

**Land Tenure, Property System Reforms and Emerging
Urban Land Markets in Sub-Saharan Africa**

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Urban Land Markets in Transition
Edited by Gareth A. Jones

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To Carwyn

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Land Tenure, Property System Reforms and Emerging Urban Land Markets in Sub-Saharan Africa

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Over the last decade, urban land market reform has emerged as one of the key issues in developing countries. In most, reforming land markets is rarely an initiative that comes from the governments concerned; rather, it comes from international financial institutions and cooperation agencies in the developed countries. These reforms have aimed at developing land markets in the context of more open economies, accelerated privatization and a redefinition of the role of the state (Doebele 1994; Dowall and Clarke 1991; World Bank 1993). In Africa, because the supply of land for the urban poor is still dominated by informal/customary interests (Mabogunje 1992), issues of ownership rights are at the heart of current reforms.

This chapter analyses the emerging debates on urban land market reform in southern Africa (namely South Africa, Namibia, and Botswana), as well as other sub-Saharan African countries, both Francophone and Anglophone. This broad perspective is adopted because, despite a wide range of local situations inherited from different colonial and post-colonial histories, land tenure, and property systems, land management practices and urban land markets in these areas have many similarities. In particular, the term 'customary' covers a fairly wide range of situations and land arrangements, but the basic characteristics of the customary system are very similar in all countries (UNCHS 1995). Generally, the market is a concept that is alien to the customary system, yet within which a market exists. Thus, reference to a customary market is an anachronism commonly used for designating informal land subdivision and allocation procedures (Tribillon 1993). Yet, given the absence of any alternative solution proposed by either central and local governments or private/formal operators, the heirs to the customary system remain just on the edge of state law and legality, improvising transfer procedures that mix customary practices, market-oriented strategies and administrative practices (Kiamba 1999; Rakodi 1994). Most of the supply of peri-urban customary land is now exhausted, absorbed by the market, but this has not put an end to customary claims.

In all African cities, land for housing is provided by three main land delivery systems. First is a commercial, formal land delivery system, in which registered land is developed and sold by professional developers and the legality of the transaction is guaranteed by a property title. This land market concerns only a small percentage of land sales and is concentrated in central urban areas where tenure has been consolidated (Programme de Gestion Urbaine et al. 1995). Second, state- or government-controlled land delivery systems provide serviced land generally allocated by central government bodies or government-controlled land development agencies to its client social groups at a price far below market. Beneficiaries can either use the land for themselves or sell it at the market price for their own profit. This market amounts to 10 to 40 percent of total land sales/transactions. Third are the popular informal/customary land delivery systems that provide unserviced plots with no titles and are sold with no legal guarantees by intermediaries or so-called customary owners. This is a dubious market in which the only way to reduce risk is to rely on family, tribal, or religious networks. In sub-Saharan Africa, this market predominates, accounting for 30 to 90 percent of all transactions.

Government attitudes regarding customary land delivery systems vary from one country to another. Three types of situations can be observed. First is the restoration and/or integration of customary ownership. This situation remains the exception but has taken place in Ghana (Asiama 1995; Korkor 1997) and Botswana (Mosha and Kalabamu 1995), where the customary management system supervised by the central state and local authorities has been partly restored since independence. The second situation is represented by attempts to dismantle customary land delivery systems, usually following radical reforms

such as the nationalization of land. Land policies have been deeply influenced by tentative, socialist-oriented reforms in about two-thirds of sub-Saharan African countries (Mabogunje 1992; Programme de Gestion Urbaine et al. 1995; Rakodi 1994; UNCHS 1996a). This was the case in Burkina Faso after the Agrarian and Land Reform of 1984 (Guiebo 1995), Ethiopia after 1975 (Galaup, Tigabu, and Lakew 1995), Nigeria with the Land Use Decree of 1978 (Onibokun 1995) and Uganda with the Land Reform Decree of 1975 (Nsamba Gayiyya and Mudde Walaga 1995). The achievements of these reforms have generally been very poor.

The third and most common situation is the progressive integration or subordination of the customary system. This is often a very slow process, with newly independent states appropriating colonial land management strategies and consolidating their land prerogative, when necessary (i.e., the former French colonies of Benin, Cameroon, Chad, Guinea, Niger, Ivory Coast, Senegal and Togo, as well as Kenya and Tanzania). The attitude toward customary/informal land delivery systems is linked with the political and administrative culture inherited from the colonial state. In former French colonies, where customary rights generally have been formally denied but tolerated, newly independent states took over the colonial land management legacy with a surprising degree of continuity. In the former British colonies, some attempts to restore customary land rights have been made, mainly for agricultural land. And in southern Africa, with the exception of Botswana, formal land markets and free access to urban land was until recently strictly controlled by the white community, with segmented and highly segregationist delivery channels for the majority of the population. But even in this context, customary claims remained important, as can be seen from present demands for land restitution.

In all sub-Saharan African countries, the customary system has shown an astonishing resistance to any attempts at state reform. Indeed, the customary system is able to integrate perfectly into the market in contexts where the demand structure, the institutional framework, and the financing systems prevent the emergence of private formal operators. However, it must be stressed that most empirical studies in sub-Saharan Africa do underline a rapid integration of customary land management into the land market (Durand-Lasserve 1990).

THE MAIN COMPONENTS OF CONTEMPORARY LAND MARKET REFORMS

In the context of most sub-Saharan African countries, contemporary land market reforms can only be understood if we refer to the first generation of land reforms of the late 1960s and 1970s, which aimed at strictly monitoring or prohibiting private land markets (Durand-Lasserve 1994). After independence, the vast majority of states preserved the land management system established under colonization, especially in sub-Saharan Francophone countries, which consolidated a highly centralized, government-controlled land delivery system. In countries that explicitly implemented socialist land management, the principles and objectives were based on political statements that, for example, land is the exclusive property of the state and can never be definitively given up to anyone. Thus, the government had to authorize in advance all land allocation or transfer of occupancy rights (Durand-Lasserve 1994). Property was not created “from the bottom,” through adverse possession or prescription procedures, as is generally the case in already occupied and populated areas, but “from the top,” through discretionary land allocation by the state, as if the land were empty and free of any occupation or claim. In practice, the socialist experiences did not usually achieve their objectives, and the result has been to consolidate the power of central government administration, while diminishing that of the state. Only Burkina Faso has succeeded in partially implementing a government-controlled land policy (Guiebo 1995). The main problems were the lack of resources to provide infrastructure and services; political external pressures from international finance institutions to impose more market-oriented land management policies; and internally insufficient population mobilization.

Current Land and Land-Market Reforms

Today's land market reforms should be understood as a backlash or a reaction against counterproductive state-controlled land management and delivery policies, with the emphasis on privatization and deregulation.¹ For the last 15 years, with the exception of South Africa and to a lesser extent Namibia and Botswana, African governments have been subjected to increasing pressures from aid and cooperation agencies and international finance institutions to promote the development of a land market. In sub-Saharan Africa, the most prominent agents have been the World Bank and bilateral cooperation institutions (especially USAID and ODA/DfID), while the United Nations institutions (UNDP, UNCHS) have played more subtle roles, promoting mixed-economy solutions rather than purely market-oriented land policies.

The development of a land market has required two forms of intervention. First, at the land-market level itself, land reform was necessary in the areas of property rights, tenure systems, land records, information, and registration procedures, in order to "free" land (Payne 1997a; 1997b; Rakodi 1994). Second, at a more global level, measures were needed to put this freed land on the market and to ensure it is dealt with correctly, using regulation where necessary in areas of finance, planning and construction, taxation, and service infrastructure policy. Experts frequently stress the need for governments to promote efficient and equitable land markets, with the emphasis on property rights rather than security of tenure. The objective is for any potential purchaser (household or developer) to be able to buy land that corresponds to what he or she is looking for, in terms of location, physical characteristics, services, and price. This approach is illustrated in the World Bank's policy paper *Housing: Enabling Housing Markets to Work* (1993, 115). The report states that:

Rapid urbanisation in the developing countries, often coupled with independence from colonial rulers and watershed changes in systems of governments have largely destabilised land tenure systems...The establishment of a clearly defined, fair, stable and enforceable system of property rights in land and housing is a key enabling instrument of government. It is necessary to ensure that land and housing can be transferred through enforceable agreements, as well as be used as collateral for mortgage loans.

The authors suggest that "the regulatory system makes sufficient land available for development. Tenure systems encourage transfer and development of land. Conversion of agricultural land to urban uses is not too cumbersome, and the land registration has a broad coverage" (World Bank 1993, 135).

This approach says that a market is efficient if it gives consumers what they are prepared to pay for, a position that is highly debatable. It implies that supply and demand respond rapidly to changes in prices (Hallett 1979, cited in Rakodi 1993). There are a number of conditions necessary for economic efficiency to be achieved through the price system. These conditions are:

- Perfect competition, resulting in a perfect market...in which consumers and producers seek to maximize utility and profits respectively (Harvey 1987, cited in Rakodi 1993).
- Perfect knowledge of production and transaction costs...implying that there is no cost involved in obtaining knowledge (Pamuk 1996).

Land market efficiency also depends on other factors, such as the existing legal framework that should permit the private appropriation, sale and transfer of land, and the regulatory framework that should be

¹ The case of South Africa and to a lesser extent of Namibia is different: ongoing land reforms and land market policy can only be understood if we refer to the apartheid legacy.

able to keep speculative dynamics under control. Lastly, land market efficiency depends on the existence of accurate, updated, transparent, and accessible land-related information systems, and efficient and simple land registration procedures. This requires an administrative organization that most African states do not possess.

In the absence of these conditions, it is not surprising that a land market as such is neither an efficient nor an equitable means of allocating land between uses. So, why is the land market so often presented as the best solution for an efficient and equitable provision of land for housing? The objective of most land market reforms in sub-Saharan Africa is both to put an end to the counterproductive and government-controlled land delivery channels and to integrate informal land delivery practices into a commercial, formal land market. A further objective is to induce the development of a modern, formal commercial land and housing development sector. In this respect, there would appear to be a certain degree of confusion between objectives and the means required to achieve them. The development of a formal market is possible only if certain conditions are fulfilled: acceptance of the proposed measures by the actors concerned; a favorable political environment; an appropriate land information and registration system; and a housing finance system. Creating a formal land and housing development sector through government controls alone will not create these conditions. In short, land market reforms do not take into consideration the key role social links play in the provision and allocation of land for housing (Tribillon 1995). Consequently, we need to question the efficiency of such reforms.

Conventional Measures for Reforming Land Markets

Land market reforms are based on a series of measures to facilitate land transactions and redefine the legal and regulatory framework within which these transactions take place (Dowall this volume; Dowall and Clarke 1991; Farvacque and McAuslan 1992). These reforms usually rely on the combination of direct and indirect measures.

The direct measures include reforms of tenure and property rights to put land for housing on the market (state-owned, private or customary land); to privatize state-owned land; to develop property rights and/or other real rights; and to provide secure tenure through upgrading or regularization. Examples include Ethiopia's Law of Leasehold on Urban Land (1993); Guinea's adoption of the new Land Code (Code Foncier et Domaniale) in 1992; Botswana's conversion of state land (formerly crown land) back to customary land after independence; Namibia's National Housing Policy, approved in 1991; and South Africa's Land Reform Programme, combining restitution, redistribution and tenure reform programs. It should be stressed that, in most cases, especially in Francophone sub-Saharan Africa, promoting a diversity of land delivery systems is not part of land market reform objectives.

Other direct measures include developing a policy and institutional framework to ensure that markets provide adequate and affordable land for housing. This includes the adoption and enforcement of legislative and regulatory measures aimed at improving the supply of land for housing; simplifying and speeding up land transfers (and, whenever requested, the land acquisition process); and adopting lower and more affordable standards (less restrictive land use, zoning and development and construction norms). Similarly, direct measures might involve improving or setting up land records and registration as well as land-related information systems, and especially cadastres (Durand-Lasserve 1993; Durand-Lasserve and Hernandez 1993; République du Sénégal 1993). Regulating, organizing and controlling land (and housing) markets might include measures to regulate the activities of developers and organizing and regulating formal land markets through a system of administrative and financial incentives and sanctions. Finally, suggested direct measures involve transferring land management responsibility to municipal/local levels.

Indirect measures are fiscal mechanisms and incentives. They are aimed at promoting land and housing markets; setting up a finance system for developer and end-user mortgage finance; providing infrastructure services for residential land development; targeting subsidies both for providing infrastructure services and developing mortgage finance systems; and articulating formal and informal land delivery systems.

All land market reforms implemented over the last 10 years incorporate a combination of these measures. Two factors make the difference from one country to another:

- the redistribution capacity of the state, which in turn depends on resources and political will; and
- the land management tradition and practice by states and government administrations, which in turn depend on the preexisting tenure and property systems, the colonial legacy, political orientation of government, and administrative practices.

THE FRAMEWORK OF LAND MARKET REFORMS IN SUB-SAHARAN AFRICA

Two points need to be made before looking at the experience of specific policies in specific countries. First, African politicians rarely make explicit statements concerning land market reforms because it is understood that the reforms are considered detrimental to both the state and the informal/customary land delivery channels. Second, at present, there are few land market reforms as such, but rather sets of measures aimed at stimulating land markets. The countries of sub-Saharan Africa have not deliberately embarked on a comprehensive policy of land market reform but have instead opted for a reformulation of their land policy. The aim of this approach is to give a wider role to market mechanisms in the allocation of land for housing while also trying to preserve the key interests of government institutions in charge of land management. This has meant a redefinition of the role of the state with some responsibilities transferred to the local or municipal level (Badiane 1997). Private actors (formal and sometimes informal) also have acquired new responsibilities in land management, and renewed attention has been paid to the diversification of land (and housing) delivery channels (Tribillon 1993). These choices have then resulted in new legal and regulatory measures to monitor and stimulate the development of a land market, although in most sub-Saharan African countries government interference continues to hinder this process.

In the Francophone sub-Saharan countries, the centralist and authoritarian tradition in urban land management remains strong. The independent states inherited colonial land management traditions without really changing the content to any extent. Central government remains in charge of land-related matters and is very reluctant to relinquish any power, especially with regard to its role as the sole developer and distributor of land for housing (Durand-Lasserve 1999). It also puts up constant resistance to pressure from customary landowners or informal land subdividers (often one and the same). This attitude compromises any diversification of the land and housing delivery channels. The lack of any flexibility, at least until recently, in their land management policies has had serious consequences for most Francophone sub-Saharan countries, not least because they have been unable to satisfy the demand for land for housing (Programme de Gestion Urbaine et al. 1995; Rochegude 1998).²

In the Anglophone sub-Saharan countries, there is a different colonial heritage. The attitude of the colonizer vis-a-vis the customary landowners was often more flexible than in the French colonies, resulting in a greater diversity of land holding and tenure systems (Programme de Gestion Urbaine et al.

² Land development agencies created in several African sub-Saharan countries during the 1980s in a transition towards a market economy with the aim of strengthening public intervention in land development while promoting public-private partnerships never succeeded (Programme de Gestion Urbaine et al., 1995). In Francophone sub-Saharan Africa, this was the case in Burkina Faso (SOCOGIB), Ivory Coast (SETU-DVI), Cameroon (MAETUR-ARAN), Senegal (SCAT-URBAM) and Guinea (SOLOPRIMO).

1995). The rights of the customary owners have more often been recognized, and in part maintained, even by the governments of newly independent states. This was the case in Nigeria, for example, at least until the Land Use Decree of 1978, which unified the land management system under the central control of the state, in Uganda with the *mailo* land tenure system (Government of Uganda and UNCHS 1995; Francois 1997) and in some parts of Kenya, including urban areas, where customary tenure or trust land survived changes of the last decades (Macoloo and Maina 1995). However, as in Zimbabwe, the communal tenure created by the colonial administration and allocated to the African population mainly concerns rural areas. There are three consequences. First, unlike other parts of Africa, informal and customary systems of tenure do not, at present, co-exist and overlap with the formal system (Payne 1989; Rakodi 1993; 1995). Second, in certain circumstances, the customary tenure systems are very well adapted to a decentralized form of management. Third, it has enabled the establishment of more diversified land delivery systems than in former French colonies even if this diversity may hinder the development of a modern, unified land market.

In southern Africa, Botswana, Namibia and South Africa inherited most of the British colonial tradition regarding land management, but they also reveal specific features that have a major influence on urban land management and the development of a land market. This is because land management was based on explicit racial segregation, which only came to a formal end in Botswana with independence in 1966, and lasted in Namibia and South Africa until the 1990s. In Botswana, following the African Acquisition of Land Proclamation, black Africans were excluded from acquiring any interests in land without the approval of the high commissioner. Before independence, the basic land tenures in urban areas were crown lands and freehold, while after independence crown land became state land, but a two-tenure system was retained (Mosha 1993; Mosha and Kalabamu 1995).

In Namibia, urban centers were maintained as white areas under the Germans and then under the South African colonial regime. Again, black Africans had no choice but to settle in less developed formal townships or in informal settlements, which quickly developed into suburban homelands where land was allocated by traditional leaders or, after independence, in former white areas. Since 1992, de facto towns or urban areas have been registered in the name of the government or local authority. Although the tenure formalization process is still limited to townships that were planned and surveyed before independence, the present trend is that local authorities accept the informal settlers, but would like to formalize the area (Bower, Christensen and Howard 1997; Haldrup 1995). The National Housing Policy approved in 1991 states that the needs of all sectors of the community for urban land should be addressed, but that the main aim is to overcome inequalities in the system and provide access to affordable land for the poorest and most disadvantaged sector of society. A similar objective is expressed in the 1994 People Conference on Land (Republic of Namibia 1997; also Fourie this volume).

In South Africa, the Land Reform Programme forms a part of the government's effort to create just and fair land redistribution (Royston 1998). It should provide secure tenure for all occupants while accommodating diverse forms of tenure in the country (Berrisford 1999; Hanekom 1997). The government's land policy places much emphasis on participation, accessibility and democratic decision-making and on the need for people to organize themselves around land reform (Bolnick 1996). Priority is given to the poor, and the policy is based on a demand/need-driven approach, with the government acting in the main as a facilitator (Republic of South Africa 1994). In terms of implementation, in South Africa, as with Botswana and Namibia, a high rate of economic development has assisted the adoption and implementation of direct and indirect measures aiming at promoting a land market and, at least in the case of South Africa, a finance system that could permit the setting up of an end-user mortgage finance arrangement. In this way, some of the prerequisites for land market reform and development could be fulfilled. Moreover, when compared with the other sub-Saharan countries, the countries of southern Africa have dealt with the land question within the context of their social and political context, notably in

terms of correcting inequalities inherited from the land policies of colonial regimes and apartheid. However, the development of a formal land market remains an implicit objective at the macro level, although its segregative effects are increasingly highlighted (Royston this volume).

LAND MARKET REFORMS: CURRENT TRENDS AND PRACTICES

The Progressive Emergence of Formal Land Markets

A survey on public land policies carried out in 1999 in 10 sub-Saharan Francophone African countries (Benin, Burkina Faso, Cameroon, Ivory Coast, Democratic Republic of Congo, Guinea, Mali, Niger, Senegal and Chad) revealed that only Ivory Coast and Mali have undertaken reforms recently to develop formal land markets (Durand-Lasserve 1999; UNCHS 1999). This new policy relies on the large-scale allocation, at market price, of publicly owned land to individuals and developers. It is made possible by the adoption of simplified and rapid administrative procedures concerning land transfer and registration.

In the Ivory Coast, a market-oriented policy is being implemented, although state control over land remains very strict (République de Côte d'Ivoire 1994). Housing developers are granted development rights to land upon which they have to build housing units that correspond to government specifications for size, building materials, access to infrastructure services and selling price.³ Housing developers operate under the control of the Programme d'Appui à la Politique de l'Habitat, which is under the authority of the Ministry of Finance. In 1997, an act authorizing private land developers to acquire and develop state-owned land opened up the land market even further to the private sector; approximately 10 housing development companies are presently operating in the Abidjan metropolitan area. However, the government is confronted with a growing scarcity of land for housing, which has prompted moves to establish a state-owned land bank.

In other countries, such as Burkina Faso, Benin or Senegal, informal land markets are increasingly recognized and their formalization would depend on minor changes in the existing regulatory framework. In all other countries, development of land markets is, more often than not, systematically impeded by the state, which remains the exclusive formal provider of land for housing. However, even in these cases, the trend is toward the progressive emergence of formal land markets. This phenomenon is linked to the ongoing decentralization process and to the pressure local authorities exert on the state to break its long-standing monopoly on the land market.

Redefining the Rules of the Game: Adopting New Land Codes

A new legal and regulatory framework is usually presented as a precondition for developing an efficient land market. Many examples in sub-Saharan African countries clearly indicate that, although such reforms are necessary, they are not sufficient. Major problems arise in the way the legal and regulatory framework is interpreted and enforced by government officials. For example, many land codes open ways for the development of a formal private land market, but such a market cannot emerge.

Guinea's tentative land market reform is a good example. After 26 years of state-run land management (1958–1984), an in-depth reform of private and state-owned land policy was carried out in 1986, in the context of a rapid transition into a free-market economy. There were two main objectives behind this reform. The first was to improve security of tenure by transforming administrative occupancy permits into real rights (leasehold or freehold) to facilitate transfers and access to credit. The second objective was reforming the institutions responsible for land management and the modernization of land management procedures. A new land code was adopted in March 1992, which was a condition for the release of an

³ Mortgage finance for the end-user is provided by commercial banks. As the banking system is not yet adapted to long-term housing finance, a secondary mortgage market has been set up with public funding provided by the Compte de Mobilisation pour le Développement de l'Habitat.

adjustment loan. According to Article 1, the Land Code confirmed that the state and any other individual may hold the property rights to land or buildings in Guinea. It introduced new land management and registration procedures, specifically a dual property registration system. However, government officials have found it difficult to depart from their centralist and nontransparent administrative culture, especially as many derived direct benefit (money or power) from the conventional land allocation procedures. In fact, access to land ownership, which was seen as a first step in the development of a modern land market, proved to be nearly impossible to achieve. Between 1993 and 1997, only 143 property titles were issued for the whole country (Durand-Lasserve 1997).

Preserving the Diversity of Land Delivery Channels: Some Innovative Practices

Although no urban land market reform has been explicitly implemented in sub-Saharan Francophone Africa, some interesting innovative land development schemes to develop land markets and promote various forms of partnerships have been implemented during the last decade. Contrary to land reforms being implemented in southern Africa, which are based on a set of political principles and objectives, initiatives in the sub-Saharan Francophone countries seem to be rather pragmatic. One response to the dual tenure system and the tradition of state control over urban land could be implementing land development schemes with the joint participation of government institutions or public agencies, formal private developers and builders, and customary owners.

Guided land development—as implemented in several West African countries—is one example of this approach. Such schemes are not necessarily part of a formal land market reform, but should be considered as attempts to initiate the development of a land market. The emphasis is put on projects that include providing infrastructure in fringe areas, enabling the formal and informal/customary private sector to increase the supply of land for development. The principle is that on a sufficiently large site with low occupation density, a development company (generally a parastatal or public-private partnership) builds roads and primary and secondary infrastructure networks, thus delineating large blocks of land (from one to five hectares, for example). These blocks are then sold, rented or leased to public or private developers, while part of the serviced site is returned to the original customary owners. The blocks are then developed and subdivided, and the plots are sold out to individual purchasers. Such projects require both a degree of land control by the state and flexibility in applying standards. Guided land development offers undoubted advantages. In particular, it makes it possible to get around the frequent obstacle of customary ownership when implementing development projects by associating customary land owners with all phases of the operation, from the choice of site to the development and sale of plots.

The Mbanga-Japoma project near Douala, Cameroon, illustrates how guided land development can respond in part to the accelerated development of informal land markets at the urban periphery. The aim of the project, initiated in 1995, is to provide serviced land at a reasonable price and to reconcile formal and customary development practices. The land area of 160 hectares (120 of which are feasible for development) is located 30 kilometers from the city center. Phase one of the project, a total of 50 hectares, was completed by the end of 1997, through a partnership between the municipality, a parastatal property development company (Société Immobilière du Cameroun), a public finance institution specializing in housing finance (Crédit Foncier du Cameroun), and the public electricity company (Société Nationale d'Electricité du Cameroun). These four partners own 90 percent of the capital, and the remaining 10 percent belongs to private investors. Customary owners who claim rights on the land are closely associated in the development project.

The partnership has developed the site with primary and secondary infrastructure services, thus delineating large blocks of land (one to eight hectares). After development, the developer is to return 45 percent of the land to customary landowners, and keep 55 percent. The blocks are then subdivided, serviced and sold out, either by the developer or by customary owners. Although a series of problems are

still to be overcome, this project's approach opens new perspectives for promoting land markets in the context of sub-Saharan African cities (Bourdon 1995; République du Cameroun 1994; Yango, Logone and Kanga 1995).

Integrating Informal Development Within the City Fabric

Following decades of tentative repression of customary land markets, combined with local compromises and alliances, most governments in Africa are now at a turning point. Successful urban land market reforms depend on the capacity of governments to integrate informal/customary landowners and developers in a land market strategy without necessarily formalizing their practices. Contrary to Anglophone African countries, such an approach is rather new in Francophone African countries. The objective is to answer the diversity of demand for urban land through a wide range of options, including informal ones. Formalization of informal land delivery practices is not a priority. More important is to make informal developers accept that they must comply with some basic planning rules, especially regarding layout. Formalization is important for plot purchasers in informal developments. It can be achieved through tenure upgrading and regularization programs. It must also be stressed that, although informal practices are increasingly tolerated, informal/customary developers are not formally recognized.

The example of Cotonou, in Benin, illustrates what could be the regulatory role of the state in a context where the urban land market remains predominantly under the control of customary owners and informal developers (République du Bénin 1994). The state's objective is not to eradicate or even reform informal land markets, but rather to regulate them and, at a later stage, to integrate informal settlements within the city fabric. The main principle is that an informal developer (generally a customary owner) subdivides a piece of land on the urban fringe and sells the plots. The development is not legal; there is no proper layout plan, no land reserves for services and no provision of infrastructure services. However, the sale is "legal" by being authenticated by community representatives and local government officers.

Once most plots have been sold off, central government planning bodies intervene with the objective of redeveloping the area. Following a detailed survey of the area and the identification of all assumed owners (*les propriétaires présumés*), a new layout plan is prepared. As a significant portion of the land (up to 40 percent) is reserved for road infrastructure and services, the plots that are reallocated to the assumed owners are much smaller in size than the land they initially purchased. The central government representative then delivers an occupancy permit to the occupants. The financing of the operation is borne by the plot owners. This procedure is not rational and has obvious disadvantages, but it works better than most rational and sophisticated procedures implemented in sub-Saharan African cities, as it is based on consensus among major stakeholders (Oloude 1995).

ENFORCING NEW LAND POLICY IN SOUTHERN AFRICA

Partly because they have different histories, political traditions and objectives from most other sub-Saharan African countries, the land market reform policies of Southern African countries emphasize social and political objectives, rather than strictly economic ones. Land market reform is not an objective in itself. Although the situations differ in Botswana, Namibia and South Africa, these countries share some characteristics of the ongoing reforms.

Orientation and Policy Principles of Land Reforms in South Africa

The *White Paper on Housing* (Republic of South Africa 1994) states:

The very real situation imposed by...the macro-economic realities as well as the grinding poverty of such a large proportion of the South African population...confirms the need to focus limited state resources on the poorest sections of the population. In more specific terms, it requires the state to constantly seek new ways of supporting the poor.

Accordingly, and contrary to most statements on land market reforms, the white paper stresses:

Where people, due to economic adversity, are not in a position to afford access to secure tenure, basic services and basic shelter, society in general and the state specifically has the responsibility to address this situation within the resources and other constraints applicable to it.

To assist access to land, the government has made security of tenure a priority. One of the foundations of apartheid was the allocation of land ownership on the basis of race. Until recently, black South Africans were prohibited from registering ownership rights, and were subject to arbitrary removal and relocation. Racially based laws have been removed, but many people face tenure insecurity that prevents access to services, subsidies and credit finance. These services are closely linked to one form of secure tenure, title deed ownership, which is unavailable to a large number of people in the former black areas (Pienaar 1996). The government land tenure program aims to extend greater tenure security (Royston 1998). The Land Reform Programme, therefore, “stands on three legs” (Hanekom 1997). The Land Restitution Programme aims to restore land rights and other forms of compensation to the victims of racially discriminatory laws since 1913. The Land Redistribution Programme makes it possible for poor and disadvantaged people to buy land with the help of a government grant. The Tenure Reform Programme aims to replace the system of tenure with a nonracial and equitable system of land rights.

These programs are based on a handful of principles. For one, tenure reform must move toward legally enforceable rights and away from permits. Policy also must be demand driven, so participation, accessibility and democratic decision-making are encouraged, especially at the local level. And finally, all tenure systems must be consistent with the constitution’s commitment to basic human rights (Cowie 1997; Hanekom 1997).⁴ Programs should be focused on poverty, while wider participation in land acquisition and access will be encouraged. The government acts as a facilitator.

However, despite laudable aims, the government has recognized that tenure systems can only deliver security where there is a clear legal statement of the rights and obligations of landholders and the capacity to regulate the tenure system and protect landholders’ rights (Republic of South Africa 1997). This recognition brought forth a tranche of important legislation dealing with land tenure in urban and suburban areas. The Interim Protection of Informal Land Rights Act (1996) aimed to prevent the violation of existing interests in land from 1996 to 1998, by which time it was hoped new long-term legislation would be in place. The amendments to the Upgrading of Land Tenure Rights Act (1993) brought previous government legislation into line with current policy, which holds that security of tenure will be protected under a variety of forms, not just individual ownership. And, the Extension of Security of Tenure Bill (1997) aims to provide security of tenure for vulnerable occupiers of rural and peri-urban land.

Increasing the supply of land is one of the main objectives of the Department of Land Administration. The Draft Land Policy Principles issued in 1995 stated that the national government has a responsibility to set guidelines and norms for the use of public and state land as a national asset to further reconstruction and development. As changes would take time, the Development Facilitation Act (DFA) was created as a

⁴ The Government’s land policy places much emphasis on the needs of people to organize themselves around land reform: it is hoped this will empowering people to drive their own economic empowerment and assist in satisfying their basic needs. Accordingly, it is accepted that both group-based and individual-based ownership systems play valuable roles under different circumstances (Hanekom 1997). The Communal Property Association Act (No. 28) of 1996 provides for people who want to hold land jointly and in groups to organize their tenure arrangements.

short-term bridging measure to facilitate the speedy release of land. The act introduces new measures to facilitate and expedite land development projects, especially the delivery of serviced land for low-income occupiers (Royston 1998; this volume). The DFA affirms the commitment in the *White Paper on Housing* that the government supports a variety of tenure options, including the enormous importance of the informal land transfer system.

Uncertainties regarding tenure issues in low-income areas present an obstacle for the private sector to participate in land and housing development. Despite a commitment to counter the lack of investment in low-income areas, which are perceived as unlawful zones in which contractual rights and obligations are not enforceable, the formal private sector's current provision of serviced land and low-cost housing is limited (Royston 1998). As a possible solution, the DFA's white paper suggested forming partnerships between the private NGO sectors and the government. However, as noted by Dewar (1999), despite the Government of National Unity's public encouragement of partnerships, and some attempts to demonstrate them, partnerships remain the exception rather than the rule in urban South African development. Nevertheless, Dewar suggests that they will have to become far more common if, as policy statements suggest, South Africa is to move toward a more market-based development strategy while protecting the interests of lower-income groups. Current barriers to progress, such as attitudes, a lack of clarity on social objectives, planning and regulatory systems, land inventories, and land policies, will need to be changed.

Market Mechanisms Versus Land Reforms

The contradiction between government goals and market rationales are particularly obvious on two main issues: tenure options, and the enforcement of legal and regulatory measures for land reform. To take each in turn, first, there is a preference for individual land ownership over other forms of secure tenure. Even if it is commonly admitted that ownership meets a widespread objective of stabilizing the informal communities, one question remains: Is freehold the better option? It should be noted that this question is not specific to South Africa. But the major tenure initiative in South Africa has been land titling that provides individuals with freehold titles. Yet, as Glen, Sibanda, and Claasens (1998) observe: "Whilst these scheme were supported by governments and foreign donors, subsequent research has shown that such initiatives have not had the anticipated results. They have been found to increase inequality and landlessness, to have little or no impact on the mortgageability or productive use of land, to fall into disrepair after the first set of transfers, and to lead to ever increasing fragmentation of land parcels."

The South African land policy relates to the exclusive choice of individual land ownership for households mainly in the form of ownership-driven greenfield development. The motivation of this policy is that ownership is a prerequisite for the extension of municipal services and cost recovery, a motivating factor for housing consolidation, and a catalyst for local economic development. However, the tenure-upgrading process has been extremely onerous in many areas. In the absence of financial and administrative support, residents have been discouraged from undertaking the upgrading process themselves (Ambert 1999). The research stresses unexpected adverse effects from the choice of ownership as the preferred tenure option. Examples are an exclusionary impact on renters, subrenters and sharers, and costs and procedural obligations of legal property transfer, leading to the perpetuation of informal transfers.⁵ Ambert's research concludes that while some households will benefit from a facilitated access to ownership, the needs of others will not be adequately addressed by the ownership-driven tenure reform process, and other tenure options such as rental and group ownership should be considered.

⁵ Adopting a uniform approach to tenure upgrading is problematic because land tenure in informal settlements is fragmented and administrative responsibility for land is devolved and delegated to the provinces and not centralized (Cross 1999).

The second issue, the enforcement of integrative land reform measures, raises other problems. Berrisford (1999) observes that:

The lack of urban action is, by and large, not the result of legal or policy shortcomings but rather that of a reluctance of the nation's urban elite to grapple with the complexity of the urban land market, a market in which that elite generally holds a significant part. This reluctance is compounded by government...which inevitably restricts efforts to restrict or redistribute property rights. Clearly, if a comprehensive redistribution of urban land rights is to succeed there will need to be new legislation promulgated....

Berrisford stresses that the legal basis for a program of redistribution of urban land rights is weak and will continue to weaken until supplementary legislation is passed. At present, the basis for developing effective redistributive urban law is limited to the general Principles for Land Development, set out in Chapter 1 of the DFA. Wondering why these principles have had so little effect, Berrisford suggests that it due to a combination of "ignorance, fuzzy wording and deliberate obstruction."

Compared with most sub-Saharan African countries, South Africa benefits from major advantages for implementing land market reforms. The country has political will and continuity as well as a capacity to resist external pressures for defining a land reform program adapted to the needs of people. It also has financial and human resources; sound finance institutions and a mortgage finance system; appropriate and effective land information and registration systems in most urban areas; and a formal private development sector with technical skills and know-how. Moreover, contrary to most governments in the region, South Africa has not attempted to exert a tight control over land markets. Rather, the objective has been enabling while conciliating contradictory objectives—market efficiency, social justice and (to some extent) the protection (or restoration) of customary rights.

These contradictions are present in a number of ways. The set of reforms being implemented under the Land Reform Programme, for example, respond to the reconstruction and development needs of the country, but the present legal structures remain overcomplicated (Mabin 1996). Similarly, some pieces of the legislation aiming at restoring the rights of dispossessed communities contradict development goals, as is the case with the Restitution of Land Rights Act (1994) in Cato Manor, Durban (Maharaj and Ramballi 1997). More importantly, one of the key questions relates to compatibility between social objectives and economic strategy and land market efficiency. Housing policy combines protection against eviction, in situ upgrading, tenure regularization and provision of serviced sites and dwelling units. Market mechanisms, however, induce social exclusion. The price of land in urban and fringe areas compromises many resettlement projects, and many social objectives of the government's housing policy are not being met. One indicator of the difficulties encountered in the implementation of a social housing policy is the importance being given, since 1996, to the protection of informal settlements against eviction (see Interim Protection of Informal Land Rights Act, Act 31 of 1996).

The Case of Namibia and Botswana

Access to secure tenure and land rights and the transfer of land management responsibilities to local authorities are the key components of land reform policy in both Namibia and Botswana. Although these issues are closely related to the way the land market functions, land market reforms are not described as such.

In Namibia, the security of tenure issue is addressed the same way as in South African. It is estimated that the total number of families living in informal settlements without secure tenure is around 30,000. Since 1991, when the National Housing Policy was approved, the desire for a more secure tenure and a wide array of property-related needs have been expressed from various sides of Namibian society. Local

authorities accept the informal settlers, but would like to formalize the areas so that the residents get formal rights and the local authority can collect taxes and charges for utilities (Republic of Namibia 1997). The National Plan of Action emphasizes the regularization of informal settlements and the establishment of incremental development areas as possible ways for local authorities to address the problem of rapidly growing informal settlements (Haldrup 1995).

To respond to the demand for secure tenure, the development of a flexible land tenure system has been devised. A new statutory form of tenure is proposed for housing blocks consisting of up to 100 families, who are issued a starter title (the block is registered in freehold ownership in the Windhoek Deeds Office). The starter title provides the holder with the right to perpetual occupation of a site within the block and the right to transfer or to otherwise dispose of the right (Fourie this volume). Landhold title is proposed as a statutory form of tenure, with all of the most important aspects of ownership, but without the complication of full ownership. The title will provide the owner with the right to occupy a defined site in perpetuity, and it can be sold, transferred or otherwise disposed of, as well as mortgaged (Republic of Namibia 1997). Upgrading from starter title to landhold title or freehold ownership will be possible where the whole group within the block, or a small group within a smaller block subdivided from the larger block, decides to upgrade (Christensen, Hoejgaard, and Howard 1999). No further permission to occupy will be issued, but landhold title rights will be granted.

In Botswana, land under the British rule was classified into three categories: crown land, freehold land and land under native territories. Leasehold interests could be acquired under both the crown and freehold tenure. After independence, all lands became state lands, but the two tenures were retained. However, as noted by Mosha (1999), the Botswana government has recognized all the individual rights existing prior to independence and has interfered very little with private owners. There have been no land reform acts nor tenure concession acts to alter rights, and when it has been necessary to acquire privately owned land rights, the owners have been fairly compensated.

The most important reforms since independence are the following. In 1972, the fixed period state grant (FPSG) was introduced to provide the characteristics of freehold, but with a fixed duration (99 years for residential purposes). In the early 1970s, the certificate of rights (COR) was introduced in order to provide secure tenure for urban squatters and new plot-holders in the Self-Help Housing Agency schemes, while avoiding the complexity and cost of title registration. The state retains ownership and the plot holders acquire usufruct rights. The COR is granted in perpetuity, and can be inherited, transferred and converted into a FPSG (Mosha 1993). Occupants of plots in upgrading areas issued with a temporary permit occupancy (TPO) can acquire a COR once the area is gazetted, and eventually an FPSG. Since 1991, CORs are no longer issued and the emphasis has been put on the FPSG alone: all low-income plots and services schemes have been leased out as an FPSG since 1997 (Kalabamu 1992).

Although Botswana's historical experience is different from South Africa and Namibia, its urban land policy has some similarities. For example, the policies emphasize security of tenure, tenure upgrading, and the implementation of land management procedures at the local level. Tenure reforms do not aim exclusively at promoting market mechanisms; rather, particular attention is given to political and social objectives. However, it seems that market economy constraints are given more importance in Botswana than in South Africa or Namibia, where the apartheid and racial segregation legacy has given particular importance to corrective social policies. Policies implemented in Botswana since the mid-1990s, especially in regard to urban land servicing, land pricing, subsidies and cost recovery, seem to confirm this trend.

CONCLUSION: REFORMING LAND MARKETS—ASSETS AND OBSTACLES

What are the obstacles to improving urban land markets? There are clear differences between southern African countries, especially South Africa, and sub-Saharan African countries, both Francophone and Anglophone. In sub-Saharan African countries, the conditions for the development of an urban land market are not yet met, despite recent changes (UNCHS 1999). Among the major obstacles are:

- the lack of appropriate and updated land management tools and procedures (registration);
- low affordability for the majority of urban households that hinders the development of a formal land market;
- limited public resources and investment priorities at the national level;
- finance systems that are not adapted to mortgage finance;
- over-centralization in public land management and longstanding public intervention/interference in urban land and housing markets;
- state monopoly regarding land management;
- poorly trained staff in central and local administrations in charge of land management;
- lack of transparency in land management;
- illicit practices and widespread corruption;
- central and local administrations either unprepared to implement land-market reform measures or simply opposed to them; and
- public authorities reluctant to accept (and deal with) the diversity of existing tenure systems and to associate community-based organizations and NGOs in initiatives.

As a result, informal markets still predominate in sub-Saharan areas, hindering the urban poor's access to land for housing. It must be stressed that all these obstacles are interrelated and cumulative. For this reason, removing them is not a realistic objective. Current strategies for reforming land markets tend to focus on legal and regulatory frameworks to break down a state monopoly on land; setting up land information systems, along with improving or reforming registration procedures and taxation; and creating a mortgage finance system.

In contrast, in southern African countries, especially South Africa, the obstacles are different. In these areas, there are already very active land markets backed by a sound economic and financial environment and appropriate tools. These countries also have explicit (although sometimes contradictory) political objectives, as well as massive public intervention, especially in the form of subsidies. The problems in southern Africa, therefore, are to conciliate political objectives (correction of the colonial and apartheid legacy through land restitution, redistribution and tenure reform, protection against eviction, and access to land and basic services for all) with economic objectives, mainly evaluated in terms of market efficiency. A series of constitutional, legal, and regulatory measures have been taken to conciliate these two contradictory sets of objectives, albeit with limited results. Policy makers also face the challenge of setting up and enforcing a national land reform and land market reform policy that can integrate within national land policies both the diversity of land delivery systems and local cultural differences.

What, then, are the strategic options? The question of what should be the actual role of the state is raised in any discussion on land market reforms. There is no unequivocal solution to urban land problems in Africa. Broadly, two main options can be identified. The first option stresses greater market orientation; governments should play an enabling role, with an emphasis put on implementing regulatory measures and avoiding direct intervention that creates bureaucratic bottlenecks (World Bank 1993). In practice, land market reforms can lead to drastic increases in the market price of land and accelerated spatial segregation if implemented in a context of state disengagement; limited domestic investment opportunities; uncontrolled intervention of private land and housing developers; and hegemonic attempts by government in the name of economic rationale. The second option, therefore, gives the state a key role in formulating and enforcing land market reforms. At least in the context of sub-Saharan African countries, empirical observations indicate that successful land market reforms imply the need for a firm

and stable state. Characteristics of such stability should include political continuity and will at the national level, and a coherent, explicit and transparent land management strategy. In the best scenario, the central government administrations should be able to define, implement, and enforce a package of measures combining direct intervention on land with appropriate taxation, mortgage finance, provision of infrastructure, regulation of private developers' activities, and targeted subsidies (Programme de Gestion Urbaine et al. 1995). In the meantime, governments must adopt appropriate measures for limiting the exclusionary and segregation effects of unregulated land markets. They can intervene directly in the provision of serviced land for housing, or indirectly through taxation, subsidies and lending policies (UNCHS 1996a, 1996b).

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