Urban Land Tenure Policies in Brazil, South Africa, and India: an Assessment of the Issues

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Donald A. Krueckeberg and Kurt G. Paulsen

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Donald A. Krueckeberg, Professor
Kurt G. Paulsen, Ph.D. Candidate
Department of Urban Planning and Policy Development
Bloustein School of Planning and Public Policy
Rutgers University
33 Livingston Avenue, Suite 302
New Brunswick, NJ 08901-1987
USA
Phone: 732-932-2994, ext. 735
Fax: 732-932-2253
Email: krueckeb@rci.rutgers.edu, paulsenx@juno.com

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1 Introduction

This paper is a summary and distillation of the issues raised in 23 papers delivered at two conferences in Johannesburg, South Africa in July of 1999. The two conferences were held back to back with essentially the same set of participants gathered over a similar set of concerns. The first was the workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, held July 27-28. This workshop was organized with the support of the French Government, the South African Government and the Lincoln Institute of Land Policy, Cambridge MA, organized jointly by Alain Durand-Lasserve of the Centre National de la Recherche Scientifique, Bordeaux, and Lauren Royston of Development Works, Johannesburg.

The second meeting was entitled *Facing the Paradox: Redefining Property Rights in the Age of Liberalization and Privatization*, sponsored by the International Research Group on Law and Urban Space (IRGLUS). These meetings, July 29-30, were organized by Edesio Fernandes of the Institute of Commonwealth Studies, London, and Theunis Roux, Center for Applied Legal Studies (CALS), University of Witwatersrand, Johannesburg.

The issues of urban tenure are near the top of the agenda in development debates around the world. The basic debate focuses on the question of how important is it to provide land and property ownership to the poor. On the one hand the argument is that individual ownership is essential for the poor to stimulate their own investment in property and as security for institutional investment in their communities, all of which might stimulate civic revenue and thus finance improved community services. The counter arguments claim that security can be achieved with, in Theunis Roux's words, "something less than ownership", such as freedom from violence, freedom from eviction, various secure contracts, or customary forms of collective use rights. These indeed, it is argued, may be the only feasible means of achieving security. In the discussions that follow we present various examples of these solutions with mixed degrees of success.

The urgency of these issues is reflected in the recent alliance between the World Bank and the United Nations Centre for Human Settlements (Habitat) entitled *Cites Without Slums*. Endorsed by the patronage of Nelson Mandela, this program was announced in Berlin on December 17, 1999 as an effort to integrate the Bank's new urban strategy with Habitat's recently formulated strategic vision of a global campaign for secure tenure and urban governance. This joint effort between the Bank and Habitat is under the auspices of the *Cities Alliance*. *Cities Alliance* is a global coalition of cities and their development partners aimed to improve efficiency and development cooperation in urban management. They estimate that in the next generation (by 2020) the world's number of urban residents will increase by 2.5 billion, doubling the current urban population. Ninety-eight percent of that growth will be in the developing countries, where thirty percent of the population already lives below the official poverty line. The Alliance's goal is to improve the lives of 100 million slum dwellers by 2020. The enormity of this modest goal is exceeded only by the numbing magnitude of need.

It is not the purpose of this paper to summarize the entire set of conference papers or the proceedings of those four days of discussion. The purpose here is to focus on those papers that directly treated the policy experiences of Brazil, South Africa and India. These constitute the most concrete and

in-depth product of the conference and the bulk of the papers presented. The authors are primarily from the fields of law, urban planning, and sociology. We in no way wish to discount the importance of other materials presented which we hope will reach a wider audience through other means. Other papers were presented on other African experiences by Adjamagbo (Togo), Bagre (Burkina Faso), Kiamba (Kenya), and El-Batran (Egypt) and Mosha (Botswana). In addition a number of more generally theoretical papers were presented by Azuela (Mexico), Krueckeberg (USA), Fourie (South Africa), and Payne (England). There were as well various other presentations that contributed immensely to the stimulating intellectual experience of these meetings. What follows then is an attempt to distill the experience of these authors whose professional experience include primarily law, urban planning, sociology.

We review below the policies of Brazil, South Africa, and India, presenting in each case an overview of national policy and a summary of individual local experiences in each country. We then discuss the relationship between rural and urban land reform and conclude by summarizing the underlying issues in the debate.

2 Urban Tenure Policies in Brazil

Introduction to the Problem

Over sixty percent of Brazil's urban population is criminalized in one of "three degrees of illegality" (Fernandes 1997, 2). These three forms of illegal settlement are favelas, cortiços, and irregular and clandestine loteamentos.

The best known form of urban slums in Brazil are the "favelas." The name comes from a mountain (Morro de Favela) in the center of Rio de Janeiro, occupied by squatters in 1906. Favelas are areas poorly served by public transport and schools, few health facilities, no garbage collection, precarious or no water, sewer or electric, controlled by violence and criminality, on land illegally occupied and often environmentally unsuitable and dangerous (Fernandes 1997, Castro 1999a). The residents of favelas are, in the words of Castro, "the hostages of a criminal state within a state."

There are two other important forms of illegal settlement in Brazilian cities. "Cortiços" are high density collective housing in central cities. They are old, subdivided into small rooms often housing more than five persons, with many fire and explosive hazards, few bathrooms, no formal rental relationships, no proof of payments, and often run by intermediaries connected to the police or criminals (Saule 1999a).

The third form are the "loteamentos" - subdivisions of land on the urban fringe. Authorized, legal loteamentos are occupied by the upper and middle classes. But "irregular" loteamentos occupy land illegally and where that occupation is contested they are called "clandestine."

Historically powerful rural oligarchies were the main landowners. These owners maintained a system of control over the most productive land, leaving the poor to function as agricultural laborers, not farmers. Therefore, when the New York stock market crashed in 1928, coffee prices were severely depressed, and a coffee prices declined, so did the demand for farm labor. At the same time, the lack of foreign exchange from coffee translated into a decline in Brazil's ability to import industrial products. The result was new domestic demand for industrial production requiring new domestic urban labor. This demand for urban labor, plus the coffee driven agricultural collapse, spurred massive urban migration and consequent illegal housing. Brazil today is 80% urbanized. Illegal housing in the cities served to keep housing costs low and hence wages low as well. Even today, organized labor is sometimes reluctant to support housing reform as it is seen as a clear trade-off against higher wage demands.

The perpetuation of illegal settlements can be seen as the result of four additional forces; high formal development standards, land speculation, an industry of illegal housing, and "market evictions." Elitist standards of development, like exclusionary zoning in the U.S.A., set the bar of market entry far above affordability. The high value areas that result are driven higher by appreciation of real estate from public investments (Saule 1999a). Land speculation is extensive. "The main cities are believed to be comprised of between 30% and 40% urbanized areas – that is, areas technically urbanized through state action and therefore with public money -- kept vacant by private landowners for speculation" (Fernandes 1997, 6).

Almost all land invasions involve a planning process that has come to be called the "chain of interest" or "invasion industry," a chain that usually starts with someone politically well connected. Trees are cut and burned, land plots are marked with trees or cords, streets are planned, sometimes schools and health facilities too, families quickly build foundations, and several dozen shanties are built and occupied. Then, as the risk of expulsion passes, concrete houses, stores and churches are built (Serre 1999). Sometimes these developers will give away the first plots, then later charge high prices for the established development. Government is then forced to provide some services (Fernandes 1997). Soon, the original poorer settlers may feel overwhelming pressure to sell, as they are being priced out of their homes, a process known as "market eviction."

The Evolution of a National Framework on Urban Tenure

For three centuries Brazil had a system of "sesmarias" – of land given to those who kept it productive. If the land was not productive in private hands, it was redelivered to the King - "terras devolutas"(Castro 1999b). In 1916 the Brazilian civil code abandoned these Portuguese juridical roots for the Napoleonic code and German juridical thought. In the new view, possession could only be recognized where there was formal property ownership. This so-called objective view of property, after the German thinker Ihering, rejects the subjective view of Savigny (French) under which possession is legally recognized as possible without any relation to property ownership rights. Thus the tradition of sesmarias, while still widely prevailing in Brazilian cultural traditions, including those of ethnic Indians and blacks, was suppressed under the objective view of the new civil code – possession without ownership was unrecognizable (Castro 1999b).

Consequently, the 1916 civil code permitted evictions from the illegal settlements, but it also permitted the illegal residents to gain ownership by adverse possession (usucapiao) although this required 20 years of pacific use. Usucapiao was not applicable to state owned land, which held 50% of the illegal settlers. These laws, in conjunction with the sanitation movement, which came to Brazil at the same time as in North America and Europe, expelled the low income population to the urban periphery (Alfonsin 1999).

Before the 1988 Constitution, the legal recognition of private property rights was nearly absolute, overpowering any notion of state control or "social interest" (Fernandes 1997). The 1934 Constitution adopted the first weak concept of the social function of property, but from the coup of March 31, 1964 to 1979 an authoritarian military dictatorship in Brazil treated informal settlements with contempt and destruction, with the exception of clientilism – tolerance in exchange for political support (Pinho 1999). Federal legislation in 1979 introduced technical requirements such as a minimum lot size of 125 sq. meters and the reservation of 35% of land for roads and other public uses, and established the National Council for Urban Development, a national planning agency.

The 1988 constitution conferred great power on local authorities to guarantee the "full development of the city's social functions." It states that "urban property only accomplishes its social

function when it attends to the 'fundamental requirements of city orderliness expressed in the Master Plan'" (Fernandes 1997, 22). The constitution also altered the terms of adverse possession on plots up to 250 sq. meters, permitting claims based on only five years of occupation. This recognition of the social function of property, the authority of the Master Plan, and the new terms of adverse possession "constitute a new framework for Brazilian urban law" (Fernandes 1997,22). The Constitution also ensured the possibility of popular participation in the local planning process. An NGO now, for example, is able to submit a bill directly to the local legislature. "In other words," according to Fernandes, "in the terms of the 1988 Constitution the economic content of urban property is to be decided by municipal government through a participatory legislative process, and no longer by the exclusive individual interest of the owner" (1997, 24). Fernandes calls this the new "right to urban planning."

In addition the Constitution recognized Brazil's commitment to a "right to housing", as expressed in her commitment to numerous international accords:

1 the Universal Declaration of Human Rights of 1948,
2 the International Pact for Economic, Social and Cultural Rights of 1966,
3 the International Agreement for the Elimination of All Forms of Racial Discrimination of 1965,
4 the Agreement for the Elimination of All Forms of Discrimination against Women of 1979,
5 the Agreement on the Rights of Children of 1989,
6 the Human Settlements Declaration of Vancouver of 1976, and
7 Agenda 21 on the Environment and Development of 1992 (Saule 1999a, 2).

While these obligations are not interpreted to mean that the state must offer a residence to each citizen, it is understood to mean that the state cannot regress in housing law and is obliged to intervene and regulate the private sector in housing matters. While guidelines for land policy are a federal responsibility, states and municipalities have obligations to promote home building and improvements. Execution is purely a municipal responsibility, requiring the development of a local housing policy through a master plan.

With this general background, we now turn to the cases of specific municipalities: Sao Paulo, Santo André, Diadema, Belo Horizonte, Recife, Brasilia, Rio de Janeiro, and Belém.

Sao Paulo

Sao Paulo is the world's fourth largest city, the business and financial center of Brazil. Its 9.8 million people produce one-half of Brazil's GDP. It has a housing backlog of 4.9 million or 1.1 million households (Engelbrecht et al 1999). Engelbrecht et al report 1.9 million persons living in slums on invaded public land, 2.5 million in illegal allotments, usually self owned, and 595,000 in degraded downtown areas. Pinho offers comparable numbers: 1805 favelas with 1,004,981 inhabitants and 88,000 slum tenements that house 556,000 persons (1999). According to Saule (1999a) people exposed to forced evictions in Sao Paulo live in a wide variety of settings: favelas on public land, social groups on private land, public buildings occupied by groups, movements and cortiço residents, persons living below bridges and overpasses, in areas of water resource protection, in irregular locations of housing by the government and by community associations. His numbers show one million in favelas, three million in collective housing or cortiços, and 2.5 million in irregular or clandestine subdivisions (Saule 1999a).

A South African study group (Engelbrecht et al.) evaluated two programs in Sao Paulo. The first, the Guarapianga Program, is in a water basin, the objective being upgrading to protect water quality. Tenure was not the prime objective. Because of the random pattern of development, tenure is granted in the form of a "sectional title" where the entire development is under one deed with many owners. Thirty-five percent of the area is set aside for public space. The program is considered time consuming and expensive.

The second program they reviewed, the Cingapura (Singapore) Program, is a scattered site program of 90,000 families in 243 locations, begun in 1993. Funded through the federal government and the Inter-American Development Bank, it is a program of "verticalization," high-density multi-story housing that is meant to avoid displacement and to preserve social and economic networks and sustain community cohesion. Most residents purchase their units over a 25-year period with monthly payments of $57, a rent-to-own payment. Those who cannot afford this amount pay a "social rent" treated as a savings toward purchase. The target communities must accept the idea before it moves forward. Units have 1-3 bedrooms with an average cost of $16,000, and are delivered unfinished, with no lights, floor coverings, or internal doors. The program's philosophy is that "nothing should be provided free of charge because the obligation to pay provides people with a sense of citizenship" (Engelbrecht et al 1999, 8). The program includes education, including training in the management of household finances.

Another program attempted in Sao Paulo has been adverse possession (usucapiao) as defined in the 1988 Constitution. It requires a five-year statutory time period of continuous possession without opposition, on a plot of not more than 250 square meters. In addition the claimant cannot own any other real estate, and this right will be recognized only once in a person's lifetime. If there is no contestation of a claim it can be executed in two years. If there is contestation, the process could take 12 years. In October of 1998 there were 9,000 claims pending from the Eastern part of Sao Paulo in federal court. Several other areas in Sao Paulo saw few people applying. None were completed (Imparato 1999).

A 1996 study of tenure regularization programs in Brazil by the Federation of Organizations for Social and Educational Assistance (FAZE) and the German Society for Technical Cooperation (GTZ) found 490 settlements in Sao Paulo involved in programs of tenure regularization between 1989 and 1992. They reported no hard number of settlements or lots effectively regularized and rated the impact of the programs to have been moderate with results of low stability (Alfonsin 1999).

Santo André and Diadema, in the Sao Paulo Metropolitan Region

Santo André has a population of 613,000, with 70,000 people in favelas and 600 in slum tenements. Diadema is smaller but with a much larger proportion of illegal settlements. Diadema's population is 303,000, with 100,000 people in favelas and the balance in 106 areas of popular housing settlements and irregular land subdivisions (Pinho 1999, 8).

In both Santo André and Diadema the legal mechanism for regularization is the Concession of the Right to Use (CDRU). Like the Guarapianga program in Sao Paulo, this program conveys a collective title, one single contract between the local administration and all the dwellers of each favela, giving each family an "ideal fraction" (a percentage) rather than a "real fraction" (geographic plot) of the whole. In Santo André the dweller is expected to pay a portion of the cost of upgrading over 25 years – not more that 10% of income, 8% or 6% for lower income families. A family with income of less that 6 minimum wages, about $390, would be in the 6% category, which usually works out to about $2 per month which is considered completely acceptable. Diadema did not require payments for land.

Santo André had a right-wing administration between 1993 and 1996 and a strong union movement that ignored the housing problem in its negotiation for wages. Diadema had a left-wing administration with strong ties to labor and had more success designating undeveloped areas of the city for housing. Both municipalities also employed a program called Special Zones of Social Interest (ZEIS or EIS), which freed the designated zones from observing the rigid construction and zoning codes, "leading to a significant devaluation of land prices and therefore more access for under-privileged groups" (Pinho 1999, 9). Alfonsin points out that a weakness of usucapiao (adverse possession) is that land can eventually make its way to commercial real estate interests, while the Zone of Social Interest, "by earmarking the specified area of the city as being for the purpose of occupation by social-interest

housing, it seeks to impede the acquisition of plots by sectors of the real estate market interested in building for the wealthier portions of the population" (1999, 9). The FASE/GTZ study found Diadema the most successful community in the nation in tenure regularization and attributed success in the regularization of tenure to four factors: legislation, institutional apparatus, popular organization, and political will (Alfonsin 1999, 11). Since 1983, 194 settlements in Diadema were involved in these programs, effectively regularizing 121 settlements, involving 22,015 lots, a high impact with high stability.

Belo Horizonte

Belo was a planned city that made no provision for the workers who built it. The practice toward the favelas that developed was to eradicate them, ignore them, or play the clientilism game with them. In addition, 1979-82 was a time of great flooding, public works, and consequent displacement (Bede 1999). Belo has 50,000 homeless families and 100,000 families living in favelas.

Belo's PROFAVELA program was based on a 1979 federal enabling law. Its main features were to establish legal parameters for regularization of land subdivisions in favelas and to establish criteria for the transfer of local government land to the occupiers, respecting the original characteristics of the favelas as far as possible and recognizing a basic right to housing. It created URBEL, the Urbanization Company of Belo Horizonte. URBEL was not very effective until 1993 when a new government created the Municipal System of Housing (including URBEL), the Municipal Council of Housing, and the Municipal Fund of Popular Housing. The city also has a participatory budget process and a Municipal Conference on Housing that meets every two years with 1000 delegates to evaluate and revise housing policy.

In new housing construction the most successful programs have been totally managed by the beneficiary families. Land regularization requires each family to make payments over an 18-year period. About 5000 families have benefited from these programs. About 70% of the area of favelas are on private property, where usucapiao in the preferred instrument. Experience shows that in most cases the cost per family of favela regularization is about 1/3 the cost of a new home, including land, urban infrastructure and the construction of a house. The plans for each favela employ what is called "structural intervention", embodied in a Specific Global Plan covering physical and social recovery, land regularization, and community participation. There currently exist six plans ready to be implemented, four in the planning stage, and twenty programmed, affecting more than 50% of the favela population. A Group of Reference is formed at the beginning of each plan. Land is redivided to create more balanced, equal plots, and it is almost always necessary to remove about 15% of the families for road widening and infrastructure. New housing is constructed for these families nearby.

The FAZE/GTZ study shows 194 settlements involved in the programs since 1983, with 11,357 lots effectively regularized, a moderate impact with moderately stable results.

Recife

Fifty percent of Recife's 1,296,995 residents live in favelas. The state, Pemambuco, has a population of 7.1 million and is 70% urban**.** In 1983 the city identified 27 areas as Zones of Special Interest (ZEIS). Recife already had more than 500 favelas. By early 1998 there were 65 designated areas with an average of 44.6 years of occupation, about 12 % of the area of the city. The law was modified to become PREZEIS (Plan for Regulation of Zones of Special Interest), a managerial system with popular participation for favela regeneration. Under an authority named COMUL, teams of technical staff worked with residents and lawyers to prepare an "Urban Upgrading Plan and the Plan for Land Regularization" (Pinho 1999, 6). The work involved NGOs whose professionals mediated between the public authority and the community organizations.

Unlike Belo Horizonte's PROFAVELA, PROZEIS transfers legal possession of property to Recife's residents without the right of ownership, which remain public, with a contract between the public and the residents called "Concession of Right to Real Use" in federal legislation. In contrast to Belo Horizonte, there is no resistance to regularization through this program. Commercial uses can be developed with adjacent residences of the operators, and these possessory rights can be transferred, but only with local government permission as a safeguard against market evictions. The critics of the program argue "that transferring only the possession is seeing the Favela dweller as a half citizen who needs to be protected by the state"(Pinho 1999, 7).

The FAZE/GTZ study noted 200 settlements in Recife involved in regularization programs since 1983. Two settlements had been effectively regularized, covering 442 lots. With strong popular participation, the impact was judged as moderate but the stability of the result was judged to be high (Alfonsin 1999).

Brazilia

The national capital since the 1950s, Brazilia has 1.8 million residents but the planned new city, like Belo Horizonte, made no provision for the workers who went there to build it. Fifty percent of the families are between 2 and 12 minimum wages. Unemployment is 15-20 %. In the 80s and early 90s the use and occupation of land was aggravated by the donation of public lands to needy and middle income families on purely political grounds (clientilism), without regard to needs or legal or planning criteria. One hundred thousand low-income families received lots in settlements and have no documents to guarantee ownership (Saule 1999b, 3).

Housing policy was begun through the organization of a District Housing Conference in 1996 in which some 10,00 people chose 703 delegates. The Conference meets every two years. A Housing Council, which is political and sets policy, and Housing Fund were established in parallel. In 1997 the government instituted a Social Interest Housing Program (PHIS) to regularize low-income housing in the district. Eligibility for the programs required residency for 5 years and not owning any other property in the district. Residency could be established by work documents, bank documents, school documents, or other public records. Possession for 10 years creates ownership. The legalization is through sale. Original occupants get a 60% discount from market value, non-original owners a 40% discount. Payment is for 48 months without interest, based on family income. To date, 54,554 low-income lots have been deeded, 16,480 middle income lots, and 93,880 lots in irregular subdivisions on private land.

There are opponents of these programs and they actively create mischief in the process by making false claims of ownership and spreading misleading information to the population to destroy program credibility. The major challenges are to educate the population on their rights as citizens and to create democratic spheres of action to guarantee support and provide legitimacy (Saule 1999b).

Rio de Janeiro and Belém: Two Ineffective Programs

Rio de Janeiro has a large program called "Favela Bairro." The Faze/GTZ study notes 262 settlements involved in the program since 1987. The impact of the program is low (Alfonsin 1999). According to Castro, "This specific landed regularization project has not been developed or even conceived yet (1999, 17). Although there is some international financing, in general the program lacks local political and financial support.

Belém is the capital of the northern state of Pará, whose growth was spurred in the 1960s with a national policy of highway building to open up the Amazon. The first major illegal occupations were

planned by politicians who gave their names to the illegal districts. The metropolitan region now has about 2 million inhabitants (Serre 1999).

A large number of housing units have been built by the government - 22,000 between 1965 and 1989. After this period a policy of disappropriation decrees was instigated, taking private property with postponed payment of compensation for five years. Since 1996 an average of about 40 decrees per year have expired unpaid, affecting over 400,000 people. Normally the invalid decree allows the owners to reclaim their land. The government says that it is in no position to meet these financial commitments (Serre 1999).

Other Observations

Engelbrecht et al., South African observers of Brazil's programs, make a number of important observations about Brazil. They point out that "no housing is provided as a primary activity within any of the programmes. Houses are only built to accommodate people who are forced to move due to unsafe conditions. "(A)ll upgrading projects include funding for the installation of social infrastructure, including clinics, day-care centers etc. and the establishment of job creation initiatives, including training. No funding is provided for the construction of houses, except in cases where relocation housing is to be constructed" (13). This is quite different from South Africa, where programs are narrowly defined as infrastructure and housing.

They also observed that in Brazil, resident's needs are not met with reference to individual beneficiary qualifications, as they are in South Africa, which greatly simplifies the process. In South Africa this is a "controversial, divisive, complex, costly, and potentially corrupt process"(1999, 13).

> This simplifies the administration of upgrading projects substantially (in Brazil) and reduces the conflict inherent in the exclusion of non-qualifying beneficiaries. There is furthermore no incentive for individual beneficiaries to misrepresent their individual circumstances in order to access subsidies. This sharply contrasts with the South African situation where individual beneficiary administration is a controversial, divisive, complex, costly, and potentially corrupt process (13)

Brazil tends to work with strong political leadership driving projects and many agencies working closely together. South African development agencies tend to work is isolation and to deliver fragmented services. Titling and the registration of ownership in Brazil is not centralized nationally. "The Deeds Registration system is accordingly highly decentralized and is separated from local government cadastral systems, planning frameworks and valuation rolls for the determination of rates and taxes"(13). This inhibits the ability of local government to collect taxes and means that ownership is generally less important. South Africa has a highly sophisticated cadastral system, deeds office infrastructure and local government rating system but this is complex, time consuming and expensive and also fails to assure tax collection.

The rent to own model of Cingapura is similar to South African programs. Furthermore, programs in Brazil for job education, homeownership education and local economic development activities take place for two years after the physical construction is complete, leading to higher quality development and greater success in building civic responsibility (Engelbrecht et al. 1999).

Castro feels that the greater the complexity of the legal system, the wider the gap between that system and its mediation of justice. "A juridical system basically built upon alien cultural references that discards the cultural structural values which form this society is fated to work as an instrument of domination…" (1999b, 2). In the current Brazilian constitution there is an inherent conflict in property

rights between those of the individual and those of the collective (social function). She raises a very interesting philosophical point, that almost all Brazilian jurists include in the minimum definition of private property right the "economic expression of the property." "It is a relevant question," she claims, "to be discussed, since the economic value is not an intrinsic element to the structure of anything, but an aggregated factor due to social-economic externalities. How should the right guarantee economic values aggregated to things by social factors that are external to them and changeable?" (Castro 1999b, 6).

The " right to housing" as it appears in municipal urbanistic legislation "has no content, from the aspect of juridical power" (Castro 1999b, 9). She maintains however, that "The 'right to a house' will exist if we give a new interpretation to the juridical content of ownership. If juridical content is provided to possession 'in good faith' of an urban realty, considering it legally protected as part of the tenant's assets, then the right to a house has been acknowledged" (9).

3 Urban Tenure Policies in South Africa

History and Constitutional Background

In the Natives' Land Act of 1913 the South African Government set aside 87% of the total land surface for the white minority (24% of the population) and confined the black majority to largely peripheral and rural "Scheduled Native Areas" (Xaba 1999). Blacks could only own land in black areas. At the time of this act and for a few years afterward there were actually a significant number of cases where black male syndicates bought up large farms from whites. As Kuhn remarks, "It was nothing short of the customary tenure reasserting itself in the belly of the beast" (1999, 6). Freehold private ownership was fully withheld from the African population under the Land Act of 1939 (Cross 1999, 3).

The Group Areas Act of 1966 evicted large numbers of non-whites from urban freehold areas which were then destroyed. District Six in Cape Town and Cato Manor in Durban are famous cases of this policy's impact. Blacks were either driven to formal townships or removed to "homelands." Despite harsh pass laws (requiring non-whites to carry documents permitting them to pass into white areas) and influx controls (other limitations on the movements of non-whites), the black population grew rapidly in informal settlements, as they had no other means of living near their employment. By 1995 the housing backlog was estimated at 1.5 million units. "Approximately 13.5% of all households lived in freestanding squatter settlements on the urban peripheries and in backyard shacks" (Xaba and Beukman 1999, 3).

The fall of apartheid was followed by a new constitution in 1993 and the election of Nelson Mandela of the African National Congress party as President in 1994. For many South Africans these acts alone brought a sense of security of tenure. The 1993 manifesto of the ANC set a goal of redistributing 30% of all agricultural land within five years. Within five years they had redistributed only 456,331.61 hectares (equivalent to a square, 42 miles on a side), nothing like the target (Roux 1999, 2).

One constraint was the new Constitution. It had a property clause similar to the Fifth Amendment of the U.S Constitution. It guaranteed that every person shall have the right to acquire and hold property, to dispose of those rights, and to not be deprived of them except by due process for a public purpose with just compensation, taking into consideration use, history of acquisition, market value, and investments made. Progress was also impeded by the ANC's recognition that any attempt to dilute these protections given to private property might undermine foreign investor confidence in the "New" South Africa. However, the Constitution was revised in 1996 to contain an elaborate property clause so radically new as to merit quoting in full.

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
(2) Property may be expropriated only in terms of law of general application –
    (a) for public purposes or in the public interest; and
    (b) subject to compensation, the amount, timing, and manner of which must be agreed, or decided or approved by a court.
(3) The amount, timing and manner of compensation must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant factors, including –
    (a) the current use of the property;
    (b) the history of the acquisition and use of the property;
    (c) the market value of the property;
    (d) the extent of state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
    (e) the purpose of the expropriation.
(4) For the purposes of this section –
    (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
    (b) property is not limited to land.
(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure, or to comparable redress.
(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property, or to equitable redress.
(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform in order to redress the result of past racial discrimination, provided that any departure from provisions of this section is in accordance with the provision of section 36(1).
(9) Parliament must enact the legislation referred to in subsections (6) and (7).

(Section 25 of the Constitution of the Republic of South Africa Act 108 of 1996 as quoted in Roux 1999, note 3)

Programs for Tenure Security

The idea and practice in South Africa of delivering freehold tenure to urban low income household comes not from a popular struggle for rights, as in the case of Brazil, but from the dominance of a particular intellectual position developed by the Urban Foundation in the late 1970s. This position saw freehold tenure as a way of satisfying a universal need to stabilize informal settlements and is part of a package of services that includes a housing capital subsidy by individual entitlement (Huchzermeyer 1999b).

The programs regarding property and tenure tend to fall into three areas, each tied to a specific section of the Constitution. The three areas are tenure reform, land restitution, and land redistribution. Section 25(6) of the Constitution supports the tenure reform programs. Pursuant to this mandate, Parliament passed the Interim Protection of Informal Land Rights Act 31 in 1996. This act and a subsequently proposed Land Rights Act have as their major objective the democratization of the indigenous land tenure system in those lands known as Bantustans, which are effectively controlled by

traditional leaders (Berrisford 1999, 2). Unfortunately, as Roux observes, the 1996 statute is a statute in name only(Roux 1999, 4). The Department of Land Affairs initiated a multimedia campaign to inform people of their right to bring cases under the 1996 Act, but there have been no cases thus far.

Land restitution programs are tied to Section 25(7) of the Constitution and have an urban focus, aiming to restore lands taken away since 1913, such as District 6 in Cape Town and Cato Manor in Durban, when the government began relocation and confiscation maneuvers against non-whites. A program soliciting citizen claims was initiated and courts for their settlement have been set up. Many claims have accumulated, but the program has been severely limited by scant resources and an unwillingness to exclude certain categories of claimants which Parliament has the power but not the will to do (Roux 1999).

The land redistribution program is linked to Section 215(8) of the Constitution. Beginning as a series of Presidential Lead (or Pilot) projects, it has had a tentative start. It is targeted at white-owned commercial farmland and predicated on a willing buyer/willing seller model using market prices. Purchases are effectuated through buyers' pooling of one-time government capital grants of R 16,000 (about $2700) per poor household. The result is not a new class of black commercial farmers but rather subsistence farming, supplemented with other income. The land purchased is often marginal "which farmers are only too happy to sell" (Berrisford 1999, 3).

The national housing program is applying the same capital grant program in areas of cities where land is very cheap and where there is little resistance. The effect is to recreate spatial patterns of apartheid. "The value of land in the formerly white commercial, industrial and residential areas continues to grow while that of either land in the former townships or other areas previously reserved for black occupation remains very low, with the land generally red lined by commercial banks" (Berrisford 1999, 4). The exception to this is the slow occupation of formerly white areas by black professionals, business people and government workers.

One of the most effective programs of redistribution, enacted in 1997, is the Extension of Security of Tenure Act (ESTA). Though by its title it sounds like tenure reform, Roux maintains that it is actually a land reform measure which has had a major impact and has done so "without paying a single cent in compensation" (Roux 1999,5). The program takes advantage of the concept of property as a bundle of rights, such that the redistribution of rights in land reorganizes the bundle without taking the land itself, therefore not triggering the constitutional need for compensation. This bears upon a subtle but important distinction between the current Constitution which protects "property" and the 1993 Constitution that spoke of "rights in property," leaving room to take rights to property that are considered separable from property. Roux concludes that "this formulation means that land reform policies that do not result in an outright transfer of title to the state will probably not have to provide for compensation in respect of any adverse economic impact they might have" (Roux 1999, 6).

ESTA operates in conjunction with a sister act, the Land Reform (Labour Tenants) Act 3 of 1996 (LTA), which provides short-term protection against arbitrary evictions. Hence "occupiers" under ESTA and "labour tenants" under the LTA acquire the right to reside and use land on which they have resided and used, on or after the passage of the respective statute. These rights are evoked in court either in defense against eviction or in the assertion of further rights to water, grazing or services (Roux 1999, 7). These rights are real under ESTA, that is enforceable against successors in title, but are not real under the Labour Tenants Act.

The effect of these two Acts has been "to create several million servitudes (or easements) overnight" (Roux 1999, 7). There are good reasons to consider this a better solution than outright ownership. Most farm workers rely on a creative mixing of incomes from different sources, not just

crops. Outright ownership would sever the worker's ties to all other sources but the land, which is not enough to live on, leaving the worker to rely only on labour legislation to guarantee the critical component of cash wages.

The tenure security offered by ESTA and the LTA are less than ownership, but secure the rights of the tenants not only to land but to services as well:

> "…services in South Africa's rural areas such as access to water, electricity and even schooling, are seldom public goods, but rather part of a farm worker's employment package. On the one hand, this illustrates the tremendous social power that landowners still enjoy over their workers. On the other, the private provision of such services is a social resource that the South African government dare not destroy" (Roux 1999, 10).

At least with the provision of water, ESTA makes the deprivation of these services tantamount to eviction.

The ESTA however is a rural program and what Berrisford feels is needed is an urban equivalent, and the moral conviction to make it work. "The lack of urban action is," he states, " by and large, not the result of legal or policy shortcoming but rather that of a reluctance of the nation's urban elite to grapple with the complexities of the urban land market, a market in which that elite generally holds a significant stake" (1999, 1).

Formal Planning and Informal Settlements

Public and market rate development is guided, in general, by the national policies of the Development Facilitation Act 67 of 1995. The 1995 Act speaks to informal settlements in very general terms in Chapter 1, Principle I, which states that "the administrative practice and law should provide for urban and rural land development and should facilitate the development of formal and informal, existing and new settlements" (Xaba and Beukman 1999, 12). Principle II draws a distinction between illegal occupation, which is to be discouraged, and informal development, which is to be "recognized." Principle VII is the most explicit statement on tenure. It states that

> Land development should result in security of tenure, provide for the widest possible tenure alternatives, including individual and communal tenure, and in cases where land development takes the form of upgrading an existing settlement, not deprive beneficial occupiers of homes or land or, were it is necessary for land or homes occupied by them to be utilized for other purposes, their interests in such land and homes should be reasonably accommodated in some other manner. (Xaba and Beukman 1999, 13)

The Department of Land Affairs published a Green Paper on Development and Planning in 1999. It speaks of the lack of knowledge, difficulties with interpretation, and "willful recalcitrance" as the reasons that the principles of the Development Facilitation Act of 1995 have not been enacted (Berrisford 1999, 6). The Green Paper itself is silent on informal settlements (Xaba and Beukman 1999, 8). A few provinces (Western Cape, Kwazulu-Natal, Northern Cape) have enacted their own planning laws, but "tenure upgrading has not really been viewed as part of planning" (Xaba and Beukman 1999, 9).
With this context in mind we now turn to examine specific cases in the Eastern District of the North-West Province, R293 towns in the Greater Nelspruit area, Weilers Farm, and Cape Town and Durban.

The Eastern District of the North-West Province

Johannesburg is one of the three great metropolitan centers of South Africa and is located inland in the north-east part of the country. (The other two large metropolitan centers are Durban on the East coast and Cape Town on the Southwest coast.) The Province of Gauteng surrounds Johannesburg and also contains the national capital of Pretoria , north of Johannesburg. To the north and west of Gauteng Province is the North-West Province. Its Eastern District is immediately west of Pretoria and is the site of the eight or so towns that were the subject of a study by Allanic and others. While in a different Province, these towns are satellites of Pretoria. The study towns range in size from 1500 to 15,000 households.

Evidence from this study strongly suggests that formal security of tenure, through title, and feelings of security are vastly different things. In a survey of 236 families, 29% claim to hold a registered title, 71% firmly believe they own their land, only 3% perceiving a problem with long term tenure, and 74% were completely uninformed about the government's land reform program. Meanwhile, there is an "explosion of self-initiated, self-funded, self-built improvements and extensions to existing dwellings"(Allanic et al. 1999, 13).

The authors also claim that there is a widely held belief in South Africa that urbanization is a slow, painful and inevitable process to which all aspire, and that small peri-urban town like these in the Eastern District are only stepping stones in the process. There is also a widely accepted belief that the rural populations would "if given half a chance involve themselves in agricultural activities with gusto." Then there is the widely held opposite belief that "these simple rural folk have forgotten or don't know how to succeed in vegetable growing." Allanic et al. have shown that all of these assertions are untrue. For most people urbanization was easy and happened a long time ago. They have no desire to become more urban, and they have not lost their agricultural skills and ties. Their lives routinely move back and forth between rural and urban homes, and for the most part they like it that way.

For most of these people land reform subjectively happened in 1994; political legitimacy brought with it de facto security of tenure. However people still relying on pre-1994 arrangements are vulnerable. Women are especially vulnerable, as rights are not held in family names but in husbands'. Even the supposed conflict between traditional and formal democratic authority does not hold. They have no complaints with traditional authority over communal property, yet they want individual title deeds because they see scarcity of land in the future and higher costs of acquisition in the future. The title now is a protection against that eventuality (Allanic et al. 1999).

R 293 Towns in the Greater Nelspruit Area

Nelspruit is a town north of Durban and east of Johannesburg and Pretoria, situated on the border between South Africa and Mozambique, in the Mpumalanga Province. There are about 250,000 people in the area. R293 towns were established by Proclamation 293 of 1962. There were 101 of these towns in 5 out of 6 provinces in 1999 into which former homelands and self-governing territories were incorporated as a result of the Proclamation. Nominally they are owned by the Department of Land Affairs and they are in areas where authority over land is divided among competing traditional leaders. Tenure upgrading was initiated in 1998, motivated by considerations of social redress and the expectation that it would bring about socio-economic development. Residents commute daily to employment. The closest of these towns to Nelspruit is 20 km. Informal settlements have mushroomed in the last 15 years and government policy promotes housing with individual ownership in the form of greenfield developments.

Current housing policy assumes that ownership will foster civic pride. The provision of municipal services is seen as conditional upon using that ownership to identify end users and thus ensure their payment for services. Yet, in practice, services payment levels are at about 25%. One explanation

often given for this nonpayment of services is that these South Africa non-whites, in the latter days of apartheid, often withheld payment for services as a form of political protest. This pattern of non-payment persists after apartheid because people assume that the services are a deserved form of compensation for past deprivations and injustices. Another explanation is given by Cross:

> It is still an open question as to how far non-payment of service charges in the impoverished informal areas is due to unemployment and lack of money, or to a stubborn rurally-derived belief that services are part of the right to settle and represent a tradeoff against basic needs once filled by the rural natural resources base, but now out of reach due to overcrowding and environmental damage caused by apartheid spatial planning (Cross 1999, 7).

Policy also assumes is that formal tenure will create a market that will promote consolidation of housing structures. But again, contrary to theory, there is widespread consolidation in areas where the form of tenure is not ownership.

Another assumption has been that ownership would be a catalyst for local economic development and would halt the practice of borrowers taking out life insurance policies as security for their loans. Owners with titles, it was hypothesized, could now use their property for that security instead, freeing the insurance payment monies for other development investments. Unfortunately at the same time the government has been upgrading tenure, it has been reducing investments in water and transport, decreasing public transport subsidies, raising commuting costs and hence causing consumers to divert those projected savings from investment to water and transport. Reduced investment in water and transport are perceived to be a de facto reduction in tenure security. In addition there are new transfer or conveyancing costs incurred with ownership. This demonstrates the lack of intergovernmental coordination of policies.

Ownership plans have also sometimes been strongly opposed by traditional authorities. Rental and group ownership schemes might better approximate the traditional tenure arrangements and should be given more consideration (Ambert 1999).

Weilers Farm

Weilers Farm is one of eleven pilot projects of the Gauteng Province's "Informal Settlement Upgrading Program," funded through the national housing subsidy and a national showcase for successful tenure reform. The farm is situated 30 km south of Johannesburg, 15 km south of Soweto, housing 2500 families on 330 ha. and 3200 sites. It is officially now known as Kanana Park and managed by a community-based organization, the Thuthuka (meaning "Let's Improve") Foundation (Huchzermeyer 1999a).

It is not clear whether Weilers Farm was started as exploitative shack farming or compassionate pragmatism on the part of the owner. Illegal tenants had been taken in since the 60s, working for Mr. Weiler and renting from him, in conscious defiance of official government policy. Weiler abandoned the farm in 1985, no longer feeling secure there. In the area, 75 percent of the landowners had abandoned their farms due to crime by the mid 90s. The Farm attracted urbanites as well as farmers because residents of urban back yard shacks could live at Weilers Farm for no rent. Similarly hostel residents from Soweto found the farm a refuge from township violence. Mr. Weilers' land was taken by the government in 1987 and he received compensation above market value. Part of the area was declared an emergency camp and there were attempts to forcefully remove people to Orange Farm further south.

In 1995 the new provincial government designated the farm as a pilot project. A team was established to do planning, including Provincial and local officials, seven democratically elected section

heads from the farm, and two other community leaders - a teacher and a business person. These latter nine persons formed the Thuthuka Foundation. The provincial government program saw the upgrading of tenure as the first step in overall upgrading. "The meticulousness of the Thuthuka Foundation is praised by the provincial administration, which finds that in comparison to the other ten pilot projects of the Informal Settlement Upgrading Programme, which are all local authority driven, Weilers Farm is progressing most rapidly and with the least problems." Upon completion, the project will be managed by the foundation with "no involvement from the local authority other than plan approval and inspection" (Huchzermeyer 1999a, 7).

Huchzermeyer feels that the government's policy of selective recipient qualification for the subsidy drives the more well-to-do and influential people out of the settlement, leaving behind a homogeneous pool of those stigmatized as low income. The program also excludes persons for lack of citizenship, for previous ownership of property (even if by a defected spouse), and for being without children. The result is the creation of "a new class of haves as opposed to have-nots" (Huchzermeyer 1999a, 9). The author feels that the individualized capital subsidy program might better be geographically or place oriented rather that recipient oriented, eliminating the personalized allocation criteria (Huchzermeyer 1999a, 12).

Cape Town and Durban

Catherine Cross of the Rural-Urban Studies Unit, University of Natal, Durban, reviews the experiences of Cape Town and Durban. Tenure security, of course, is available to the poor by the same mechanisms it is available to the wealthy, but that is too expensive. Consequently for the poor, tenure security (title) in informal settlements is mainly available as part of the delivery process of upgrading by a municipality or authorized private developer. Thus it can imply an ability to pay charges for services. The housing subsidy of R 16,000 "fills the gap left by the unavailability of private sector mortgage finance at the low end of the urban market, but leaves a gap slightly higher in the market for households that could afford to pay off a better house but cannot get the finance to obtain one" (Cross 1999, 5).

Durban's informal settlements are old, heavily differentiated, with extensive land restitution claims and are linked to former homelands in the region. Cape Town's informal settlements are relatively new and draw on Coloured in-migrants from farms, old mission stations, and the Eastern Cape rather than homelands. "Both city administrations are deeply committed to providing land, infrastructure, tenure security and livelihoods to the disadvantaged residents" (Cross 1999, 10). Resources flowing into this work are massive relative to total metropolitan governmental expenditures.

Both Durban and Cape Town are working on planning schemes to combat sprawl and reduce costs of services by compacting development. Cape Town planners are working on estimates of the cost to extend the housing subsidy to all eligible, which means they currently do not know the build-out costs of the policy. Densification is not popular with the poor. White areas are already low-density. Crowding also promotes violence, stress, health problems, crime, and "spiritual attack or witchcraft". Most residents walk to work and have no transport costs.

The Cape Town model is based on delivering a finished house and is not financially viable. "Access to tenure through this effectively gold-plated vehicle is falling further behind the rate of increase in demand, so that the informal process of access to land is accelerating as it outruns the tenure formalization process that is chasing it" (Cross 1999, 15). The Durban model "of site and service delivery only with *in situ* upgrading" seems more viable.

At Blaauwberg, on the northern periphery of Cape Town, households who had just received services and tenure security moved out within two months. Moving into one of these upgraded houses

means not only paying for services, but "changing over from what is seen as a rural culture of mutualism and thrift to what is seen as the correct urban township lifestyle, by buying formal furniture, appliances, and other relatively expensive household goods, along with fashion clothing, food and other display items and consumables" (Cross 1999, 5). Cross' point is that moving out may not be due to "deliberate down-market raiding (gentrification) but that the residents simply cannot afford the upgrading. Similar cases are reported in the Eastern Cape in Sada and Whittlesea.

The experience of Durban and Cape Town suggests that private market approaches have serious problems. Private developers get discouraged and walk away from unfinished projects. Local organizations collect money and walk away with it, or in worse cases, as happened in Durban, resist completion of the projects as it would eliminate their roles, and sometimes even kill their critics. As Cross puts it, "Emphasis on participatory process may be contributing to encourage local leaders to take advantage of their opaque and unaccountable positions to exploit their constituencies…" (1999, 17).

A Review of the South African Debates

Marie Huchzermeyer of the Department of Sociology at the University of Cape Town has done an excellent job of synthesizing the South African debates over tenure in informal settlements (1999b). The government's policy, she notes, is challenged by the research by Spiegel, Watson and Wilkinson, who focus on household ties that span localities. A household may typically have both an urban and a rural base. Urban children are often relocated to rural kin for schooling. One cannot then assume that the urban base is primary and hence one cannot assume that a household prefers to invest its capital subsidy from the government in permanent urban quarters. They further assert that the delivery of residential environments should be more conducive to patterns of informal income generation in the home and in market places. In other words, residential environments should be less exclusively residential.

Ross found that the very idea of household as a simultaneously residential and productive unit was wholly inappropriate. He found that the kind of human resources that sustain long-term relationships among kin were scarce in informal settlements. This lack of permanence is captured in a pattern of "circulatory migration" in which households maximize their access to a wide variety of income producing activities and services and simultaneously spread their risks (Huchzermeyer 1999b, 5). Circulatory migration means constant on-migration between different urban locations. The implication is that regularization policies will therefore have the unintended consequences of minimizing economic opportunities and increasing social risk. Researchers do not all agree on the benefits of circulatory migration. In the Durban Area Ross found it was spurred largely by violence rather than economic opportunities

"Oscillatory migration" is the pattern of going back and forth between fixed urban to rural locations. Research in Durban by Smit again showed families with both an urban and rural base, the rural base being the safety net. However the family preference was to invest in the urban site, while government programs for tenure were rural. Smit also noted that the current policy tends of split extended families into nuclear families in order to access the capital subsidy, which is not responsive to household size and maintaining existing strengths.

The issue of tenure individualization is very controversial and violence is a major factor to be considered. Morris and Hindson and McCarthy support individualization. Huchzermeyer, quoting Morris (1992:97) says that:

> As long as the inhabitants do not have an individual de jure right and de facto control over their own reproductive resources, shantytowns will always be intrinsically violent, since their reproduction is based on forcible control, patronage and arbitrary extraction of surplus in the form of cash, kind, labour or quasi-military service to those who control social resources.

Similarly she quotes Hindson and McCarthy (1994, 28) who hold that in Durban:

> The challenge at present is to recast power relations within these communities, and more widely within urban areas, through the creation of rationalized, integrated and democratic local authorities which are accountable to residents.

These views lead quite naturally to the support of freehold title programs and a view of participation as one that serves project implementation rather than community control. There is a tendency in these critics to see all community leadership as exploitative.

Another line of criticism points out the fluid nature of the informal settlement process over time. This fluidity is in many ways important to the residents and to freeze its structure prematurely in ownership may be to stifle rather than expedite development. The process of invasion and settlement is described for Cato Manor by Makhatini in three stages. First comes camouflaged or hidden squatting. "Economic opportunities are created through the clandestine building activities (much of which occurs at night) and growing demand for basic household commodities" (Huchzermeyer 1999b, 14). Eventually the shacks are numbered, lending a degree of legitimacy to the settlement. Open squatting takes place in the second stage, in which an official moratorium has been declared by authorities (also a form of recognition). Potential newcomers are diverted to other camouflaged developments and squatter leadership becomes sophisticated in negotiating for official services. A third stage is called organization and consolidation, marked by the mobilization of political parties in the settlement.

Cross describes that the process of getting situated in an informal settlement, in both Durban and Cape Town, follows more or less the rural model. Outsiders approach a relative or contact. Only couples with children are normally acceptable. A plot is identified and the applicant is taken to the headman or chief who reviews the family history, behavior and what payment is expected. The applicant then stays with the sponsors for a while so that the neighbors can observe their behavior while the new house is being built. A neighborhood party celebrates completion and marks acceptance. Up to seven levels of permission may be required, with a written record. "Maintaining tenure rights then depends on good moral behavior" (12).

The urban version of this process moves more quickly and less formally. Single women with children are eligible until the land comes under a lot of pressure, at which point preference is given to couples. Tenure security for those born outside the community is essentially contractual, continuing to be conditional upon acceptable behavior and meeting communal obligations.

Dewar and Wolmarans in research in five settlements in the Western Cape found a process whereby newcomers required introduction to the controlling committee by a resident and after being screened are offered a choice among two or three sites, possibly near their sponsors and after negotiation with neighbors, including negotiation of the site boundaries. The important question raised by these studies of settlement process is what is the impact of tenure intervention? How can one be sure that the fixing of boundaries is not premature in a situation that requires flexibility?

Another concern, raised by Cross, is the system of rental tenancy within these settlements. Upgrading is seen as competing with the private rental sector, also know as backyard shack farming (the erection of shacks for rent in the backyard to supplement the owner's income). Single women and women with children are often not welcome and have to make special rental arrangements as lodgers. The criticism appears to be that the introduction of titled tenure sharpens the status divisions between owners and renters, landlords and tenants, ironically reproducing the very dependency relationship tenure security was designed to erase. Those that suffer the most are women.

Huchzermeyer notes three "broad angles of evaluation" of tenure programs in the literature. One, with private sector sympathies, another which challenges that view, and a third that straddles the two. In the first group is an evaluation of Freedom Square upgrade in Bloemfontein, located just north of Cape Town, whose authors report that ownership is appreciated by the overwhelming majority, over and "above infrastructure and services". However, these studies also show a number of vacated stands (plots) which the authors claim is due to the fact that "most residents do not have an understanding of the value of their sites" (Marais and Krige 1997, 185, quoted by Huchzermeyer 1999b, 18). Huchzermeyer believes this interpretation is wrong, pointing to the fact that post-upgrade selling prices are only marginally higher that pre-upgrade prices, and considerably below the capital subsidy to each site. Similar prices differences were found in studies of Khayelitsha, Cape Town. These studies call into question the extent to which government investment translates into improved site value.

Other defenders of the tenuring programs argue that sale or simple abandoning of sites by owners is due to the owners lacking any sense of personal investment. This problem might be corrected by charging fees for what is presently free title. Huchzermeyer is highly critical of this attempt to impose capitalist values on settlement residents. She quotes McCarthy et al. (1995, 77) as saying:

> Upgrading can unleash the huge consumer markets in informal settlement. The introduction of electricity, for example encourages the consumption of "white goods," kitchen appliances, television sets, etc. (Huchzermeyer 1999b, 20).

In summary, Huchzermeyer's view is that the programs are too prescriptive, not sufficiently localized and not founded on people's need for political development and self-determination.

Meanwhile, as Jens Kuhn points out, there are immense impediments to customary tenure ever being reconstructed. Its exploitation of women, and customary systems have no experience managing schools, clinics and urban services. Customary tenure systems cannot deal with regional, non-local implications of land development control, and there seems to be little or no precedent for reversing the commodification of market relations, once established (Kuhn 1999).

4 Urban Tenure Policies in India

Introduction

At least 55 million of India's poor live in cities in tenure status which can be defined as unauthorized, illegal, or informal. These settlements, often called "squatters", are characterized by poverty, insecurity, and poor conditions of shelter and infrastructure. The Indian government has been concerned about these informal settlements throughout most of its history. Yet, its policy orientation and responses have evolved over the years, mirroring trends in both the world economy and in academic and theoretical literature on development. This section will trace the evolution of policy responses to squatter settlements, with particular reference to tenure polices and policy changes in Mumbai (formerly Bombei), Delhi, Visakhapatman and Shillong.

An understanding of urban land tenure systems in India must begin with a history of colonial land policies. The land tenure systems extant in India today are largely derived from the British colonial system, which leaders adopted *en masse* after independence. In 1884, the colonial government passed the "Land Acquisition Act", which gave colonial rulers legal right to acquire land by compulsion for "public purpose." (Lyndgdoh, 1999). Public purpose in colonial systems was broadly defined for whatever land use interested the colonial rulers. The British colonial system also established the notion that all land

belonged to the government, called the "Raj". Therefore, all private claims to land required government recognition in the form of legal title. A dual legal system was also imposed, whereby government land (analogous to crown land in the English Common Law) was governed by English law. Territorial reserves were set up for natives, which allowed tribal management and indigenous or customary forms of land tenure and land management. It is this system which was adopted by Indian leaders after independence, and serves as both the legal-institutional framework under which land is administered, and also the source of the largest inequalities of access to land.

Under the Indian Constitution (Article 246), land policy, land supply, urban development and housing policies are primarily State concerns, not the concerns of the Central Government. (Banerjee, 1999a). Thus, there can be observed great variation in the land policies and responsiveness of different State governments to urban pressures. It should be noted, however, that many of the financing mechanisms available for urban development are Federal responsibilities and all State governments are heavily dependent on the central government for administrative and financial resources. Most municipalities lack qualified administrative staff and resources, as most administrators of various policies are actually central government staff posted to states and cities. It becomes apparent that even though the central government has promoted the concepts of devolution and decentralization, much administrative and fiscal capacity remains at the national level.

Banerjee (1999a) describes the history of policy with regard to slum and squatter settlements. Until the 1970s, slums were mostly viewed negatively, as sources of illegality, poverty, and disease. The prevailing assumption was that slums should be cleared, and residents rehoused, either in "proper" urban apartments or through relocation back to rural areas. Similar trends prevailed around the world, especially in the view of urbanization as a negative process to be resisted through strong regulation and restriction. In 1972, the national legislature passed the Environmental Improvement of Slums Act, which was based on recognizing that policies of removal or relocation were costly and failing. Under the slum act, if an area was declared to be a slum and if the municipality declared that the slum would not be cleared for 10 years, the municipality received central government funds for infrastructure improvements. Living in a declared slum area, therefore, implied improved security of tenure. Banerjee (1999a) notes that through 1996, 40 million people were affected by this act.

The evolution from restrictions to improved tenure security and an acknowledgement of squatters' rights is seen in the 7th 5-year plan (National Development Plan, 1985), which states that "Steps should be taken to provide security of tenure to slum dwellers so that they can develop a stake in improving and maintaining their habitat." The recognition is that tenure insecurity precludes investment and dwelling maintenance. This key insight continues to form the basis of many present policies to improve tenure security. In areas where tenure security has been improved, greater investments in housing and land development have occurred.

In the 1990s, Indian urban tenure policies have followed world trends in moving away from an administrative-planning approach to a more market-oriented approach with an emphasis on the role of the private sector and public-private partnerships. The National Housing Policy Act of 1994 enshrines the following concepts as guiding housing policy. First, the role of government is not to provide or build houses, but is limited to "creating conditions and removing impediments" (Banerjee, 1999a). The government will avoid forced relocation and will encourage slum upgrading through granting occupancy rights. Additionally, the concept of participation has entered the policy process with an attempt for decisions to be made with community involvement. Innovations in this law confer joint or exclusive titles to poor and disadvantaged women. Mearns (1999) describes how many women are excluded from holding title to land through either legal or cultural means, and that this lack of access is a key determinant in women's economic status and poverty.

The Draft National Slum Policy (January 1999) establishes the above principles and provides a framework for state and local governments to formulate policies. The core principle is, "that households in all urban informal settlements should have access to certain basic minimum services irrespective of land tenure and occupancy status." The form in which this access should take place is not specified.

As a result of economic forces such as "structural adjustment", and a desire to attract foreign investment in a globalized economy, India has engaged a series of market oriented reforms in many policy areas. Banerjee (1999a) notes the shift from the priority of land acquisition and land planning to facilitating private land market operations. The Urban Land Ceiling and Regulation Act, designed to promote equity through limiting the size of individual holdings, has been repealed. Many states are in the process of abandoning rent control acts which date back to the 1930s. The general process has been one of reducing planning impediments to private land market transactions.

Banerjee (1999a) argues there were multiple determining factors of this policy reorientation. Perhaps most important has been the growth and activism of civil society. The degree of civil society involvement varies between states, but there is a National Campaign for Housing Rights. Additionally, under Indian law any party can file public interest litigation, hence there have been numerous court rulings that slum clearance is legitimate only under strict public interest concerns (health, infrastructure), and only with compensation or adequate relocation. These court actions have served to improve de facto security of tenure.

The shift toward a more market-oriented approach was facilitated not only by economic factors of liberalization and globalization, but also the experience of past attempts at slum clearance and public housing. HUDCO (The Housing and Urban Development Corporation, a parastatal enterprise with central government funding) was unable to acquire enough land to provide for public housing in sufficient quantity to satisfy demand. Additionally, Banerjee (1999) notes the influence of changed thinking at an international policy level, with particular influence coming from the UNCHS Habitat conferences. It should be noted that in the last few years the UNCHS has teamed up with the World Bank in urban development and slum upgrading programs, with a prevalence of World Bank language of freehold tenure security and removing impediments to private markets in urban land.

In the political economy perspective, the Revenue Department plays a significant, if contradictory role in urban land tenure policies. In the reports from various municipalities, there is a significant separation between a) finance and revenue decisions and b) land use planning. The Revenue Department is a function of state government, the sole agency charged with custodial duties and administration of state land, and is the only authority allowed to expropriate land, and the only authority to register land transactions, issue titles and deeds. It appears that the Revenue Department is quite a powerful state agency, independent of local planning and land use decisions, and has strong proprietary interests in not improving squatters' tenure on state owned lands.

Mumbai (Bombei).

Mumbai is projected to become the 7th largest urban agglomeration in the world, with a population over 15 million. It is estimated that between 55 to 60 percent of Mumbai's population reside in slums, somewhere between 8 and 9 million people. Furthermore, 40 percent of slum households have income below the official poverty line. This situation is exacerbated by inequality of land holdings, as 55 percent of the population resides on only 6 percent of the land of the city.

In general, the private market for housing is too expensive and there is insufficient housing available for the poor. A majority of the population cannot afford their own place of residence. These forces lead to tenure arrangements of leasing, shareholding, squatting, or social housing schemes from the

State. State housing has never been adequate, and policy changes in recent years have focused on private provision of housing.

Mumbai rivals New York in being famous for rent control policies. The Bombei Rents, Hotel and Lodging House Rates Control Act of 1947 controlled rental rates throughout the city. The aim of this legislation was to make housing affordable for the poor, but landlords and tenants find many extra-legal ways of avoiding the rent control provisions. One system which has developed has been called the "purgee" system, which is a mutually agreed upon illegal transfer of tenancy rights from one party to another. An additional effect of rent control has also been the emergence of large number of buildings in disrepair because their owners could not receive sufficient rent to cover maintenance and operation. Pimple and John (1999) provide estimates of at least 150,000 vacant flats in Bombay. Because of these unintended consequences, many have advocated eliminating rent controls to enable the private rental market to function more efficiently.

Policy responses to squatter settlements have been mixed, and often exist in a policy and legal framework which is contradictory. In 1975, the state (Maharshtra) passed the Maharashtra Vacant Lands (Prohibition of Unauthorized Occupation and Summary Eviction) Act, which made it illegal to occupy or build on any land without permission of the municipal commissioner. The prevailing policy impact was on slum clearance and eviction. However, the Supreme Court of India abolished this act in 1985. Pimple and John comment on the policy focus toward slums:

> State organized attempts towards tackling the issues of housing for the urban poor seem to be primarily rooted in a planners dream of a 'clean and slum-free city' rather than any real concern for the rights of the poor to quality housing facilities and basic amenities…Thus interventions are rejection-oriented attempts to wish away the problem; instead of being rooted in an acceptance of the phenomenon as a legitimate result of the developmental processes and patterns of the city and subsequent empathetic and consistent action towards need-identification and the comprehensive enhancement of quality of life thereof (1999, 10-11)

Delhi.

The population of Delhi is projected to be 12.8 million in 2001, and it is estimated that about 30 percent of the population are located in squatter settlements, covering about 2000 hectares of public land. Furthermore, it is estimated that that more than 62 percent of the population lives in various informal housing sub-systems. These can include illegal subdivisions. Delhi first had a master plan in 1957, but the master plan made no provision for squatter settlements. (Risbud 1999)

Delhi's land management policies are rooted in the strategy of the 1957 master plan. It was believed that the way to implement the master plan was with bulk land acquisition, which took place under the Delhi Development Authority. All lands acquired are managed by the DDA under a leasehold system. Risbud (1999) is critical of the responsiveness of the DDA, "Delays by the public agency to develop and dispose of land especially for the poor has led to large scale squatting on public land." A Supreme Court decision in 1996 ordered Delhi to clean up the city, which has led to an emphasis on resettlement, rather than policies of tenure or in-situ upgradation. There is also evidence that the high planning standards of the Master Plan effectively exclude large populations from housing supply. Thus, the DDA as a central development and land management agency plays a key role in policies regarding squatter settlements.

The case of Delhi also illustrates a continuum of perceived tenure security through administrative and regulatory action. Squatting communities and land occupation are frequently sponsored by politicians in exchange for money or votes. In fact, regularization programs seem to correspond to

election campaigns. The political power of the squatter residents thus implies a degree of security in being able to extract some benefits from politicians.

It has also been observed (Risbud 1999) that the absence of major slum demolition programs in the past 20 years has increased perception of tenure security. This has led to an increase in the number of more permanent buildings being constructed. As well, identity cards issued by the state administration are perceived by squatters as de facto recognition of occupancy rights, even though the administration does not consider this to be the case.

Along the continuum of tenure security, basic services and infrastructure improvements are viewed as enhancing security. One approach in Delhi has been in-situ upgradation, with some basic infrastructure services provided so that families can construct their own dwellings. Risbud (1999) reports that these attendant improvements have raised property prices, as perception of security has increased investment, even without formal access to title. These improvements have also increased resale rates to 20 percent. In-situ regularization has been resisted by local officials and land owning agencies. Local planning officials are concerned about any programs which lead to this level of resale, and so have focused policies on licensing rights, and restricting rights to transfer or sell.

Research on tenure security in Delhi demonstrates the politics of economic classes in their perception of security. In recent years, the Indian Supreme Court has, under pressure from middle income groups and public interest lawsuits by middle income groups, reversed many previous policies and reduced tenure security. The Supreme Court has come to view squatters very negatively, as those who only want "free" land from society. Middle income residents have pressured officials to keep slums and squatter settlements from encroaching on their neighborhoods. In fact, squatter settlements are now more vulnerable to eviction when land agencies want to "recover" land for higher income settlements.

Delhi has mirrored global and national trends in moving to a more market oriented approach to urban land management and housing. Risbud (1999) reports a major shift in policy (June 1998) to allowing private developers and builders in both land supply and housing. Thus, the public monopoly on land was ended. Additionally, some permission is being granted to leaseholders to convert their tenure to freehold.

Visakhapatman (Vizag)

Visakhapatman (also called Vizag) is located on the eastern coast of India, between Calcutta and Madras. The population in 1991 was estimated at just over 1 million, but there is a lot of migration to the city from the surrounding rural areas, which are poor. The largest owners of land in the city are the Visakhapatman Port Trust, the Revenue Department, and Indian Railways. Revenue land is often classified as "objectionable" for habitation, but is often the only option for poor families. Banerjee (1999b) reports that 52,000 households (approximately 240,000 people) live in 251 officially designated slums. Development planning and land use management are designated to the Urban Development Authority, which also acquires and develops land for disposal to the public.

In contrast to both Mumbai and Delhi, Visakhapatman has seen remarkable achievements in slum improvements and regularization. Visakhapatnam shows

> that it is actually possible for diverse institutions with different activities to work in an integrated way, but this does not happen automatically. The process has to be backed by institutional development and clear procedures. The support of the State Government has been a crucial element in the process… The link between tenure regularization, housing and infrastructure is one of the success stories of slum improvement in Vizag (Banerjee 1999b, 16-17).

Vizag has two decades of experience in slum improvement and tenure regularization, leading to improvements in slum conditions, and access to infrastructure, health care, and literacy. In 1979, the Urban Community Development (UCD) program started, focusing on community participation via neighborhood committees to strengthen the capacity of slum dwellers. This was accomplished with a low program budget. DFID (Department for International Development of the United Kingdom) funded a city-wide slum-improvement program based on the principles of the UCD, with grants for infrastructure improvement and increased spending on social, economic and health activities. Community organizers played a key role in the decision making, and UCD staff (of the municipal corporation) conducted surveys with grassroots workers.

During the process, it is estimated that 57.5 percent of the population was granted some form of "patta", which is an occupancy right or use certificate. As of now, only 5.5 percent are living in conditions of insecure tenure. However, since the granting of legal land rights are seen as a welfare measure, pattas are not transferable or saleable. Economic activities (small trades, shops, etc) are not permitted. It has been observed that it is easier to grant pattas on state government and municipal land, rather than on private land.

The situation in Vizag, however, is not without problems, as there has been substantial gentrification and "downward raiding", the selling of plots and houses to higher income families. This is especially so in the well located hills along the National Highway. Rates of property value increases in the hills have surpassed even those in the central city. Many sales are considered distress sales because of the debt of the homeowner. The initial enthusiasm of building a nice home on secure land with secure tenure allowed too much debt at high interest rates, presumably from a variety of non-formal lenders. However, in well-organized neighborhoods with women dominating local committees, the turnover of plots is much lower.

Tribal Areas: Shillong.

Shillong, located in north-east India, represents a case becoming increasingly common in developing countries as rapid urban expansion encroaches on tribal areas. Development pressures and increasing urbanization causes conflicts with traditional systems, both as tribal members perceive urbanization as a threat, and as urban planning officials view indigenous tenure systems as backwards, inefficient, or "underdeveloped."

The Khasi people inhabit the land near Shillong, and their special status as a tribe is recognized in the Constitution. This recognition extends to the acknowledgement that land belongs to the tribe, not the government. However, no legal recognition has been given to indigenous forms of tenure. The Khasi system of ownership is similar to many tribal systems, in promoting an egalitarian ownership structure with land allocation resting in a tribal chief, elder, or council, and the right to alienation belonging to the community or the tribe. Under the customary tenure system, land and tenure relationships are never recorded, and the inheritance system is based on religious and customary principles. The central conflict with planners, then, is that land is not recorded for land management and development. The formal and informal systems clash as the cities grow to engulf traditional areas.

The tribe is matrilineal, with property rights of inheritance going to the youngest daughter. The tribe is governed democratically, a tradition extending back probably hundreds of years. The people of the tribe elect the chief directly when the council (durbar) cannot decide, and the durbar functions as a form of "electoral college". All development projects require the approval of the community. Community development projects are undertaken to promote the security and welfare of the whole

community. "Research shows that community land is the most favorable land tenure category for the implementation of development projects that benefit the community." (Lyndgdoh, p. 13)

Tribal members are suspicious of the municipal authorities, because they perceive that municipal officials want to take or develop their land. Local tribal members rely on their own system of "pattas" issued by the chief, which they do not register with the government. Tribals fear that registering of land claims is a prelude to government acquisition. There is the perception, then, that formal title registered with the government is less secure than that organized in a traditional form.

5 Links Between Rural and Urban Tenure Reform.

Many researchers have noted the lack of empirical studies on the effectiveness of tenure security policies to improve the lives of poor residents. The argument for improved tenure security in urban areas often arises from experience with rural land and tenure reform. Therefore, in order to evaluate the experience in Brazil, South Africa and India, we turn now to explore some comparisons and insights from rural tenure programs for urban tenure programs.

Developing countries have been undertaking policies of land reform and land tenure reform since the end of colonialism. The experience has been mixed, with some countries such as Korea and Taiwan utilizing land reform as a means of destroying local landed elites and achieving impressive rates of growth in both agricultural and industrial production, as well as what has been termed "growth with equity." In other countries, however, the process has been corrupted, subject to violence, or has left poor farmers in worse situations post-land reform. A growing body of literature, both theoretically and empirically, has now developed many years worth of experience on tenure reform. While it is not at all possible to review all of this literature here (see Bruce 1996, Lastarria-Cornheil and Melmed-Sanjak 1999. and Faruqee and Carey 1997 for reviews), a number of key insights can be brought to bear on questions of urban land tenure reform. This section will highlight a number of key points from the literature on land reform, as well as point out a few important ways in which urban land reform might be different from rural land reform.

The Experience With Land Reform.

1. Land reform, to the extent that it yields rough equality of secure tenure, has been associated with both equity and growth. Recent empirical work in political economy and endogenous growth theory has found that inequality can be harmful for growth. In a new, comprehensive data set covering developing countries, Deininger and Squire (1997) find that countries with inequality of initial land holdings experienced the lowest levels of growth. Countries with greater equality of land holdings experienced both faster agricultural and economic growth. Even more, countries with more equal land holdings experience higher income growth for all income levels, except the highest quintile. The mechanism by which equality of tenure affects growth is not well understood, but a few hypotheses exist in the literature.

First, inequality of land holdings (as in large landed estates) is associated with large differences in power relationships. Latin American countries serve as case studies of the relative political and economic power of a few landlords. Power relationships mean that poor tenants are denied access not only to land, but to input and credit markets as well, often leading to forms of sharecropping and tied or bonded contracting. In the face of strong power interests, markets may be subject to a range of differential transactions costs, thus reducing productivity. Politically, landlords are a powerful, conservative force and often resist necessary taxation for improvements in infrastructure and social spending. Inequalities of power are also very destabilizing politically, as most of the Latin American cases represent.

Second, growth comes about because poorer people and smaller farmers use resources more productively. Much research has demonstrated that when people are residual claimants, there is more incentive for efficient management and investment. Third, the experience of countries such as Korea are instructive. Korean land reform increased both microeconomic efficiency of rice production (more output per hectare) and macroeconomic productivity (productivity gains in rice production reinvested in other sectors), which stimulated economic growth. This leads easily into the second point.

2. *The economic rationale for land reform is the "inverse productivity relationship", where smaller farms are more efficient and intensively cultivated*. Although a matter of some empirical dispute, it is generally accepted and observed that small farms are more productive (per hectare) than large farms. Thus, even without considering the dynamic productivity and investment effects, land reform would increase aggregate production. This result is not merely theoretical, but has been observed in many cases of land reform. A most recent case has been China, where land was decollectivized into small plots, and rural productivity increased tremendously.

3. *Experience with administrative land reform has often resulted in slower redistributive processes. Often, those who benefit may not be the most efficient farmers. This has led to a policy shift of market-oriented land reform*. It is frequently alleged, if not actually true, that the beneficiaries of land reform are often those who are politically mobilized or advantaged, whether or not they may be the best farmers. It is also readily apparent that when decisions of land allocation are made by local or national officials, opportunities for administrative "discretion" lead to inefficiencies and/or potentials toward corruption. Similarly, many have pointed out that beneficiaries of land reform either may not want to farm, or may not be able to farm, for various reasons. In market-based land reform, emphasis is placed on making land markets function efficiently and working with the poor to negotiate to buy the land which they desire. Similar shifts have occurred in the major policy advice for urban areas. While the increased emphasis has been on making land markets function efficiently (removing impediments, reducing transaction costs), the experience with market-oriented land reform is still too new for generalized results. There is much concern that negotiation procedures may be subject to informational and power asymmetries.

4. *Security of title-based tenure is neither necessary nor sufficient for household security and welfare. Land, and hence land reform, must be seen as "interlinked" or embedded in a series of relationships with credit, insurance, and labor markets*. Many current proposals for urban land reform focus almost exclusively on formal title-based strategies. Full legal title is not sufficient because, in the absence of thin or missing capital and labor markets, small farms may not be viable. However oppressive and inefficient, sharecropping and various tenancy relationships provided access to capital and inputs through the landlord. A program of titling without complementary support systems has often led to smaller farmers selling their land back to the larger farmers. Similarly, experiences in urban areas show that after titling, many poor people sell their homes after accumulating too much debt.

A second concern is that, at least in many parts of Africa, formal legal title is seen as less secure than other forms of tenure. In many communal forms of tenure, farmers have security of tenure (usufruct rights) based on cultural norms of reciprocity, as well as informal institutions for managing land disputes. Formal legal title from the government exposes the farmer to the perceived insecurity and variability of the state. Moreover, legal title often allows a person to alienate (sell) his land, thus undermining community systems of support and informal insurance schemes. There is the perception that legal titles which can be mortgaged thus make the farmer more exposed to risk and repossession.

Similarly, experience teaches that a full titling system is not necessary. There are a variety of forms along the tenure security continuum which provide sufficient tenure security for investment and

productivity. In China, long-term lease grants are made without title, but rather depend on the perception that village leaders will not remove farmers. Other cases have demonstrated that access to forms of secure tenure other than full title was associated with increased production and investment. An evolutionary approach to tenure reform, then, would be to increase tenure security in stages without the expensive and irreversible step of full title. Varieties of informal property rights can substitute for formal titled rights.

5. Inadequate land reform is often followed by reconsolidation of ownership patterns. The explanation for this result is given above, but this concern bears repeating here. Often times, land reform has not lived up to its expectations when it is proposed as the only solution to rural poverty and injustice. Likewise, it has been observed that when full title is given to informal settlements in urban areas, "downward raiding" or "gentrification" is seen, as the rich buy into the poor areas and reverse the intentions of land reform.

6. Land reform feasibility and success depends on the nature of the tenancy before reform. This result derives from the comparative experience in Latin American and Asian countries. In landlord based estates where the poor or peasants are already tenant farmers, land reform requires only reassignment of property rights, establishing the peasants as residual claimants. In systems where the beneficiaries are already small-scale farmers who are land constrained, land reform depends on being able to acquire land near the present farm. Where the poor are merely agricultural laborers on large farms, land reform is much less successful. Applying this principle to squatter settlements in urban areas, it becomes important to understand the nature of present tenancy relationships. Policy makers need to undertake detailed studies of the exact nature of tenure relationships before applying programs of tenure reform.

Comparison of Rural and Urban Land.

1. The locational importance of land is different in agricultural and urban settlement systems. In agricultural systems, land is a key input into the production process. For land to be viable as a farm, it must be located within a system of access to both input and output markets. Even subsistence farming depends on relations to inputs to production, including labor. For urban areas, the economic locational importance is to be near sources of employment, or transportation. Yet, people move to squatter settlements for social reasons as well, such as to be near social networks, as demonstrated in the South African case. In the papers presented on India, many squatter residents argued that they persist in living in squatter settlements because they are close to sources of employment.

2. Most agricultural land subject to land reform is privately held, while most urban land of informal or squatter settlements is government land. It is unclear whether private landholders or government planning and development agencies are more resistant to tenure reform. The strategies of reform are therefore quite different. In rural land reform, dispossessed peasants seek government assistance to expropriate or negotiate with landowners. In urban tenure reform, it is often the case that community and political organizing against governments takes place, or favor is sought with one or more municipal officials. In the papers presented, it seems that the most successful programs took place where communities were well organized.

3. Except on the urban periphery, agricultural land is generally not an appreciable form of real estate, as urban land is. With rural land reform, the concern is not "downward raiding" or gentrification as it is in urban areas. There is much concern raised in many of the papers that giving formal title to squatter residents will lead to selling to upper income groups. From the perspective of social justice, this is not necessarily a problem if the poor who sell will then have lump-sum capital for alternative investments or consumption as they see fit. Often, though, the poor end up selling for less than the initial investment, which leaves them worse off. From the perspective of policy-makers and planners, selling

out seems to defeat the purpose of tenure regularization. In India and Brazil, this concern has led directly to prohibitions on sales of occupancy rights.

4. The essential relationship between land and livelihood is different in rural and urban systems. In rural areas, access to land is the key determinant of household livelihood and lack of access to land is a key underlying cause of poverty. In urban areas, access to employment is the key source of livelihood. Tenure for housing is obviously very important in household welfare, but it is a secondary concern. In rural areas, lack of land produces poverty, while in urban areas it is poverty which produces lack of land. Thus, policy responses should prove to be different. The research in South Africa also indicates that households may wish to hold both rural and urban land in a process of circulatory migration. Urban land may therefore not be a source of permanent dwelling, but rather a temporary residence.

5. In agricultural areas where land is abundant, recognition of communal and/or indigenous forms of tenure do not generally pose challenges to centralized land management. However, in urban areas, and particularly at the urban periphery, indigenous forms of tenure do not generally accord with comprehensive master planning and land-use controls of municipal officials. This is a key concern in all three countries. As urban areas encroach on customary tenure areas, conflict arises. Tribal leaders and members press for legal recognition of customary and common tenure arrangements and fear that incorporation into formal systems will reduce tenure security. Tribal leaders also view tenure regularization as threats to their political status. There is no easy answer to this conflict, and much further research needs to be conducted.

6 Evaluating the Experience of Brazil, South Africa and Indian Urban Tenure Programs

Drawing generalized conclusions from three unique countries and implying a universally applicable policy solution would ignore the diverse histories, institutions, and politics of these countries. Policy formulation and evaluation is never an abstract academic exercise, but is rooted in the various interests, powers, political and social movements, and institutions within a country. The sections of this paper have traced the evolution of urban tenure programs in each of these countries, with insights drawn from researchers and activists in each country trying to understand their experience. It is hoped that the experience of each country can help give perspective and insight into its own processes, as well as inform debate in the international community. We conclude with three key issues for further discussion.

First, the policy-orientation and planning language in each of these countries has evolved from a negative view of slums and squatter settlements as illegal to a view of squatter residents as playing a potential role in urban development. Policies have moved from bulldozing to upgrading. These changes can be seen in India (Draft National Slum Policy, January 1999), Brazil (1988 constitution recognizing social interest of property and "right" to housing) and in South Africa (dismantling of the apartheid system and efforts at tenure and land reform). In all three countries, there is at least some emphasis on involving squatter residents in decision making and participatory planning. The international community, as evidenced in the World Bank/UNCHS Cities' Alliance, has pledged increased technical and financial assistance for squatter settlement upgrading. Removal of military regimes (Brazil) and oppressive regimes (South Africa) has allowed civic society, NGOs, and community organizations to thrive in many squatter communities. There is much hope that the world community and national governments may finally be recognizing the dignity and rights of squatter settlement residents and the opportunity to improve their lives and stimulate urban economic development. The key issue is whether this shift in policy orientation and language becomes a reality in the actual implementation and institutions "on the ground." In each of the three countries, this policy re-orientation is relatively new. Many years of policy formation, struggle and research lie ahead.

The second key issue is the global shift to "neo-liberalism", that is an orientation toward private market provision of housing and land and removing impediments to land markets. This policy shift is seen in the national strategies of each country. There is an emphasis on enabling local land markets to function efficiently. There are reasons to applaud this development. In general, markets are more efficient in responding to demand pressures than are governments. Marketization is crucial for the development of mortgage-based finance. Restrictive land controls and land policies often exclude the poor from access to land and housing, and have adverse impacts on both productivity and social welfare. On the other hand, there are a great many concerns about free markets in urban land. Market processes often lead to downward raiding and pricing the poor out of the land market. Market processes are not always transparent, and power inequities can lead to asymmetric bargaining, with the rich buying out the poor. Land markets require full and complete information to function efficiently and equitably, and such information is often unavailable and requires a high degree of municipal administration. Market processes are also often thought to make the poor more vulnerable. In short, while there are great benefits for growth and development in markets in land, great care must be taken to ensure equity and protection for the poor. The emphasis of the World Bank (Dowall and Clark 1996) is more on marketization than on equity protection.

A third key concern is with issues of corruption and violence. In some international documents, there seems to be the assumption that simply the adoption of correct policies will improve the lives and position of slum dwellers. In reality, the whole process is often infused with violence and corruption. Social unrest can ensue when groups perceive unfairness, or when middle-income residents perceive unequal benefits to the poor. Poor residents can become violent when the process appears too slow or too arbitrary. Slum organizers, political bosses, and tribal chiefs can often view tenure regularization as eroding their privileged social and economic position. Municipal officials and ministries which exhibited near absolute power over land decisions do not easily give up control. Political sympathy for squatters is frequently low. Change which improves the situation of some will necessarily erode political, cultural, and/or economic power for others. For all these reasons and more, the process is often complicated, political, and violent. The key challenge for policy makers, planners and community organizers is to have a process which is as open, transparent, and participatory as possible. Even then, we should not be naive that the process is always easy.

There are, obviously, many other important issues raised in this paper, such as protection of customary tenure systems, provision of infrastructure and services, access to stable credit and employment, and the political organization of squatter residents. The underlying causal processes which generate the spatial conflagration of slums and squatter settlements are many and complex. No simple, magic policy solution can solve all attendant problems. Programs to improve tenure security are, therefore, an essential policy intervention, but must be integrated into broader programs of planning, policy, development and justice.

References.

Alfonsin, Betania de Moraes. 1999. Instruments, Experiences and Trends in Tenure Regularization in Brazil**.** Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Allanic, Benoit, Jacus Pienaar, Mercia Waring and Brancely Shilote. 1999. Some Perception and Realities Observed During Recent Land Reform and Livelihoods Research of Eight Localities in the Eastern District of the North-West Province. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Ambert, Cecile. 1999. Privatizing Displaced Urbanization: Can Tenure Reform Lead the Way for the Integration and Development of Displaced Urban Areas in a Neoliberal Environment? Issues Emerging from the Greater Nelspruit Tenure Upgrading Process. Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Banerjee, Banashree. 1999a. Security of Tenure in Indian Cities: Overview of Policy and Practice. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Banerjee, Banashree. 1999b. Security of Tenure in Irregular Settlements in Visakhapatman. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Bede, Monica Maria Cadaval. 1999. Housing Policy for Low Income Population of Belo Horizonte. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Berrisford, Stephen. 1999. Redistribution of Land Rights in South Africa: Simply a Rural Question? Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Bruce, John. 1998. *Country Profiles of Land Tenure: Africa 1996*. Research Paper No. 130, Land Tenure Center, University of Wisconsin-Madison.

Castro, Sonia Rabello de. 1999a. "Favela Bairro:" A Brief Institutional Analysis of the Program and its Landed Aspects. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Castro, Sonia Rabello de. 1999b. Some Different Ways of Thinking and Re-constructing Property Rights, and Land Tenure Rights in "New Countries" Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Cross, Catherine. 1999. Land and Security for the Urban Poor: South African Tenure Policy Under Pressure. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Deininger, Klaus and Lyn Squire. 1997. "Economic Growth and Income Inequality: Reexamining the Links." *Finance and Development*, 34:1, March 1997.

Dowall, David and Giles Clark. 1996. *A Framework for Reforming Urban Land Policies in Developing Countries.* World Bank Urban Management Policy Paper no. 7.

Engelbrecht, Carien, Henry Chawane, Rory Gollocher, Georg van Rensburg, Xoliswa Mkhalali, Pieter van der Heever, and Chris Browne. 1999. Upgrading Informal Settlements: A Brazilian Experience. Gauteng Department of Housing, 1 July.

Faruqee, R and K. Carey. 1997. "Land Markets In South Asia: What Have We Learned?" World Bank Discussion Paper.

Fernandes, Edesio. 1997. Access to Urban Land and Housing in Brazil: "Three Degrees of Illegality." Lincoln Institute of Land Policy Working Paper.

Hindson, D. and J. McCarthy. 1994. Defining and gauging the problem. In *Here to Stay: Informal Settlements in KwaZulu-Natal,* ed. by Hindson, D. and J. McCarthy. Indicator Press, CSDS, University of Natal.

Huchzermeyer, Marie. 1999a. A Case Study of the Weilers Farm Informal Settlement Process: Questions Raised about the Current Intervention Framework. Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Huchzermeyer, Marie. 1999b. Tenure Questions as Understood in the Debates in South African Informal Settlement and Intervention Literature of the 1990s: A Critical Review. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Imparato, Ellade. 1999. Security of Tenure in Brazil. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Kuhn, Jens. 1999. Customary Tenure in South Africa: The Final Frontier. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Lastarria-Cornhiel, S. and J. Melmed-Sanjak. "Land Tenancy in Asia, Africa, and Latin America: A Look at the Past and a View to the Future." Working Paper No. 27, Land Tenure Center, University of Wisconsin-Madison.

Lyndgdoh, Yarissa Richmond. 1999. Effect of Tribal Land Tenure Systems on Urban Development: Case Study of Shillong, North-East of India. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

McCarthy, J., D. Hindson and M. Oelofse. 1995. *Evaluation of Informal Settlement upgrading and consolidation Projects.* Report to the National Business Initiative.

Marais, L. and S. Krige. 1997. The upgrading of Freedom Square informal settlement in Bloemfontein: lessons for future low-income housing. *Urban Forum* 8,2: 177-194.

Mearns, Robin, 1999. "Access to Land in Rural India: Policy Issues and Options." World Bank discussion paper. Available at www.worldbank.org/research.

Morris, M. 1992. Violence in squattercamps and shantytowns: power and the social relations governing everyday life. In *South Africa in Transition: Urban and Rural Perspectives on Squatting and Informal Settlement in Environmental Context* by Verloren van Themaat Centre. Environmental Law Division, University of South Africa, 95-103.

Pimple, Minar and Lisa John. 1999. Security of Tenure: the Experience of Mummbai. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Pinho, Evangelina. 1999. The Legislation of Social Interest in Brazil. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Risbud, Neelima. 1999. Policies for Tenure Security in Delhi. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Roux, Theunis. 1999. Something Less than Ownership: Extending Security of Tenure in Rural South Africa. Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Saule, Nelson, Jr. 1999a. Forms of Protection of the Right to Housing and the Combat of Forced Eviction in Brazil. Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Saule, Nelson, Jr. 1999b. Urban Land Regularization – The Experience of Brazilia. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.

Serre, Agnès. 1999. Illegal City and Urban Policy in Belém, Brazil. Paper presented at the International Research Group on Law and Urban Space/Centre for Applied Legal Studies Workshop on *Facing the Paradox: Redefining Property in the Age of Liberalization and Privatization,* Johannesburg, 29-30 July.

Xaba, Subusiso, and Ruth Beukman. 1999. The Upgrading of Informal Tenure in South Africa: the Policy Gaps and the Legislative Challenges. Paper presented at the Workshop on *Tenure Security Policies in South African, Brazilian, Indian and Sub-Saharan African Cities: A Comparative Analysis*, Johannesburg, 27-28 July.