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# Regularizing the Informal Land Development Process

Volume 1: Background Paper

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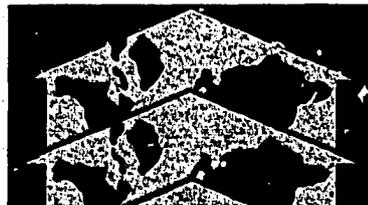
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# ■ Regularizing the Informal Land Development Process

Volume 1: Background Paper

■ by

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# ■ Abstract

This report served as the background paper for the Workshop on Regularizing the Informal Land Development Process, which was sponsored by the U.S. Agency for International Development's Office of Housing and Urban Programs and was held in Washington, D.C., on November 1, 1990.

The report provides an overview of the regularization process and related policies; examines legal issues and the evolution of development regulations in Asia, Latin America, the Middle East and North Africa, and sub-Saharan Africa; and provides descriptive case studies from each region. The report should provide useful background information for those who are responsible for implementing land policies and programs and should be helpful to donor agencies involved in supporting decentralization and municipal management.

## ■ Preface

In the late 1970s, informal land development emerged as a major issue in many countries. Soaring land prices denied an increasing number of limited-income households access to homeownership, and responsibility for the social and environmental cost of informal development shifted to the state. Volatile land markets promoted haphazard and wasteful urban expansion, which was difficult to integrate and expensive to retrofit. Rapid densification undermined the use of low-cost infrastructure options. The absence of land management policies allowed development to proceed in a chaotic manner. Un-serviced subdivisions grew two to three times faster than urban areas as a whole, exceeding the managerial and budgetary capacity of local authorities to service new developments. Unregulated development occurred on valuable agricultural land, marshlands, and forests, and encroached on protected reserves. The urban fringe became the geographic setting for the interface between real estate law and traditional property rights, between formal rules and informal practices.

The U.S. Agency for International Development's Office of Housing and Urban Programs has been concerned with issues related to the informal land development process and has sponsored land regularization programs since the late 1970s. The economic realities of the developing world will make it more difficult to meet the urban challenge in the coming decade. There is an urgent need to seek new approaches that promote economic activity while avoiding the adverse impacts that unregulated development can have on the environment and on valuable natural resources. Regularizing informal land development processes will require the establishment of mechanisms to structure and regulate the fit between formal and informal approaches.

This report is the background paper prepared for the Workshop on Regularizing the Informal Land Development Process, sponsored by the Office of Hous-

ing and Urban Programs in November 1990. It may also 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 report is based on an extensive review of the recent literature and the identification and assessment of relevant regularization policies and experiences. The first chapter provides an overview of the challenges of institutionalizing a successful program for the regularization of informal land development. Subsequent chapters examine the evolution of development regulations, the widening gap between formal requirements and informal development processes, and selected regularization experiences in Asia, Latin America, the Middle East and North Africa, and sub-Saharan Africa.

# ■ Overview

## Informal Land Development Process

The surge in commodity prices in the 1970s changed the character of urban development by providing liquidity to support a massive infusion of capital in urban real estate. The built-up area of cities doubled or tripled in size, resulting in an increase in land consumption per capita and a decline in residential densities, particularly in cities' 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 or declined. Families with incomes in the 30th to 40th percentile who had sought shelter in the shacks of squatter areas were often able to find affordable accommodations.

Formal sector developers build for a limited range of incomes as a result of the price of land and the cost of servicing it at standards required by formal regulations. Spurred by the aspirations of newly affluent segments of the middle class, a vigorous informal land market has developed in many countries. It has been 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 shortage of legally marketable land within reasonable commuting distance has led to the selection of locations where quasi-legal building plots could be offered at attractive prices. Tenure has been considered secure and code violations relatively inconsequential and unlikely to lead to confrontations with public authorities. Such violations have involved 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, common violations of other regulations have included 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 have soared, the capital needed to enter the market has increased steadily in relation to income, forcing a growing number of limited-income households into the rental market provided by informal settlements. This new demand, in turn, has affected the character of informal development. Aside from opening new avenues for speculative investments, the income-generating potential of real estate has acquired new importance as owners have sought to capitalize on rentals in order to accelerate the process of incremental construction. At the other end of the market, a variety of joint ownership and tenancy arrangements have emerged to structure financial cooperation between kin groups, associates, and holders of subsidiary rights. Social heterogeneity has become a striking characteristic in most informal settlements.

As a result of high demand and rampant inflation, expatriate remittances and local savings have been channeled into the informal real estate market. The rapid appreciation of land values, in turn, has fostered densification, speculative development of rental units, resale of lots, turnover of resident population, and, over time, has led to the consolidation of property and an increase in the number of absentee landlords. The legal strength of development regulations has been undermined by the widening rift between a formal market gridlocked by overregulation and an informal sector unencumbered by controls. In many countries, such regulations have broken down altogether.

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

Since 1986, as a result of economic recession, construction costs have stabilized or declined. However, demand pressure has kept the price of urban land high. The land component of housing costs has increased steadily since the mid-1960s, from under 15 percent to over 50 percent by the late 1980s. This has given rise to development dynamics that displace limited-income households to more distant locations. Rental accommodations affordable to lower income groups have been lost to gentrification and the conversion of premises to more lucrative commercial uses. When the ratio of property value to income has reached a critical level, less affluent owners have tended to cash in on the appreciation in land value and move further out, where land has been cheaper. Volatile 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 costs have risen five to ten times faster than the consumer price index, forcing an intensification of use that is reflected in a higher rate of buildup. In larger urban centers, densities have exceeded 500 persons per hectare, which is generally considered the maximum level that can be serviced economically by affordable infrastructure options.

The informal land development process has evolved into an organized and highly lucrative business operated by specialized agents including lawyers,

brokers, land officials, court clerks, kin groups, and local civic and political leaders. This fact is all the more important at a time when economic retrenchment has limited the political sustainability of regulatory action. To protect the public interest, regularization procedures must be formulated, structured, and institutionalized as instruments of land policy.

## Regularization of Informal Land Development

Land regularization did not emerge as an issue until the late 1970s, when informal subdivisions and squatter settlements became the dominant forms of urban development. Urban growth often spilled onto private land held under tenure arrangements that ranged from outright preemption to legal but unregistered property rights. Tenure arrangements have been shaped by subtle and complex distinctions between ownership and possession and primary and subsidiary rights.

The urban fringe has become the geographic setting for the interface between real estate law 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 the fit between formal and informal approaches.

Public development projects have often triggered a wave of speculative investments in surrounding areas. Land values in impacted zones have risen by a factor of three to four in a matter of months. Speculators and developers have frequently reaped huge profits by shifting to the state the social and environmental cost of informal development. Measures enacted thus far to discourage speculation have been disappointing. Taxes on vacant land or profits from property transactions have been too low to be effective. In India, attempts to freeze prices under the Urban Land Ceiling Act, which requires purchase at below-market rates for low-cost housing projects, have proved difficult to enforce. In the Philippines, an urban land reform law put a cap on unreasonably high prices, but has generated challenges that have led to protracted litigation. In Malaysia, steep taxes imposed on transfers within two years of purchase have been bypassed by keeping land for a slightly longer period.

The reluctance to tax land in relation to its real market value has been perplexing. Land is the most

rapidly appreciating commodity in developing countries, yet the yield of real estate taxation has been disappointing. With few exceptions, tax rates have been low and undervaluation has been rampant, undermining the use of taxation as an effective instrument of land policy and as a deterrent to holding vacant buildable sites.

The decentralization of administrative functions has not provided 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 have shifted the focus of public intervention toward regularization and servicing. Municipalities have been particularly ill equipped to fulfill their new mandate. Their technical and managerial capabilities have been overwhelmed by the pace and geographic spread of informal land development. Plans have rapidly become obsolete for lack of updating, data bases have been incomplete, and cadastral records have covered a declining portion of urbanized areas. Municipalities have lacked the resources required to extend to informal areas the infrastructure networks and services to which regularization would entitle them. Since the mid-1980s, the financial investment required to build infrastructure has not been available, impeding the progress of regularization even when procedures for legalization and cost recovery have been in place.

Upgrading projects have provided the impetus for the enactment of legislation to formalize procedures for land regularization. Attempts at regularization have highlighted the importance of defining an optimal degree of control over land development and have initiated an overdue debate on the appropriate roles of the public and private sectors in this process. However, linking regularization and cost recovery in upgrading programs has confused the two issues. Legal procedures for regularization have 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 have demonstrated that, in spite of serious environmental drawbacks, informal land development generates and supports activities that make an important contribution to the economy and society. Investment in urban infrastructure has allowed these activities to evolve into microenterprises. 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 is to structure a framework for regularization that is 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.

## 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 often account for a majority of housing starts. Laws governing property rights, land acquisition, registration and transfer of titles, development regulations, taxation of real estate, and municipal institutions were often introduced during a country's colonial period by adapting European models to the requirements of colonization. Such activities frequently set in motion profound and irreversible changes in urban and rural land markets as a result of the shift to private ownership of land, the consolidation of individual property rights, and the removal of constraints on the free transfer of land titles. In general, the private sector has taken firm control of urban development and, to a large extent, of the rural land market as well.

Often, traditional land development systems have become marginal and been restricted to spheres of influence deemed to be of secondary importance or inconsequential significance. In Africa, the application of customary law has been limited to the perimeter of designated village lands. In the Middle East and North Africa, traditional law has continued to govern tenure, inheritance, and the transfer of property rights. In most Asian countries, customary practices have proved equally resilient and have continued to govern popular land transactions. The notable exception has been Latin America, where the precolonial legacy has been completely obliterated.

In countries which were not directly colonized, as in Thailand, and in the post-colonial period elsewhere, developing nations have continued to adapt Western land policy instruments, planning mechanisms, management techniques, and regulatory procedures to meet the objectives and requirements of socioeconomic development. In many countries, as in India and the Philippines, current systems reflect the European codes on which they were modeled rather

than indigenous traditions. In Latin America, colonial legislation and land ownership patterns have remained unchanged. Elsewhere, nationalization, repossession of colonial estates, and land reforms have eliminated large private holdings and expanded the scope of the public domain. Under socialist regimes in countries such as Burma and Guinea, the state has claimed sole ownership of land, which has been held by individuals under various forms of leasehold.

Since independence in many countries, the reaffirmation of cultural identity has led to a resurgence of traditional rules and precepts. Governments have incorporated them into civil codes and have altered inherited colonial institutions to accommodate them. However, the difficulties encountered in formulating a legal framework for the integration of traditional rules in modern land administration and management systems have resulted in the coexistence of parallel systems. Official attitudes vary regarding the two systems, yet it is customary law that provides the legal foundation for the regularization of informal land development through differentiating between ownership and possession, recognizing a diversity of property rights, legitimating the ability to demonstrate possession and adequate utilization, and accepting flexible leasing arrangements.

Irregularity of tenure has taken precedence over any other category of infraction, since tenure must be legalized before other violations can 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, but infractions invalidating the registration of land holdings are the only ones of importance in the regularization process. These include unauthorized conversion of land to urban use, violation of subdivision regulations, and illegal fragmentation or transfer of property rights. Building code infractions are so widespread that they have generally ceased to be a significant factor impeding 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 most squatter settlements, land has been preempted from the legal public or private owners. Occupants are in violation of tenure laws as well as development regulations. Regularization requires legalization of tenure rights for the entire commu-

nity, followed by the demarcation and registration of individual holdings. It is a lengthy process which often involves feuding among private parties as well as confrontations between public authorities and private interests.

The majority of squatter settlements have been located on government land or land owned by semi-public agencies and institutions, since unused private land on the urban fringe is rare, with the exception of Latin America. The intensity of conflict depends on the degree of direct public sector involvement in urban development activities. Governments must exercise judgment and must balance public and private interests in considering the regularization of squatter settlements on state lands and deciding the conditions under which they may 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 often more inclined to enforce eviction than are units of local government, which are more sensitive to the political leverage squatter communities wield.

In Latin America and in many countries of Asia, squatters have also invaded privately owned land. Regularization then becomes more complicated, as property rights cannot be usurped under the rule of law. Accommodation has been reached on a case-by-case approach, in which owners and illegal occupants resolve tenure issues by negotiated agreement. The process has not lent itself to institutionalization, since it is difficult to envision 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 is found for the land. Thailand's land-sharing program has evolved as a response to this particular situation. In Latin America, owners have actively participated through intermediaries in the irregular sale of plots without acknowledging the subdivision process, intending neither to transfer title nor contest the occupancy.

In most informal settlements, property has been acquired and held legally, but titles have remained mostly unregistered. There has been no serious challenge to the tenure status of landholders by other private parties or, for that matter, by public authorities. Irregularities have arisen mainly from:

violations of development regulations. Remedial action has involved retrofitting the physical layout to bring it in line with minimum standards specified in legal codes. In the process, plots have been mapped and property owners have been enjoined to register their title. In practice, many owners have preferred to defer the costly and time consuming registration procedure, since their security of tenure is not threatened. The complexity of the registration procedure has forced them to retain the services of specialists, lawyers, brokers, and clerks who charge fees. The potential benefits of the operation have not been apparent, and its urgency has seemed unjustified.

Informal subdivisions have been easier to regularize as a result of the absence of conflict with fundamental tenure principles. Indeed, governments have implicitly regularized informal subdivisions through the extension of infrastructure services to newly developed zones as part of their capital investment programs. However, the inability of budgetary resources and managerial capabilities to keep up with the pace of development in the 1970s has created a crisis in the management of urban land, with a backlog of unserved subdivisions increasing at a rate two to three times faster than the overall expansion of urbanized areas.

The basic elements of the regularization process already exist in many countries, but the institutional framework within which they function has collapsed in the face of mounting pressure for urban land. The challenge is to restructure procedures, create new linkages, and rebuild a framework better adapted to the particularities of each nation's sociocultural context.

## Institutional Framework for Land Regularization

With very few exceptions, units of local government have not had the power to deal with land issues. Land administration has remained a responsibility of central governments even when managerial functions have been delegated to the local level. Registration of titles, authentication of deeds, and taxation of real estate have been managed through regional and local offices of central ministries. Development controls and subdivision regulations have been applicable within municipal boundaries, but these boundaries have had no impact on land tenure or land transactions. Infractions affecting tenure have historically required legislation at the national level

before they could be addressed at the local level by units of local government.

In Latin America, 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 has been limited to two equally undesirable options: settlement on marginal sites or invasion of publicly or privately owned land. Public land reserves have been lost to squatters, while the government's ability to interfere in conflicts between owners and illegal occupants has been limited.

In socially cohesive groups, accepted practices have governed individual and collective discretionary rights over land and property, 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 that are meaningful within their particular sociocultural context. Imbalances have arisen when legally recognized rights and prerogatives have not been integrated in the institutional framework for land administration.

Perceptions of regulatory procedures in relation to accepted practices and self-interest have determined the popular response to regularization processes. As long as the legal basis for land regularization procedures has been unclear or misinterpreted because it remains enshrouded in formulas linked to development standards and cost recovery, general indifference or reluctant compliance have sometimes evolved into widespread disregard and open challenge. Cultural acceptability has been as important to the success of regularization efforts as the more widely quoted criteria of simplicity, expediency, and affordability. For the individual, the difficulty and cost of regularization must be balanced by prospects of immediate benefits. Experience has shown that access to credit for housing or a small business has often not been a sufficient incentive to prompt title registration. More tangible benefits have been needed, such as improved security of tenure, validation of inheritance rights, and, most important, higher property values. Despite past successes, land readjustment, which substantially reduces the size of holdings, has encountered growing resistance.

When security of tenure is no longer in question, registration of titles has not been a catalyst for home improvement or active participation in upgrading

the community's living environment. For this, the determining factor seems to be social cohesion. In sub-Saharan Africa and elsewhere, ethnically homogeneous groups have banded together to lay out an informal subdivision, contract for the construction of an access road, and negotiate with utility companies the supply of water and electrical connections to the community.

Attempts to regularize informal land development have ranged from blanket legalization to complex procedures for case-by-case reviews. In Latin America, laws legalizing squatter settlements have limited their scope to publicly owned land and have mandated servicing prior to the issuance of titles. Elsewhere, national agencies have been entrusted with the responsibility of upgrading such settlements. Throughout the 1980s, high land prices, currency devaluations, lack of foreign exchange, and budget cuts have prevented the allocation of funds to service settlements, leaving many unregularized. In the Middle East, informal land subdivisions have raised few issues related to tenure, unless the seller's claim has been contested. Problems have arisen from violations of development regulations. Until the mid-1980s, the issue had been addressed by blanket legalizations decreed at intervals when the situation became untenable, as happened in Egypt in 1966, 1981, and 1984. Each law has legalized the violations or illegal occupancy which occurred prior to a specified date and has prohibited any new infractions after that date.

Blanket legalization has been 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 somehow be contained by official pronouncements. In such instances, informal land development has been viewed as the consequence of a failure to exercise control at a critical time rather than the symptom of a fundamental imbalance in the urban land market. The underlying causes which have given rise to the situation have not been addressed. Furthermore, government intervention has occurred without reference to the official legal and administrative framework of the country. Irrespective of specific formats, blanket legalizations have not been conducive to the elaboration of administrative procedures; they have undermined the strength of regulatory controls without amending existing frameworks.

The institutionalization of new processes for the regularization of informal land development has

been a far more constructive approach. Well-structured functions and procedures have been formulated where public authorities take a lead role, as in many countries of sub-Saharan Africa and Asia in which land replatting and readjustment techniques have been used. Elsewhere, the regularization process has been left purposefully unstructured to allow ample leeway for accommodation at the local level. In general, overly cumbersome systems have discouraged compliance and promoted corruption.

Complex procedures and ill-adapted regulations have 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. Such is the case in Ivory Coast. The administrative burden of regularizing informal subdivisions and the cost of prefinancing the infrastructure to service them has most often not been counterbalanced by the revenue generated from taxation of formerly untaxed properties.

Irrespective of their own inclinations, decision makers throughout the developing world have become keenly aware that informal land development helps alleviate the housing shortage and relieve the frustrations of middle-income households squeezed out of the conventional market for land and housing. However, political instability and divergent viewpoints have prevented the formulation and implementation of coherent land regularization policies. Contradictory strategies have caused official policies to fluctuate between stringency in legislation and leniency in enforcement. Different agencies have sometimes embarked simultaneously on programs with conflicting objectives. Tensions between central and local authorities have been heightened by overlapping jurisdictions and ambiguities in statutory and actual assignments of responsibilities in newly decentralized administrations. In Latin America, excessive politicization of administrative procedures has tended to subvert the regularization process.

Decentralization has given 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 has been a basic ingredient of successful regularization experiences. Creativity has been required in order to devise responses that are able to keep pace with a fast-changing environment. Municipalities have needed

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 who achieve land regularization through negotiation and integration. The challenge is to create an institutional framework which enables activities at the local level to be structured and coordinated in support of a coherent land management policy.

# ■ Asia

## Legal Background

Coastal commercial settlements established by European trading companies in the sixteenth century have had a major impact on subsequent urban development in Asia. The settlements attracted population and activities away from older centers in the interior and introduced new modes of land development and new urban patterns. Colonization brought a sharp break with customary rights and systems of land utilization. New legal codes based on the laws and administrative procedures of the colonizing powers were introduced to govern property rights, registration and transfer of titles, development regulations, and taxation of real estate. Indigenous urban traditions were stamped out or allowed to recede to the background. Current land development systems in Asia reflect the European regulations on which they were modeled rather than the influences of precolonial practices.

In the British colonies, urban land policy has drawn on English common law and land management using an administrative structure of home rule. Regulations have been modeled on British planning standards and procedures. Urban parcels have been held under various forms of long-term leasehold, 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 has promoted administrative decentralization. State governments have been authorized to formulate land policy, adopt development controls, and otherwise manage land resources. Since the early 1920s, town planning laws enacted by the states have delegated land planning and regulatory functions to the municipalities. Locally enacted land development regulations have been applied within municipal boundaries; outside municipal jurisdictions, regulations have been enforced by the states.

India's Central Land Acquisition Act of 1894 granted powers of eminent domain to the union and the states and gave all levels of government wide discretion in defining public purposes for which land could be appropriated. This authority has been sustained by the courts. An array of state agencies has also been empowered to use compulsory purchase for urban development, slum clearance, and housing projects. Claims to property purchased under this authority have been compensated at full market value plus 15 percent.

In the Philippines, the civil code introduced by the Spaniards in the sixteenth century institutionalized private freehold ownership of land, in which landowners enjoyed unconstrained freedom in utilizing and disposing 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 were to be registered with the Bureau of Lands.

In Indonesia, traditional land tenure systems referred to as *adat* 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 thus became surrounded by privately owned land over which the government could exercise little control. Population pressure and rapid urbanization later prompted conversion of the land from agricultural to urban use. Landowners granted indigenous populations occupancy rights in the form of long-term leases. This tenure pattern came to characterize a growing proportion of the urbanized zone. A 1948 town planning law and subsequent regulations enacted in 1949 were based on Dutch legislation. They authorized units of local government to assume broad responsi-

bility for land management within their administrative boundaries. Municipalities thus became 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 the government became 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 permits the preparation of development plans under the supervision of a named planning official for sub-areas that are specified by decree. Plans remain valid for a 10-year period, and proposals presented by the landowners in each sub-area can be adopted with or without modification. Implementation is entrusted to units of local government; the act authorizes municipalities to issue bylaws, expropriate land, and redistribute land as indicated. In 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 negotiation of sales agreements with landowners prior to the initiation of expropriation procedures. Expropriation has to be approved by the legislature, which usually takes three years to complete. Low-cost housing is not considered a public purpose for which eminent domain powers can be used.

## Land Development since Independence

In many countries, independence led to a reassertion of traditional customs. The colonial institutional structure was 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, while those which enjoyed wide acceptance were reformulated and integrated into the legal and institutional structure designed to meet the requirements of modernization.

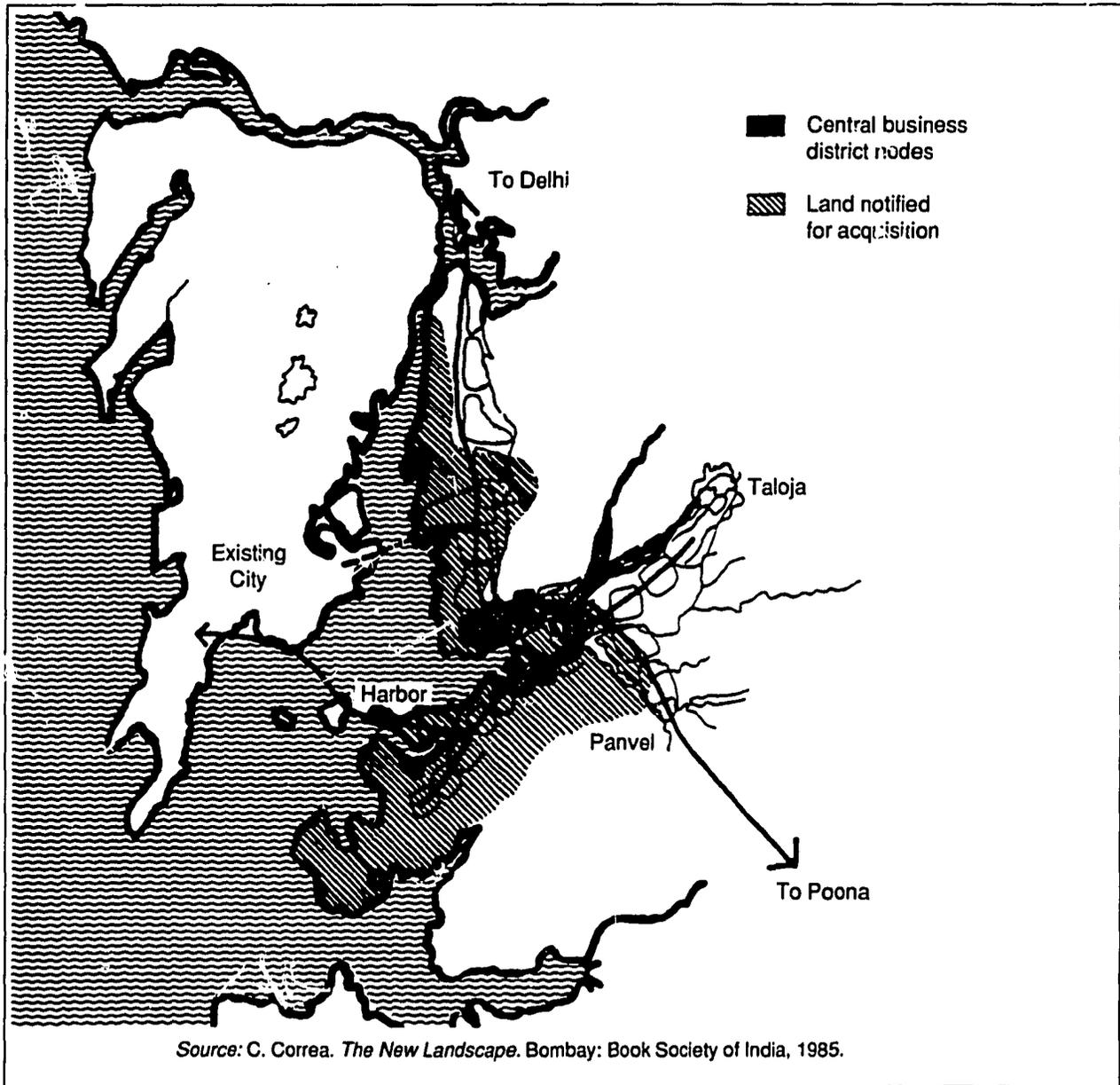
In India, the Model Town and Country Planning Act was enacted by the central government to promote consistency among the states. Based on the British

Country Planning Act of 1947, it provided the model 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 means of obtaining the land needed for current projects and reserving 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 acquired and redistributed among government agencies. The agencies were authorized to redevelop the land and grant it to new users on a leasehold basis. The Delhi Development Authority, which received 17,000 acres, released the land for commercial and residential development under a peculiar form of perpetual leasehold: The lease entitled the authority to receive up to half of the increase in land value at the time of transfer, prohibited changes in approved land uses, and disallowed transfers for a minimum period of 10 years following allocation.

Land prices have soared since the mid-1970s and are increasingly limiting middle-income households' 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 landowners, fostering the emergence of an illegal real estate market. Informal subdivisions proliferated, and squatting became widespread. In the late 1970s, it was estimated that half of Bombay's population lived as squatters in *hutments* located on both publicly 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 (figure 1). Recent land policy in India reflects the growing concern about 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 be-

FIGURE 1  
Land Acquisition Plan, Bombay, India



tween initial and long-term planning and building standards and are adopting incremental servicing schemes to improve affordability.

In Indonesia, colonial estates were abolished at independence and the land involved reverted back to the state. An 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 had been legal under the Dutch colonial system of land rights, which remained in effect until 1960. Its subsequent abrogation left the occupants in a state of partial legality. As the urbanized zone expanded, unregistered leasing arrangements became the predominant form of urban land tenure on both publicly and privately owned land.

Indonesia's 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 new law. 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 1970s, master plans continued to incorporate building codes and subdivision regulations drawn from the Dutch town planning law, although few plans were actually ratified. Since 1960, there has been a sustained effort to draft and enact a new urban planning law that is 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 has been restricted to public projects—mostly rights of way and community facilities—and requires the issuance of a presidential decree. Enforcing the compulsory taking of property conflicts with a strong tradition of communal decision making by deliberation and consensus. Regulations issued in 1975 authorize land acquisition by negotiated agreement with property owners. Negotiated purchase prices are always above market value, with the notable exception of land taken 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 public use and upon payment of compensation. Housing for lower income groups is consid-

ered a public use, yet land acquisition problems have plagued urban projects since the first upgrading program in Tondo, Manila. An urban land reform law was enacted by presidential decree to facilitate land acquisition by freezing prices in areas identified for priority development. In actuality, the law's effectiveness has been limited. Protracted litigation over price ceilings has concluded with the courts setting prices much closer to real market values than expected. The National Housing Agency has gradually shifted from the cumbersome and unreliable judicial expropriation procedure toward negotiated purchase agreements, a process which is more expeditious but just as unpredictable. To support decentralization efforts, responsibility for new upgraded sites has been turned over to local authorities. Their performance, in terms of tax collection and maintenance of infrastructure, has been unsatisfactory.

In Thailand, in addition to planning enactments for specific sub-areas, the regulatory framework includes zoning, subdivision regulations, and building codes, but enforcement is generally lax. There is practically no control on land subdivision and construction activities. In urban centers, large holdings dominate land ownership patterns. Public land ownership within urban centers is limited; in Bangkok it does not exceed 15 percent, including royal property. Land transactions must be registered, but otherwise are not subject to control, and there are no policies to curb the land speculation that is rampant in the Bangkok area. Transfer fees are low, capital gains on land transactions are nonexistent, and taxes on vacant land are too low to have an impact. Property taxation is ineffective, as assessments are well below market value, rates are low, and collections are poor.

Since 1973, private developers have moved quickly to meet the demand for moderately priced housing generated by the remittances of expatriate workers. They have provided three major options: housing 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 has outstripped population growth. Affordability has improved, as rising incomes have kept well ahead of increases in house prices. The improvement in living conditions has affected approximately half the urban households, and the availability of alternatives has allowed a significant number of slum dwellers to move to new urban developments.

## Land Development 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 developments housing limited-income families 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 increased their costs.

A municipal development program financed by the World Bank in 1980 attempted to circumvent the legal entanglements of land regularization. The program focused on providing infrastructure along public rights of way without regularizing tenure by relying on property tax assessments for cost recovery. In fact, however, municipalities failed to recover costs or recapture part of the substantial increase in real estate values along the 150 kilometers of improved roads and infrastructure service lines because of inadequate and out-of-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 and removed their sense of urgency about initiating costly registration procedures.

Public authorities and private developers alike have been seeking streamlined procedures to expedite the transfer and registration of real estate in the Philippines. Meanwhile, central and local agencies have been experimenting with alternative approaches that enable them to provide services and low-cost housing while avoiding involvement in regularizing land tenure. Only the National Housing Agency has continued to regard land regularization issues as part of its mandate, implemented by 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 first acquiring the land. It offered short- and long-term credit to finance land subdivision projects on the urban fringe on the condition that 70 percent of the plots be affordable to 70 percent

of the urban population. The public sector has thus redefined its role to become a catalyst for bringing together land developers and landowners and exercising control over the character of development through financial instruments.

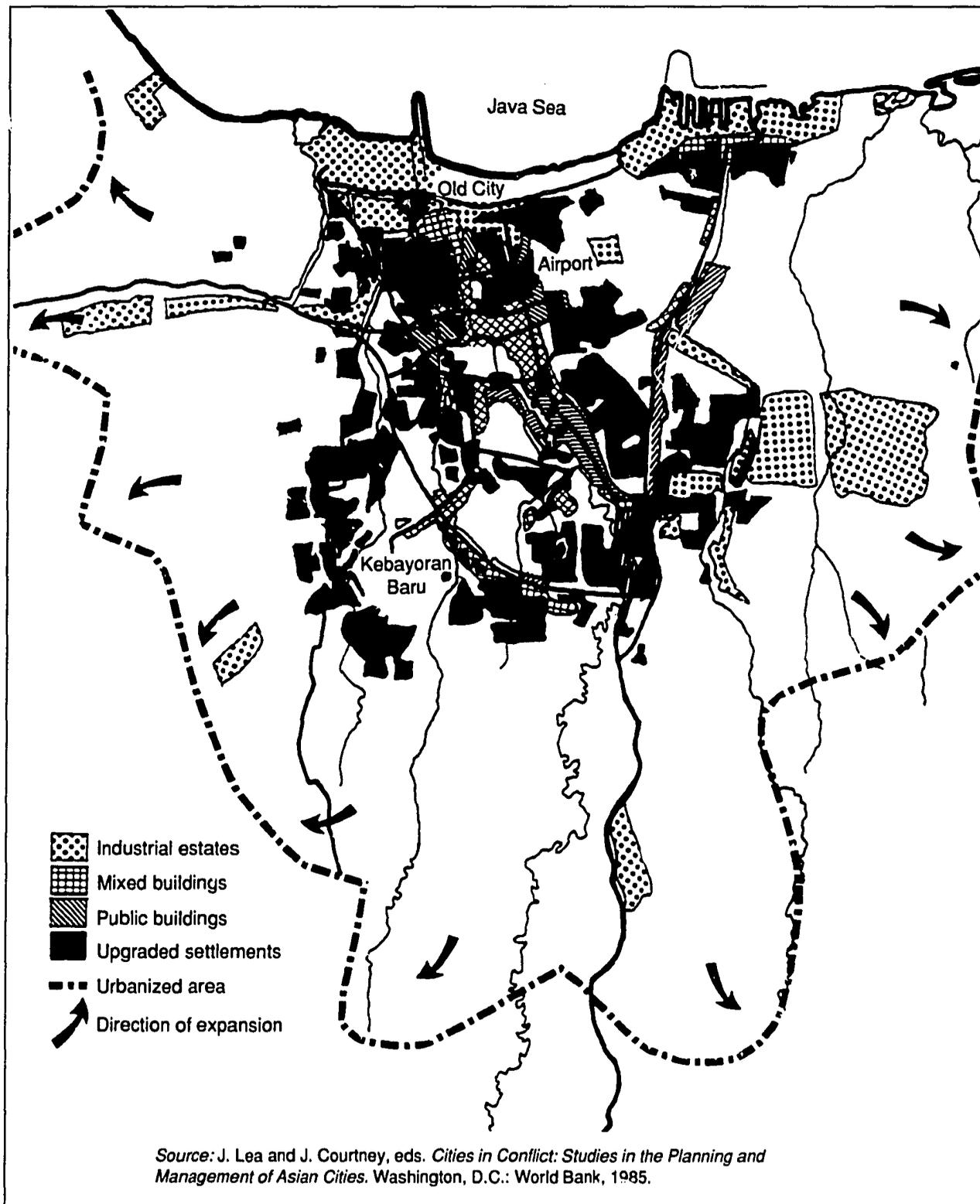
In Indonesia, sustained economic growth and the availability of foreign capital has fostered investment in real estate and intensified land speculation, particularly on the urban fringe (figure 2). A strict application of existing regulations would deny the legality of 80 percent of current land development activities, however. Two permits are required in order to develop a parcel of land.

- A development permit is required for any land development activity. It legally authorizes the proposed development and ensures that it conforms to the locality's master plan. Applicants must submit a document certifying their right to the land.
- 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 is reclassified 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 the long delays deter holders of unregistered rights from complying with permitting procedures. In 1986, an estimated 85 percent of housing starts were constructed without permits.

In 1985, no more than 10 percent of the area under municipal jurisdiction was estimated to be covered by registered land rights. In the outlying districts, where expansion has been occurring, the proportion was only 5 percent. Almost all development activities have been taking place informally. Private developers are buying large tracts of agricultural land from villagers at low prices and accumulating significant reserves around urban settlements, which they hold until the land can be urbanized. When opportunities materialize, developers often release land quickly, marketing moderately priced building plots in densely laid out and unserviced subdivi-

**FIGURE 2**  
**Urbanized Area, Jakarta, Indonesia**



sions, thus perpetuating haphazard and wasteful patterns of urban development that are difficult and costly to service. A private deed is drawn up, signed by the two parties, attested to by witnesses, and notarized. The transaction can also be recorded with the local district head or *kampung* 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, posing a serious problem in light of the fact that 80 percent of urban households select ownership as their preferred housing tenure.

In Thailand, the National Housing Authority, created in 1973 to provide low-cost housing for the urban poor, is also active on the urban fringe. A policy of recovering costs through rents and lease-purchase payments for site infrastructure, land, and construction costs imposes limits on the price that can be paid for land without eroding affordability. The National Housing Authority does not use the powers of eminent domain for land acquisition. Instead, it advertises for bids from landowners for sites meeting its 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, the National Housing Authority's activities can have an impact on the land market in the urban fringe.

The private sector's involvement in large-scale developments of low-cost housing since 1974 has dwarfed the National Housing Authority's activities. The private sector has generated a sustained demand for large parcels on the urban fringe and has accelerated the conversion of farmland to urban use. Informal subdivisions typically market plots with minimal services: unpaved roads, electricity, and an on-site water supply. The haphazard sprawl and unrestrained expansion of the urbanized area carry a public cost in terms of providing infrastructure to service wasteful settlement patterns. They also carry a private cost in terms of the distance between housing and work locations, an average of 13 kilometers.

## Land Regularization

### Case Study: Thailand

The land sharing program developed in Bangkok in the 1980s evolved in response to local settlement patterns. A long-standing tradition exists of land-

owners allowing families to occupy land and build makeshift shacks without conveying formal tenure. The occupants are tenants-at-will who pay rent but have no security of tenure. When the owners want to use the land, the occupants are evicted. A survey of slum areas undertaken by the National Housing Authority in 1985 showed that close to half the households rented land and another 27 percent rented houses; only 13 percent claimed to own the land they occupied. The remainder lodged without tenure agreements.

Slum communities in Bangkok are mostly located on land owned by the 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 eviction.

Land sharing entails the redistribution of land between informal occupants and landowners who are unable to regain control of their land. The negotiation process involves the landowner, the occupants, and local public authorities. The negotiated agreement involves a legal and administrative framework designed to bring about formal regularization to the benefit of all parties concerned. With the exception of some lands owned by the royal family, there are no legal impediments to regularization.

Residents form a community organization to defend their occupancy of the land and block eviction procedures, then select leaders capable of representing their interests and winning the support of public authorities and political structures. 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 re-use 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, which ensures affordability and speedy implementation.

Legalized occupants receive serviced sites much smaller in size than their original holdings under lease agreements of up to 20 years. Security of tenure and investment in housing bring about a marked improvement in the quality of construction and an increase in floor area. Densities in the rebuilt zones increase by a factor of two to three. At the same time, the owner recovers a considerably reduced portion of the site, although it has a market value far in excess

of the original price paid for the land. Furthermore, the land is vacant, free of occupants, and immediately available for development.

The workings of the land sharing process are apparent in the example of Klong Toey. Klong Toey is a large tract of land belonging to the Port Authority and reserved originally for future expansion of the port. However, day laborers working in the docks began to settle on the land, and the Port Authority tried unsuccessfully to evict them. In 1980, the National Housing Authority started the construction of 1,440 rental units on a site west of the settlement in order to relocate the occupants, but by then Klong Toey housed over 6,000 households. It became apparent that neither relocation nor eviction would be feasible solutions. In 1983, the National Housing Authority 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 was filled in order to develop 1,300 serviced sites. The 60-square-meter lots were offered to the residents under a 20-year leasing agreement. In 1985, recipient households took possession of their plots and started to build their houses.

Another example involves the Ban Manangkasila area, which belonged to the Treasury Department (figure 3). Occupants began to settle on the vacant land in the 1920s. 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 the rear half of the site to the community for its housing needs. The owner recovered the portion fronting on the major artery, with plans for its commercial development. The households who had remained on the site throughout the protracted negotiation period received 40-square-meter lots; the others received 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 20-year leases, but the regularized occupants, who felt a new sense of security, opted for renewable annual leases, which require less initial capital.

The success of the land sharing program in Bangkok is attributable in large part to the fact that only one

landowner is involved in the negotiation process and the fact 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 initially by owners to the occupants are more conducive to mutual accommodation than to the confrontational attitudes that ensue from forceful invasion of land. Although legalized occupants pay an average of 6 percent of the real market value of their serviced plot, there is a significant turnover in the land sharing projects. In 1986, 23 percent of households involved in land sharing projects sold their legalized occupancy rights to middle-income families, and another 18 percent were seriously considering selling, reflecting priorities and choices made possible by the availability of alternative housing options on the urban fringe.

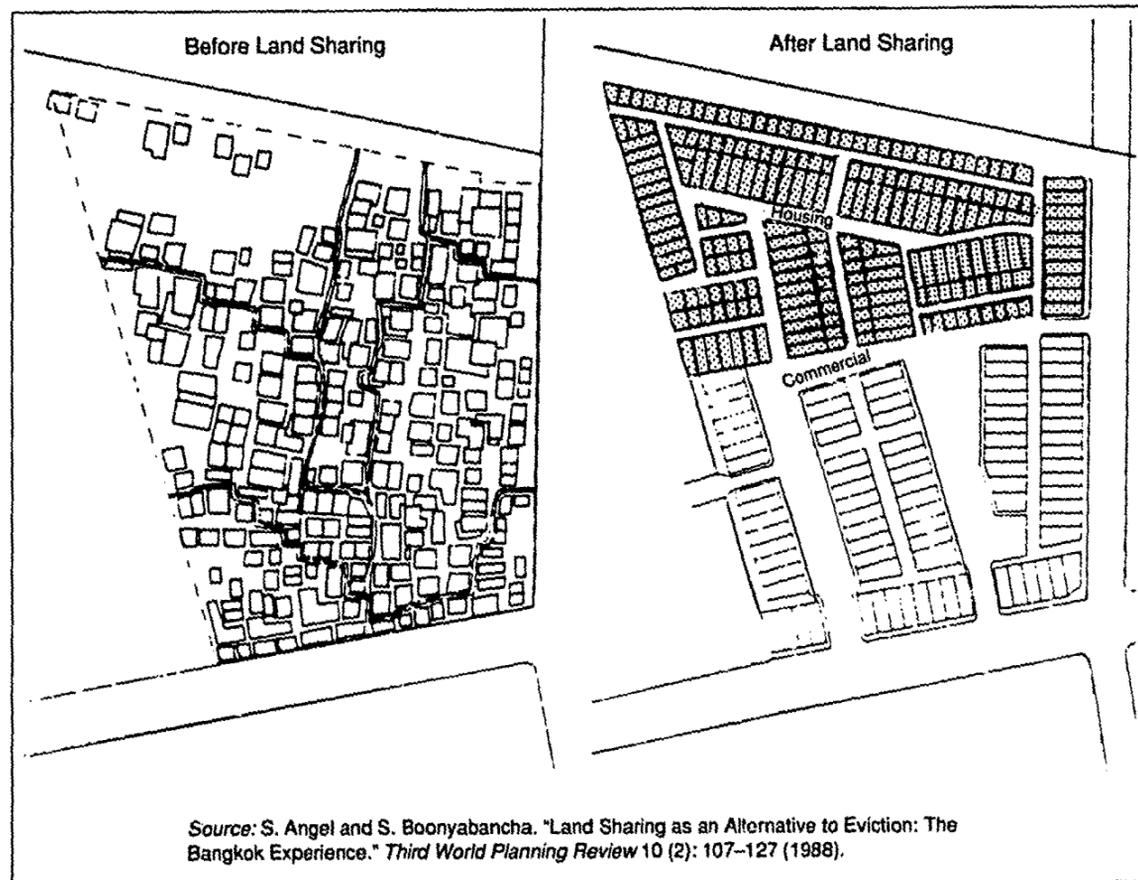
### Case Study: Indonesia

The basic agrarian law of 1960 established five categories of recognized and transferable land rights in Indonesia: ownership rights, building rights, utilization rights, exploitation rights, and management rights. In built-up areas, land tenure is predominantly ownership rights or building rights. The latter represents a right of land utilization derived from traditional leasehold and is 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 may be extended for another 20 years.

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 by 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 more than 5 hectares.

Management rights involve an intergovernmental transfer of authority in which 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 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

**FIGURE 3**  
**Regularization of Ban Manangkasila Settlement, Bangkok, Thailand**



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 converting rights held under older systems into formally recognized rights for which titles could be registered. In practice, the task proved horrendous: progress was hindered by the complexity of traditional rights, unclear titles, and ambiguous tenancy agreements. More important, 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: provinces, cities, and 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 and the chiefs of smaller urban and rural settlements (*kampung*s) 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 remain with the central level. The Ministry of Finance controls all aspects of real estate taxation, although 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 percent of informal holdings. The very low tax rates encourage compliance, which, from the holder's 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 percent of market value for residential property and 0.2 percent for commercial property.

Land administration is controlled by the Ministry of Home Affairs through the Directorate of Agraria. Regional 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 proce-

dures are time consuming and costly, yet the certificates 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 percent to 15 percent 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 should be formalized by registration at regional offices within one year of execution. In Jakarta, about one quarter of all households claim to hold a legal right without having a registered title.

Land regularization did not emerge as an issue until the 1970s, when rapid urban growth spilled over onto land held under a variety of unregistered leasing agreements. Standard agreements existed to transfer claims to land without fully documenting their legality, thus allowing successive informal transfers of unauthenticated rights. The inability to use compulsory purchase to secure land for planned projects forced public authorities to rely on negotiated sales to acquire the land they need. Land disputes, confused ownership, and ambiguous claims became serious impediments, holding up the implementation of public projects.

In 1977, an attempt at compulsory registration failed. In 1980, a national voluntary registration program was launched, financed by revenues from public projects. A title registration program focusing on lower income urban communities was initiated. By 1989, two million titles had been registered. Since 1983, the drive has slowed considerably for lack of funding. It is difficult to maintain the momentum of regularization programs when the legality of the property's title and its tax status are independent of registration. The lack of incentives for compliance 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 must register their title. 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 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, the government has recognized the rights of holders of informal land title to retain possession and freely dispose of their land. Land holders 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 into 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 land rights and transactions under *adat* has yet to be fully utilized in the land regularization process, however. They provide the interface between customary and codified rules and between formal and informal institutions, and they play a pivotal role in a decentralized administrative structure, which reinforces their integrative potential. They have the potential to become the instruments for the regularization of informal land tenure.

# ■ Latin America

## Legal Background

Colonial patterns of urban settlement along the coastal zones of Latin America and legal codes introduced in the sixteenth century have shaped subsequent development in the region. The only imprint left by precolonial urban history can be found in interior cities such as Bogotá 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, a lack of population pressure and continued economic reliance on the exploitation of natural resources allowed colonial ownership patterns to remain unchanged. Land has been controlled by large landowners, charitable organizations, and mining companies. State ownership of land in and around cities has been 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 have prompted massive migration to major cities. In Argentina and Uruguay, more than 80 percent of the population now lives in urban areas. Topography and soil conditions have constrained the availability of buildable land, thus inflating land values and pushing poorer segments of the population to settle on marginal and environmentally hazardous sites such as steep slopes and lowlands. Pressure for accessible sites has led to overcrowding and congestion in existing settlements.

## Land Development since 1960

An inability to come to grips with the landownership issue has impeded the implementation of coherent urban strategies in Latin America. Holding

large parcels for speculation rather than development has allowed land to remain idle and kept prices artificially high, thus squeezing middle and lower income groups out of the market.

The absence of policies regarding the use and disposal of public lands has left municipalities without a framework for the development of lands held in reserve. Except in Mexico City, land reserves have been rather limited, rarely exceeding 10 percent of a municipality's jurisdiction. Progressively, beginning in the 1950s and 1960s, lower income groups and rural migrants have been allowed to settle on public lands. Even in Mexico City, municipal land reserves have been lost to squatters.

In Mexico after the 1910 revolution, a large number of agricultural land holdings 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 began long before development plans could be implemented. By 1930, the city was surrounded by a ring of squatter settlements known as *colonias proletarias*. Public authorities have acknowledged their existence and tried to control them politically, but have not regularized them.

Throughout Latin America, elaborate frameworks for policy planning at the national level have often led to the creation of special authorities to implement specific programs, while the capacity of municipalities to enforce regulatory controls has remained limited. Legal and administrative procedures have frequently been 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 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 jurisdictions, while the central government enforces development regulations in zones that are expected to urbanize within 10 years.

Throughout Latin America, government response to the invasion of public land has been slow to coalesce into action because of the inability of central governments to regulate land markets and the lack of workable urban development strategies at the municipal level. Initially, governments have attempted to provide serviced sites as an alternative to illegal occupancy. This approach has utilized powers of eminent domain to appropriate private land and develop the acquired parcels.

Chile managed to develop an effective program in the 1960s. 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. The agency, known as the Urban Improvement Corporation (CORMU), could also negotiate loans and was authorized to keep profits from the sale of land it acquired. In the late 1960s, when CORMU was most active, it purchased 1,500 hectares annually and managed momentarily to keep up with urban growth and contain escalating land prices. CORMU transferred land to CORVI, a housing corporation, 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 ultimately too low to deter speculative holding.

Despite eminent domain powers, public authorities have found it increasingly prohibitive to acquire land needed for urban expansion in the absence of legislation enabling them to acquire private land without having to pay for its speculative value. The alternative approach to widespread squatting within the cities and around them has been to attempt to regularize squatter settlements. By the mid-1960s, 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 prohibited new invasions, but did not address the

status of squatters on privately owned land. The law mandated that the regularized sites be serviced with infrastructure prior to the issuance of deeds. Because of a lack of funds, the settlements remained unserviced. Nevertheless, more than 100,000 titles were issued, mostly on political grounds. Titles gave the beneficiaries access to mortgage credit, but also made them liable for real estate taxes. Most occupants to whom title was granted from 1965 to 1985 did not make use of credit facilities and refused to pay taxes, claiming poverty.

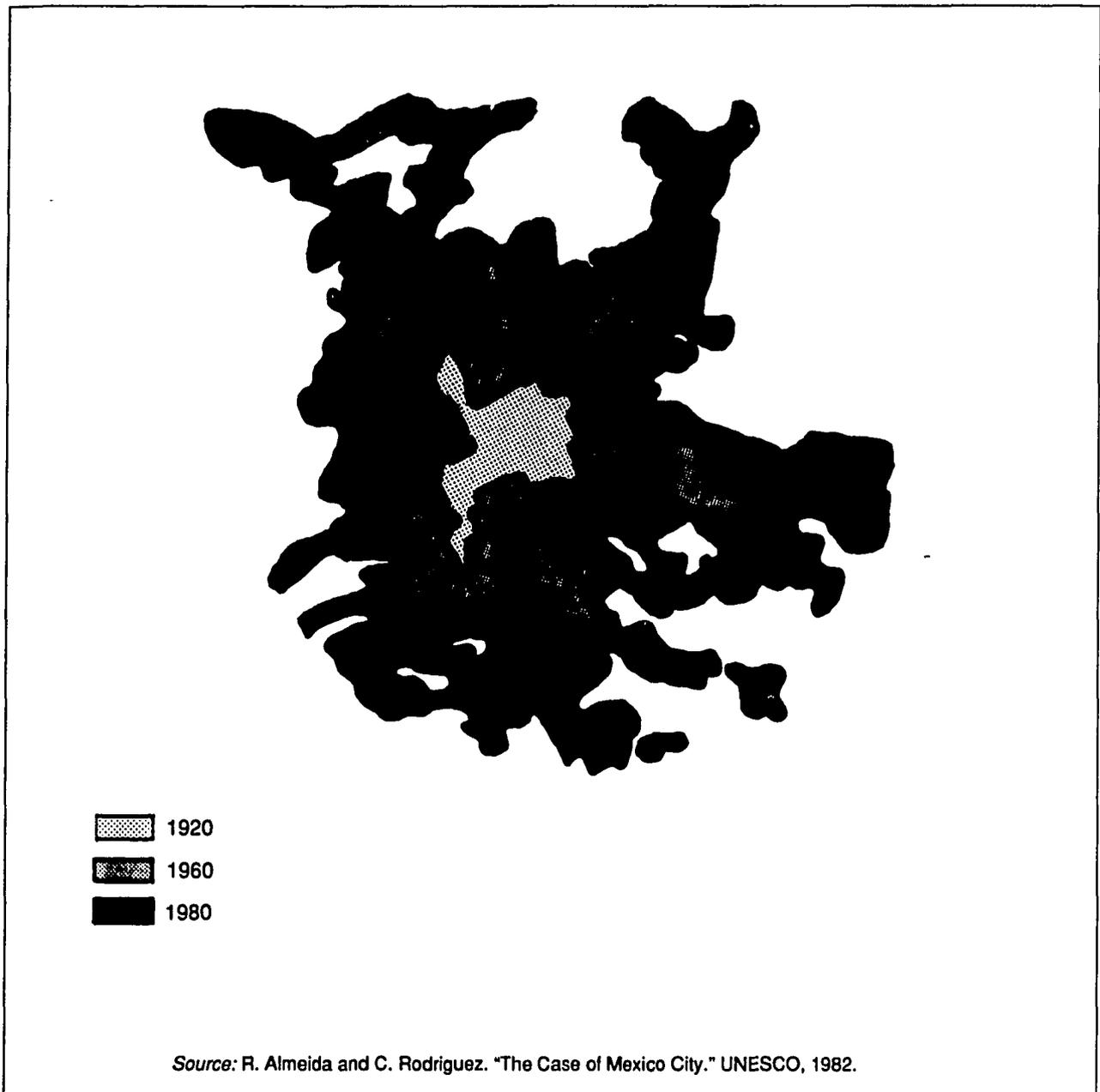
In Mexico, the 1970 law for urban settlements created a special agency to structure and regularize squatter settlements on the *tierras ejidales* around Mexico City. Rapid densification and the difficulties encountered in servicing the settlements impeded the regularization process. Priority was given to settlements located in politically sensitive zones. San Isidro, wedged between the Ministry of Defense and an elite residential district, became Barrio Reforma Social after regularization. Meanwhile, the world's largest urban agglomeration expanded beyond the boundaries of the federal district, compounding the legal and administrative issues involved in dealing with uncontrolled development (figure 4).

In Venezuela, the National Housing Institute in the Ministry of Public Works was entrusted with the clearance of *barrios* and the development of low-income housing. Despite laws prohibiting the construction and rental of substandard dwellings, the National Housing Institute's compensation rules reflected the ambiguity that 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 in Venezuela have preferred to rent land to *barrio* residents rather than evict them. *Barrios* have only been cleared in the case of invaded 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 (FUNDA-COMUN) to provide social welfare assistance and community development programs in the *barrios*. The foundation was therefore partially integrated into the organizational structure of the state.

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

**FIGURE 4**  
**Urban Area Growth, Mexico City, Mexico**



reserve for the city, but the recommendation was not implemented. The oil boom of the 1970s accelerated the rural exodus. As a result, the number of *barrios* grew exponentially (figure 5). The location of *barrios* spread, extending along the steep slopes bordering the valleys (figure 6).

In 1974, Presidential Decree 332 put FUNDACOMUN in charge of coordinating programs to regularize and service invaded lands. The decree legalized invasion processes after the fact, and the agency proceeded to undertake a nationwide inventory of *barrios*. Meanwhile, in 1975, the special committee reiterated the need to purchase 35,000 hectares to cover Caracas's short-term needs. Once again, the acquisition was postponed while uncontrolled urban expansion continued unabated.

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

Unemployment has affected both middle and lower income groups. Throughout the 1980s, the number and size of *barrios* grew. Invasions of vacant land and empty buildings increased, as did aggressive encroachments on abutting properties. By 1986 in Peru, Lima had 737 *barriadas* covering 10,700 hectares, of which 78 percent were located on public land. In Venezuela, the population living in *barrios* grew from under one million in 1971 to over six million in 1985; by 1989, it was estimated that 61 percent of Caracas's inhabitants lived in the city's *barrios*.

The laws authorizing regularization of squatter settlements have generally mandated servicing prior to the issuance of titles. However, the expense involved in extending networks and retrofitting marginal sites has brought programs to a halt.

With considerable urban growth now occurring on private land, the development of new districts for limited-income groups has required land acquisition. As the price of urban land has soared to unprecedented levels, municipalities have been unable to afford to purchase parcels or to 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 have not practiced 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. 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 that were inaccessible to public transport and unserviceable in the near term. The program was abandoned in 1989.

## 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 has been occurring on land held privately by large landowners or mining companies. The urban developments contrast sharply. In low-density subdivisions, a majority of parcels are vacant and held for speculation. Squatter settlements are spreading in the less desirable zones. In addition, uncontrolled settlements are emerging in the midst of agricultural areas.

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

In Venezuela, regularization of invaders' tenure on private holdings has required the approval of landowners, since transactions on land owned by third parties cannot be legally registered without the consent of the landowner. The civil code has allowed owners to demolish buildings erected on their land without their authorization or to acquire them at market value less any damages to the property occasioned by the invasion. Despite this legal backing, landowners have been unable to enforce their rights. Since invaders cannot be evicted except through the courts, two alternatives have been possible.

- An action to recover property has required owners to substantiate ownership claims by submitting

**FIGURE 5**  
**Growth of Barrios in Venezuela**

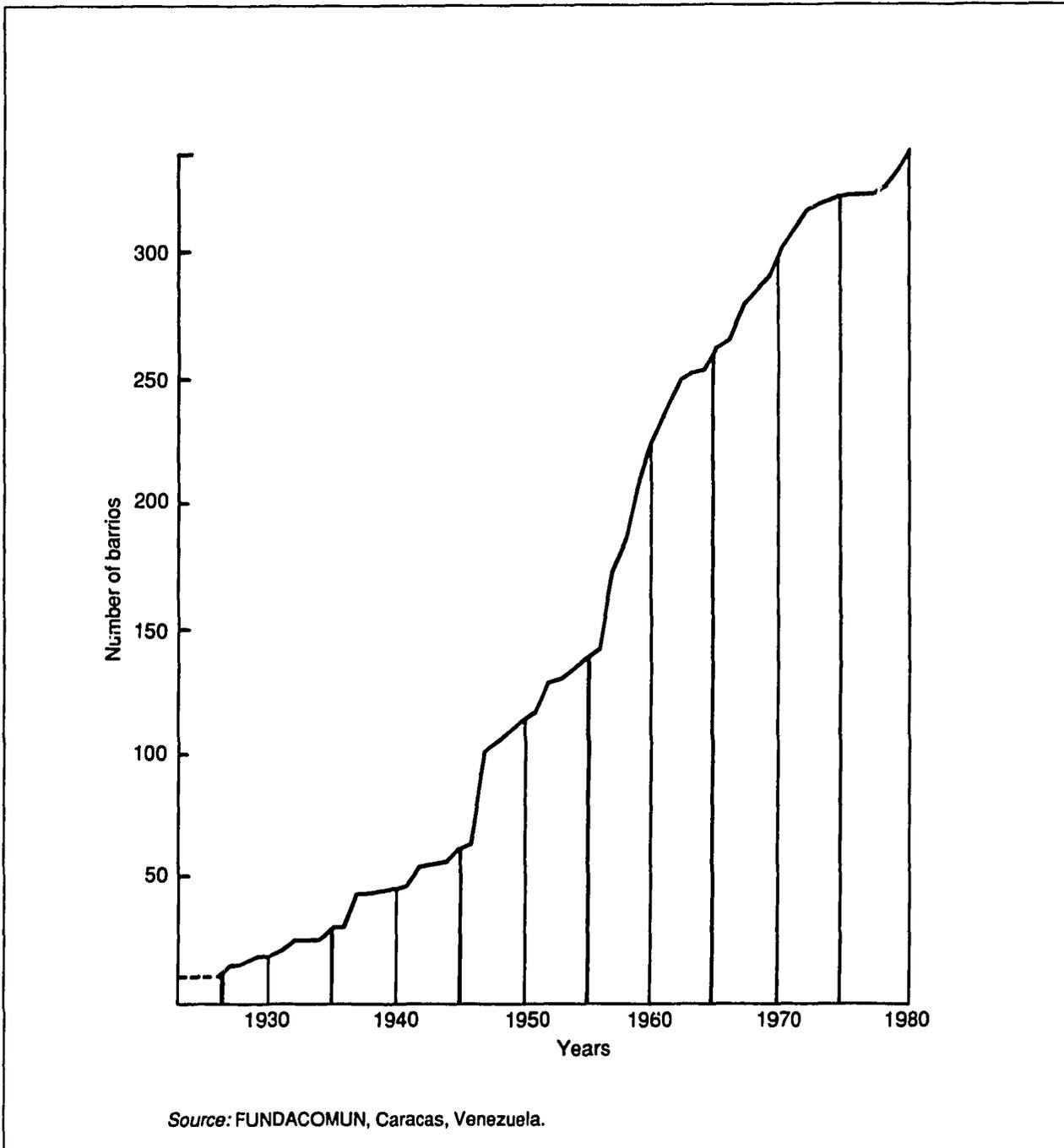
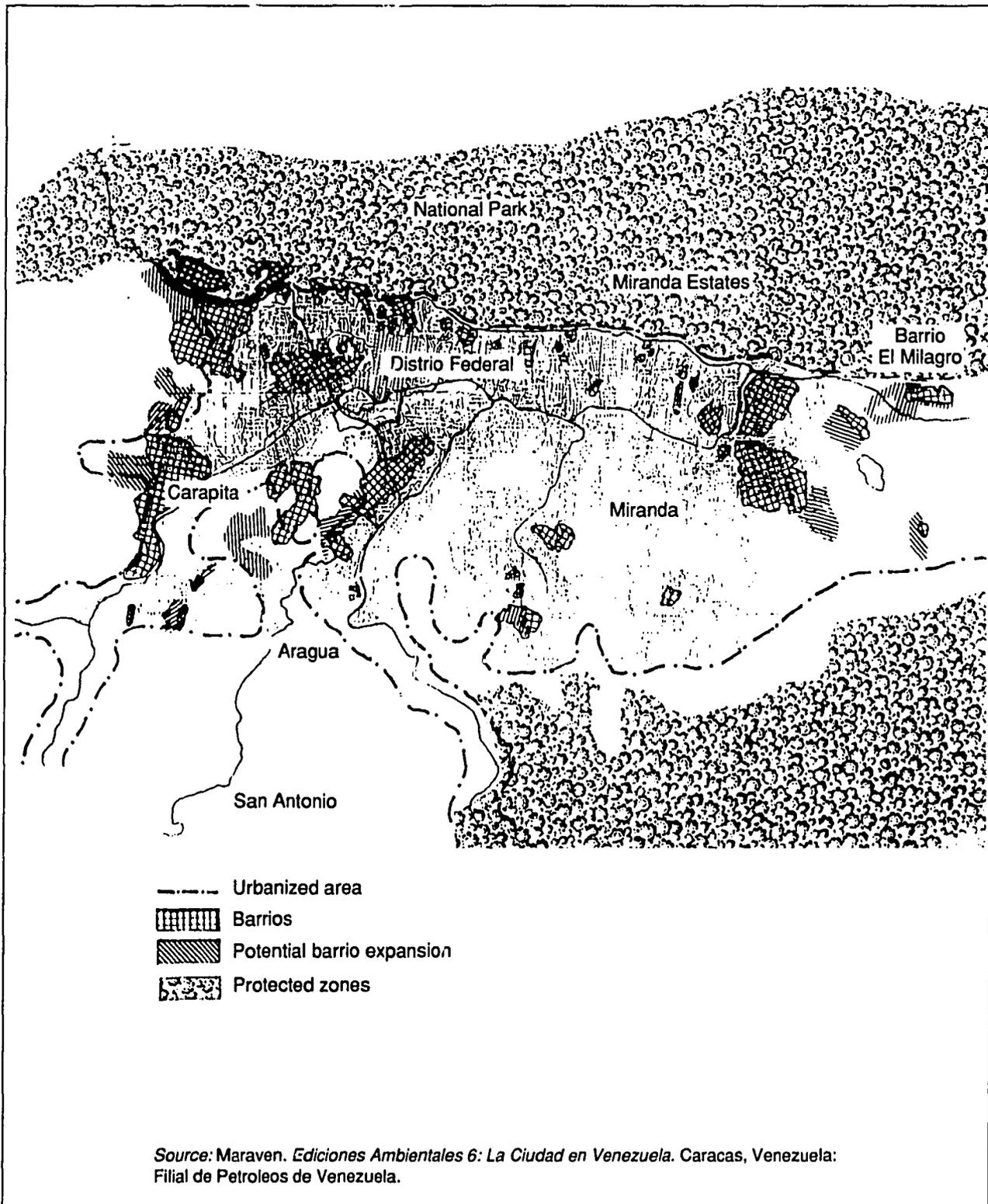


FIGURE 6  
Location of Barrios, Caracas, Venezuela



registered deeds and filing a separate suit for each invader. Quite apart from the problems involved in identifying individual invaders, the process has become unmanageable as the number of invaders has increased.

- An action to defend possession has required owners to demonstrate possession through the testimony of witnesses. A judge could then issue a provisional restitution order to be enforced through administrative procedures. Action by public authorities has been discretionary, however, and has usually been avoided, since the forceful eviction of families has been an unpopular operation.

In the early phases of a settlement's development, small groups of settlers have often sought a negotiated agreement with owners. However, as soon as their numbers have increased, settlers have not been accommodating, preferring instead to seek protection from municipal authorities and legitimize their foothold.

Owners have often contributed actively to the growth of settlements by selling parcels without legally subdividing the land in order 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 limit their losses have sought to dispose of the affected parcel expeditiously.

This type of settlement, however, has resulted in the emergence of developments more akin to informally developed settlements than squatter settlements. Within five years, close to three-quarters of *ranchos* have acquired sheet metal and wooden frame roofing, brick walls, and cement floors. In settlements of more than a decade's existence, the majority of occupants are no longer the original builders, and over half the houses include rental accommodations. At this stage, the residents have organized associations to petition local authorities for protection and to request improvements in infrastructure services (e.g., access roads, storm drainage, and water supply) and community facilities (e.g., health centers, schools, and markets).

Invasions of vacant land are no longer spontaneous events in Venezuela. They have become elaborately planned operations involving invasion planners, who are usually lawyers who sell plots to *ranchero* builders in order to profit from the transactions. The planners

also arrange for adequate protection by securing the support of municipal councilors. The *junta comunal*, a political organization representing *barrio* residents whose membership is drawn from the various political parties, usually blocks legal action by accusing landowners of attempting to evict invaders forcefully, thus inciting further invasions and organizing invaders to defend their possession of the land. Municipal authorities support invaders in return for votes and financial gain. Political leaders, usually landowners themselves, protect invaders 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 a *barrio* and an implicit support of the entire process.

Government authorities have intervened in the resolution of conflicts arising from invasion of private land, but they have done so outside the judiciary system and without reference to the official legal and administrative framework. In so doing, they have institutionalized an informal system of regularization. This involvement is likely to evolve into a constructive role in which public authorities serve as catalysts in bringing 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.

## Land Regularization

### Case Study: Venezuela

The land in *barrios* El Milagro, El Hormiguero, and Tum Tum belonged to a sugar manufacturing company that authorized some of its workers to settle on the site in Venezuela. By 1969, about 200 families lived there, although most were newcomers with no connection to the factory. The occupants formed a *junta pro defense* to file petitions with municipal authorities for protection from forcible eviction.

The governor of the state of Miranda convened an informal meeting between the company and the *junta* to promote a negotiated agreement, as the invasions had occurred on lands which were not cultivated. The agreement was read at a 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 to or servicing the site. Lot sizes ranged from 200 to 700 square meters. No down payment was required, and the sales price could be paid in installments over seven 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 agreed to refrain from evicting occupants who refused to buy their lots, 97 percent 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 cultivated land which resulted in the eviction of the invaders led to the formation of a new association, the *junta pro desarrollo*, to protect settlers and develop the regularized zones. The association managed to secure the installation of street lighting and some drainage works and negotiated with the company to purchase 400,000 square meters in the vicinity for expansion.

When landslides occurred in 1981, the governor coerced the company into providing 48 new plots to be sold to affected households. 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 and been replaced by houses constructed of permanent building materials.

In this case, initiating regularization in the early stages of illegal occupancy and preventing the politicization of procedures 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.

# ■ Middle East and North Africa

## Legal Background

Laws pertaining to land tenure in the Middle East and North Africa have been based on the governing principles of Islamic jurisprudence (*sharia*) derived from Koranic prescriptions and religious tradition. These principles have given government-wide discretion to issue civil codes and regulations and to incorporate into law local customs that do not conflict with *sharia*. At the outset, there had been a sharp distinction between urban and rural land tenure. Agricultural land was held under usufruct and provided the state's tax base. 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 held by freehold and were not taxed. Leasehold was a common form of tenure for long-term investments in urban real estate. Intricate tenure patterns differentiated among ownership of the land, ownership of property rights to the land, ownership of improvements erected on the land, and ownership of 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 nineteenth century, strong pressure from 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.

Colonial rule in the Middle East and North Africa brought about crucial and irreversible changes in land markets. Appropriation of prime land in rural areas by European colonists and the development of modern districts in urban centers to house the influx of Europeans 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 were introduced for the registration of titles outside the traditional court system. Registration became mandatory, and titles were to be registered with a central registration agency. In theory, titles issued by the registry were 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, forms of collective ownership evolved in the direction of joint ownership. In Jordan, a 1933 land settlement law mandated the distribution of tribal lands held in collective ownership among clan members. Titles were to be registered in the name of individual owners, but implementation was sporadic and ineffective.

Nevertheless, *sharia* could neither be abolished nor ignored. It continued to govern the possession and disposition of real estate, since inheritance rules mandated the distribution of property among heirs. A progressive fragmentation of freehold land occurred 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. The properties were administered by special governmental agencies which maintained a degree of autonomy because of their religious character and successfully resisted colonial attempts to interfere.

The new urban management systems introduced in colonial times had to avoid conflict with *sharia* in order to be enforceable. When taxation of urban property was instituted, the tax was levied on the property's rental value, since only income derived from a property had traditionally been taxable by the state. The capital value of the property had traditionally been considered part of personal wealth and had been subject to a tax in the form of a contribution earmarked for charitable purposes.

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

## Land Development since Independence

Independence allowed for the re-emergence of institutional and legal traditions that had been brushed aside by colonial administrations and enabled their incorporation in civil codes and regulations. Foremost among these were three concepts of *sharia* that have had a major impact on urban growth and have provided the legal foundation for the regularization of land tenure on the urban fringe. They are

- the acquisition of property rights by prescription after 5 to 15 years, depending on the country;
- the right to claim ownership of wasteland by bringing it into use through improvement; and
- the protection of inhabited dwellings from demolition except when the site is needed for public use and upon resettlement of the inhabitants and payment of full compensation.

These principles have protected squatters on vacant state lands and have allowed the legalization of occupancy in informal settlements. Furthermore, despite the reaffirmation of formal procedures mandating the registration of titles, the courts have opted for a flexible approach that has perpetuated the tradition of transfer by private contract. The coexistence of the two systems has contributed to confusion and litigation, particularly since the regis-

try has not independently verified or updated its records. Official attitudes toward court-certified documents vary. In Tunisia, titles are not legal until they are registered. In Jordan and Morocco, certification entitles owners to municipal services and credit.

In the 1950s and 1960s, large land holdings disappeared through agrarian reforms, nationalization of the estates of departing foreign colonists, and the curtailment or abolition of private *waqfs*. In Egypt, private *waqfs* were incorporated with the public *waqf* system in 1952. In Tunisia, they were incorporated in the state domain in 1957.

Aside from *waqf* property, public ownership of land within urban centers has been limited and the extent of public ownership around cities has varied widely. Where urbanized areas have been bounded by agricultural zones, land has primarily been owned privately or jointly. In North Africa, the repossession of colonial estates allowed the government to constitute land reserves, which became a key element in urban development and housing policy. However, the reserves were largely depleted in the 1970s and 1980s 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 were limited to land which was actually in agricultural use. Land left vacant reverted to the state and became part of its domain.

In many cities that border on deserts, the state has controlled vast lands which, unfortunately, have required substantial investment in infrastructure in order to be opened for development. Encroachments have occurred only along a narrow band from which sources of water in the adjacent agricultural zones could be reached. Subdivision regulations have required that land be serviced before being sold for building plots. The same clause has applied to state lands, which must be serviced prior to release. The financial burden of infrastructure investments and the absence of adequate cost recovery mechanisms has prevented any significant marketing of government land. Public land reserves have therefore been left open to encroachment and illegal appropriation.

The oil boom of the mid-1970s changed the character of urban growth in the Middle East and North Africa suddenly and dramatically. Fueled by remittances from expatriate workers, investment in urban real estate rose sharply. The sudden entry into the market of large numbers of households with cash sav-

ings led to rapid increases in the price of land and building materials in one of the worst inflationary spirals experienced in urban real estate. Between 1975 and 1985, land values roughly doubled every three years. On the urban fringe, the increase was even more spectacular, as land prices rose by a factor of 15 to 20, thus frustrating the housing aspirations of large segments of the population. The capital required to enter the market increased throughout the 1970s and 1980s and surpassed the means of the average urban wage earner. Limited-income households were forced to seek accommodations in the informal rental market.

Mounting demand and the substantial profit to be derived from land development have led to a general disregard of codes and regulations. Hampered by obsolete plans, lagging cadastres, and inadequate support infrastructure, authorities have been forced to tolerate the proliferation of uncontrolled sprawl. The dynamics of informal land development have accelerated the outward expansion of urbanized areas and have triggered significant intra-urban population movements. Egypt, Jordan, Tunisia, Morocco, and Yemen have been particularly affected. The urbanized zone in larger cities has doubled and sometimes tripled in size, undermining the effectiveness of infrastructure networks (figures 7 and 8). Unserved areas have grown two to three times faster than the urbanized zone as a whole.

Concern over the loss of arable land has 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 perimeters of municipalities. To control the tendency of local authorities to annex large tracts of land and promote their conversion to urban uses, the law stipulates that proposed extensions of municipal boundaries must be approved by the Council of Ministers. In 1984, the Minister of Agriculture issued a decree imposing restrictions for the first time on the conversion of agricultural land within municipal boundaries. Local authorities have been entrusted with its implementation, but enforcement is lax and ineffective.

## Land Development on the Urban 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. It is shielded from the impact of high inflation and yields lucrative profits. Small-scale entrepreneurs and contractors have reaped profits through land speculation, illegal subdivision, and low-quality construction. The process also involves small brokers, local court clerks, and district officials in various capacities. Nevertheless, kinship networks have remained a dominant factor in marketing land, and large parcels have often been purchased by a group of related households and subdivided among them.

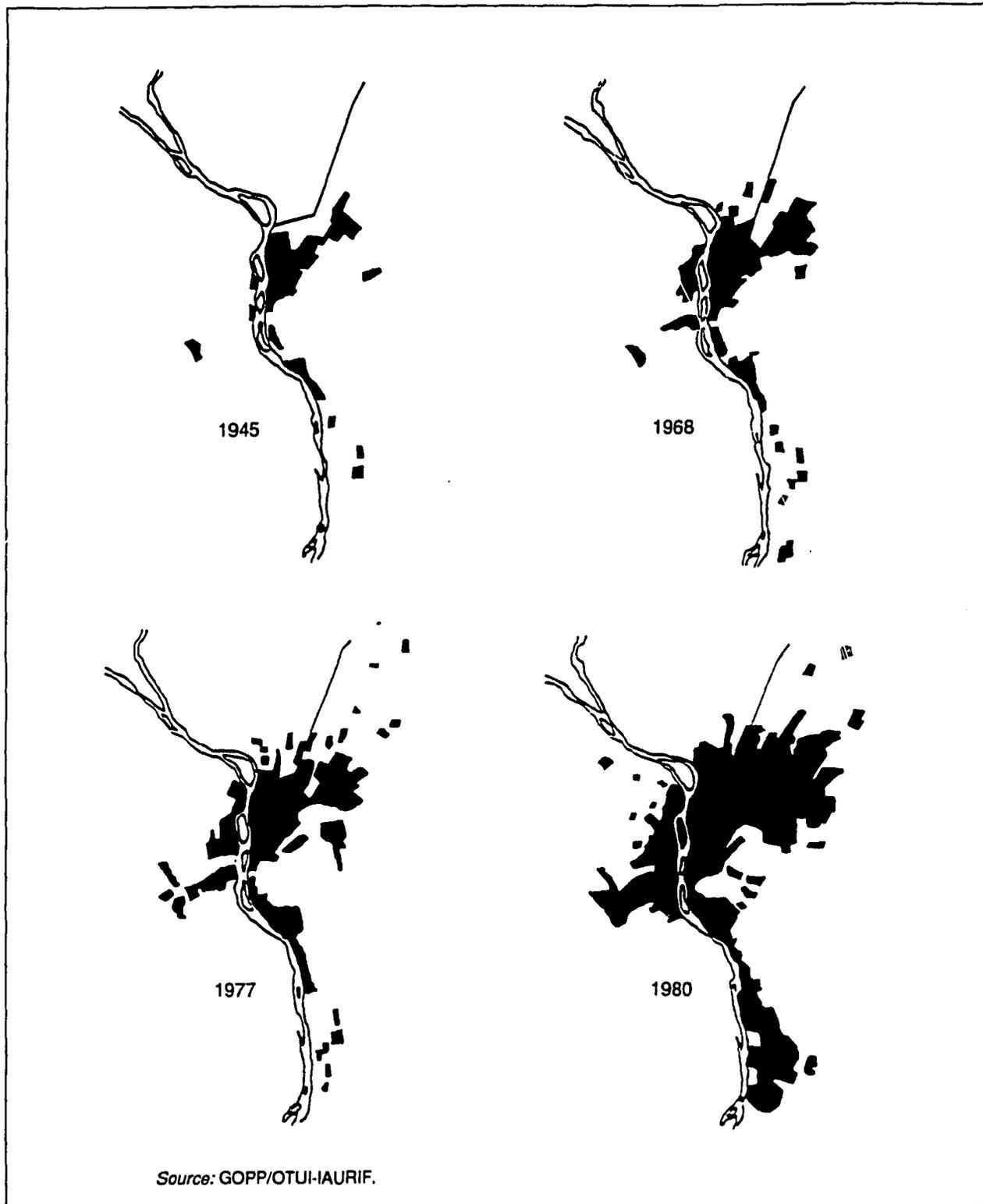
Today, informal development accounts for a minimum of 20 percent to 30 percent of housing starts in Amman and Tunis, where growth pressure is moderate, to a maximum of 60 percent to 70 percent in Cairo, where pressure is intense. Lot sizes range from 100 to 300 meters square, with larger lots fronting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

In Tunisia, regulations governing the sale of agricultural land held by the state were issued in 1970 and resulted in a massive transfer of land to the private sector. Despite restrictions on conversion to non-agricultural uses, speculative transactions have multiplied land values. Private sales and leaseholds granted by public agencies have given rise to illegal subdivisions and to fraudulent appropriation of sizeable parcels from abutting unregistered lands originally belonging to *habous*. Claims attested to by witnesses have been notarized by the courts as private deeds and have been used to initiate official registration procedures.

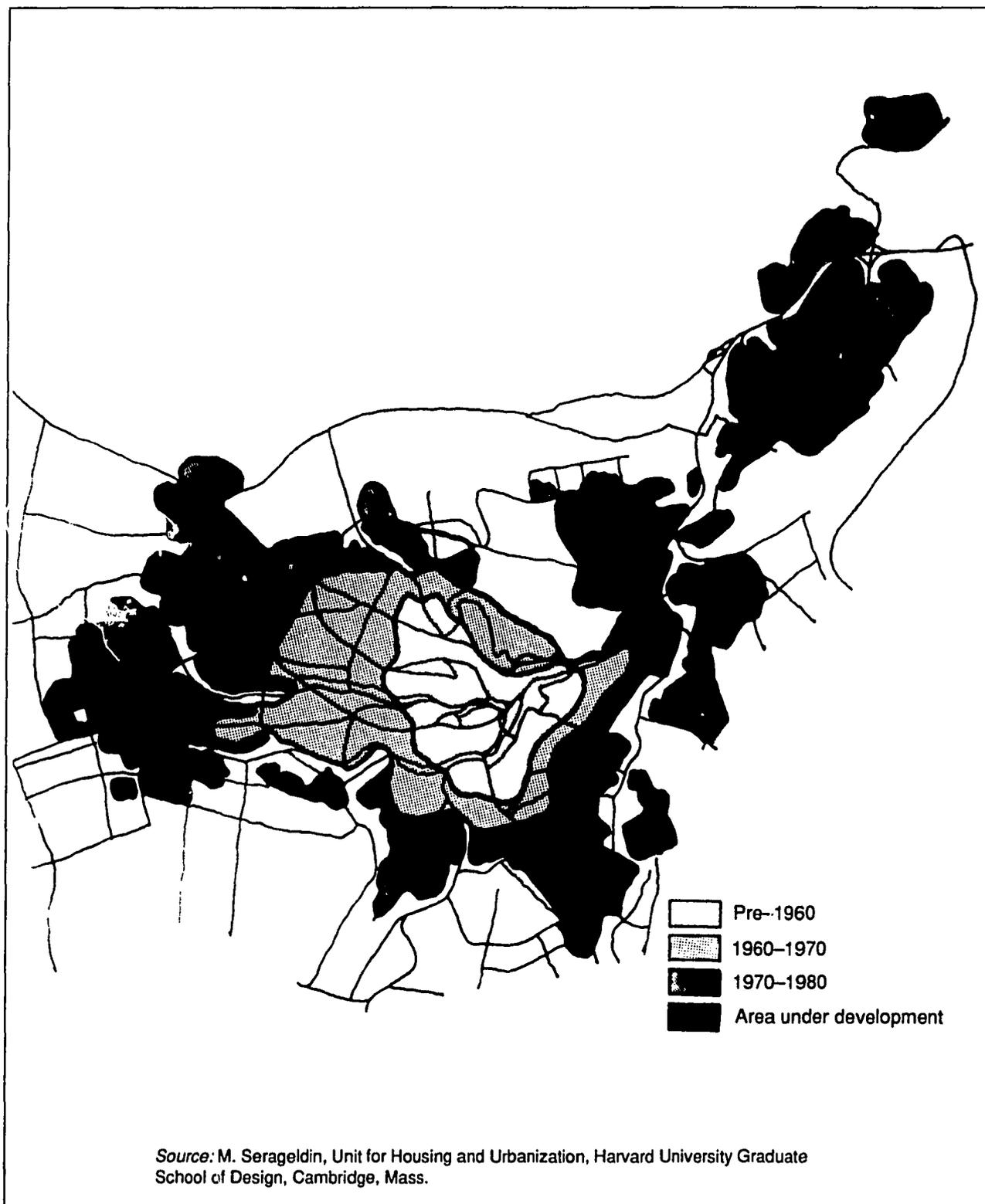
Since 1980, the informal process has followed well-structured procedures. Lawyers specializing in land transactions have sought land holders in outlying zones and have negotiated highly profitable agreements allowing them to take charge of the subdivision process. For larger parcels, particularly those near public projects, which increases the value of adjacent land by a factor of three to four, a professional draftsman has prepared a plat, which adds an aura of legality to the subdivision. Sales contracts for plots have been drawn up and notarized by court clerks. In the unlikely event that registration procedures have been completed for the original agricultural holding and a title has been issued, the buyers of 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 has reflected the prior agricultural use of the land. There has been a conscious effort to replicate

FIGURE 7  
Urban Area Growth, Cairo, Egypt



**FIGURE 8**  
**Urban Area Growth, Amman, Jordan**



the street grid of government projects while ensuring that no less than 75 percent of the tract's area is saleable, compared to 45 percent under current regulations. Local developers have purchased large tracts in outlying zones and held the land until conversion to urban use has become feasible. They have offered credit and allowed immediate occupancy for a down payment. Buyers have begun construction without delay and have settled the balance of the land price in installments over three to five years. Developers have made a 20 percent to 30 percent return on their investment by shifting the social and environmental costs to the public sector, which eventually must retrofit the settlement.

Rising land prices and rent control laws have led to a resurgence of joint ownership patterns in formats adapted to new market conditions. In the formal sector, cooperative concepts have been adapted to respond to land rather than credit problems. Cooperatives have focused their energies on land acquisition and subdivision. Members have received title to individual plots or units under a condominium-style agreement. The number of cooperatives multiplied in the 1970s and 1980s. In Jordan, despite the fact that the Higher Planning Council has been authorized to designate planning areas outside of municipal boundaries in order to create new urban sites, cooperatives have shaped the pattern of low-density horizontal expansion by leapfrogging over existing urbanization in search of cheaper land. Cooperatives have relied on political leverage to obtain building permits. Registration of the cooperative has entitled the subdivision to municipal services and housing credit finance, thereby shifting to the public sector the cost of haphazard sprawl.

Because municipalities have neglected to prevent building activity in zones where infrastructure cannot be provided, they have been forced to endure wasteful land consumption and inefficient infrastructure systems. The 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 percent of the structures are registered, underscoring the importance given to landownership, which is considered a permanent asset.

In the informal sector, a variety of joint ownership and tenancy arrangements have emerged that draw on the range of recognized property rights. Often, agreements for financial cooperation have been made between associates, neither of whom has had suffi-

cient funds to enter the market individually. A common strategy has been for one associate to secure the land and the other to build the structure where each can have a dwelling. The method has been particularly popular in Morocco and has derived its legal strength from traditional rights of utilization. It is estimated that 64 percent of the privately built housing stock incorporates this form of tenure. For example, a family with sufficient capital to build might enter 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 in order to speed the development of allocated plots.

## Land Regularization

Governments have been keenly aware of the contribution of informal land development to the alleviation of housing shortages. Consequently, public policies have intermixed attempts to control with efforts to regularize informal land development. Prior to the late 1970s, regularization occurred through unstructured and sporadic decrees promulgated whenever the situation got out of hand. The legalization regularized past violations and covered subdivisions and buildings that contravened existing codes, as in Egypt, Tunisia, and Sudan; revised plans and ordinances to conform to the situation, as in Morocco; and adjusted municipal boundaries to encompass fringe development on agricultural land that had been illegally converted to urban use.

Official reluctance to tax vacant land, which has traditionally been viewed as a non-income-producing asset, has undermined efforts to curb speculation in the Middle East and North Africa. In 1978, Egypt, Syria, and Jordan instituted a modest tax on vacant serviced lots, but the rate was far too low to have an impact. Morocco also enacted a similar tax 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 percent on land appropriated in areas affected by public projects. In Egypt, the New Town Organization has been empowered to repossess parcels that are not developed within three years of allocation.

In the 1980s, decentralization laws shifted powers and responsibilities from the central to the local

level. While key planning, regulatory, and budgeting functions have remained vested in central governments, area planning, code enforcement, and fiscal management have become local responsibilities, as has the administration of state lands within local jurisdictions. Decentralization laws have often imposed constraints on the management of municipal lands, either in terms of disposal strategies, as in Tunisia, or in the application of revenues generated from land sales, as in Egypt. The regulatory latitude granted to municipalities has enabled them to issue regulations supplemental to national codes, although 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 have been based largely on French models. Executive functions have been discharged by a hierarchy of appointed officials. More recently, elected local councils have assumed a larger role in administration and decision making. Council members have included landowners, contractors, entrepreneurs, and brokers active in the informal land development process. As a result, local viewpoints and actions have been responsive to the interests of this 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.

Land regularization issues have varied 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 have not affected the tenure status of the plot on which they stand. Titles to illegally subdivided land cannot be registered, however, and permits to build on these plots cannot be issued. 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 desperately need to service these developments.

Tenure systems that regulate possession and disposition of land have been sanctioned under *sharia* and cannot be easily modified. Development controls that regulate the utilization of land have been changed as conditions warranted. Land regularization has primarily been concerned with violations of development controls. Despite overly cumbersome and

complicated administrative procedures, there have been 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 has been in possession of a sales contract certifying the transaction. Unless the seller's claim to the land has been contested, the buyer's tenure rights have not been at issue. The transaction has been registered and a title obtained upon payment of the registration fees. The title has referred only to the transfer of ownership rights to the parcel. In Egypt, unregistered properties have been 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 have proved difficult to overcome, but governments have exercised a greater degree of control over the process. The only exception has been the case of land designated for utilities, thoroughfares, public open space, and community facilities, which constitute a special category of public land outside of the state domain. The priority given under *sharia* to the provision and protection of public thoroughfares has enabled government authorities to appropriate up to 25 percent of the area of a privately owned parcel without compensation in order to open up or widen public rights of way, provided that the remaining land is developable under existing codes and regulations. Such land cannot be transferred from public to private use and has been protected from encroachment or appropriation. The dwellings of squatters settling on such land and public rights of way have not been legalized and are eventually cleared.

The mixed experience of upgrading projects reflects the problem of linking title registration and cost recovery through plot charges rather than a reluctance on the part of municipalities to regulate land tenure. Regularization remains entangled in a 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.

### Case Study: Jordan

Compared to other countries in the Middle East and North Africa, Jordan's experience with squatter settlements and informal development is a recent one. In the greater Amman region, squatter settlements stretch along the Amman-Zarqa corridor, while in-

formal development is occurring on the northeast fringe of the area (figure 9).

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

To develop vacant land within the municipal boundaries, Amman has experimented with land readjustment. The municipal council has been empowered to delineate land readjustment zones and can take, without compensation, up to one-third of the area of a plot in order to provide utilities and community facilities. The process has proved cumbersome because of the variety of property rights that must be appraised and translated into new ownership rights within the planned development. Land shares have therefore been defined in terms of value rather than plot size. Values are set by an appraisal committee and are subject to an appeals procedure, and shares can be traded to consolidate holdings below minimum lot size.

The ambitious land readjustment project of north Amman covers 700 hectares. Planning work began 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 the problems of fragmented holdings and multiple owners; it has not been used as a mechanism for regularizing land tenure, as has been done in Southeast Asia.

A flourishing informal sector has developed in the northeast sector of Amman on 2,300 hectares of tribal pasture lands and privately owned property. The parcels being marketed average 500 square meters, which matches the middle range of plot sizes in standard residential districts. Taking into account the eventual cost of regularizing titles (including registration fees and the payment of a fine for building outside the authorized planning areas), the prices offered are very attractive compared to the higher quality options available through the formal land market. For median-income households, this is the only affordable access to land and homeownership.

Entrepreneurs use local brokers as intermediaries to negotiate the purchase of tracts of land. The transac-

tion involves the informal transfer of tribal rights to the developer. A private sales contract referred to as *hujjah* is drawn up, signed by the two parties, and attested to by two witnesses, although 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 code and is of surprisingly high quality. The buyers must

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

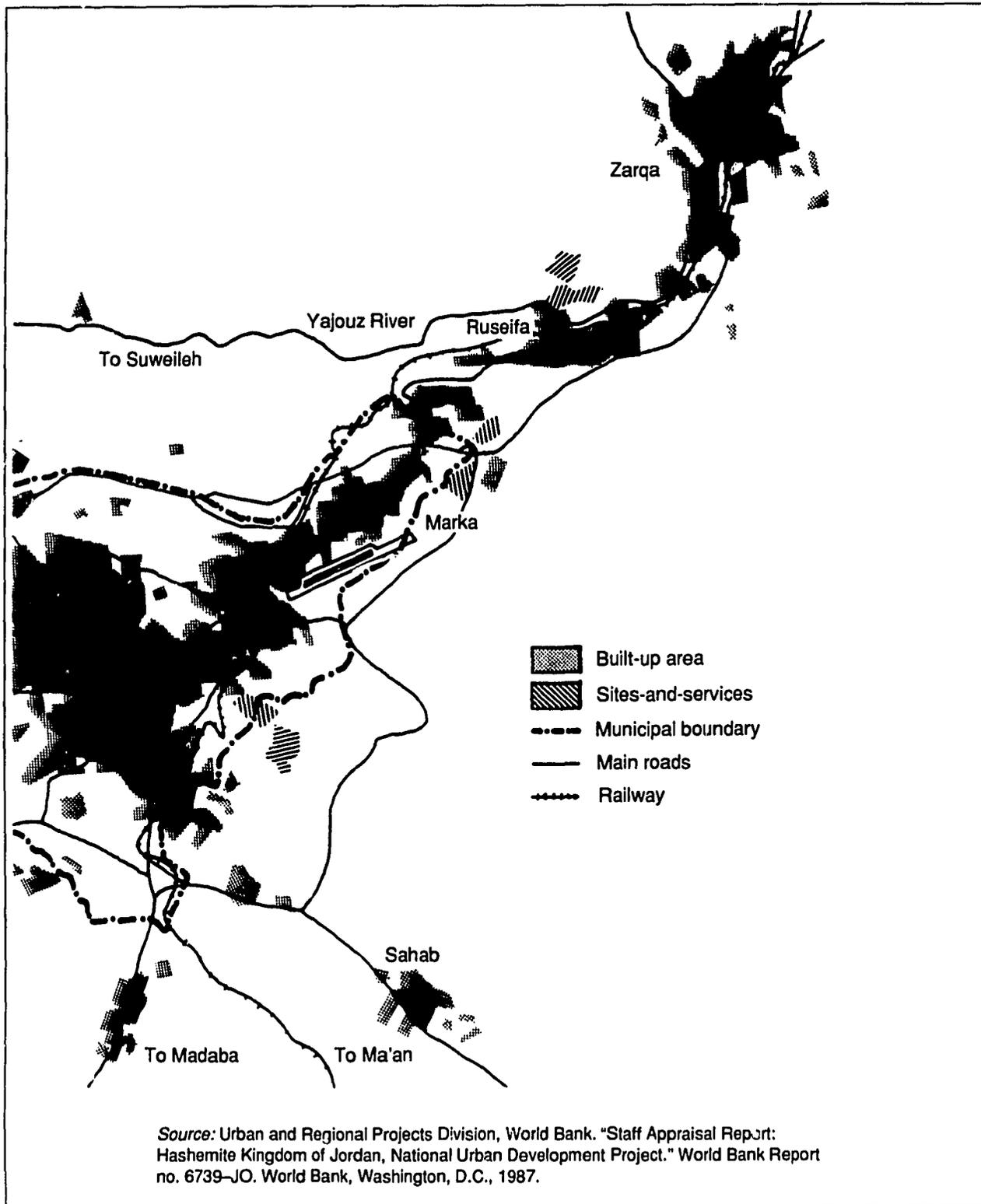
The Joint State Land Committee, which oversees these lands, is empowered to remove violations and impose fines on violators.

When settlers in the Ruseifa area reached a critical number, property owners exerted pressure on the government to regularize their tenure. The high cost of privately supplied water and electricity was a strong incentive; regularizing land tenure qualified owners for municipal services, which have traditionally been provided free of charge. The cost differential was such that households fared better paying real estate taxes because it enabled them to have access to public utilities. In the early 1970s, a branch office of the Department of Lands and Surveys was established on the site and has been operating since then marking plots and sorting out property rights.

The Ministry of Municipal and Rural Affairs and the Environment (MMRAE), which controls land development outside of Amman's jurisdiction, established the following formal regularization procedures:

- submit to the MMRAE's Department of City and Village Planning an application to regularize a sub-area
- survey the site to determine the feasibility of regularization based on evaluation criteria, including physical characteristics of the site, quality of structures, difficulty of extending primary

**FIGURE 9**  
**Urbanized Area of Northeast Sector, Amman, Jordan**



infrastructure to the site, and cost of retrofitting the development

- prepare a formal subdivision plan to lay out public rights of way and delineate land reserves for community facilities
- obtain approval of sub-area plans by the MMRAE's minister
- submit plans to the governor, who issues notices of public hearings
- review plans for two months and file grievances and objections
- adjudicate grievances
- obtain endorsement of plans by the governor and final approval by the MMRAE's minister
- refer approved plans to the municipality to include the sub-area in its infrastructure and services programs
- refer approved plans to the Department of Lands and Surveys to issue legal titles to individual plot owners
- survey the land and establish metes and bounds
- prepare cadastral records for each parcel
- assess plot charges and survey fees
- issue 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 among the Department of Lands and Surveys, the MMRAE, and the municipality. The process has proved to be complicated and time consuming. Numerous difficulties have been encountered in attempting to collect plot charges. Households feel they have already paid presumed owners for the acquisition of their plots and refuse to pay additional charges. In addition, utilities and services have not been forthcoming for lack of funds.

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

### Case Study: Egypt

Until 1980, there had been no official policy in Egypt regarding the regularization of informal land devel-

opment beyond periodic and highly controversial blanket legalizations of past violations. Existing laws had legalized subdivisions and structures that had violated codes and granted municipalities discretionary powers to service these areas while specifically prohibiting future violations. Since the underlying causes fostering informal land development had not been addressed, it was necessary to issue laws at intervals to legalize continuing informal land development.

Upgrading projects in Cairo sponsored by the U.S. Agency for International Development and the World Bank in 1978 raised issues regarding tenure in squatter zones along the desert's edge and on illegally subdivided agricultural land (figures 10 and 11). The projects required the institutionalization of legal processes and administrative procedures to regularize tenure in the upgraded sites.

The progressive transfer of executive authority from central ministries to units of local government 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 construction, operation, and maintenance were delegated to the governorates through 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 in the field of land management and development were delegated to municipal authorities, in addition to their regular responsibility 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 of 1981 was the first to mention procedures for the regularization of informal development in Egypt. It mandated governorate authorities to prepare upgrading plans for settlements located within their administrative boundaries, but did not specifi-

**FIGURE 10**  
**Urbanized Area, Cairo, Egypt**

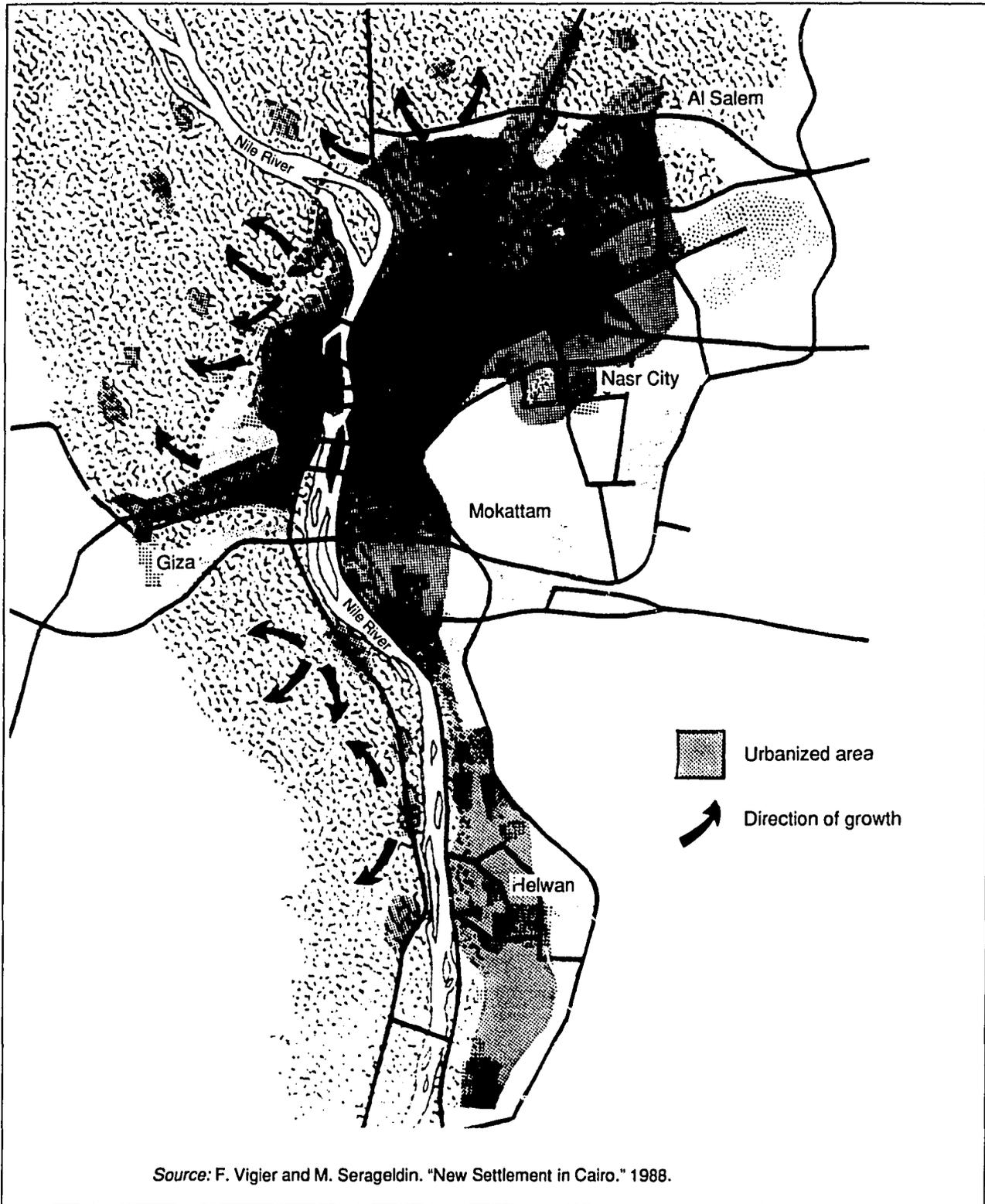
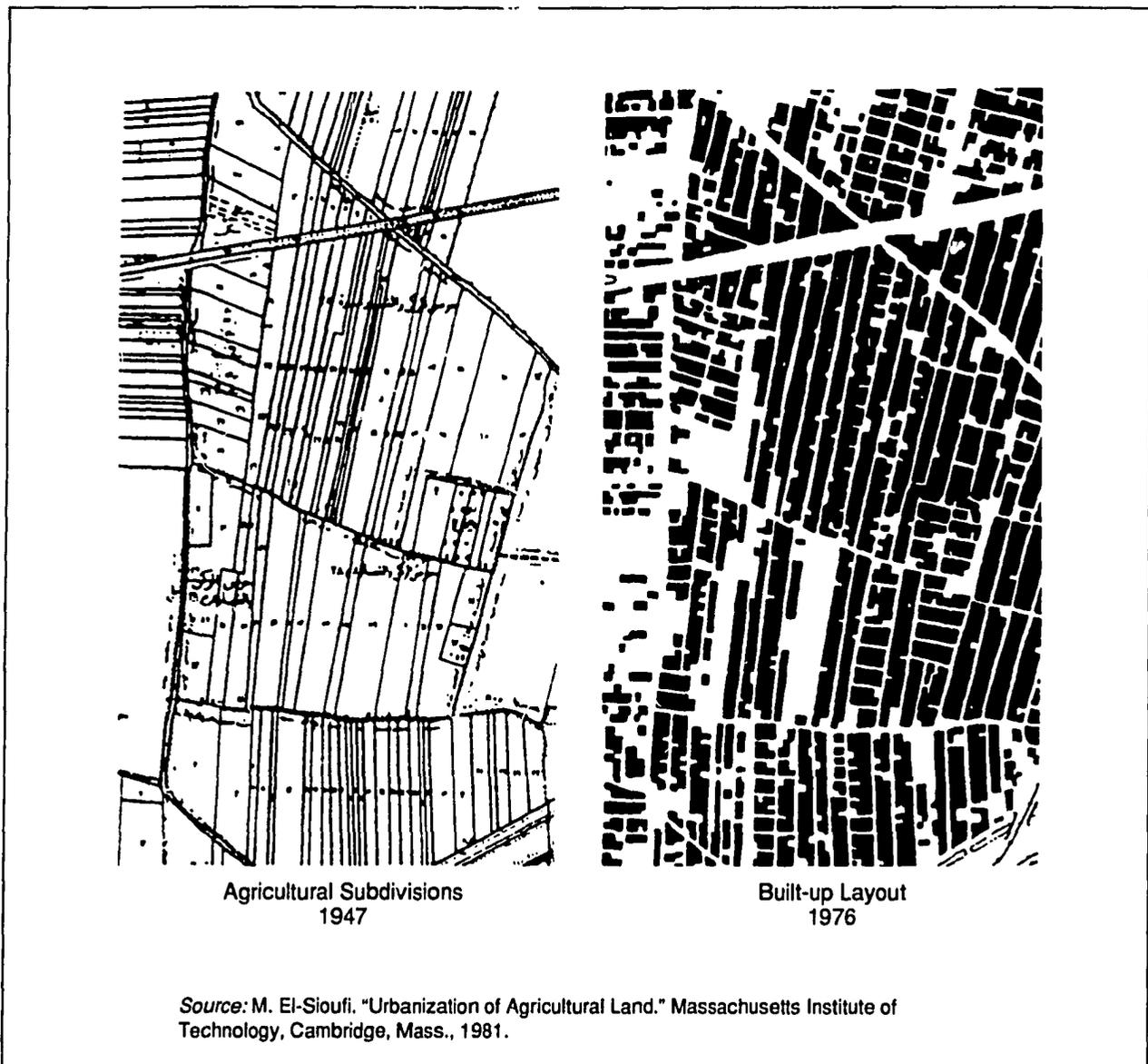


FIGURE 11

Informal Subdivision of Agricultural Land, Cairo, Egypt



cally address issues related to land tenure. Following enactment of the law, local authorities turned to the national legislature to define the rules governing the transfer of state lands to settlers. The only rule existing 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.

Law 31 of 1984 empowered governorates to dispose of land through negotiated sales on the condition that the recipient would utilize and develop the land in accordance with the terms specified in the sales agreement. Law 34 instituted harsher penalties (fines and prison sentences) for encroachments on agricultural land or vacant state lands. A year later, executive regulations to implement Law 31 had still not been issued, although governorates felt pressured to develop interim regulations to outline procedures for filing requests to purchase land plots, paying fees to cover survey costs, and depositing a down payment related to the size of the parcel pending appraisal of the property.

When 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 governorates to define their own operational procedures to implement the law. Following a full year of study and deliberation by a special committee, its recommendations were adopted by the local council in Cairo and a decree was issued by the governor in 1986 that spelled out the policies and procedures for the regularization of land titles. The decree stipulated the following:

- Structures that conflicted with approved street alignments and planned projects would not be regularized, and occupants would only be granted a temporary land lease.
- Interim regulations developed in 1985 for the sale of vacant government-owned land to settlers would be institutionalized.
- Prescription claims which did not encroach on land designated for approved projects would be regularized.
- A special office would be set up in the governorate's Properties Department to process requests for regularization.

- A committee headed by the general secretary would supervise implementation.

By the end of 1987, fewer than 30,000 requests had been filed, representing about 5 percent of the estimated number of eligible illegal occupants in the governorate. No more than 750 had actually made the required down payment. The lack of response prompted a reconsideration by the local council of the required procedures. It recommended that the initial flat rate charge be eliminated and replaced by a regular down payment following 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 in Cairo. The decentralization of responsibilities has entailed a sequence of incremental adjustments in the central/local interface. National laws have increasingly been enacted in the form of enabling legislation, which sets a framework of broad powers and areas of responsibility. Local authorities have been given wide discretion to formulate land policy and disposal strategies and define the rules, regulations, and procedures governing transactions, including the regularization of informal tenure.

At no time during the lengthy process has the basic concept of prescription rights been questioned. Occupants have never felt that their security of tenure has been threatened. Furthermore, the elected local council has felt that titles should be issued to settlers in accordance with their rights under *sharia* and that they should have to pay only for the cost of the regularization procedure. The inability of authorities to enforce penalties has undermined the effectiveness of legalization as an incentive to comply with regulatory measures. Since the likelihood of collection has been highest for charges remitted prior to the issuance of titles, it is important to reach an agreement regarding the methods of computing and collecting down payments.

The enactment of procedures for land regularization in Cairo has been delayed by questions regarding the legality of charging for land in accordance with one's ability to pay. The law empowers governorates to transfer land by negotiated agreement, but local authorities have been concerned that by allowing settlers to acquire title at an artificially low price, they are jeopardizing their ability to charge real estate development corporations the full market value for newly accessible desert land. Likewise, the

*Middle East and North Africa*

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, and it is crucial that they be resolved in order to institutionalize a successful process for land regularization.

# ■ Sub-Saharan Africa

## Legal Background

In the nineteenth century, European colonial administrations in sub-Saharan Africa introduced codes copied or adapted from Western systems governing property rights, registration, acquisition and transfer of land, development regulations, and taxation of real estate. The primary intent of the codes was to manage the colonization process and facilitate the exploitation of natural resources, including the rich soils useful for farming and planting cash crops.

Colonial administrations found the verbal traditions of customary law incompatible with Western concepts of law and sought to expurgate customary rights. Deeply ingrained customs proved resilient and enduring, however, 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 rural areas, the two systems coexisted. Tenure in village lands ranged from inalienable collective ownership in West Africa to fragmented holdings in East Africa, with 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. Uganda's Crown Lands Ordinance of 1903 and Kenya's Government Lands Act of 1915 stipulated state ownership of all lands that were not already private property or tribal domains. Tribal groups were allowed partial autonomy in internal governance and, thus, could manage their lands in accordance with their customary laws.

A civil code for the French 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*, which empow-

ered the state to grant provisional land concessions that designated allowable utilization and indicated a time frame for development. Concessions were viewed as transfers of property that were to 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. Unlike the English system, the centralized administrative structure of the French territories did not allow for internal fragmentation of village lands. The restriction did not become an issue, however, because customary law in the region prohibited the subdivision and sale of tribal land. 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. Penalties for infractions to land codes included jail sentences and fines. Illegal occupancy of state 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 and were dominated by foreigners. Throughout the colonial period, African ownership of urban property was limited.

Colonial administrations prevented the 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 provisional concessions to private parties, enabling them to develop the site but retaining ownership of the land for the state. Title to the land could be 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 200 square meters. The transfer of occupancy rights was authorized in 1921. The law also provided for compensation for improvements made in the event of subsequent displacement. In 1943, a decree allowed the permits to be changed to provisional concessions subject to the codified procedures for acquiring title. The only restriction on the freehold was that the land not be sold to a European.

In sub-Saharan Africa, municipal boundaries have had no impact on land tenure systems or land transactions. Municipalities and communes do not control state lands within their jurisdictions. Instead, the allocation of concessions and the issuance of titles is done by central authorities.

The concept of improving and developing a land holding have been central in West African codes and customs. Claims to property rights have hinged on the ability to demonstrate adequate utilization. The effectiveness of the system has required 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.

## Land Development since Independence

With independence came an assertion of cultural identity in many sub-Saharan African countries, which led to the resurgence of customary rules and religious precepts. At the same time, the authority of the state was 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, and regulate transactions of customary holdings. There has been, 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 land holdings, 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 lands, control their use, and appropriate them by the power of eminent domain, if necessary, to further the public interest.

In Ivory Coast, private ownership of land has been retained. Village lands have continued to be held under customary collective ownership and management. Individual ownership of urban parcels can be acquired in a two-step process: as a provisional land concession pending development and, upon completion of improvements, as an individual freehold with a title issued to the owner.

In Cameroon in 1963 and Senegal in 1966, nonregistered land was declared part of the state domain. Individuals and groups could obtain land allocations, which gave them a right of utilization but not ownership, although the utilization rights could be inherited. Fully developed urban parcels have been granted a special status that allowed 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 could only claim a right to utilization of the parcel for agricultural or urban uses. Consequently, it has become illegal to hold vacant land except as a provisional concession pending development. All other vacant lands have been considered part of the state domain.

In Zaire, the same principle of government ownership of land was established by a 1966 law and reinforced by new laws in 1971, 1972, and 1973. The state has granted concessions to private parties authorizing the use of parcels, with the terms of leaseholds varying from perpetuity to three-year renewable rental agreements. The law has granted tribal groups a collective right of utilization of village lands. In urban areas, land holders have been guaranteed security of tenure under the new system. A parcel card authorizing the utilization of a specific plot has replaced the occupancy card of the colonial period. The title to the developed concession can be documented by the issuance of a registration certificate, for which a tax of 8 percent of the purchase price is charged.

In the newly independent African nations, the coexistence of parallel legal systems mandated setting up mechanisms to structure and regulate their inter-

face. This, in turn, demanded the reinterpretation, adaptation, and integration of customary rules and tenets within the framework of the law. The urban fringe provided the geographic setting for this challenging interface.

## Land Development on the Urban Fringe

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

The need to structure urban growth has necessitated the layout of infrastructure networks, the rationalization of jurisdictional boundaries, and the recording of properties—an immense task, given the inability of cadastral services to keep up with urban expansion. Large-scale planned projects on the urban fringe have invariably required the assembly of land by eminent domain procedures, which have included formulas for the compensation of occupants on the appropriated site. This has entailed a definition of customary tenure rights and the property over which they can be exercised.

Beginning in the 1970s, the wealth represented by urban land (the most rapidly appreciating commodity) and the potential profit to be derived from land transactions led to an erosion of the collective management of customary lands. Village chiefs began to subdivide and sell ancestral land. Traditional rights guaranteed by lineage and alliances among kin groups became reduced to preferential treatment reflected in lower prices for plots and precedence in allotments. Social heterogeneity became a characteristic of informal development on the urban fringe. Since village chiefs were unable to control subsequent transactions, informal settlements experienced very rapid densification through subdivision of parcels, the addition of rental accommodations, and overcrowding. In less than 10 years, the population of a settlement often swelled from under 100 members of a kin group to over 10,000 inhabitants belonging to different ethnic groups.

Irrespective of whether vacant land could be subdivided legally, village chiefs have found it more expedient to subdivide first and then seek regulari-

zation. It has become to their advantage to ensure that

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

The layout of subdivisions has been undertaken by a professional surveyor in exchange for one or two plots. The layout has replicated the grid of official subdivisions in anticipation of regularization. Nevertheless, streets have often been impassable in the rainy season as a result of site conditions such as unfavorable topography, a high water table, or erodible soils. Plot sizes have been generous and have ranged from 300 to 600 square meters, and a private deed to the plot has been signed by the two parties and witnessed by local leaders.

Given the rapid appreciation of land values at the urban fringe, it may 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 have been necessary in order for households to save. In this context, the role of the extended family and the income-generating activities of women have been essential to families' gaining access to property ownership.

A plot in a government subdivision has been a bargain for the price, bringing immediate infrastructure services and security of tenure. However, given the imbalance between supply and demand, access to patronage networks has been important for families who hope to avoid lengthy and fruitless waiting periods. A parcel in an informal subdivision can be acquired for about 20 percent of the cost. The risk of displacement, problems of access, and the threat of encroachments have been counterbalanced by the prospect of large profits from an appreciation in property values and the possibility of income-generating uses for the land.

To counter charges of greed and abuse of power and to avoid friction with the younger generation, village chiefs have increasingly resorted to the creation of village associations made up of members who are able to contribute financially to the development of land holdings. The skill and aggressiveness of the association and its access to patronage networks have determined the magnitude and security of the development as well as the range of violations it can

accumulate with relative impunity, such as building rental accommodations without a permit, selling land illegally, subdividing vacant village lands without authorization, illegally occupying and selling land outside of village holdings, and illegally converting agricultural parcels to urban use.

## 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 have been illegal and are considered null and void.

Since independence, government authorities have been reluctant to enforce regulatory measures that conflict openly with customary rights. Preventing the subdivision of village lands has been viewed as an unwarranted governmental intrusion in tribal affairs and a confiscatory practice that preempts the traditional rights of villagers to manage their own property. Legalization has become the only politically acceptable policy, and regularization the only technically feasible solution.

### Case Study: Ivory Coast

In Ivory Coast, subdivision of vacant land has been allowed. Infractions have arisen from bypassing subdivision regulations that mandate official approval of the plat and provision of minimum infrastructure prior to the sale of plots. A 1955 decree prohibited the sale of customary land except through codified registration procedures, but the complexity and cost of the documentation required to file a formal application for a subdivision authorization has been a deterrent to compliance. Lengthy and cumbersome approval procedures, which can take from six months to more than two years, have become 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 they have been applied after the developer or the village association has reaped profits from the venture. The survey and planning work has subsequently been undertaken by the responsible authorities, and decisions made have affected only 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, water and electric companies have started to service irregular developments in anticipation of their regularization.

The regularization process has entailed the transfer of customary holdings to the state followed by a reallocation of the land to lot owners as provisional concessions (figure 12). Freehold title can be acquired following regular procedures. Holders of customary rights have been compensated for the appropriation of their land. Others claiming ownership of lots in the subdivision may acquire title to the lot and pay the survey and bounds fee. If the lot has been vacant, they must meet the same eligibility requirements as any applicant for a land concession. In other words, they must pay a deposit to prove their capacity to develop the land. The deposit is roughly equal to half the cost of a modest house and is reimbursed as work progresses.

Since land is privately owned, it is taxable. Land that remains undeveloped or underdeveloped after expiration of a grace period has been subject to a tax surcharge. In addition, it can be repossessed at any time without compensation.

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

### Case Study: Guinea

In Guinea, the state has sole ownership of land, and 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.

A 1974 law detailed eminent domain procedures and provided compensation for authorized improve-

**FIGURE 12**  
**Regularization of Customary Land, Abidjan, Ivory Coast**

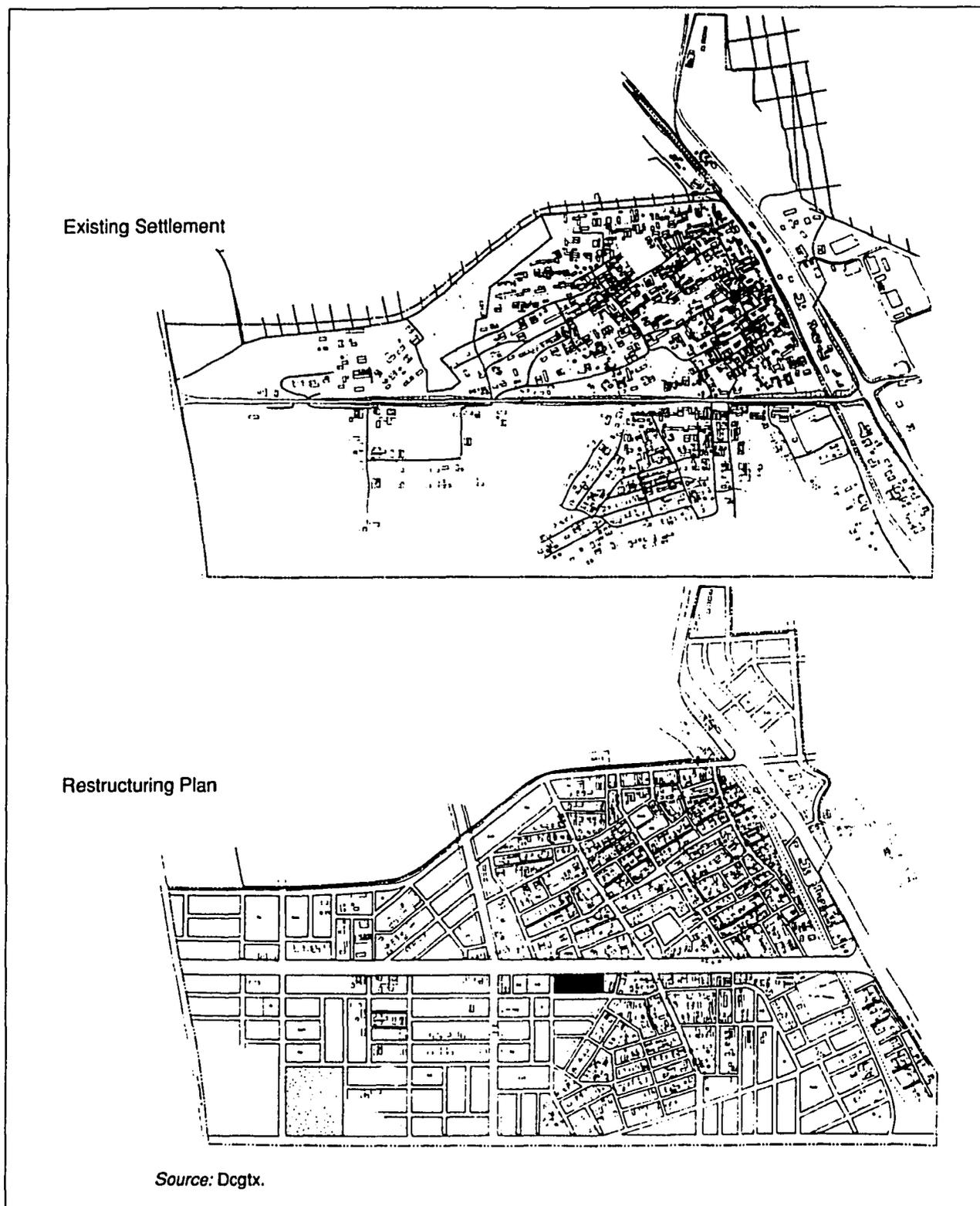
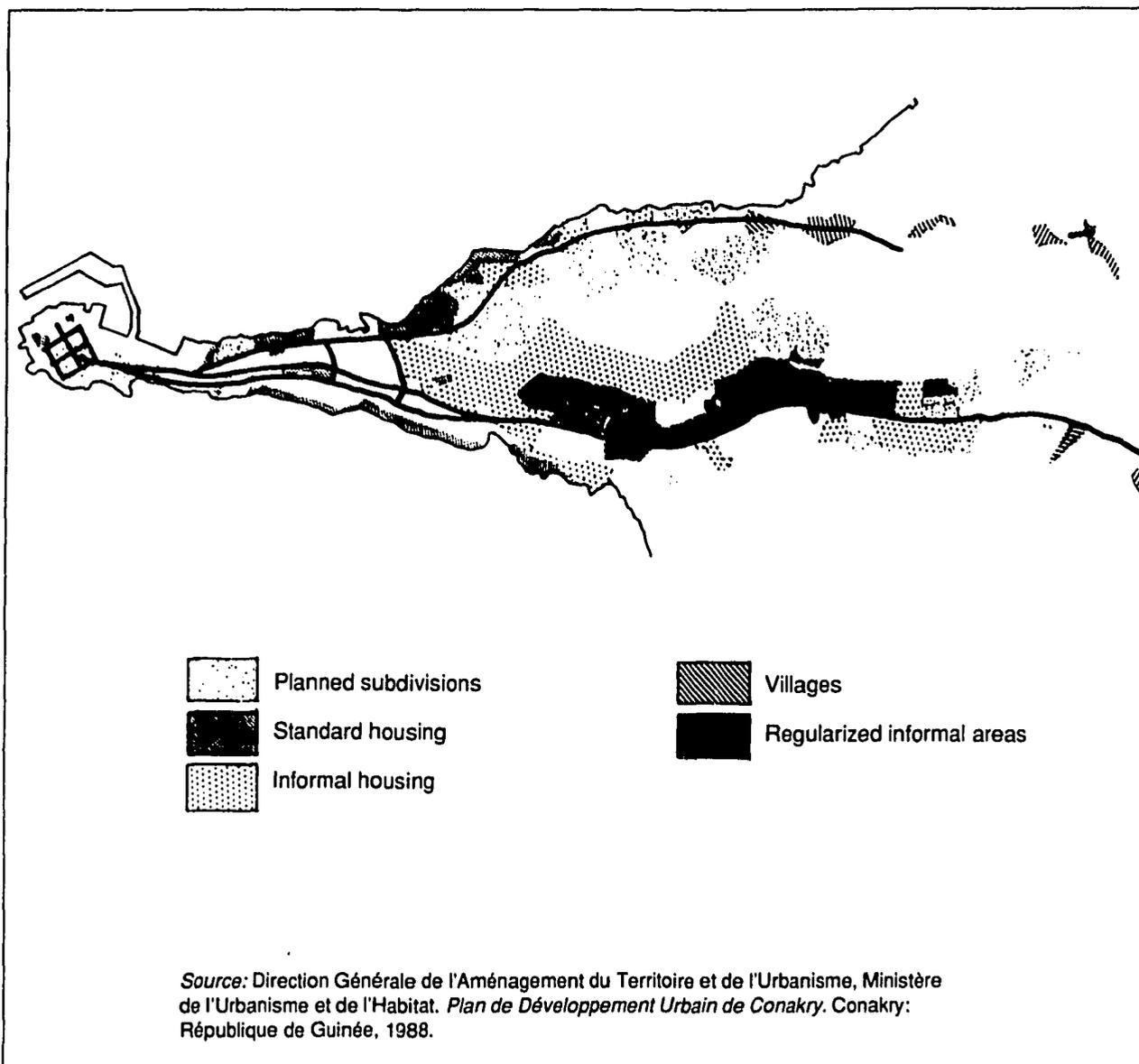


FIGURE 13  
Urbanized Area, Conakry, Guinea



ments. With the exception of structures on customary holdings, no monetary compensation has been awarded for buildings erected without a permit. Occupants on the appropriated site have been given plots in exchange for the parcels they held, usually in the new subdivision but occasionally in a resettlement zone. The transaction has been considered a transfer of utilization rights from one property to another of a roughly similar value.

The allocation of a parcel has been equivalent to the granting of an occupancy permit. A progressive fee has been charged in relation to plot size, although prior to 1987, it was a flat rate. The fee is intended to cover the cost of surveying and demarcating the plot boundaries. Parcels must be developed within three years of allocation. Failure to do so entitles the state to repossess the land.

Informal settlements have developed on village lands regulated by customary law (figure 13). Since land cannot be sold, transactions have been recorded in private deeds as donations of property rights. Restructuring and upgrading projects have been the sole mechanisms by which land tenure has been regularized. The main objective of public intervention has been to ensure the minimum infrastructure needed to integrate the area into the urban fabric: access, drainage, public rights of way, and sites for community facilities and future improvements. Regularization of tenure on the site has occurred as a byproduct of the restructuring process.

The official mandate given to surveyors has been to plat the largest feasible area in order to maximize the return on the government's investment in infrastructure. They have also been empowered to appraise existing improvements for compensation purposes. In the absence of legal definitions of improvements and official compensation schedules, the process has given surveyors wide discretionary powers, which they have used as leverage in their negotiations with property owners. The resulting agreements have implemented the official mandate, avoided conflicts with occupants, and secured a profit for the surveyors (usually a number of plots from the chief's share). The potential for excessive arbitrariness and corruption has been tempered by widely accepted practices. Despite drawbacks, restructuring projects have sanctioned the legitimacy of informal development on village lands and contributed to its integration into the urban economy.

Since 1986, decentralization laws have created an administrative hierarchy of units of local govern-

ment in which municipalities with appointed governors have been subdivided into communes headed by elected mayors. The communes, in turn, have encompassed urban quarters, presumably a socially cohesive area headed by a neighborhood council consisting of six elected members whose president acts as executive officer. A council of elders has advised on issues requiring deliberation. Neighborhood councils in fringe areas have been dominated by holders of customary rights. The councils have witnessed the private deeds by which informal land transactions are recorded.

Despite their lack of executive and budgetary autonomy and their subordination to the commune, neighborhood councils have provided a crucial first step in the regularization of tenure by legitimizing transactions long before restructuring or upgrading projects have been envisioned. As a result, surveyors must negotiate with the official body as well as with private parties. The involvement of local councils can be regarded as the beginning of institutionalized procedures for the regularization of tenure in informal settlements.

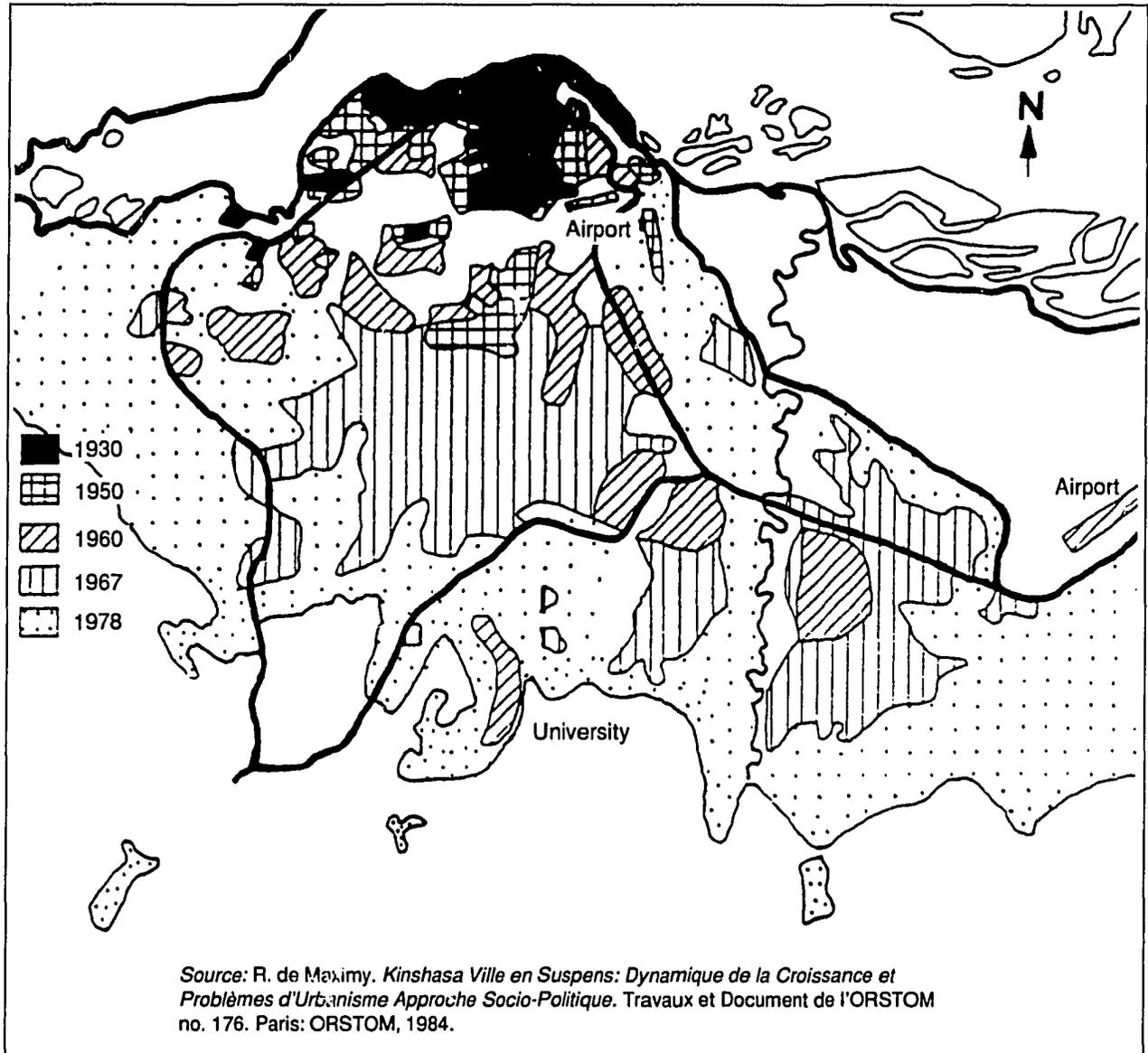
### Case Study: Zaire

As in most of the capital cities of Africa, urban growth in Kinshasa, Zaire, has increased in recent decades (figure 14). 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 have been viewed as transfers of concessionary rights in which the seller obtains concession documents in the buyer's name from local officials. The fee charged has been about 10 percent of the sales price.

A lucrative trade in land documents has developed in which fraudulent operators procure documents issued by local authorities as well as false reproductions of official papers. The vulnerability of the system to corruption and greed has promoted multiple sales of the same parcels, leading to open conflict among claimants. The practice of multiple sales has increased rapidly as development activity in an area has increased, fueling speculative transactions. The remaining tribal holdings have shrunk and the rate of turnover of property ownership has accelerated, with a marked increase in social tension.

The widespread practice of purchasing three or more adjacent lots reflects a rational response to spiralling

FIGURE 14  
Urban Area Growth, Kinshasa, Zaire



inflation and an absence of police protection of personal property on the urban fringe. Excess land has been 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.

The value attached to the possession of real estate has led to the emergence of private real estate brokers (*commissaires*) who charge a fee of about 10 percent on transactions and maintain links with village chiefs, local authorities, small-scale developers, contractors, and producers of building materials.

In the absence of legal standards, widely accepted norms have become the key to security of tenure. The minimum investment required to stake a claim to develop a parcel are a fence and the construction of a one-room shack; hence, the large number of vacant lots enclosed by a two-and-a-half meter high fence. To safeguard the parcel the new owner must manifest a presence on the site to deter encroachment by abutters, stockpile sufficient building materials to signal an imminent intent to build, and initiate construction to avoid the theft of building materials. Completion can stretch over a lengthy period so long as work is undertaken until a completed portion can be occupied.

This uncontrolled para-legal process governs urban land development in Zaire (figure 14). Such development provides housing for 67 percent of Kinshasa's population and accounts for 70 percent of the city's residential area.

### Case Study: Zambia

Lusaka's population grew from 123,000 in 1963 to more than 401,000 in 1974, when the World Bank's first squatter upgrading project began. In the same period, Lusaka's squatter population grew from 15 percent to 42 percent of the city's inhabitants. Originally planned as a spacious garden city, rural migrants flocking to the city were not allowed in the European districts and settled in distant fringe townships such as Kabwata or Natero.

A squatter settlement known as George developed near a large industrial zone on land that belonged originally to a British absentee landlord. George had about 25,000 inhabitants in 1970 with about 50 dwellings per hectare. Nearly 80 percent of the housing stock was owner occupied, 15 percent was rented, and 5 percent was occupied by owners with tenants and lodgers. By 1976, the settlement housed

50,000 persons. About 45 percent of households were made up of tenants who rented accommodations in owner-occupied houses.

The process of land regularization has caused major delays in implementing the squatter upgrading project. The land acts of 1969, 1970, and 1975 authorized eminent domain procedures and the payment of compensation, but upgrading required the passage of special legislation to enable disposal of the assembled land after replanning of the settled areas (figure 15). The Housing Act of 1974 allowed urban leases of up to 99 years for serviced sites and occupancy permits of up to 30 years for upgraded plots.

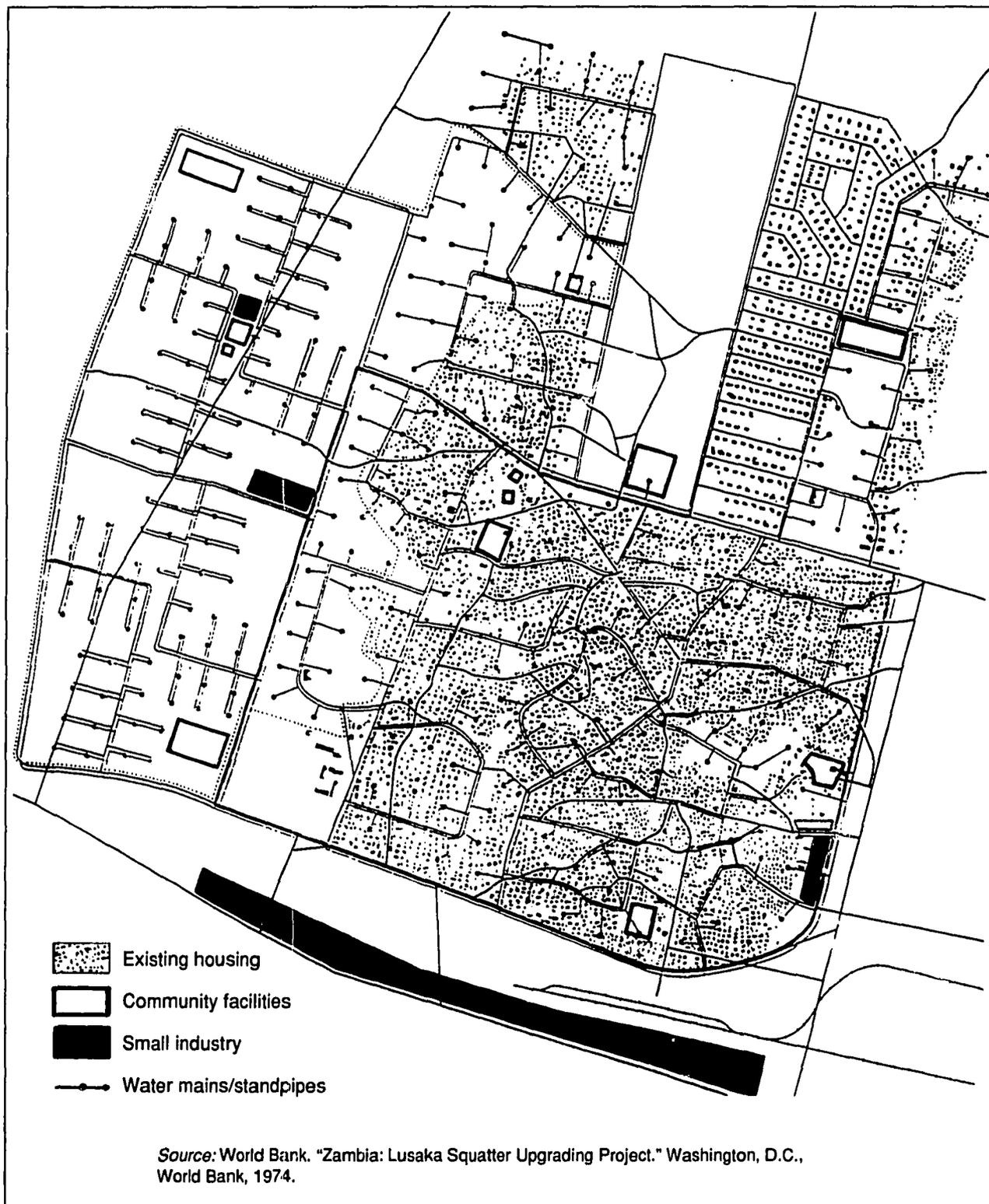
Serious delays have occurred as a result of the following:

- 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, and the Department of Land was understaffed for such a mission. At the time, there was only one registered, chartered surveyor in Lusaka.
- Landowners had no incentive to sell their holdings, since the compensation offered was very small. Many landowners organized to fight the expropriation.
- The community participation process made decisions more lengthy and complicated.

The issuance of titles had been expected to be the mainstay of the cost recovery process, since the scheme was based on service charges and loan repayments. While the acquisition of land was time consuming, the granting of land tenure took still longer, and the first titles were 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 a necessity. Furthermore, its value was questioned, as it seemed less secure than a normal leasehold, and banks did not accept it as security for a loan.

FIGURE 15

Layout of Upgraded Area, Lusaka, Zambia



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