categories of agricultural land tenure are particularly relevant to the problems of development on the urban fringe. Utilization rights are granted for variable terms by the state or an individual holder who may himself be leasing the land from a third party. Exploitation rights are granted by the state for up to 35 years on holdings of over 5 hectares.

Management rights involve an intergovernmental transfer of authority whereby the state delegates to units of local government the right to manage tracts of state owned land within their jurisdiction. Local authorities can grant private developers building rights on these lands allowing the government to capitalize on the resources and dynamism of the private sector to promote planned urban growth. Agreements stipulate that a portion of the land with the improvements constructed on it will revert back to the state upon expiration of the term for which the right is granted. This system is a culturally adapted form of public/private partnership in urban development.

The primary objective of the basic agrarian law was the rationalization of land tenure in the country by conversion of rights held under the two older systems into formally recognized rights for which titles can be registered. In practice, the task proved horrendous: progress was hindered by the complexity of traditional rights, unclear titles and ambiguous tenancy agreements. More importantly the absence of incentives encouraging compliance perpetuated informal development processes.

Since 1974 decentralization laws have expanded the powers and responsibilities of the three tiers of local government: the provinces, the cities, and the rural zones. Legislative power is vested in an elected regional council while executive authority rests with centrally appointed governors, mayors, and heads of smaller units of local government. Urban areas are subdivided into districts and neighborhoods. The district heads ("camat") and the chiefs of smaller urban and rural settlements known as Kampungs play an important role in the land markets. They are involved in record keeping, property valuation, tax collection, and the recording of unregistered land transactions.

In many ways, the legal structure for the decentralization of urban management was already in place through the organizational framework for land planning and development. Expanded local functions were reaffirmed by presidential decree in 1976 and, in 1980, ministerial regulations outlined the distribution of responsibilities. Land administration and taxation remained with the central level. The Ministry of Finance controls all aspects of real estate taxation. Interestingly, tax rolls only list current uses and occupants of land parcels and are not concerned with ownership or legal titles. Property taxes are collected on 85% of informal holdings. The very low tax rates encourage compliance which from the holders viewpoint has the added advantage of helping reinforce the

legality of claims. In 1979, Jakarta and Surabaya property taxes amounted to less than 0.1% of market value for residential property and 0.2% for commercial property.

Land administration is controlled by the Ministry of Home Affairs through its directorate of Agraria. Regional Agraria offices prepare land use maps, keep cadastral records, administer land rights, register titles, and issue certificates of title registration in accordance with the basic agrarian law and supplementary regulations issued in 1961. Registration procedures are time consuming and costly. Yet, the certificates issued establish a legal claim to the land which is not absolute in nature. The certified rights can be contested and the ensuing litigation can only be settled by the courts. Only 10 to 15% of urban land is actually registered. Informal land transactions involving unregistered property rights continue to be recorded with the local district heads or Kampung chiefs. These officials keep records listing owners of various land rights within the community. Their records remain the most widely used system for documenting land rights. Informal transactions are not illegal but they should be formalized by registration at Agraria offices within one year of execution. In Jakarta about 25% of all households claim to hold a legal right without having a registered title.

Land regularization did not emerge as an issue until the 70's when rapid urban growth spilled over onto land held under a variety of unregistered leasing agreements. Standard agreements exist to transfer existing claims to land without fully documenting their legality, thereby allowing successive informal transfers of unauthenticated rights. The inability to use compulsory purchase to secure land for planned projects forces public authorities to rely on negotiated sales to acquire the land they need. Land disputes, confused ownerships, and ambiguous claims became serious impediments, holding up the implementation of public projects.

In 1977 an attempt at compulsory registration was not successful. In 1980 a national voluntary registration program was launched, financed by revenues from public projects. A title registration program focusing on urban lower income communities was initiated and, by 1989, two million titles had been registered. Since 1983 the drive has slowed down considerably for lack of funding. It is difficult to maintain the momentum of regularization programs when the legality of the title and the tax status of the property are independent of registration. The lack of real incentives to comply accounts for the low priority given to regularization by public authorities and private individuals alike.

Since registration is not required for purposes other than the issuance of building permits, only developers of large real estate projects who require location permits issued by governors need to register their titles. An added incentive is the higher price commanded by registered land but for the vast majority of property owners the price differential is not worth the cost of registration and the time wasted on lengthy bureaucratic procedures. Furthermore it is a potential gain they can only capitalize on if the property is transferred. When such a transfer is contemplated they can always reassess the situation and register their title if they deem it profitable. In the meantime, government has recognized the rights of holders of informal land titles to retain possession and freely dispose of

their land. They are subject to taxation and entitled to compensation if the land is appropriated for a public purpose.

In their role as community leaders, district heads and Kampung chiefs have been successfully incorporated in the public administration system. Their involvement in matters of taxation and property valuation has contributed to the integration of informal development in the urban economy. Their traditional authority to issue land documents certifying "Adat" land rights and transactions has yet to be fully utilized in the land regularization process. They provide the interface between customary and codified rules and between formal and informal institutions. This is a pivotal role in a decentralized administrative structure and reinforces their integrative potential. They can become the instrument for the regularization of informal land tenure.

3.0 Latin America

3.1 Legal background

The colonial patterns of urban settlements along the coastal zones and legal codes introduced in the 16th century have shaped subsequent development in the region. The only imprint left by the pre-colonial urban history can be found in the location of interior cities such as Bogota and Mexico City. The decimation of native populations and the absence of massive immigration allowed colonization to proceed through the granting of large tracts of land in private freehold ownership.

After independence, the lack of population pressure and the continued reliance of the economy on the exploitation of natural resources allowed colonial ownership patterns to remain unchanged. Land is controlled by large landowners, charitable organizations and mining companies. State ownership of land in and around cities is limited.

Since the turn of the century, the development of transportation networks, the growing gap between rural and urban living conditions, and sharp swings in economic cycles prompted massive migration to the major cities reinforcing patterns of concentration and primacy. In Argentina and Uruguay over 80% of the population lives in urban areas.

Topography and soil conditions constrained the availability of buildable land; inflating land values and pushing poorer segments of the population to settle on marginal and environmentally hazardous sites: steep slopes, lowlands, etc. Pressure on accessible sites led to overcrowding and congestion in existing settlements.

3.2 Land development regulations since 1960

3.2.1 Land development and the invasion of public lands

The inability to come to grips with the landownership issue has impeded the implementation of coherent urban strategies. Large parcels held for speculative rather than developmental purposes, allow land to remain idle and keep prices artificially high, squeezing out middle and lower income groups from the market.

The absence of policy regarding the use and disposal of public lands left municipalities without a framework for the development of the reserves they held which, except in the case of Mexico city, were rather limited rarely exceeding 10% of the jurisdictional area. Progressively, throughout the '50's and '60's, lower income groups and rural migrants were allowed to settle on public lands. Even in Mexico City, municipal land reserves were lost to squatterization.

In Mexico, after the 1910 revolution, a large number of agricultural land holdings, "Latifundia", around the capital were appropriated to constitute an adequate land reserve, "tierras ejidales", for future development in the Federal district. However, illegal occupancy of these lands started long before plans could be implemented. By 1930 the city was surrounded by a ring of squatter settlements known as "colonias proletarias". Public authorities acknowledged their existence, tried to control them politically but did not regularize them.

Elaborate frameworks for policy planning at the national level often led to the creation of special authorities to implement specific programs while the capacity of municipalities to enforce regulatory controls remained limited. Legal and administrative procedures were superseded by political considerations.

In Brazil, the Federal Service for Housing and Urbanization (SHERFAU) formulates national urban policy. Implementation occurs at the central and local levels while the state governments organize and coordinate intermunicipal bodies. Standards for the subdivision of land are set by the National Housing Bank. Municipal authorities enforce these regulations within their jurisdictional boundaries. The central government can enforce land development regulations in zones which are expected to urbanize within a time frame of 10 years according to urban growth projections. Theoretically these areas should also be subject to regulatory controls; but the layout of some subdivisions, Sao Paolo's public lands were gradually occupied by squatters and in the '70's even public open spaces (plazas, squares, parks and gardens) were invaded.

Throughout the subcontinent government response to the invasion of public land was slow to coalesce into action programs because of the inability of central governments to regulate land markets and the lack of workable urban development strategies at the municipal level. In a first phase governments attempted to provide serviced sites as an alternative to illegal occupancy. This approach entailed the use of eminent domain powers to appropriate private land and the capacity to develop the acquired parcels.

Chile managed to develop an effective program in the '60's. Within the context of a national policy aiming to deconcentrate population and activities from Santiago, the government created a semi-autonomous federal agency empowered to exercise compulsory purchase of privately held land. This agency known as the Urban Improvement Corporation (CORMU) could also negotiate loans, and was authorized to keep profits from the sale of the land it had acquired. In the late '60's when CORMU was most active, it purchased 1500 ha annually and managed to momentarily keep up with urban growth and contain escalating land prices. CORMU transferred land to the housing corporation (CORVI) to develop projects for lower and middle income groups. Municipalities were empowered to levy a tax on vacant parcels in urban areas but the maximum rate was too low to deter speculative holding.

The absence of legislation enabling governments to acquire private land without having to pay for its speculative value implied that despite eminent domain powers public authorities found it increasingly prohibitive to acquire the land they needed for urban expansion including sites and services programs.

3.2.2 Approaches to regularizing squatter settlements on public Land

The alternative approach to widespread squatting within the cities and around them was to attempt to regularize squatter settlements. By the mid '60's the idea had already gained broad acceptance. Political parties supported illegal occupants and at various times promised to regularize tenure on invaded public lands. Peru's "Ley de Barriadas", enacted in 1965 was the first ordinance providing an institutional framework for the regularization of illegal land occupancy. The law granted tenure to occupants in existing squatter settlements on publicly owned lands. It did not address the status of squatters on privately owned land and prohibited new "invasions". The law mandated that the regularized sites be serviced with infrastructure prior to the issuance of deeds. Due to the lack of funds, the settlements remained unserviced; yet over 100,000 titles were issued, mostly on political grounds. Titles gave the beneficiaries access to mortgage credit but also made them liable to real estate taxation. Occupants to whom titles were granted during the period 1965-1985 did not make use of credit facilities and refused to pay taxes, claiming poverty.

In Mexico the 1970 law for urban settlements created a special agency to structure and regularize squatter settlements on the "tierras ejidales" around Mexico City. Rapid densification of barriadas and the difficulties encountered in servicing them impeded the regularization process. Priority was given to settlements located in politically sensitive zones, such as San Isidro, wedged between the Ministry of Defense and an elite residential district which, after regularization, became the Barrio Reforma Social. Meanwhile the world's largest urban agglomeration, expanded beyond the jurisdictional boundaries of the federal district compounding the legal and administrative issues involved in dealing with uncontrolled development.

In Venezuela, the National Housing Institute in the Ministry of Public Works (INAVI) was entrusted with the clearance of barrios and the development of low income housing. Despite laws prohibiting the construction and rental of substandard dwellings, INAVI's compensation rules reflected the ambiguity which characterized the government's approach to illegal occupancy. Compensation was paid to both the landowner and the owner of the dwelling. Tenants were rehoused but owners of rented premises were not compensated.

Municipal councils preferred to rent land to barrio residents rather than evict them. The only clearances authorized and actually carried out were in the case of invasion of public open space or when land was needed for highway and road construction. In 1962, a presidential decree established a private foundation for community and municipal planning (FUNDACOMUN) to provide social welfare assistance and community development programs in the barrios. The foundation was therefore partially integrated in the organizational structure of the state.

Fig. 5

GROWTH OF MEXICO CITY URBAN AREA

0 10 km

1920

1960

1980

Source: "The Case of Mexico City", Rodolfo Almeida et Carlos Rodriguez-UNESCO 1982

In 1964 a special committee on Housing and Spatial development recommended the acquisition of 46,300 hectares of land around Caracas to create a land reserve for the city but the recommendation was not implemented. The oil boom of the '70's accelerated the rural exodus and the number of barrios grew exponentially, extending along the steep slopes bordering the valleys.

The 1974 Presidential Decree 332 put FUNDACOMUN in charge of coordinating programs to regularize and service invaded lands. The decree de facto legalized invasion processes. The agency proceeded to undertake a nationwide inventory of barrios. Meanwhile in 1975 the committee on housing and spatial development reiterated the need to purchase 35,000 hectares to cover Caracas' short term needs (1975-1980). Once again the acquisition was postponed while uncontrolled urban expansion continued unabated.

3.3 The impact of the economic crisis

Economic recession, the debt crisis and runaway inflation led to the curtailment of housing and social programs. Budget cuts, currency devaluations and skyrocketing land prices prevented municipal authorities from acquiring the land needed to implement basic infrastructure works.

Unemployment affected both middle and lower income groups. Throughout the '80's the number and size of barrios grew and there was an intensification of "invasions" of vacant land and empty buildings as well as aggressive encroachments on abutting properties. By 1986 Lima had 737 barriadas covering 10700 ha of which 78% were located on public land. In Venezuela the population living in barrios grew from under 1 million in 1971 to over 6 million in 1985 and by 1989 it was estimated that 61% of Caracas' inhabitants lived in the city's barrios.

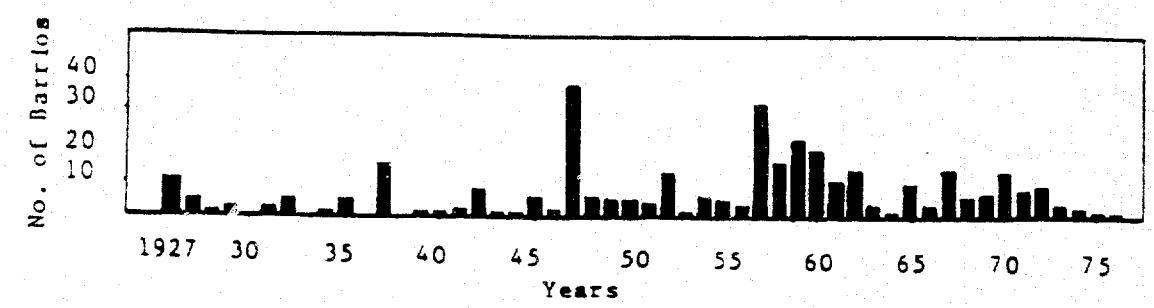
The laws authorizing regularization of squatter settlements mandate servicing prior to the issuance of titles. The expense involved in extending networks and retrofitting marginal sites brought programs to a grinding halt. With urban growth now occurring on private holdings, the development of new districts for limited income groups imply land acquisition. As the price of urban land soared to unprecedented levels municipalities could neither purchase parcels nor acquire them by eminent domain and compensate owners.

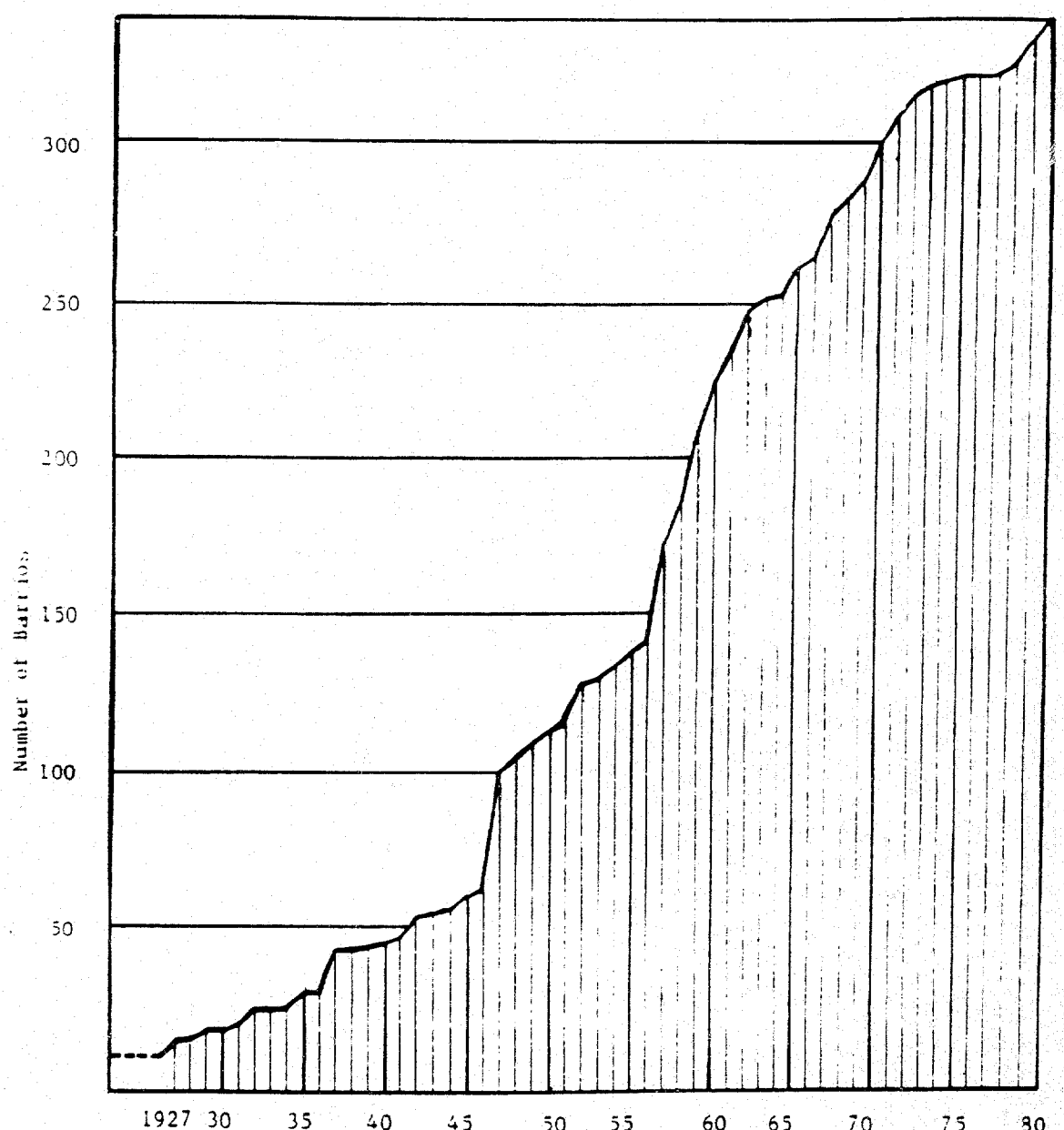
In Peru, in 1984 the government attempted to recover vacant publicly owned land leased to mining companies at modest rents but municipalities objected to the loss of rental income and obstructed the effort.

Brazil and Argentina did not practice compulsory appropriation as a matter of national policy. In Brazil the government attempted to buy private land but the program was quickly abandoned when it became apparent that the land was too expensive to be affordable to the target group. The assembled parcels were resold on the open market.

Fig. 6

EVOLUTION OF BARRIOS, VENEZUELA





In Argentina the Pro Tierra program in 1987 for the first time authorized municipalities to expropriate private land and sell plots to lower income groups. But the only land affordable to the target group was located in outlying districts inaccessible to public transport and unserviceable in the near term. In 1989 the program was abandoned.

3.4 Land development on the urban fringe

Since 1970 the urbanized area in all the larger cities of Latin America has spilled over jurisdictional boundaries. Expansion is occurring on land in private ownership mostly held by large landowners or mining companies. The urban extensions present sharply contrasting features with alternating patterns of low density subdivisions where the majority of parcels remain vacant and are held for speculative purposes, and densifying squatter settlements spreading in the less desirable zones. At the fringe, uncontrolled settlements emerge in the midst of agricultural areas.

Land development regulations outside municipal boundaries are in theory supposed to be enforced by central authorities. In practice they are ignored. Irrespective of the letter of the law, the regulatory functions are unstructured and rely on a highly politicized administrative apparatus for implementation. At the municipal level, this fluidity gives ample leeway for political accommodation.

3.5 Invasion of private lands and mutual accommodation in Venezuela

Short of compulsory appropriation and redistribution of land by government authorities, regularization of invader's tenure on private holdings requires the approval of landowners since transactions on land owned by third parties cannot be legally registered without the consent of the landowner who has to authorize and approve the occupancy.

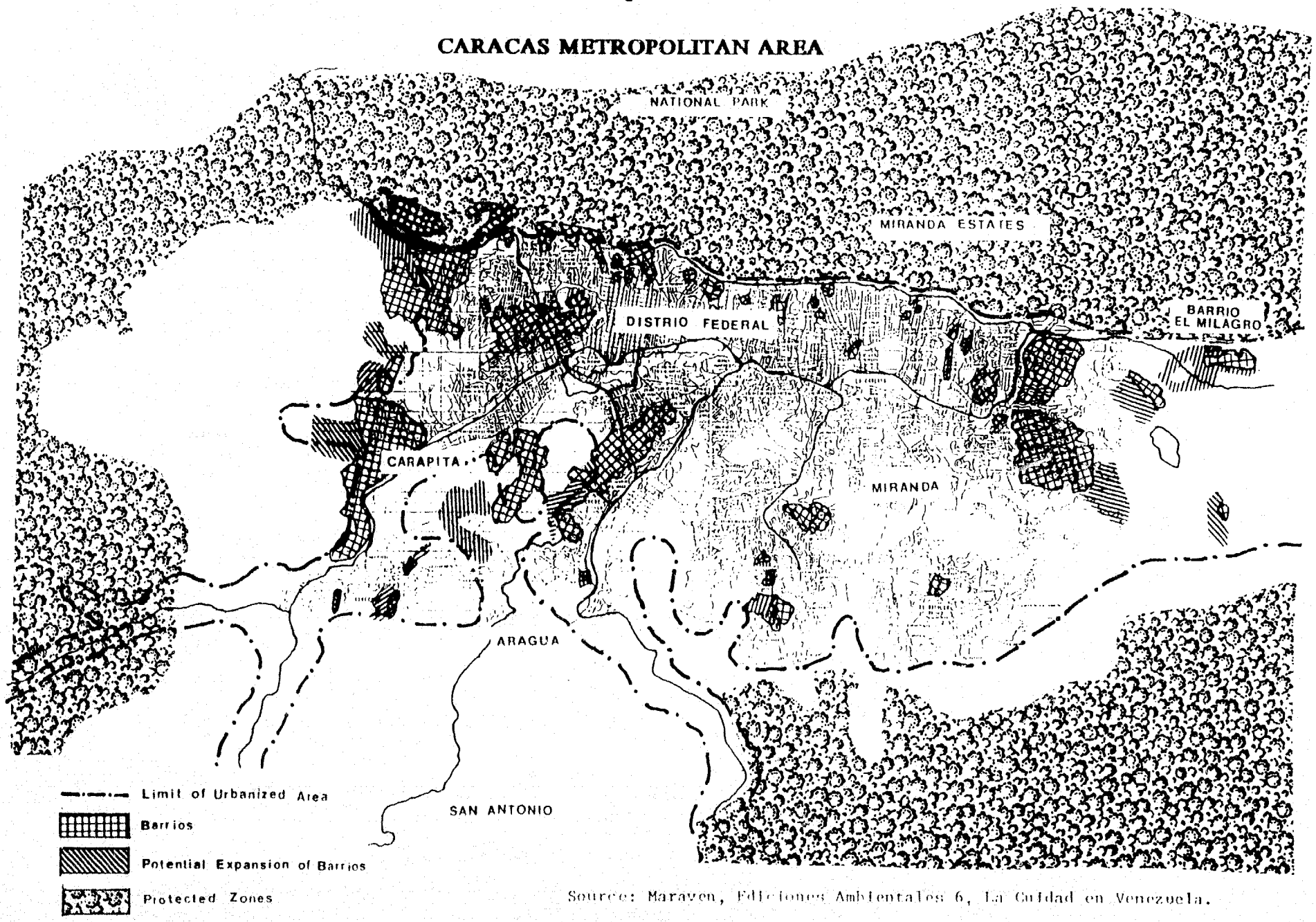
The civil code allows owners to demolish buildings erected on their land without their authorization or to acquire them from "invaders" at their market value less any damages to the property occasioned by the invasion. Despite this legal backing, landowners are in practice unable to enforce their rights. Since invaders cannot be evicted except through the courts, two alternative actions are possible:

1. The action to recover property requires owners to substantiate ownership claims by submitting registered deeds and to file a separate suit for each invader. Quite apart from the problems involved in identifying individual invaders the process becomes quickly unmanageable with increasing numbers. Furthermore judges are reluctant to pass sentences entailing evictions.

2. The action to defend possession requires owners to demonstrate possession through the testimony of witnesses. The judge could then issue a provisional restitution order to be enforced through administrative procedures. Action by public authorities is discretionary and

Fig. 7

CARACAS METROPOLITAN AREA



Source: Maraven, Ediciones Ambientales 6, La Ciudad en Venezuela.

is usually avoided since the forceful eviction of families is bound to be an unpopular operation.

In the early phases of a settlement's development, the limited number of settlers can and do seek a negotiated agreement with owners. However as soon as their numbers increase, they no longer seek to be accommodating, preferring instead to seek protection from municipal authorities and legitimize their foothold.

Owners often actively contribute to the growth of settlements by directly selling parcels without legally subdividing the land to avoid having to service the site. The rationale derives from the impact of squatters on land values. The presence of squatter shacks "ranchos" on a parcel depresses land values in the surrounding area. Owners eager to cut their losses have to dispose expeditiously of the affected parcel. This settlement has resulted in the emergence of developments more akin to informal a squatter settlements. Within 5 years, close to 75% of the "ranchos" acquire sheet metal and wooden frame roofing, brick walls and cement floors.

In mature settlements, over 10 years old, the majority of occupants are no longer the original builders and over half the houses include rental accommodations. At this stage the residents organize associations ("Juntas de Barrio") to petition local authorities for protection and request improvements in infrastructure services (access roads, storm drainage and water supply) and community facilities (health centers, schools and markets).

Invasions are no longer spontaneous events. They are elaborately planned operations involving "invasion planners", usually lawyers who sell plots to rancho builders and profit from the transactions. They also arrange for adequate protection by securing the support of municipal councilors. The Junta Communal, a political organization representing barrio residents with membership drawn from the different political parties usually blocks legal action by accusing landowners of attempting to forcefully evict invaders, inciting further invasions and organizing invaders to defend their possession of the land. Municipal authorities support invaders in return for votes and monetary profit. Political leaders, usually landowners themselves, protect them to bolster their own popularity. The extension of services to established settlements gives rise to another round of negotiations. Each improvement is an explicit favor to one barrio and an implicit support of the whole process.

Government authorities intervene in the resolution of conflicts arising from invasions of private land but outside the judiciary system and without reference to the official legal and administrative framework. In so doing they have institutionalized an informal system for de facto if not de jure regularization. This involvement can and should evolve into a constructive role for public authorities as catalysts to bring about formal regularization of illegal occupancy on private land. It is an important role since urban expansion, legal and illegal, is continuing to occur on private holdings.

3.6 Institutionalizing an informal system for private land regularization.
Barrios El Milagro, El Hormiguero and Tum Tum in Paz Castillo, Miranda, Venezuela

The land in question belonged to a sugar manufacturing company which authorized some of its workers to settle on the site. By 1969 about 200 families lived there, mostly newcomers with no connection to the factory. The occupants formed a "Junta pro defense" to file petitions for protection from forcible eviction with municipal authorities.

The Governor of the State of Miranda convened an informal meeting between the Company and the Junta to promote a negotiated agreement. The invasions had occurred on lands which were not cultivated. The price of sugar was controlled and cultivations was unprofitable. It was only practiced to prevent invasion since unutilized land could not be protected for long. The agreement was read at an official public meeting held by the municipal council and attended by the barrio residents, representatives of the company and the governor. The residents were asked to record their acceptance of the terms offered.

The Company agreed to sell the occupied lots to the occupants at a specified amount but would not assume responsibility for providing access or servicing the site. Lot sizes ranged from 200 to 700 m^2. No down payment was required and the sales price could be paid in installments over 7 years without interest charges. The municipality and the state undertook to survey the land, prepare a subdivision plat and assist the residents in the completion of legal procedures. Politicians were not inclined to interfere because of the small number of families involved.

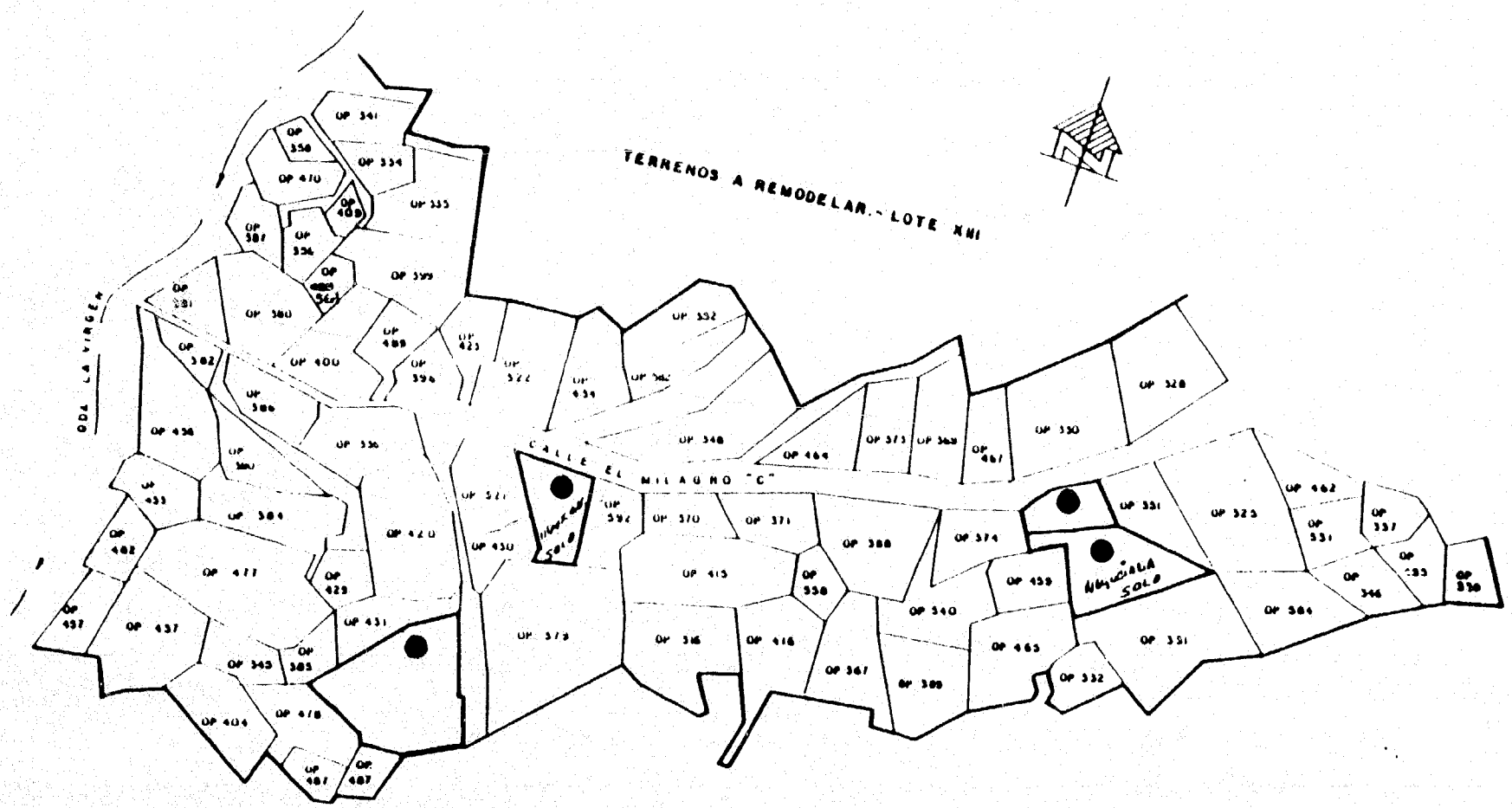
Although the company did agree to refrain from evicting occupants who refused to buy their lots, 97% had settled their accounts by 1979. Procedures were strictly supervised by company lawyers through a special office charged with handling payments, documents and records. Residents laid out streets and petitioned the municipality to provide them with public services. The electric company regularized the pirated connections and installed meters.

In 1978 an incident involving the invasion of planted open spaces belonging to the company which resulted in the eviction of the invaders, led to the formation of a new association, the "Junta pro desarollo" to protect settlers and to develop the regularized zones. The association managed to secure the installation of street lighting and some drainage works. It negotiated with the company the purchase of 400,000 m^2 in the vicinity to expand the settlements.

When landslides occurred in 1981 the Governor coerced the company into providing 48 new plots to be sold to affected households and when, in 1983, the Junta failed to meet its obligation regarding the land purchase the governor intervened once more to prompt the Junta to settle the delinquent account. Today the "ranchos" have disappeared replaced by houses in permanent materials.

Fig. 8

REGULARIZATION OF "INVADED LANDS", EL MILAGRO, MIRANDA, VENEZUELA



● Occupied, but Residents did not buy the plots

Source: Inversiones La Concepcion C.A.

Initiating regularization in the early stages of illegal occupancy, prevented the politicization of procedures and maximized the chances of a negotiated agreement. Prompt action in subsequent conflicts forced all parties involved to recognize and discharge their responsibilities in accordance with the letter and spirit of the agreement, thereby ensuring the success of the land regularization process.

4.0 The Middle East and North Africa

4.1 Legal background

Legislation pertaining to land tenure is based on governing principles of Islamic jurisprudence, the "Sharia" derived from Quranic prescriptions and religious tradition. These principles give government wide discretion to issue civil codes and regulations and to incorporate into the legislation local customs which do not conflict with Sharia. At the outset, there was a sharp distinction between urban and rural land tenure. Agricultural land was held under usufruct and provided the tax base of the state. Usufruct rights could be transferred and inherited but the land itself could not be subdivided. Urban land and built property in villages and towns, could be owned as a freehold and was not taxed. Leaseholds were a common form of tenure for long term investments in urban real estate. Intricate tenure patterns differentiated between ownership of the land, ownership of different property rights to the land, ownership of improvements erected on the land, and ownership of different parts of a structure. These various rights were recorded in private deeds and contracts attested to by local witnesses and certified by the courts.

In the second half of the 19th century strong pressure from the European powers forced a shift to private ownership of land and individual property rights. The first law to permit private ownership of agricultural land was promulgated in Egypt in 1858. In 1867 an Ottoman decree granted ownership to holders of usufruct rights over agricultural tracts in all the Ottoman dominions. The decree also allowed foreigners to own real estate.

Direct colonial rule in the Middle East and North Africa brought about crucial and irreversible changes in the land markets. Appropriation of prime land by European colonists, in the rural areas and the development of modern districts to house the influx of Europeans in urban centers required the introduction of new legal, administrative and institutional mechanisms. Between 1880 and the turn of the century new codes drawing on French or British models, consolidated individual property rights and removed all legal constraints on the free transfer of titles paving the way for the assemblage of large estates. New procedures for the registration of titles outside the traditional court system were introduced. Registration became mandatory and titles had to be registered with a central registration agency. In theory, titles issued by the registry are the only legally accepted documents authenticating property rights. Land over which no private party could claim ownership rights was considered part of the state domain, including deserts, forests and wastelands. Customary forms of collective ownership fell into disuse. Where the tribal order remained strong, they evolved in the direction of joint ownership. In Jordan, the land settlement law of 1933, mandated the distribution of tribal lands held in collective ownership among clan members. Titles were to be registered in the name of individual owners. Implementation was sporadic and ineffective.

However Sharia law could neither be abolished nor ignored. It continued to govern the possession and disposition of real estate since inheritance rules mandate the distribution of property among the heirs. There was a progressive fragmentation of freeholds despite the persistence of joint ownership patterns. Furthermore, the courts continued to certify transactions and recognize the validity of unregistered titles. Charitable endowments unique to Islamic countries, known as Waqf, in the middle east and Habous in North Africa continued to control a large roster of properties in both urban and rural zones. They are administered by special governmental agencies which have always managed to maintain a degree of autonomy because of their religious character and successfully resisted colonial attempts to interfere in their affairs.

The new urban management systems introduced in colonial times had to avoid conflicts with fundamental Sharia principles to be enforceable. When taxation of urban property was instituted by the turn of the century, the tax was levied as a rate on rental valuation since traditionally only income derived from a property is taxable by the State. The capital value of the property as an asset is part of personal wealth and subject to a tax equivalent in the form of a contribution earmarked for charitable purposes.

Municipal institutions copied on western models were created in the early part of the 20th century. The right of eminent domain was reaffirmed, expanded and codified to expedite land takings for infrastructure projects. Development controls including building codes and subdivision regulations were enacted but were only applicable within municipal jurisdictions whose boundaries had to be adjusted at intervals to generate land for new urban development.

4.2 Land development regulations since independence.

Independence allowed the reemergence of the institutional and legal traditions brushed aside by colonial administrations and their incorporation in civil codes and regulations. Foremost among these are three concepts of Sharia Law which have had a major impact on urban growth and provide the legal foundation for the regularization of land tenure on the urban fringe:

1) The acquisition of property rights by prescription after a period which can range from 5 to 15 years depending on the country.
2) The right to claim ownership of wasteland by bringing it into use through improvement and development.
3) The protection of inhabited dwellings from demolition except when the site is needed for a public use and upon resettlement of the inhabitants and payment of full compensation.

These principles have protected squatters on vacant state lands and allowed the legalization of de facto occupancy in informal settlements. Furthermore, despite the reaffirmation of formal procedures mandating the registration of titles, the courts have opted for a flexible approach which has perpetuated the tradition of transfers by private contract. The coexistence of the two parallel

systems has contributed to confusion and endless litigation particularly since the Registry did not independently verify or update its records. Official attitudes towards court certified documents vary. In Tunis titles are not legal until duly registered. In Jordan and Morocco certification entitles owners to municipal services and housing credit.

In the 50's and 60's large landholdings disappeared through agrarian reforms, nationalization of the estates of departing foreign colonists, and the curtailment or abolition of private Waqfs. In Egypt they were incorporated with the public Waqf system in 1952. In Tunis they were incorporated in the state domain in 1957.

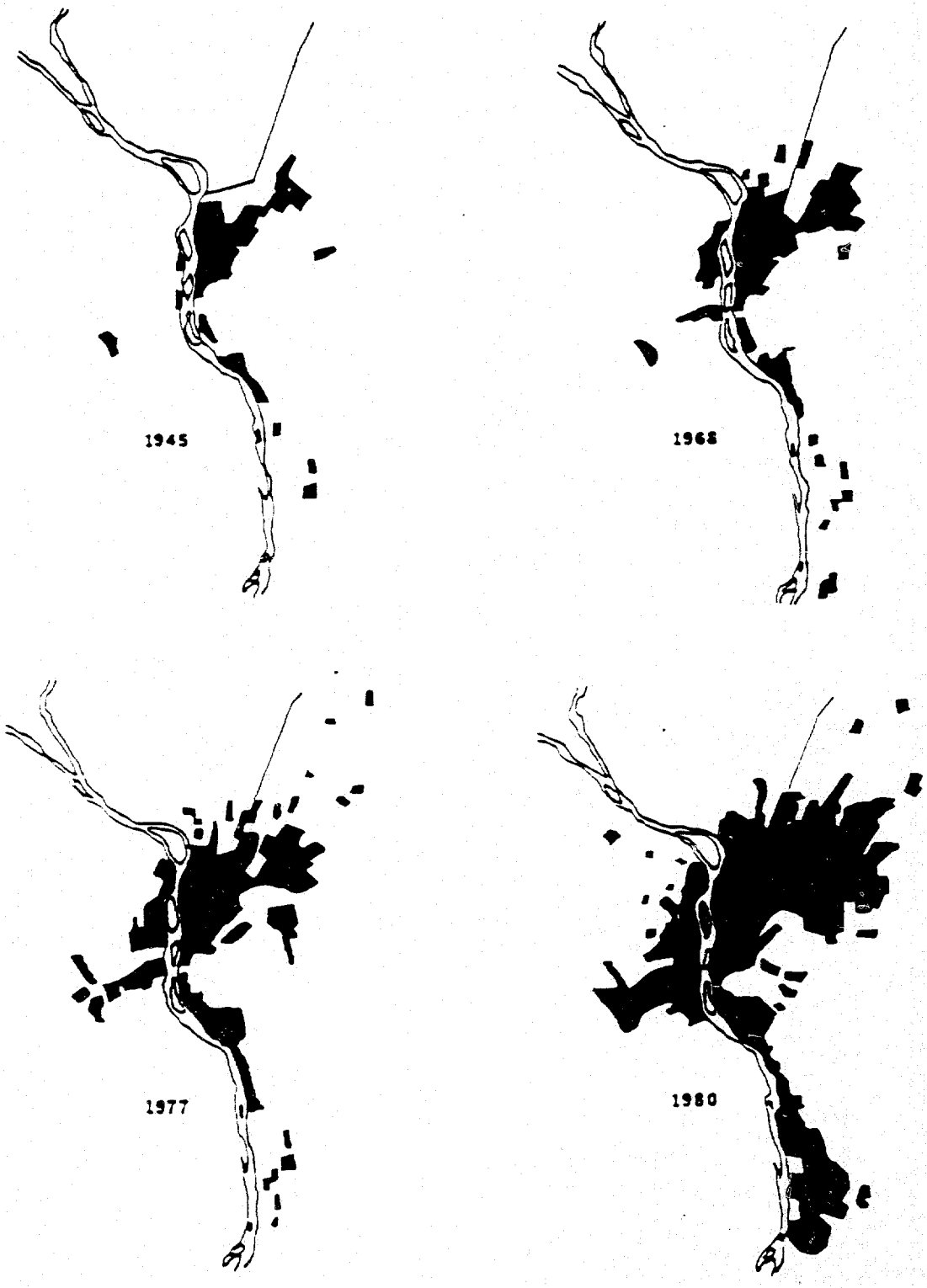
Aside from Waqf property, public ownership of land within the urban centers is limited. The extent of public ownership around the cities varies widely. Where the urbanized area is bounded by agricultural zones the land is mostly in private or joint ownership. It is very difficult to contain uncontrolled sprawl and land speculation. In North Africa the repossession of colonial estates allowed the government to constitute important land reserves which became a key element in urban development and housing policy. The reserves were largely depleted in the 70's and 80's by inadequate management and wasteful land consumption standards adopted by public and semi public agencies implementing large scale housing programs. In Jordan, law 40 of 1952 regarding tribal lands stipulated that claims to collective tribal ownership would be limited to land which was actually in agricultural use. Land left vacant would revert to the state and become part of the domain.

In cities which border on deserts, the State controls vast lands which unfortunately require substantial investments in infrastructure to open them up to development. Encroachments can only occur along a narrow band from which sources of water supply in the adjacent agricultural zones can be reached. Subdivision regulations require that land be serviced before it can be sold for building plots. The same clause applies to domain lands which must be serviced prior to release. The financial burden entailed by significant front end investments and the absence of adequate cost recovery mechanisms for basic infrastructure systems prevents any significant marketing of government land. Public land reserves are therefore left open to encroachment and illegal appropriation.

The oil boom of the mid 70's changed the character of urban growth suddenly and dramatically. Fueled by remittances from expatriate workers, investment in urban real estate rose sharply throughout the 70's. The sudden entry in the market of large numbers of households with cash savings led to rapid increases in the price of land and building materials in one of the worst and most pervasive inflationary spirals ever experienced in urban real estate. Between 1975 and 1985 land values roughly doubled every 3 years. On the fringe the increase was even more spectacular as land prices rose by a factor of 15 to 20 frustrating the housing aspirations of large segments of the population. The seed capital required to enter the informal market increased throughout the 70's and 80's and surpassed the means of the average urban wage earner. Limited income households were forced to seek accommodations in the informal rental market.

Fig. 9

GROWTH OF CAIRO URBAN AREA



SOURCE: GOPP/OTUI-!AURIF

Mounting demand pressure and the substantial profits which could be derived from land development led to a general disregard of codes and regulations. Hampered by obsolete plans, lagging cadastres and inadequate support infrastructure, central and local authorities alike were forced to tolerate the proliferation of uncontrolled sprawl. The dynamics of informal land development accelerated the outward expansion of the urbanized area and triggered significant intra-urban population movements. Egypt, Jordan, Tunisia, Morocco and Yemen were particularly affected. The urbanized zone in the larger centers doubled and sometimes tripled in extent, undermining the operational effectiveness of infrastructure networks. Unserviced areas grew 2 to 3 times faster than the urbanized zone as a whole.

Concern over the loss of arable land prompted many countries to enact laws prohibiting the conversion of agricultural land to urban uses. In Egypt, where the situation has reached crisis proportions, law 116 of 1983 protected agricultural land outside the designated urbanization perimeters of municipalities. To control the tendency of local authorities to annex large tracts of land promoting their conversion to urban uses, the law stipulated that proposed extensions of municipal boundaries had to be approved by the council of ministers. In 1984 the Minister of Agriculture issued a decree imposing for the first time restrictions on the conversion of agricultural land within municipal boundaries. Local authorities have been entrusted with its implementation. Enforcement is lax and ineffective.

4.3 Land development on the fringe.

Initially a response to a worsening housing shortage and the scarcity and cost of serviced land, informal development has become a prime form of investment, shielded from the corrosive impacts of high inflation and yielding lucrative profits. Small scale entrepreneurs and contractors reap windfall profits through land speculation, illegal subdivision and low quality construction. The process also involves small time brokers, local court clerks, and district officials in various capacities. Yet kinship networks remain a dominant factor in marketing and large parcels are often bought by a group of related households and subdivided among them.

Today, informal development accounts for a minimum of 20% to 30% of housing starts in Amman and Tunis, where growth pressure is moderate, to a maximum of 60% to 70% in the Cairo region where pressure is intense. Lot sizes range from 100 to 300m^2 with larger lots fronting on the wider streets.

In Tunis regulations governing the sale of agricultural land held by the State were issued in 1970 and resulted in a massive transfer of domanial land to the private sector. Despite restrictions on conversion to non agricultural uses, speculative transactions multiplied land values. Private sales and leaseholds granted by public agencies gave rise to illegal subdivisions and to fraudulent appropriation of sizeable parcels from abutting unregistered domanial lands originally belonging to

the "Habous". Claims attested to by witnesses are notarized by the courts as a private deed which is used to initiate official registration procedures.

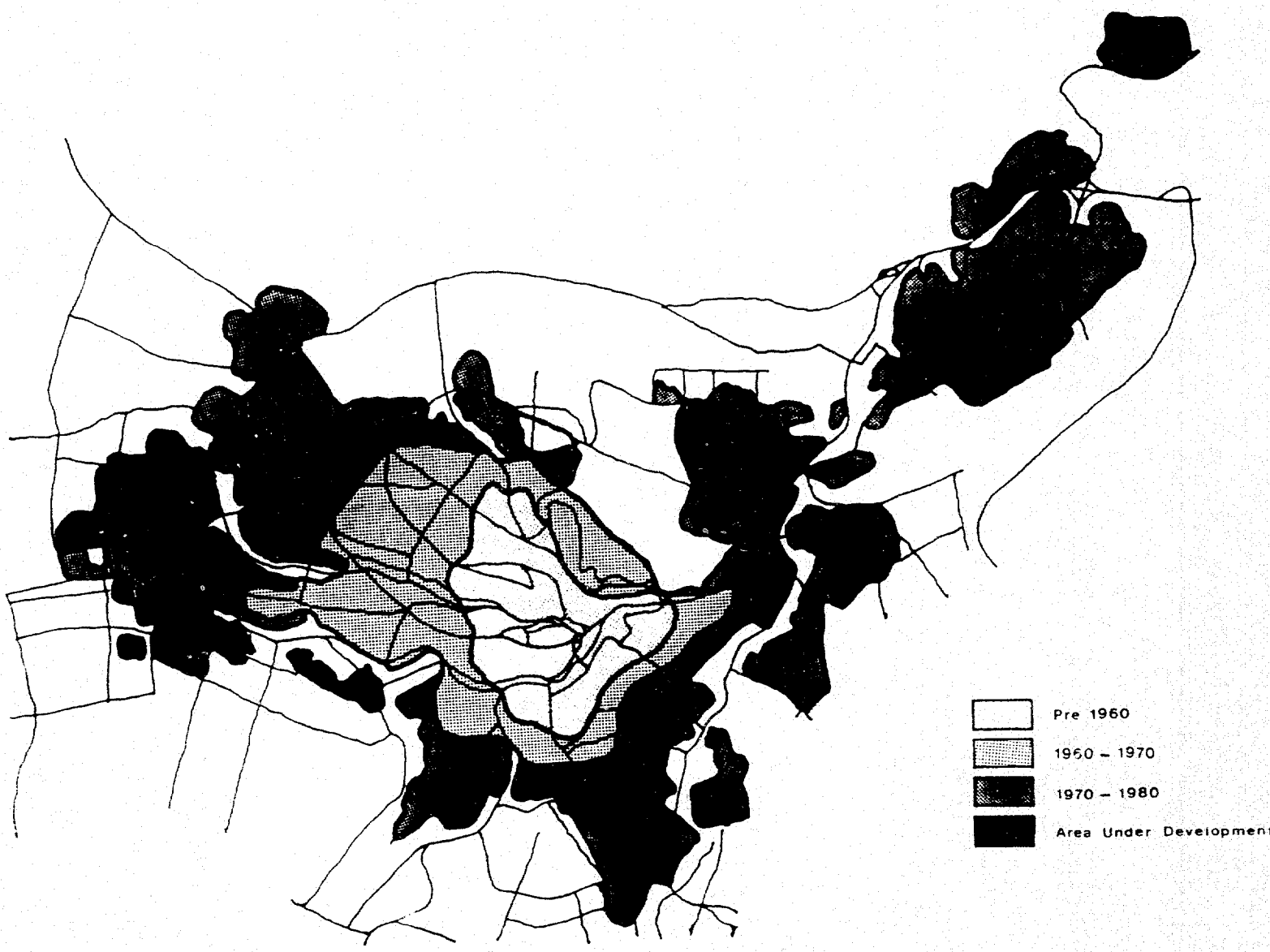
Since 1980 this informal process has followed well structured procedures. Lawyers specializing in land transactions seek out land holders in outlying zones and negociate highly profitable agreements allowing them to take charge of the subdivision process. For larger parcels, particularly in proximity to public projects which valorize adjacent land by a factor of 3 to 4, a plat is prepared by a professional draftsman and adds an aura of legality to the subdivision. Sales contracts for plots are drawn and notarized by the court clerks. In the unlikely event that registration procedures for the original agricultural holding are completed and a title is eventually issued, the buyers of building plots can only register as joint owners of the larger parcel since the subdivision is considered illegal.

In Egypt and Morocco, the fabric of informal settlements reflects the prior agricultural use of the land. There is a concious effort to replicate the street grid of government projects while ensuring that no less than 75% of the tract's area is saleable as compared to 45% under current regulations. Local developers buy large tracts in outlying zones and hold the land until conversion to urban use becomes feasible. They offer credit allowing immediate occupancy against a downpayment. Buyers can start construction without delay and settle the balance of the land price in installments over 3 to 5 years. Developers make a 20 to 30% return on investment by shifting the social and environmental costs to the public sector which will have to eventually retrofit the settlement.

Rising land prices and rent control laws have led to a resurgence of joint ownership patterns in formats adapted to the new market conditions. In the formal sector, cooperative concepts were adapted to respond to land rather than credit problems. Cooperatives focus their energies on land acquisition and subdivisions. Members receive title to individual plots or units under a condominium type agreement. The number of coops multiplied in the 70's and 80's. In Jordan, despite the fact that The Higher Planning Council is authorized to designate "planning areas" outside municipal boundaries to create new urban sites, it is mostly the activity of cooperatives that has shaped the patterns of low density horizontal expansion by leapfrogging over existing urbanization in search of cheaper land. They rely on political leverage to obtain building permits. Registration of the cooperative entitles the subdivision to municipal services and housing credit finance, thereby conveniently shifting to the public sector the cost of haphazard sprawl. Having refrained from exercising their right to refuse to authorize building activity outside the development zones where infrastructure can be provided, municipalities are forced to endure wasteful land consumption and inefficient infrastructure systems. This subdivision process accounts for the fact that in Jordan most urban property is held in fee simple ownership with fully registered land titles. However less than 10% of the structures are registered, underscoring the importance given to land ownership, a permanent asset.

Fig. 10

GROWTH OF AMMAN URBAN AREA



Source: Serageldin, Mona, Unit for Housing and Urbanization, HGSD.

In the informal sector, a variety of joint ownership and tenancy arrangements have emerged drawing on the range of recognized property rights. Agreements for financial cooperation are worked out between associates, neither of whom has sufficient funds to enter the market on his own. A common strategy is for one associate to secure the land and the other to build the structure where they can each have a dwelling. This method is particularly popular in Morocco and derives its legal strength from traditional rights of utilization. It is estimated that 64% of the privately built housing stock (formal and informal) incorporates this form of tenure. A family with sufficient capital to build enters into an agreement with a landowner lacking the funds to develop the land. Legally, the landowner holds a utilization right to a part of the structure and the owner of the structure holds a utilization right to the land. A squatter resettlement project in Fez capitalized on this system to speed up the development of allocated plots.

4.4 Land regularization

Governments are keenly aware of the contribution of informal land development to the alleviation of housing shortages. Consequently, public policy has intermixed attempts to control and efforts to regularize. Prior to the late 70's, regularization occurred through unstructured and sporadic decrees promulgated whenever the situation got out of hand. The legalization covered subdivisions and buildings in contravention with existing codes by outright regularization of past violations (as in Egypt, Tunisia and Sudan) by revising plans and ordinances to conform to the de facto situation (as in Morocco) and by adjusting municipal boundaries to encompass fringe development on agricultural land illegally converted to urban use.

To harness the dynamism of informal development, municipalities need to overcome legal restrictions preventing them from releasing unserviced sites in locations which reinforce desired patterns of urban expansion. They also need mechanisms enabling them to restrain the detrimental effect of land speculation.

Official reluctance to tax vacant land traditionally viewed as a non income producing asset, has undermined efforts to curb speculation. In 1978 Egypt, Syria and Jordan instituted a modest tax on vacant serviced lots but the rate is far too low to have any impact. Morocco enacted a similiar tax also in 1978 but quickly repealed it. Two other measures enacted at the same time are still in force. The first is a tax on the capital gains of real estate transactions. The second is a discount of appreciation in excess of 20% for land appropriated in areas affected by public projects. In Egypt the New Town Organization has finally been empowered to repossess parcels which are not developed within 3 years of allocation.

In the 80's decentralization laws have shifted powers and responsibilities from the central to the local level. While key planning, regulatory and budgeting functions remain vested in the central level, area planning, code enforcement, and fiscal management are now local responsibilities as well

as the administration of State lands within local jurisdictional boundaries. Decentralization laws often impose constraints on the management of municipal lands either on disposal strategies, as in Tunis, or on the application of revenues generated from land sales, as in Egypt. The regulatory latitude granted to municipalities enables them to issue regulations supplemental to national codes. They can neither amend nor override national legislation and central directives.

The absence of a tradition of local government accounts for the intrinsic weakness of municipal institutions in the region. Existing administrative structures and regulatory controls were mostly copied on French models. Executive functions are discharged by a hierarchy of appointed officials. More recently, elected local councils have assumed a larger role in administration and decision-making. Council members include landowners, contractors, entrepreneurs and brokers active in the informal land development process. Hence the noted responsiveness of local viewpoints and actions to the particular interests of this potent constituency. Over the years ambivalent attitudes and laxity in the enforcement of regulatory controls have given way to open tolerance of violations and active support of measures to legalize informal subdivisions.

In any city, land regularization issues can be very different depending on whether the irregularities are the result of illegal settlement on state owned land, illegal conversion of agricultural land to urban use or illegal subdivision of a parcel. Structures violating building codes do not affect the tenure status of the plot on which they stand. Titles to illegally subdivided land cannot be registered, neither can permits be issued to build on these plots. In most countries, real estate taxes, plot charges and other fees cannot be levied on property which is not registered, depriving municipalities of revenues they desparately need to service these developments.

Tenure systems which regulate possession and disposition of land are sanctioned by Sharia principles and cannnot be easily modified. Development controls which regulate the utilization of land can be changed as conditions warrant. Land regularization is primarily concerned with violations of development controls. Despite overly cumbersome and complicated administrative procedures there are no major legal obstacles to regularization in the case of informal development on privately owned land. Invariably, the occupant has bought a plot from the owner of a large tract and is in possession of a sales contract certifying the transaction. Unless the seller's claim to the land is contested, the buyer's tenure rights are not at issue. The transaction can be registered and a title obtained upon payment of the registration fees. The title would only refer to the transfer of ownership rights to the parcel. In Egypt unregistered properties are listed in the tax rolls and can be serviced. In theory they are also subject to rent control laws.

In the case of squatters on public land, legal and technical impediments can prove difficult to overcome but governments do exercise a greater degree of control over the process. The only exception is the case of lands designated for utilities, thoroughfares, public open space and community facilities which constitute a special category of public lands outside the State domain. The priority given in Sharia to the provision and protection of public thoroughfares has enabled

government authorities to appropriate up to 25% of the area of a privately owned parcel without compensation to open up or widen public rights of way, provided that the remaining land is developable under existing codes and regulations. These lands cannot be transferred from public to private use and are protected from encroachment or appropriation. Squatters settling on these lands and public rights of way cannot be legalized and will eventually have to be cleared.

The mixed experience of upgrading projects reflects the problems of linkage between registration of titles and cost recovery through plot charges rather than a reluctance on the part of municipalities to regulate land tenure per se. Land regularization can remain entangled in the web of bureaucratic issues related to collections, jurisdictional disputes over special functions, problems related to the allocation and application of receipts, and political and social concerns over equity considerations.

4.4.1 Land regularization in Jordan: Institutionalizing a formal process

Compared to other countries in the middle east and north Africa, Jordan's experience with squatter settlements and informal development is a very recent one. In the greater Amman region squatter settlements stretch along the Amman-Zarqa corridor while informal development is occurring on the northeast fringe.

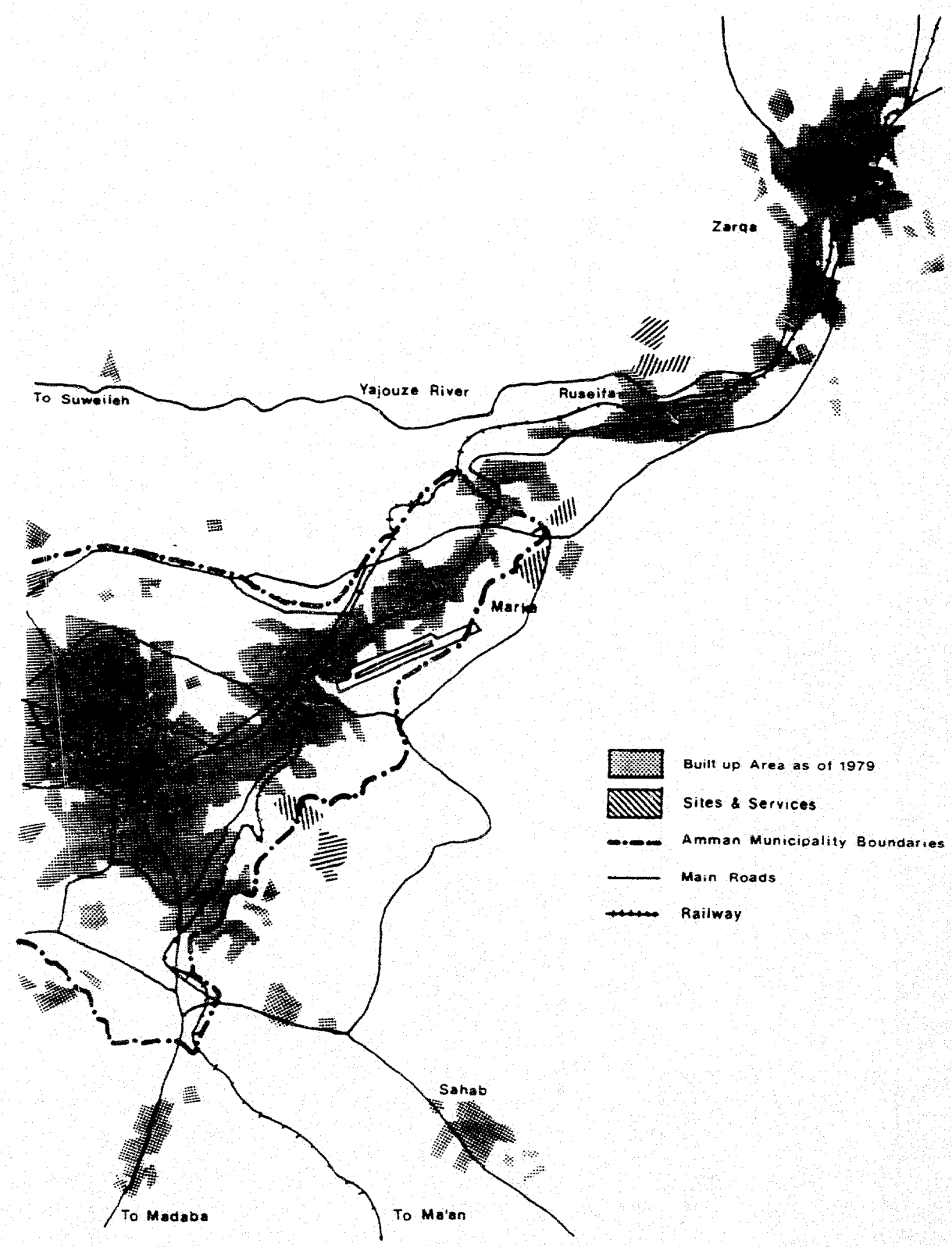
To avoid excessive fragmentation of ownership, further subdivision among heirs is prohibited when the resultant individual lots would be smaller than 150m^2, the minimum lot size allowed by subdivision regulations. The bulk of vacant land in Amman falls in this category. Properties have to remain in joint ownership among the heirs and, more often than not, continue to be registered under the name of the last owner having had full title to the land.

To develop vacant land within municipal boundaries, Amman experimented with land readjustment. The municipal council is empowered to delineate land readjustment zones. It can take without compensation up to one third of the area of a plot to provide utilities and community facilities. The process proved to be rather cumbersome because of the variety of old property rights which must be appraised and translated into new ownership rights integrated within the planned development for the site. Land shares are therefore defined in terms of value rather than plot size. Values are set by an appraisal committee and is subject to an appeal procedure. Shares can be traded among holders to consolidate holdings below minimum lot size. The ambitious land readjustment project of North Amman covers 700 hectares. Planning work started in 1985 and the approved plans were referred to the Department of Lands and Surveys in 1987 for the issuance of titles. The method has been used to deal with problems of fragmentation of holdings and multiplicity of owners. It has not been used as a mechanism for regularization of land tenure as is the case in southeast Asia.

A flourishing informal sector has developed in the Northeast sector of the Amman region capitalizing on 2300 hectares of tribal pasture lands and property owned by the Phosphate Company. The parcels being marketed average 500m^2 matching the middle range of regulatory plot areas in

Fig. 11

AMMAN REGION
NORTH EAST AREA



Source: World Bank, "Staff Appraisal Report, UDP2". 1987.

standard residential districts (Zone C). Taking into account the eventual costs of regularizing titles (including the payment of a fine for building outside the authorized planning areas and registration fees) the prices offered are very attractive compared to the higher quality options available on the formal land markets. For median income households it is the only affordable access to land and home ownership.

Entrepreneurs use local brokers as intermediaries to negotiate the purchase of tracts of land. The transaction involves the informal transfer of tribal rights to the developer. A private sales contract referred to as Hujjah is drawn, signed by the two parties and attested to by two witnesses; but it is not registered with the Department of Lands and Surveys.

The developer proceeds to subdivide the tract and sell building plots in a similar fashion. The subdivision layout conforms more or less to the norms applied in government projects although lots are usually smaller. Likewise, the housing constructed reflects the official building codes and is of surprisingly high quality. The buyers must:

- establish a presence on the site rapidly and discretly;
- avoid attracting the attention of state land inspectors who regularly patrol land outside municipal and planning areas.
- work expeditiously outside regular working hours to build a one room structure. A roofed building is legally considered an inhabited dwelling protected by Sharia from demolition.

The Joint State Land Committee which overseas these lands is empowered to remove violations and impose fines on violators.

When settlers in the Ruseifa area reached a critical mass, the new property owners exerted pressure on the government to regularize their tenure. The high cost of privately supplied water and electricity was a strong incentive to regularize in order to qualify for municipal services traditionally provided free of charge. The cost differential was such that households would fare better paying real estate taxes and having access to public utilities. In the early 70's, a branch office of the Department of Lands and Surveys was established on the site and has been operating since demarkating plots and sorting out property rights.

The Ministry of Municipal and Rural Affairs and the Environment (MMRAE) which controls land development outside of the jurisdictional boundaries of Greater Amman Municipality, has established the following formal regularization procedures.

1) Submission of application to regularize a sub-area to the Department of City and Village planning MMRAE.
2) Site reconnaissance survey to determine the feasibility of regularization based on evaluation criteria including: physical characteristics of the site, quality of structures, difficulty of extending primary infrastructure to the site, cost of retrofitting the development.
3) Preparation of a formal subdivision plan by MMRAE to layout public rights of way and

delineate land reserves for community facilities.
4) Approval of sub-area plans by the Minister.
5) Submission of plans to the Governor who issues notices of public hearings.
6) Review period (2 months) and filing of grievances and objections.
7) Adjudications of grievances.
8) Endorsement of plans by the Governor and final approval by the Minister MMRAE.
9) Referral of approved plan to the municipality to include the sub-area in its infrastructure and services programs.
10) Referral of approved plan to the Department of Lands and Surveys (DLS) to issue legal titles to individual plot owners.
11) Detailed survey by DLS and installation of metes and bounds.
12) Preparation of cadastral records for each parcel.
13) Assessment of plot charges and survey fees.
14) Issuance of titles upon settlement of all charges and fees.

The first phase of the land regularization process at Ruseifa involved 530 hectares. The process required a coordinated effort between the Department of Lands and Surveys, the Ministry, and Ruseifa Municipality. The process proved to be complicated and time consuming. Numerous difficulties were encountered in attempting to collect plot charges. Households felt they had already paid presumed owners for the acquisition of their plots and refused to pay any additional charges. Utilities and services have not been forthcoming for lack of budget appropriations.

MMRAE has concluded that planning must stay ahead of development to expedite and simplify the procedures. The second phase of the Ruseifa land regularization project will involve 700 hectares. Less than 15% of the area has actually been built up.

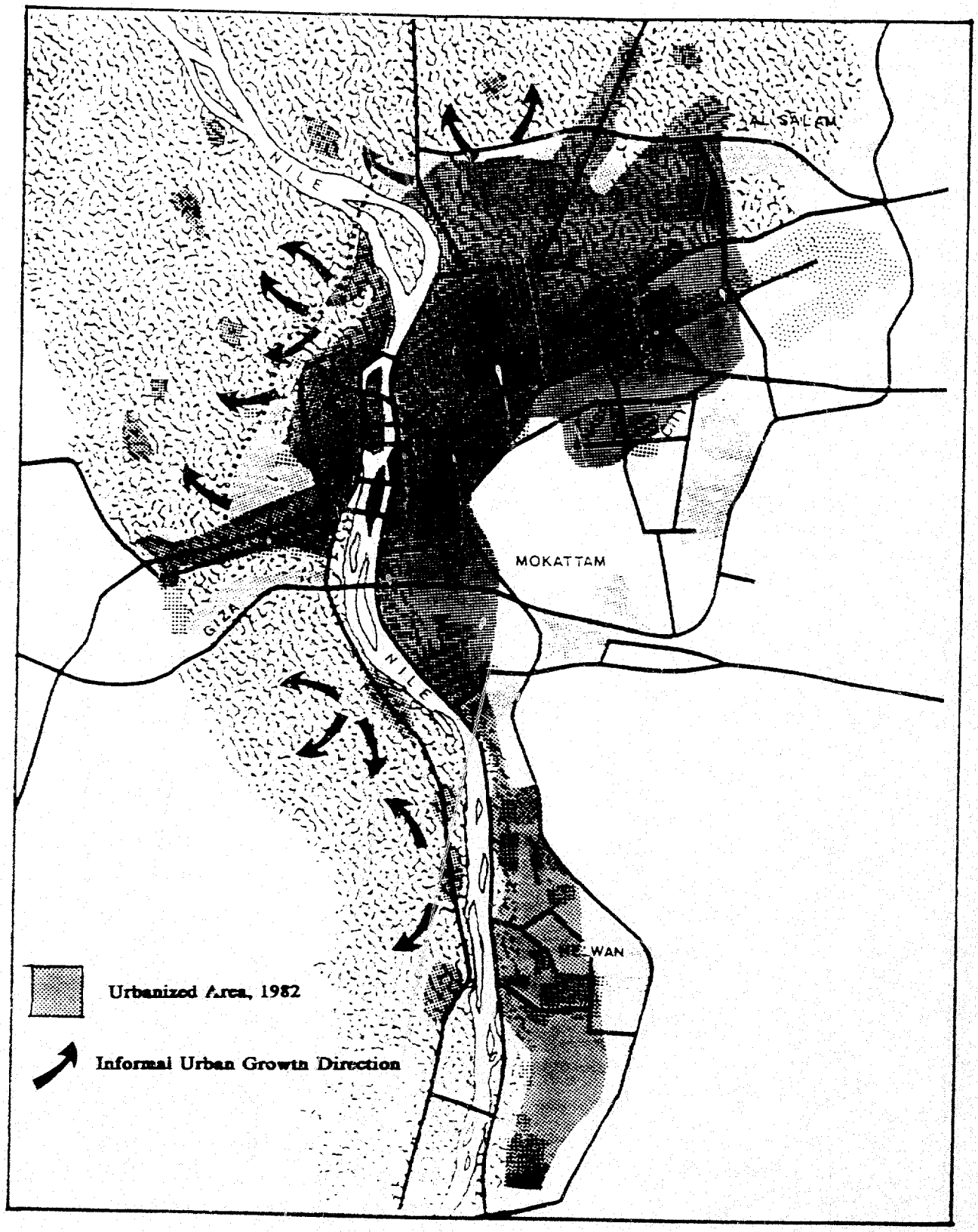
4.4.2 Land regularization in Cairo Governate, Egypt: The national/local interface under decentralization

Until 1980 there was no official policy regarding the regularization of informal land development beyond periodic and highly controversial blanket legalizations of past violations. The Existing laws legalized subdivisions and structures violating existing codes and granted municipalities discretionary powers to service these areas while specifically prohibiting future violations. Since the underlying causes fostering informal land development were never addressed, it became necessary to issue similar laws at intervals legalizing a de facto situation.

The upgrading projects sponsored by USAID and The World Bank in 1978 raised issues regarding tenure in both squatter zones along the desert's edge and illegally subdivided agricultural land. They required the institutionalization of legal processes and administrative procedures to regularize tenure in the upgraded sites.

Fig. 12

GREATER CAIRO URBANIZATION



Source: Vigier, Francois and Serageldin, Mona. "New Settlement in Cairo" Monograph, 1988.

The progressive transfer of executive authority from central ministries to units of local governments between 1975 and 1982 was accompanied by frequent changes in laws and regulations, the unavoidable consequence of incremental adjustments. Policy guidelines, development standards, capital investment programs and operational budgets continued to be the responsibility of central ministries. Program implementation and actual construction, operation and maintenance was delegated to the governorates through functional hierarchies headed by undersecretaries attached to the central level but working for and in the governorates. This institutional organization made it impossible to formulate and implement land policy without direct links and coordinating mechanisms between decision makers at the central and local levels.

Extensive functions were delegated to municipal authorities in the field of land management and development in addition to their regular responsibities for the delineation of public rights of way, enforcement of building codes and subdivision regulations and the provision of community services. Legally the governorates were empowered to manage and dispose of state lands within their jurisdiction. The proceeds were earmarked to replenish a special fund created in 1976 to finance the construction of public housing projects.

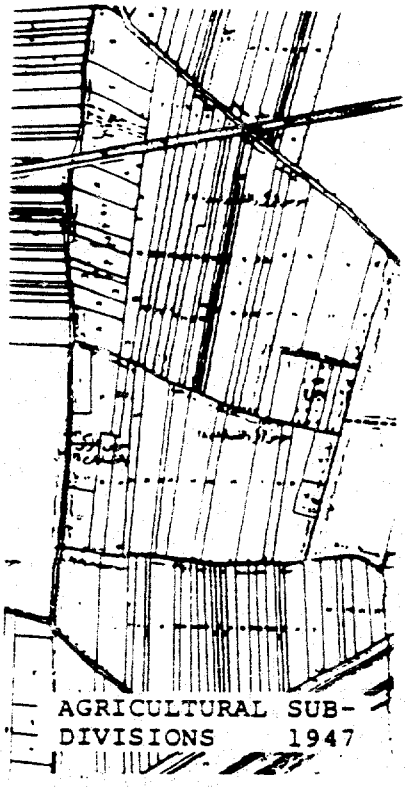
Law 135 in 1981 was the first to mention procedures for the regularization of informal development. It mandated governorate authorities to prepare upgrading plans for settlements located within their administrative boundaries but did not specifically address issues related to land tenure. Following the enactment of the law, local authorities turned to the national legislature for the definition of rules governing the transfer of state lands to the settlers. The only existing rule at the time was a presidential decree promulgated in 1976 which authorized the sale of government land to illegal occupants upon payment of the full market value prevailing at the time of the transaction. Local authorities felt that a more flexible approach was needed to deal with limited income groups.

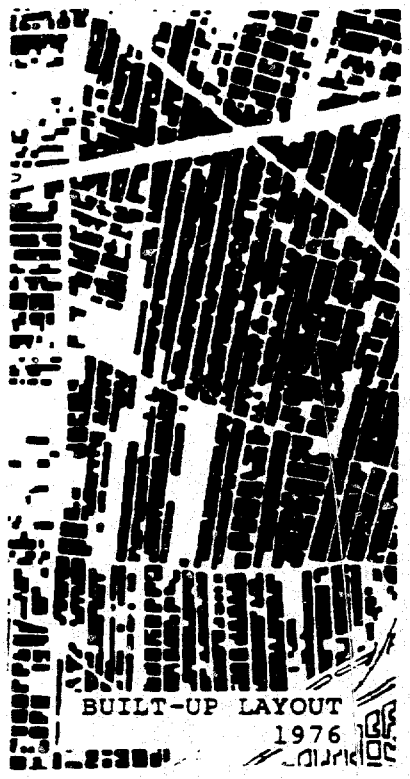
In 1984 Law 31 of 1984 empowered Governorates to dispose of land through negotiated sales conditional upon the recipient's obligation to utilize and develop the land in accordance with the terms specified in the sales agreement. In parallel, law 34 instituted harsher penalties (fines and prison sentences) for encroachments on agricultural land or vacant unutilized state lands. A year later executive regulations to implement law 31 had still not been issued. Governorates felt pressured to develop interim regulations, outlining procedures for filing requests to purchase land plots; paying fees to cover survey costs and depositing a flat rate charge related to the size of the parcel as a downpayment pending actual appraisal of the property.

When the central executive regulations were finally issued in 1985, the ministerial decree referred to procedures for the transfer of wastelands to occupants who had brought the land into use prior to the enactment of law 31 and allowed the Governorates to define their own operational procedures to implement the law.

Fig. 13

CAIRO: INFORMAL SUBDIVISION OF AGRICULTURAL LAND





Source: El Sioufi, Yehia and "Urbanization of Agricultural Land", 1981

Following a full year of study and deliberation by a special committee, its recommendations were adopted by the local council and a decree issued by the governor in 1986 spelling out the policies and procedures for the regularization of land titles. The decree stipulated that:

1. Structures which conflict with approved street alignments and planned projects would not be regularized. Occupants would only be granted a temporary land lease until construction of planned works started.
2. The interim regulations developed in 1985 for the sale of vacant government owned land to settlers would be institutionalized.
3. Prescription claims which do not encroach on land designated for approved projects would be regularized.
4. A special office would be set up in the Governorate Properties department to process the requestsd for regularization.
5. A committee headed by the General Secretary would supervise implementation.

By the end of 1987, less than 30,000 requests had been filed, representing about 5% of the estimated number of eligible illegal occupants in the governorate. No more than 750 had actually made the required downpayment. The lack of response prompted a reconsideration of the procedures by the local council. It recommended that the initial flat rate charge be eliminated and replaced by a regular downpayment upon appraisal of the property. The proposed amendments were adopted and incorporated in the land regularization procedures in 1988.

A full 10 years have elapsed since the issue of regularization was first raised in relation to the upgrading effort. The decentralization of responsibilities has entailed a sequence of incremental adjustments in the central/local interface. National laws are increasingly enacted in the form of enabling legislation setting a framework of broad powers and areas of responsibilities. Local authorities are given wide discretion to formulate land policy and disposal strategy and define the rules, regulations and procedures governing transactions including the regularization of informal tenure.

At no time during this long drawn out process was the basic concept of prescription rights ever questioned. Occupants never felt that their security of tenure was threatened. Furthermore the elected local council felt that titles should be issued to settlers in accordance with their Sharia sanctioned rights and that they should only have to pay for the costs of the regularization procedures. The inability of authorities to enforce penalties undermines the effectiveness of legalization as an incentive to comply with regulatory measures. Since the likelihood of collection is highest for front end charges, remitted prior to the issuance of titles, it is important to reach an agreement regarding the modalities of computing and collecting downpayments early on in the process.

The enactment of procedures for land regularization in Cairo was delayed by questions regarding the legality of charging for land in accordance with ability to pay. The law empowers

governorates to transfer land by negotiated agreement. But local authorities are concerned that by allowing settlers to acquire titles at an artificially low price, they would be jeopardizing their ability to charge real estate development corporations the full market value for desert land opened up by the network of new connectors and the ringroad. Likewise, the charges that landowners in informal settlements are asked to pay must be clearly defined, understood and accepted before they can be enforced. Serious issues of social equity have been raised in this regard. It is crucial that they be resolved in order to successfully institutionalize a process for land regularization.

5.0 **Sub Saharan Africa**

5.1 Legal background

In the 19th century the European colonial administration introduced codes copied or adapted from western systems governing property rights, registration, acquisition and transfer of land, development regulations and taxation of real estate property. The primary intent of the codes was to manage the colonization process and facilitate the exploitation of natural resources including the rich soils for farming and planting cash crops.

The colonial administrations found the verbal traditions of customary law incompatible with western concepts of codified legislation and sought to "expurgate" customary rights through a combination of confiscatory practices and marginalization. But deeply ingrained customs proved resilient and enduring, forcing colonial administrations to adopt a more conciliatory attitude and recognize the legitimacy of customary law, albeit within a limited perimeter of designated village lands. In the rural areas the two systems coexisted in parallel.

Tenure in village lands ranged from inalienable collective ownership in West Africa to fragmentation of holdings in East Africa, with important local variations depending on tribal rules governing allotments of parcels and the inheritance of property rights.

In the British colonies, urban land policy drew on English common law and the home rule tradition. The crown lands ordinance of Uganda in 1903 and the Government lands Act of Kenya in 1915 stipulated state ownership of all lands that were not already private property or tribal domains. The delineated tribal land reserves were referred to as Trust lands in East Africa and Stool lands in West Africa. Tribal groups were allowed partial autonomy in internal governance and could thus manage their lands in accordance with their own customary laws.

In the French colonies, a civil code for the colonies was officially promulgated in Senegal in 1830. However the statutes relating to land tenure proved incompatible with the objectives of colonization and were replaced in 1906 by the "Acte Torrens" empowering the State to grant provisional land concessions designating allowable utilization and indicating a time frame for development. Concessions are viewed as a transfer of property and must be registered, a procedure known as "immatriculation".

The right of tribal groups to collective ownership of designated village lands held under customary law was recognized. However unlike the English system, the centralized administrative structure of the French territories did not allow for internal fragmentation of village lands. This restriction did not surface as an issue because customary law in the region prohibited the subdivision and sale of tribal land which had to remain inalienable and in collective ownership. With the

exception of vacant village lands, all parcels left unimproved for 10 years or more were repossessed in 1935 and became part of the State "domain". Heavy penalties for infractions to land codes ranged from jail sentences to fines. Illegal occupancy of domain lands usually resulted in the clearance of squatter settlements ("déguerpissement") when the land was needed for some purpose.

The absence of an indigenous urban tradition was reflected in the absence of customary rules for the appropriation and use of urban space. Urban settlements had been established by foreigners and were dominated by foreign groups: Europeans, Asians, Arabs and Levantines. Throughout the colonial period, African ownership of urban property was limited.

Colonial administrations prevented any intrusion of customary law in the cities. In east Africa the commissioner of lands granted 99 year leases for urban parcels. The leases could be converted to freeholds upon fulfillment of specified conditions and payment of a fee. In the French colonies, municipal authorities granted urban land parcels as a provisional concession to a private party enabling the "attributaire" to develop the site but retaining ownership of the land for the State. Title to the land was acquired upon certification that it had been developed as mandated by the terms of the concession.

To allow the settlement of African populations in the cities, colonial authorities instituted the occupancy permit system which allowed the holder to occupy a lot but did not entitle him to acquire property rights over the land. The system was introduced in the French colonies in 1909. Lot sizes were restricted to 200m^2. The transfer of occupancy rights was authorized in 1921. The law also provided for compensation for the improvements in case of displacement. In 1943 a decree allowed the permits to be changed to provisional concessions, subject to the codified procedures for the acquisition of titles. The only restrictions on the freehold was that the property land not be sold to a European.

Municipal boundaries have no impact on land tenure systems or land transactions. Municipalities and communes do not control state lands within their jurisdictional limits. The allocation of concessions and the issuance of titles can only be done by central authorities.

The concept of improving and developing a landholding is central in West African codes and customs. Claims to property rights hinge on the ability to demonstrate adequate utilization ("mise en valeur"). The effectiveness of the system requires a general agreement on and understanding of the minimum requirements needed to make a claim acceptable to government authorities and to allow the issuance of a title.

5.2 Land development regulations since independence

With independence came an assertion of cultural identity which led to the resurgence of customary rules and religious percepts. National governments could hardly deny their legitimacy

without jeopardizing their own authenticity. The colonial policy of containment and marginalization conflicted with the objectives of socio-economic development of a national territory.

Conversely, the authority of the State had to be strengthened to prevent the confusion arising from the application of different customary tenure practices. In general, post-independence legislation sought to:

- Redefine and expand the public domain;
- Control land development;
- Regulate transactions of customary holdings.

There is however a wide discrepancy between the regulatory powers claimed by the State and the ability of government authorities to enforce them.

In Kenya, in 1963, the land Adjudication Act provided for the consolidation of native landholdings stipulating that this should be done in accordance with customary land tenure practices, while the registered Land Act sought to integrate different systems and modernize the registration process. In Ghana the Administration of Land Acts of 1962 authorized the state to intervene in the management of tribal ("Stool") lands, control their use and appropriate them by the power of eminent domain if needed to further a public interest.

In the Ivory Coast, private ownership of land was retained. Village lands continued to be held under customary collective ownership and management. Individual ownership of urban parcels could be acquired in a two step process. First as a provisional land concession pending development and upon completion of the improvements, the property could be registered as an individual freehold and a title issued to the owner.

In Cameroon (1963) and Senegal (1966) nonregistered land was declared part of the State domain. Individuals and groups can obtain land allocations which give them a right of utilization but not ownership of the land. However the utilization rights can be inherited. Fully developed urban parcels are granted a special status which allows issuance of a registered title.

In Guinea, the 1962 law regulating real estate stipulated that the State was the sole owner of land in the nation. Private parties holding property under codified or customary laws can only claim a right to utilization of the parcel for agricultural or urban uses. Consequently, it became illegal to hold vacant land except as a provisional concession pending development. All other vacant lands are considered part of the "Domain".

In Zaire, the same principle of government ownership of land was established by the Bakajika law of 1966 and reinforced by new laws in 1971, 1972, and 1973. The State grants concessions to private parties authorizing the use of a parcel. The terms of the leaseholds can vary from perpetuity to three year renewable rental agreements. The law granted tribal groups a collective right of

utilization of village lands. In the urban areas landholders were guaranteed security of tenure under the new system. A "parcel card" authorizing the utilization of a specific plot replaced the "occupancy card" of the colonial period. The title to the developed concession is documented by the issuance of a registration certificate for which a tax of 8% of the purchase price is charged.

In all the newly independent African nations, the coexistence of two parallel legal systems mandated setting up mechanisms to structure and regulate their interface. This in turn demanded the reinterpretation, adaptation and integration of customary rules and tenets within the framework of codified law. The urban fringe provided the geographic setting for this challenging interface.

5.3 Land development on the urban fringe

Rapid population growth and massive rural/urban migration have resulted in a dramatic expansion of the urbanized area in the larger cities. Spilling over municipal boundaries delineated in colonial times, urban development, formal and informal, is now occurring either on domanial reserves or village lands held under customary law and managed by clan leaders.

The need to structure urban growth necessitates the layout of infrastructure networks, the rationalization of jurisdictional boundaries and the recording of properties; a horrendous task given the inability of cadastral services to keep up with urban expansion. Large scale planned projects on the urban fringe invariably require land assembly by eminent domain procedures which include formulas for the compensation of occupants on the appropriated site. This entails a definition of the extent of customary tenure rights and the property over which they can be exercised.

Starting in the '70's, the wealth represented by urban land, the most rapidly appreciating commodity, and the potential profits that can be derived from land transactions led to an erosion of the collective management of customary lands. Village chiefs started to subdivide and sell their ancestral land. Traditional rights guaranteed by lineage and alliances among kin groups are reduced to a preferential treatment reflected in lower prices for plots and precedence in allotments, but not exclusivity. Social heterogeneity is a characteristic of informal development on the urban fringe. Since village chiefs can no longer control subsequent transactions, informal settlements experience very rapid densification through further subdivision of parcels, the addition of rental accommodations, and overcrowding. In less than 10 years the population of a settlement can swell from under 100 members of a kin group to over 10,000 inhabitants belonging to different ethnic groups.

Irrespective of whether vacant land could legally be subdivided or not, village chiefs have found it more expedient to subdivide first and then seek ex post facto regularization. It is therefore to their advantage to ensure that:

- subdivision does not flagrantly contravene offical development standards;
- parcels are built up promptly; and
- construction is in durable materials, preferably reinforced cement blocks.

The layout of the subdivision is undertaked by a professional surveyor in exchange for one or two plots for himself. Hence the orthogonal layout replicating the grid of official subdivisions clearly anticipating regularization. Yet, streets are often impassable in the rainy season due to difficult site conditions: unfavourable topography, high water table or erodable soils. Plot sizes are generous and range from 300 to 600m^2. A private deed is signed by the two parties and witnessed by local leaders.

Given the rapid appreciation of urban land values at the fringe relative to incomes, some can take up to 10 years for a young family to accumulate the capital needed to acquire a plot from a village chief. The contributions of multiple wage earners are a prerequisite to enable households to save. In this context, the role of the extended family and the income generating activities of women are essential to give a family access to property ownership.

A plot in a government subdivision is a bargain for the price, bringing immediate security of tenure and infrastructure services. However, given the imbalance between supply and demand, access to patronage networks is important in order to avoid lengthy and fruitless waiting periods. A parcel in an informal subdivision can be acquired for about 20% of the cost. Risk of displacement, problems of access and threat of encroachments are counterbalanced by the prospects of large profits from a guaranteed appreciation in property values and real possibilities for income generating uses.

To counter charges of greed and abuse of power and to avoid friction with the younger generation, village chiefs increasingly resort to the creation of "village associations" grouping members able to contribute financially to the development of landholdings. The skill and aggressiveness of the association and its access to patronage networks determine the magnitude and security of the development as well as the range of violations it can cumulate with relative impunity:

- Building rental accommodations without a permit;
- Illegal sale of land;
- Subdividing vacant village lands without authorization;
- Illegal occupancy and sale of land outside village holdings;
- Illegal conversion of agricultural parcels to urban use.

5.4 Land regularization

A strict application of land development regulations would deny the legality of informal development of land held under customary law. The status of current occupants would also be in jeopardy since all transactions occurring prior to the registration of a parcel are illegal and consequently null and void.

Since independence, government authorities have been reluctant to enforce regulatory measures that openly conflict with customary sights. Preventing the subdivision of village lands

would be viewed as an unwarranted intrusion of government in tribal affairs and a confiscatory practice preempting the traditional rights of villagers to manage their own property. Legalization is the only politically acceptable policy and regularization the only technically feasible solution. The interface between formal and informal development is interlinked with the interface between customary and codified law.

5.4.1 Land regularization in the Ivory Coast: A fully institutionalized process with codified rules and procedures.

In the Ivory Coast, subdivision of vacant land is allowed; the infraction in informal land development arises from bypassing subdivision regulations which mandate official approval of the plat and minimum servicing by infrastructure prior to the sale of plots. A 1955 decree had prohibited the sale of customary lands except through the codified registration procedures. The complexity and cost of the documentation required to file a formal application for a subdivision authorization is a deterrent to compliance. Lengthy and cumbersome approval procedures which can take anywhere from 6 months to over 2 years are an added enticement to ignore the law and seek regularization after the fact.

Procedures for the regularization of subdivisions on village lands were enacted in 1977. They are also lengthy and cumbersome but at that point the developer or the village association has already reaped the profits from the venture. The survey and planning work will be undertaken by the responsible authorities and decisions will affect new owners and occupants on the site. Since 1965 the quality of buildings in informal settlements has increased markedly reflecting rising expectations regarding security of tenure. Since the enactment of the 1977 law, the Water and Electric companies which legally should not service irregular developments have started to do so in anticipation of their eventual regularization.

The regularization process entails first the transfer of customary holdings to the State "domain" and then a reallocation of the domanial land to lot owners as provisional concessions. Freehold title can be acquired following regular procedures. Holders of customary rights are compensated for the appropriation of their land. Others claiming ownership of lots in the subdivision will receive the right to acquire title to the lot and pay the survey and bounds fee. If the lot is vacant, they have to meet the same eligibility requirements as any applicant for a land concession: payment of a deposit to prove capacity to develop the land. The deposit is roughly equal to half the cost of a modest house and will be reimbursed as work progresses.

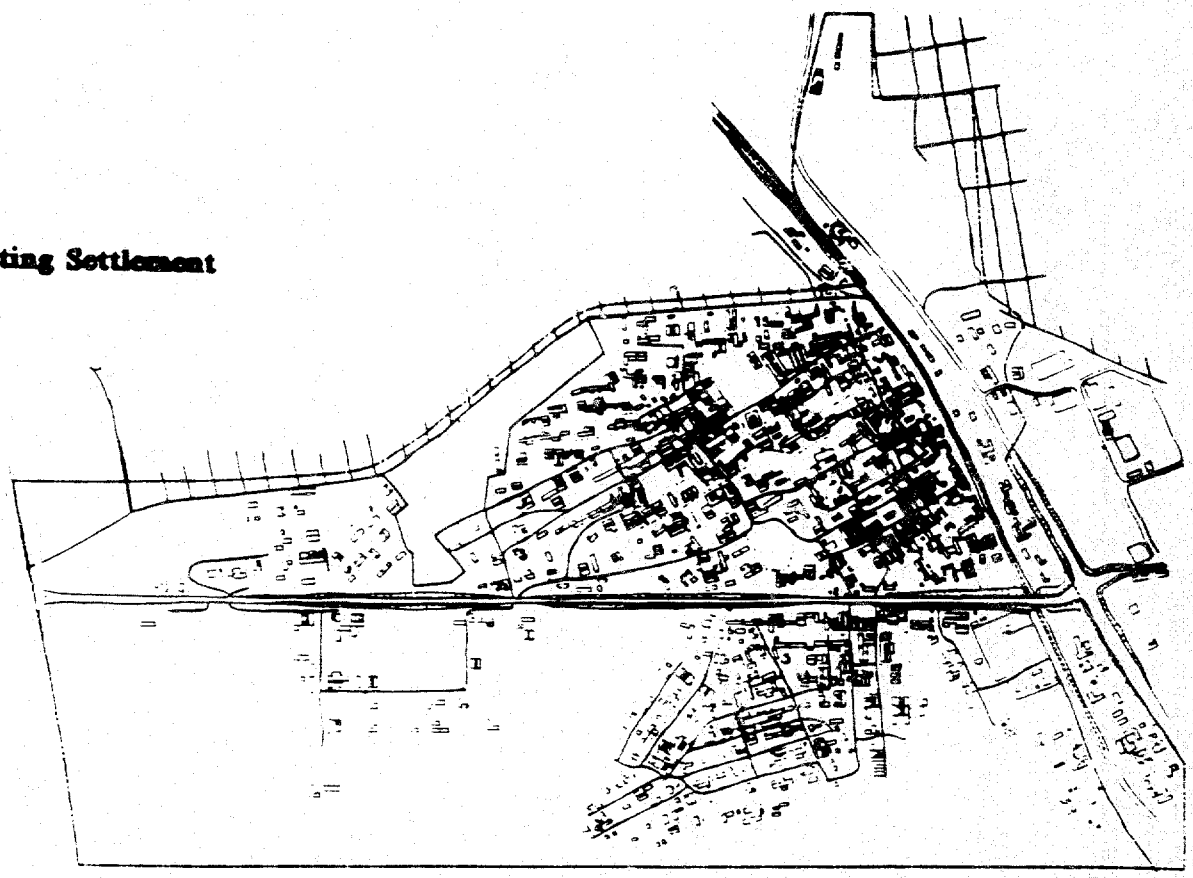
Since land is privately owned, it is taxable. Land which remains undevelopped or underdevelopped after the expiration of the grace period is subject to a tax surcharge and in addition can be repossessed at any time without compensation.

Regularization procedures have to be initiated by the villagers and the mayor of the commune in which the village is located. The Ministry of Construction and Urbanism and the

Fig. 14

ABIDJAN: Km 18
INFORMAL DEVELOPMENT ON CUSTOMARY LANDS

Existing Settlement



Restructuring Plan

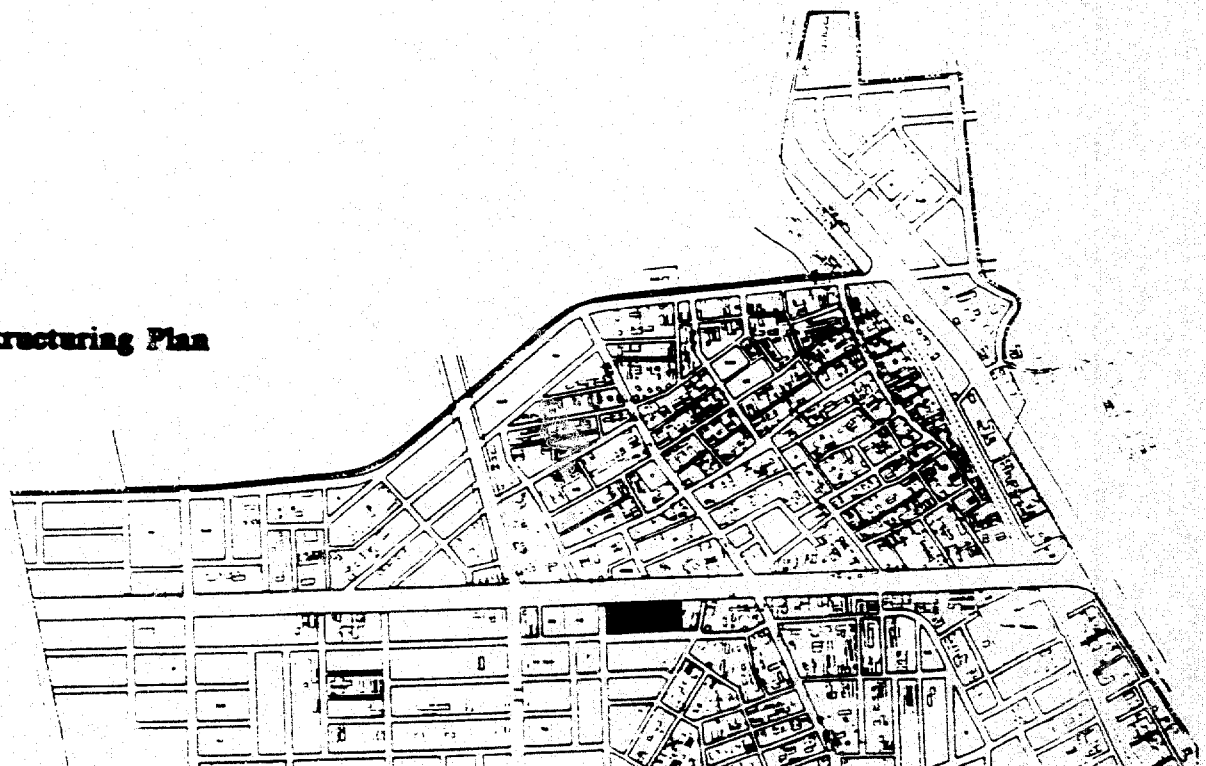
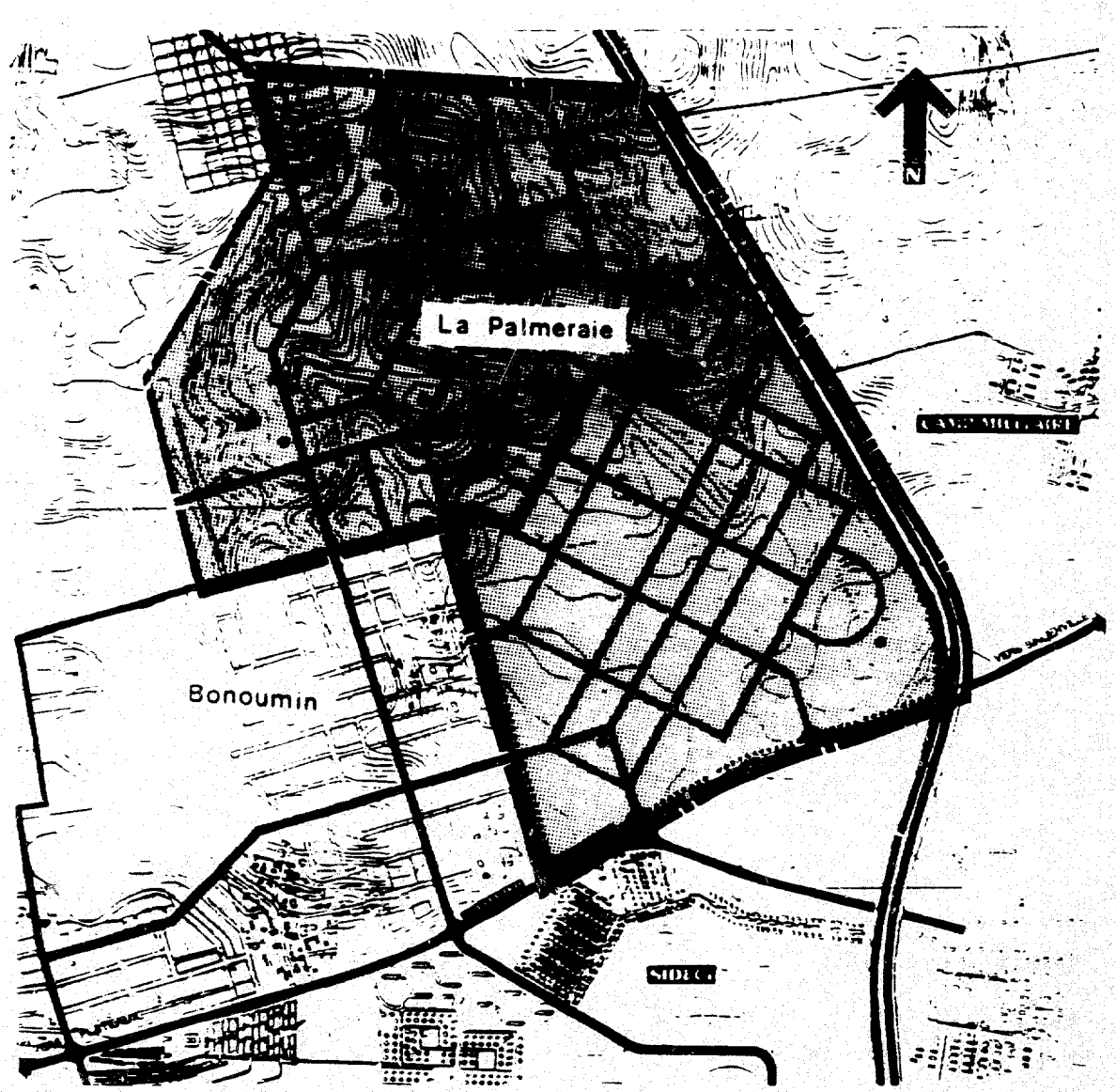


Fig. 15

REGULARIZATION OF BONOUMIN INFORMAL SETTLEMENT IN CONJUNCTION WITH THE DEVELOPMENT OF LA PALMERAIE PROJECT ABIDJAN



Source: Dcgtx Working Papers

Direction et Controle des Grands Travaux are responsible for replanning and servicing the subdivision. The formulation of criteria for regularization and the selection of minimum service standards are interlinked and affect the pace at which regularization can proceed. Since budgetary constraints limit the ability to meet requests on file, the present and future potential to bring infrastructure to the site at a reasonable cost is a key determinant of priority ranking. It is no coincidence that regularization usually occurs in conjunction with large public projects.

5.4.2 Land regularization in Guinea: An official institutional framework with unstructured procedures

In Guinea, the State has sole propriatory ownership of land. Consequently vacant land cannot be sold. Legal expansion of the urbanized zone can only occur through land assembly and the platting of new subdivisions by the Ministry of Planning and Urbanism.

The 1974 law which detailed eminent domain procedures provides compensation for authorized improvements. With the exception of structures on customary holdings, no monetary compensation is awarded for buildings erected without a permit. Occupants on the appropriated site are given plots in exchange of the parcels they held, usually in the new subdivision and occasionally in a resettlement zone. The transaction is considered a transfer of utilization rights from one property to another of a roughly similar value.

The allocation of a parcel is equivalent to the granting of an occupancy permit. A fee is charged, which prior to 1987, was a flat rate but is now progressive in relation to plot size. It is intended to cover the cost of surveying and demarcating the plot boundaries. Parcels have to be developed within 3 years of allocation. Failure to do so entitles the State the repossess the land.

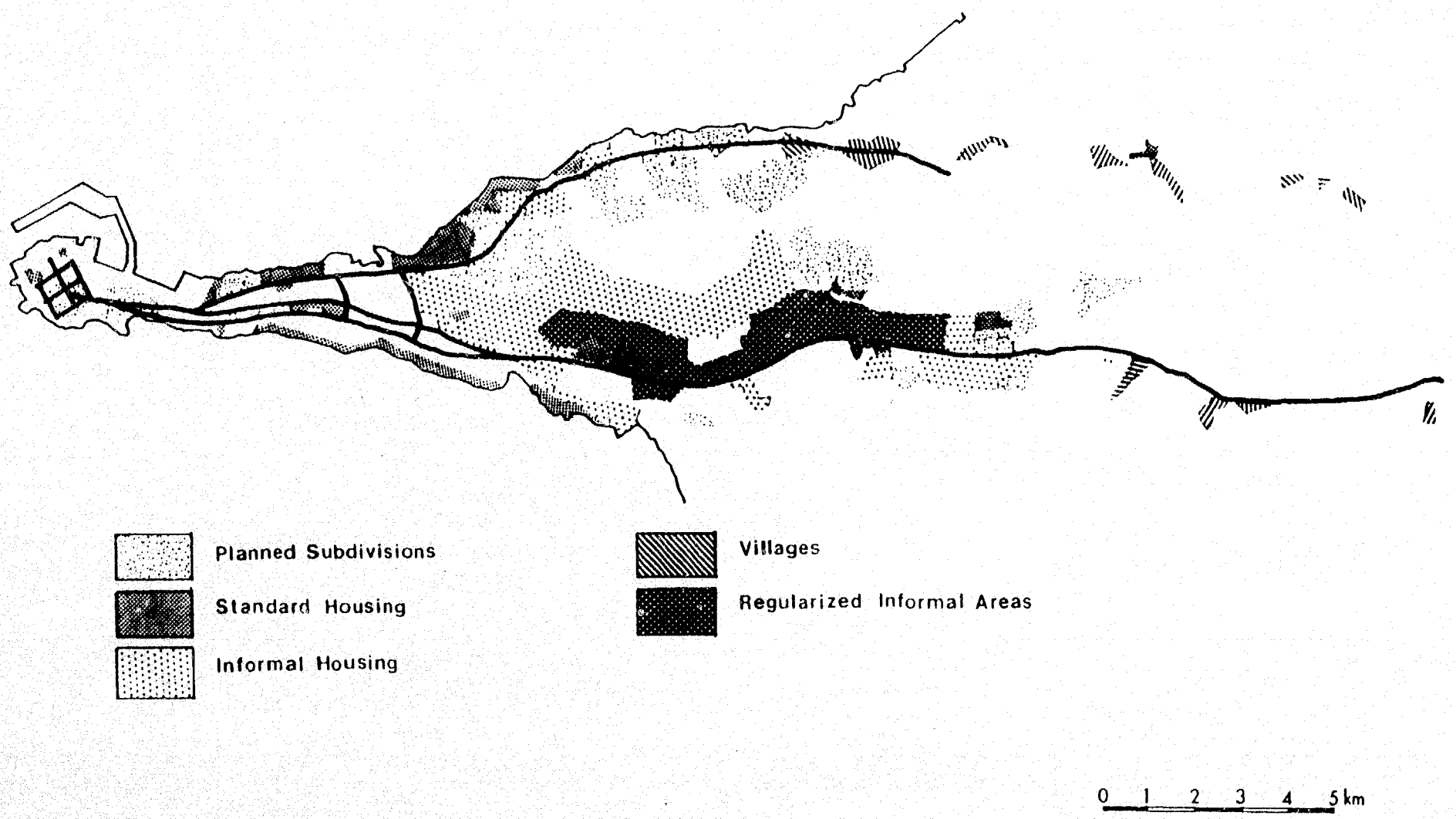
Informal settlements on the fringe develop on village lands regulated by customary law, following the process outlined in previous section. Since land cannot be sold, transactions are recorded in private deeds as donations of property rights.

Restructuring and upgrading projects represent the sole mechanism by which land tenure is regularized. The main objective of the public intervention is the introduction of the minimum infrastructure needed to integrate the area in the urban fabric: access, drainage, public rights of way and sites for community facilities and future improvements. Regularization of tenure on the site occurs as a byproduct of the restructuring process.

The official mandate given to the surveyors is to plat the largest feasible area in order to maximize the return on government investment in infrastructure. They are also empowered to appraise the existing improvements on the different parcels for compensation purposes. In the absence of legal definitions of improvements and official compensation schedules, the process gives surveyors wide discretionary powers which they use as a leverage in their negotiations with property

Fig. 16

CONAKRY: HOUSING PATTERNS



Source: Plan de Developpement Urbain de Conakry, Ministere de L'Urbanisme et de L'Habitat, Mai 1988

owners. The agreements reached implement the official mandate, and avoid conflicts with occupants, safeguard from the interests of local leaders and secure a profit for the surveyors, usually a number of plots from the chief's share. Excesses in arbitrariness and corruption are tempered by widely accepted practices. Despite their drawbacks, restructuring projects have sanctioned the legitimacy of informal development on village lands and contributed to its integration in the urban economy.

Since 1986 the decentralization laws have created an administrative hierarchy of units of local government, whereby municipalities with appointed governors are subdivided into communes headed by elected mayors. The communes in turn encompass urban quarters, presumably a socially cohesive area, headed by a neighborhood council consisting of 6 elected members whose president acts as executive officer. A council of elders advises on issues requiring deliberation. Neighborhood councils in the fringe areas are dominated by holders of customary rights. The councils now witness the private deeds by which informal land transactions are recorded.

Despite their lack of executive and budgetary autonomy and their subordination to the commune, the neighborhood councils provide a first and all important step in the regularization of tenure in the informal settlements by legitimizing transactions, as an official body, long before restructuring or upgrading projects are envisaged. Their formal role in a decentralized system with administrative functions transferred to the commune reinforces this integration. Surveyors will now have to negotiate with an official body and not only with private parties. The involvement of local councils can be regarded as the beginning of an institutionalization of procedures for the regularization of tenure in informal settlements.

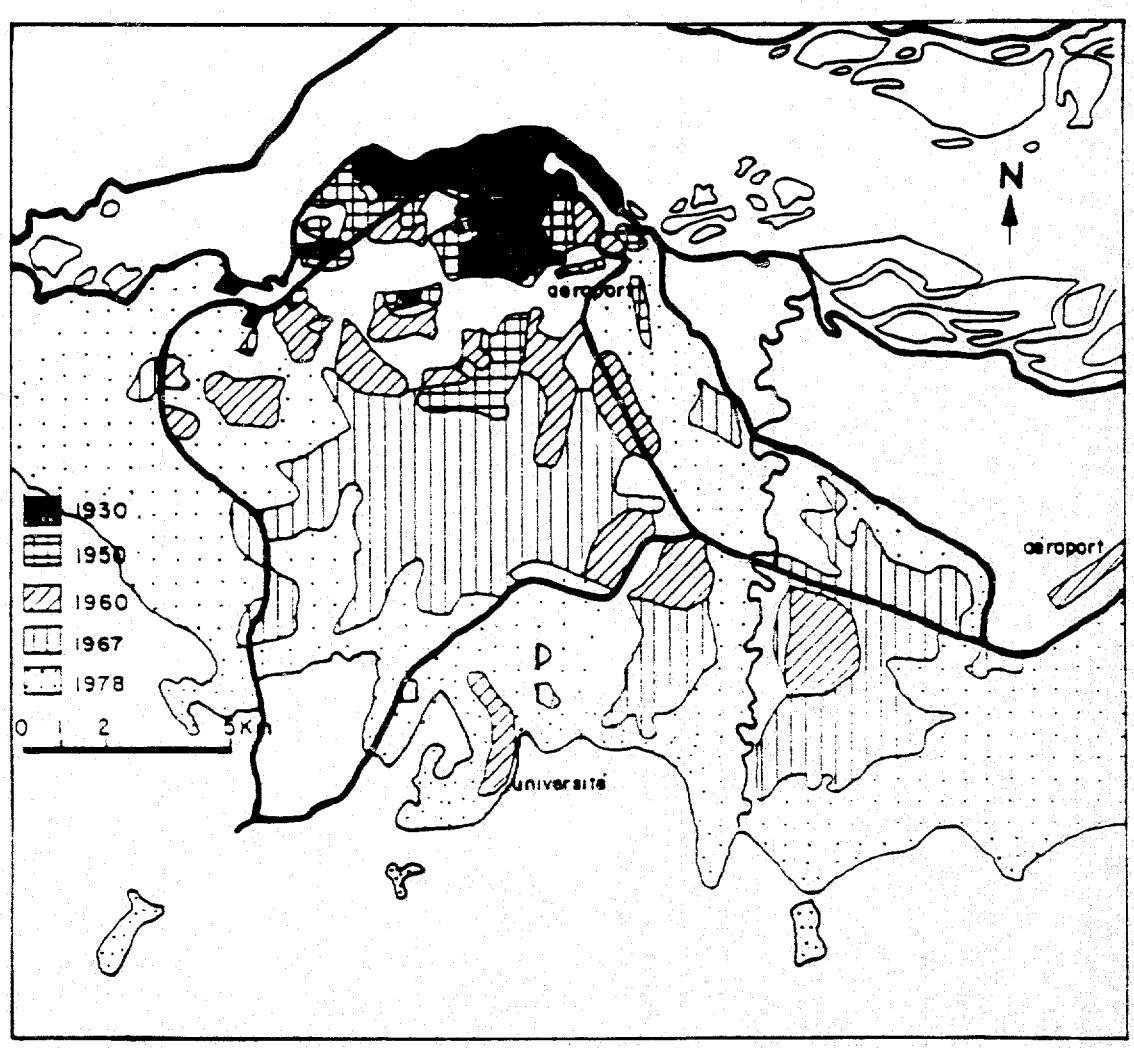
5.4.3 Land regularization in Zaire: An uncontrolled process with informal procedure

In Zaire, demand pressure and runaway inflation have eroded the capacity of the State to control the real estate sector which offers the only investment opportunities capable of protecting capital from accelerated depreciation. Land transactions are viewed as transfers of concessionary rights and the seller will obtain, at a cost, concession documents in the buyer's name from local officials. The exaction charged is about 10% of sales price.

A lucrative trade in land documents has developed, whereby fraudulent operators engage in the procurement of documents issued by local authorities as well as fake reproductions of official papers. The vulnerability of the system to corruption and greed, promotes multiple sales of the same parcels leading to open conflict between claimants. The practice increases rapidly as development activity picks up in the area, fueling speculative transactions. The size of the remaining tribal holdings shrink and the rate of turnover of property ownerships accelerates with a marked increase in social tension, friction between abutters and acts of aggression. The widespread practice of purchasing three or more adjacent lots reflects the rational response to spiralling inflation and the absence of police protection of personal property on the urban fringe. Excess land is needed as a hedge against encroachments, as a negotiable asset in the settlement of competing claims and as a safe investment to accumulate the capital needed to finance future construction.

Fig. 17

GROWTH OF KINSHASA URBAN AREA



Source: Kinshasa Ville en Suspens, Rene de Maximy, 1984

The value attached to the possession of real estate has led to the emergence of private real estate brokers known as "commisaires" in the new informal extensions, charging a fee of about 10% on transactions and maintaining links with village chiefs, local authorities, small scale developers, contractors and producers of building materials active in the area.

In the absence of legal standards, widely accepted norms become key to security of tenure. The minimum investment required to stake a claim to development on a parcel is fencing and the construction of a one room shack; hence the impressive number of vacant lots enclosed by a fence 2.5 m high. To safeguard the parcel the new owner must:

- Manifest a presence on the site to deter encroachment by abutters;
- Stockpile a convincing amount to building materials to signal an imminent intent to build;
- Initiate construction to avoid the theft of building materials.

Completion can stretch over time with impunity as long as some work is undertaken at intervals until a completed portion can be finally occupied.

This uncontrolled para-legal process governs urban land development in Zaire. Development in the extension zones houses 67% of Kinshasa's population and accounts for 70% of the city's residential area.

5.4.4 Land regularization of a squatter settlement in Lusaka, Zambia.

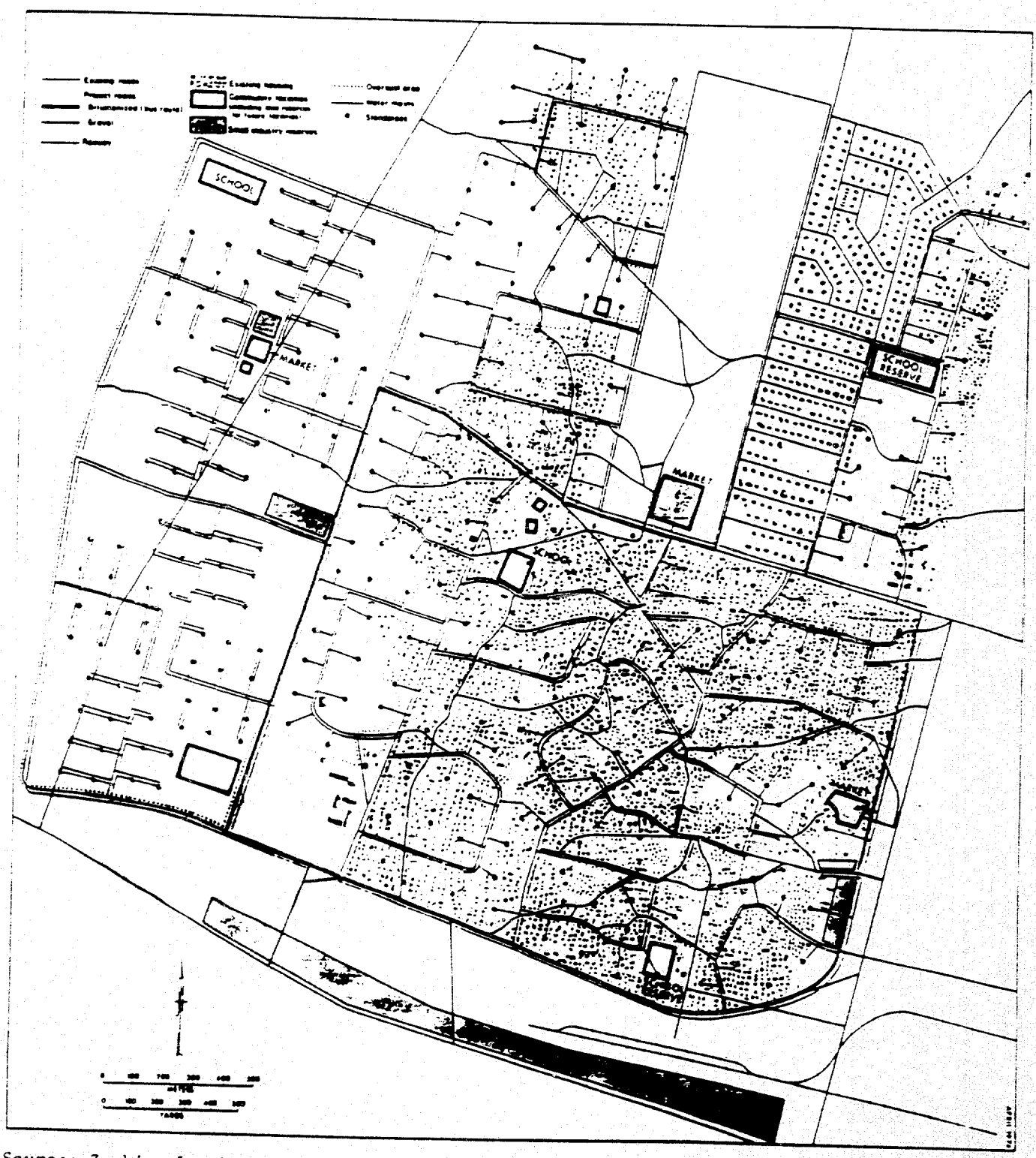
Lusaka's population grew from 123,000 in 1963 to over 401,000 in 1974 when the World Bank's first squatter upgrading project started. In the same period, Lusaka's squatter population grew from 15% to 42% of the city's inhabitants. Lusaka was originally planned as a spacious garden city. Rural migrants flocking to the city were not allowed in the European districts and had to settle in distant fringe townships, such as Kabwata or the more recent Natero.

"George" squatter settlement developed near a large industrial zone. The land belonged orginally to a British absentee landlord. George had about 25,000 inhabitants in 1970 and density was low at about 50 dwellings per hectare; 80% of the housing stock was owner occupied, 15% rented, and 5% occupied by owner with tenants and lodgers. By 1976, the settlement housed 50,000 persons and 45% of households were tenants, renting accommodations in owner occupied houses.

The process of land regularization caused major delays in project implementation. The Land Acts of 1969, 1970 and 1975 authorized eminent domain procedures and detailed compensation to be paid, but upgrading required the passage of special legislation enabling disposal of the assembled land after replanning of the settled areas. The Housing Act of 1974: Statutory and Improvement Areas allowed regular urban leases of up to 99 years for serviced sites and occupancy permits of up to 30 years for upgraded plots.

Fig. 18

ZAMBIA: LUSAKA
TYPICAL LAYOUT OF UPGRADED SQUATTER AND OVERSPILL AREAS



Source: Zambia: Lusaka Squatter Upgrading Project. The World Bank, 1974.

Serious delays were due to the following reasons:

- The land was divided into numerous small parcels which had to be acquired separately. Each piece of land had to be surveyed and its value estimated.
- The process of acquisition was complex and involved several ministries; the Department of Land was understaffed for such a mission. At the time there was only one registered chartered surveyor in Lusaka.
- Land owners had no incentive to sell their holdings since the compensation offered was very small. Many land owners organized to fight the expropriation.
- The community participation process made decisions more lengthy and complicated.

The issuance of titles was considered to be the mainstay of the cost recovery process since the scheme was based on service charges and loan repayments. While land acquisition was lengthy, the granting of land tenure turned out to be even lengthier: the first titles were only issued in 1979. By that time, many families had enjoyed the improvements provided by the upgrading project for many years and did not consider the occupancy permit to be a real necessity. Furthermore its value was questionned as it seemed less secure than a normal leasehold and banks did not accept it as security for a loan.

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