

# **SHORT LEARNING NOTE ON LAND MARKETS AND REGULATION**

---

*Geoffrey Payne, GPA*

## **1 Introduction**

The regulation of markets, whether of financial transactions, property or other sectors, is no longer the preserve of influential policy makers, but has become a subject of widespread public interest following the recent global financial crisis. The assumption that markets were inherently self-regulating, that an increase in demand would inevitably generate a supply response, has been exposed as flawed. Markets have been shown to be inherently unstable and result in concentrations of wealth and gross inequality if unconstrained by effective regulation.

This note addresses the regulation of land markets in ways which retain the best elements of market behaviour – innovation, investment, responsiveness and efficiency – with the equal need to achieve social legitimacy, accountability and an equitable distribution of benefits. It focuses on the land markets in rapidly urbanizing countries where the challenge is particularly acute and urgent, though the issue is of more widespread interest.

Given the broad scope of the issues discussed, the text focuses on key aspects. Examples and suggestions for further information are provided where appropriate. The following sections briefly summarise: the nature and extent of the problem; key concepts to address the problem; policy instruments to implement these concepts in different countries; administrative instruments for implementing concepts in different countries; the policy, legal and institutional responses to innovation; constraints to replication and; finally, some conclusions and recommendations.

## **2 The nature and extent of the problem**

Given the scale and nature of urban growth, it is perhaps understandable that many governments feel overwhelmed.<sup>1</sup> Some even seek to restrict urban growth, either by investing in rural development programmes, or by failing to make life tolerable for those already in urban areas in case it encourages further rural-urban migration. Whilst rural development is certainly needed, international experience has shown that urbanisation is irreversible and a key feature of economic development. It therefore makes sense to manage urban growth in ways which benefit the poor as much as other groups.

As urban populations increase, the demand for land has raised prices to levels which a substantial and increasing proportion of households cannot afford. Access is made even more difficult and expensive in many countries by a regulatory framework which imposes high standards, restrictive regulations and complex administrative procedures on land development and management. As a result, the poor are often priced out of legal access to land in urban and peri-urban areas. The administrative capacity to address the scale and complexity of requirements for land, housing, services and livelihoods through direct public sector provision, or formal private sector channels, has manifestly failed. Even the ability to manage, or regulate, land markets, remains relatively low due to modest revenues from

---

<sup>1</sup> By 2050, the total urban population of the developing world will more than double, increasing from 2.3 billion in 2005 to 5.3 billion in 2050. Altogether, 95% of the world's urban population growth over the next four decades will be absorbed by cities in developing countries. UN-HABITAT (2008) 'State of the World's Cities 2008/2009' Earthscan, London, page 15.

property taxes and user charges, competing institutional responsibilities and limited professional capacity.

As a result, there are currently approximately one billion people worldwide living in slums or squatter settlements. UN-HABITAT estimates<sup>2</sup> that without significant intervention to improve access to water, sanitation, secure tenure and adequate housing this number could grow to 1.5 billion by 2020 and even 2 billion by 2030 if no firm and concrete action is taken. In this context, the Millennium Development Goal (Target 11) to reduce the number by 100 million is clearly inadequate. In fact, it suggests that a target-driven policy agenda is detracting attention from the real challenge which needs to be addressed.

The challenge is two-fold. First, there is a need to improve the living conditions of far more than 100 million people living in slums and various types of unauthorised settlements. Second, there is an equally urgent need to create conditions in which all sections of urban society, especially the poorest and most vulnerable, can obtain access to legal, affordable and appropriate shelter in ways which prevent the need for *future* slums and unauthorised settlements. This is not only beneficial to those in need, but prevention is far simpler and less expensive than post facto upgrading. Both these objectives need to be achieved in ways which provide adequate levels of security and access to livelihoods, services and credit.

### **3 From control to regulation: Key concepts to address the problem**

In an increasingly integrated world economy, countries and cities are competing for vast, but unpredictable resources. Success in securing investment is therefore influenced by the ability to respond to changing opportunities. The challenge facing policy makers is therefore to devise strategic responses which are market sensitive, socially responsive and environmentally sustainable.

Balancing these pressures has traditionally been pursued through master planning. However, such plans are inherently limited in their ability to manage land markets and respond to changing needs. Also, where plans impose unacceptable costs, delays, or uncertainty, potential investors will be discouraged and may invest elsewhere, or not at all. Just as centralized systems for balancing needs and resources are vulnerable to long term inefficiency and abuse, it is now clear that market economies are prone to instability and occasional collapse without effective regulation. As a result, many governments increasingly recognize that market regulation of sectors such as land is the most effective way of stimulating investment and channelling the benefits to areas where they are most needed. An appropriate analogy may be that instead of seeking to be a supplier of goals, the most suitable role for the public sector is that of a referee, ensuring that all the players act according to democratically determined rules without discouraging flair and creativity.

Land and property markets are important areas where effective regulation is required. The current global financial crisis was, after all, triggered by inadequate regulation of the land and housing market in just one country. Particular attention is needed in urban areas, since this is where most investment is located and where competition for land is concentrated.

Regulatory frameworks are intended to ensure that systematic growth of cities and towns meets the development needs of different parts of the economy and different sections of the

---

<sup>2</sup> United Nations (2003) 'The Challenge of Slums' page XXV and Foreword by Kofi Annan, Earthscan, London

population. They are also intended to ensure public health and safety, and can thus be regarded as tools for the greater good of society if well formulated and equitably enforced.

A key issue in creating an effective regulatory framework is how to stimulate local and inward private sector investment and at the same time identify and extract a public benefit from it. It also requires that private sector, civil society and individual actors compete on equal terms and in ways that facilitate access to affordable land for housing, livelihoods and services by all sections of the population, including the poor, women and other vulnerable groups. Realizing such objectives requires policy makers to acquire and implement skills in land market management through a sound understanding of the leverage government agencies can exert at a given time and place.

One option for improving land market efficiency and equity is for government agencies to encourage diverse supply options, especially since each option comes with limitations in terms of costs and benefits. Where options are restricted, there is little incentive for suppliers to provide value for money or respond to diverse or changing needs. By promoting diversity in the supply of land, especially in terms of location, price, land tenure and property rights, governments can facilitate improved efficiency and equity without requiring the direct allocation of scarce public resources<sup>3</sup>.

#### **4 Policy instruments for regulating land markets**

Governments possess several policy instruments to regulate land markets. These include:

##### **4.1 Land or property taxation**

One of the most effective options for regulating land markets is through land or property taxation. The high values of land and property, especially in urban areas, makes tax an important source of revenue for governments and also a potential means of wealth redistribution. Tax policy can guide development to areas where it is most needed and generate revenues for a wide range of public needs. However, its application is dependent upon political will to pass the necessary legislation and the institutional capability to enforce it. Where either of these is lacking, land or property taxes are unlikely to be a practical option. Among the reasons that make it a highly sensitive issue are the following:

- Those most liable to payments of such tax are those in middle or higher income groups, or with higher value properties. These groups are often able to exert influence over the political process to inhibit such policies from being implemented. In many countries, tax evasion and elite capture of tax revenues impacts on the public welfare and the timely provision of essential urban infrastructure.
- Assessing tax liability is fraught with technical considerations of property valuation.
- If taxes are based on property values, they may unfairly penalize low-income residents whose properties which were not high value when initially acquired.
- If taxes are based on the ability to pay, collection costs may actually exceed revenues collected for a significant proportion of the population. However, in some Brazilian cities, property taxes are structured on an ‘ability to pay’ basis, effectively protecting poorer members of society from over-taxation.<sup>4</sup>

---

<sup>3</sup> Similar benefits can be realised by ensuring diverse supply in services, credit and construction systems.

<sup>4</sup> Porto Alegre is a good example of efforts to introduce a graduated taxation system: De Cesare, C.M (1999) ‘Challenges to Property Tax Administration in Porto Alegre, Brazil,’ in *Land Lines*, Vol. 11 (5), p4-5. Online access: [https://www.lincolnst.edu/pubs/dl/329\\_linc\\_landlines%208.99.pdf](https://www.lincolnst.edu/pubs/dl/329_linc_landlines%208.99.pdf)

- Whilst some of these concerns can be remedied by levying taxes on transfer, sale or inheritance, any perceived excess in the level of taxes levied may encourage under-reporting of such transfers, creating or reinforcing a 'black' economy.
- The introduction of a vacant land tax is another means of discouraging property speculation and obtaining government revenue from wealthier segments of society.<sup>5</sup>

Key policy choices impacting on land use must be properly addressed if taxation regimes and land market regulation more generally is to be successful. These include: decisions over what is included and excluded from the tax base, how property value is defined for different classes of property, what percentage of value is taxable for each class, and how effective tax rates vary within and between classes of property.<sup>6</sup>

A range of public-private, or multi-stakeholder, partnerships can also guide investment in ways which meet social, economic and environmental policy objectives.

#### 4.2 Land Banking

Land banking is a means of seeking to regulate land markets and ensure access is available to those otherwise unable to afford full market prices and has been applied in several countries, most notably India and other BRIC countries<sup>7</sup>. Under land banking legislation, public development agencies are mandated to acquire land in areas anticipated to come under pressure for urban development, usually at existing rural use value, and then hold it until such time as urban development can be justified, at which point the increase in value can justify a sufficient return to enable some parts of the land to be allocated at less than the enhanced market rate to lower income groups, or for non-commercial purposes.

In theory, this is an excellent means of realising a public benefit from land market processes. However, experience has shown it to be prone to outcomes very different from those intended. For example:

- If land is acquired at existing, usually agricultural, use value, rural land-owners are forced to sell at a lower rate than would be the case in an open market where they would be free to sell to a developer with potential or approved urban land use development schemes. Under such circumstances, farmers may be tempted to pre-empt land banking procedures by selling to informal developers who then subdivide the land and create unauthorised settlements.
- Land banking agencies are inevitably tempted to acquire larger areas of land than they need for short term development. This not only increases the potential surpluses they can generate, but also reduces land available for other suppliers, forcing up land prices generally and further increasing the value of the assets acquired, creating a self-sustaining process of land price inflation. This has been observed over many decades

---

<sup>5</sup> For a discussion of Taiwan's experience with Land Value Tax on vacant lands see Lam, A. & Wei-cho Tsui, S. (1998) 'Policies and Mechanisms on Land Value Capture: Taiwan Case Study' *Lincoln Institute of Land Policy Working Paper*, 4. Online access: [https://www.lincolnst.edu/pubs/dl/144\\_LamTsui98.pdf](https://www.lincolnst.edu/pubs/dl/144_LamTsui98.pdf). The Taiwanese case demonstrates the linkages between domestic property values, government regulation and international trends.

<sup>6</sup> Bird, R. & Slack, E. (2007). 'Taxing Land and Property in Emerging Economies: Raising Revenue...and More?' *International Tax Program Papers*, Institute for International Business, Joseph L. Rotman School of Management, University of Toronto.

<sup>7</sup> See, for example, 'Investing in the BRIC Land is investing in the future.' Online access: [http://www.bric-investment.com/bric\\_land.htm](http://www.bric-investment.com/bric_land.htm), and Harrison, K. (2007), 'International Land Banking Practices: Considerations for Gauteng,' Gauteng Department of Housing and Urban Landmark Trust, p12. On India 'Bajaj Plans to Liquidate land bank' *India Real Estate Monitor*. 17.09.2009. Online access: <http://indiarealestatemonitor.com/property-news/bajaj-plans-to-liquidate-land-bank>

in Delhi where the Delhi Development Authority has acquired huge tracts of land over 50 years. However, instead of regulating land values, prices have risen dramatically since its inception and the majority of plots allocated have gone to middle or high income groups. In this sense, small rural land-owners are effectively being forced to subsidise the urban elite.

#### 4.3 Guided land development (GLD)

Guided Land Development is a land management technique for guiding the conversion of privately owned land in the urban periphery from rural to urban uses. It uses the provision of infrastructure as a mechanism to guide urban development and has been implemented widely in Pakistan and been proposed for Indonesia.

GLD is undertaken in partnership with landowners who donate part of their land to cover the costs of providing public infrastructure. Infrastructure development plans are prepared using both topographical and land cadastre maps, ensuring that wherever possible roads and infrastructure follow existing plot boundaries. A loan is initially taken out to build the infrastructure, which is paid from betterment levies provided by land owners.

The approach is less costly than purchasing land and more equitable than land banking. Governments can use infrastructure investment policies to guide the direction of land development, as well as ensure that land development is efficient, environmentally sound and equitable. However, as it depends on the consent of landowners, GLD cannot be applied in areas with fragmented landownership. Where many landowners are involved, greater time and effort is needed in building consensus. The collection of betterment levies, particularly on an annual basis, may not be acceptable to landowners, or they may, for various reasons, default on the payments. Finally, some low-income groups, such as existing tenants, may be adversely affected, with the result that higher income groups may be the main beneficiaries.

#### 4.4 Public-private partnerships

Clearly, an approach which involves the redefinition of the role of the state and its relationship with private and third sectors raises several major issues, including:

- For the public sector, the concern over protecting the wider public interest and particularly the needs of vulnerable groups, such as the poor. The state is also ultimately responsible for maintaining an effective and appropriate legal, policy and institutional framework within which other actors can operate on equal terms.
- For the private sector, the primary interest is to maximize returns on investment, whilst minimizing costs and risk.
- For communities and NGOs, the main concerns may be social or political issues.

To build trust and confidence, it is important to stress that partnerships can build on the strengths of each sector to realize economically efficient, socially responsive and environmentally sustainable developments. Bureaucratic delays are expensive, especially if a country has high levels of inflation. Development applications must therefore be processed efficiently to promote investment. Partnerships can help achieve this. Making urban land management more responsive to market pressures is a pre-requisite to the preparation and implementation of partnerships. However, partnerships should not be seen merely as a means of extending market forces, but rather as a means of reaping social and environmental benefits from them. Partnerships will only flourish if they can demonstrate an ability to satisfy the primary needs and interests of *all* key stake-holder groups, especially the potential beneficiaries.

The best way to introduce or expand partnerships is to create pilot projects in areas where there is local support. Success in a pilot project will help build confidence in tackling more varied contexts in land management and other sectors. A number of innovative policy approaches have succeeded in enabling the public sector to guide private investment and improve land market efficiency and equity. These include:

#### 4.4.1 Requests for Proposals (RFPs):

An RFP is an invitation to suitably qualified developers to submit proposals for a specific site. It specifies a number of mandatory requirements, plus a number of additional optional elements. Developers are invited to submit proposals and the winning proposal is that which meets all the mandatory requirements and the most additional elements. It is therefore an effective means of realising a public benefit from a private development.

RFPs are being implemented in a number of countries, including Bulgaria and Russia, where the prospect of receiving between 20-30 percent of the proposed number of housing units in exchange for granting development rights on municipally owned sites has enabled the authorities to meet the needs of the dispossessed households at no direct cost. From the developers' perspective, the RFP approach increases access to highly desirable sites for development and offers an attractive alternative to the often complex and lengthy negotiations with private land owners.

An RFP should include at least the following:

- Mandatory performance standards;
- General and special conditions or terms under which the developer will operate;
- A time frame for construction;
- A recommended format and specific procedures for preparing and submitting proposals;
- Criteria by which competing proposals will be evaluated; and
- A schedule and process for reviewing the proposals and selecting a “winning” developer.

It is imperative that municipalities have a solid understanding of local real estate markets before attempting to implement an RFP to ensure that they receive the maximum public benefit without discouraging proposals. It is also important to specify development objectives, such as:

- Promoting affordable housing;
- Preserving historic structures and landmarks;
- Stimulating private sector development;
- Maximizing economic and social returns on municipal assets.

#### 4.4.2: Land pooling and land readjustment programs<sup>8</sup>

Urban land pooling/readjustment (LP/R) is a technique for managing and financing the subdivision of selected urban-fringe areas for their urban development. In each LP/R project, a group of separate land parcels are consolidated for their unified design, servicing and subdivision into a layout of roads, utility service lines, open spaces and building plots, with the sale of some of the plots for project cost recovery and the distribution of the other plots

---

<sup>8</sup> These notes are based on Archer, R. (1999) 'The potential of land pooling/readjustment to provide land for low-cost housing in developing countries' Intermediate Technology Publications, London 1999.

back to the landowners in exchange for their rural land. The approach is widely used in Japan, South Korea and Taiwan, and is being transferred to the developing countries of Southeast and South Asia.<sup>9</sup>

LP/R projects are mainly undertaken by local governments. In a typical project, the authorized LP/R agency selects and designates the urban-fringe area to be developed and identifies the land parcels (and owners) to be included. A draft LP/R scheme is then prepared to plan, define and explain the project, and to demonstrate its financial viability.

Schemes are prepared in consultation with landowners in the project area and the relevant public utility agencies. Draft schemes are presented in public for majority landowner approval. After any amendment and final approvals, the LP/R agency arranges short or medium term finance. The land is surveyed and subdivided into roads, open spaces and serviced building plots for the issue of title documents. The roads, drains and public open spaces are transferred to the local government and the utility service lines to the public utility agencies. Some building plots are sold to recover project costs and repay the project loan. The remaining plots are then transferred to each of the landowners in proportion to their share in the project. The landowners can then sell or build on (or simply hold) their new plots.

The attraction of LP/R for landowners is that they can share in the land value gains from efficient development. For local governments, it ensures efficient urbanization of land at no cost because the project site does not have to be purchased and the cost of the infrastructure works and subdivision can be financed with a short/medium term loan and then quickly recovered by the sale of some of the new building plots. The main limitation of LP/R is that the developments it provides may take many years to be built and occupied, whereas the government's objective is to achieve early development and a flow of revenues. Another limitation is that LP/LR projects provide limited access to land for lower income groups since the original land-owners need an increased value for the smaller plot areas they receive after land subdivision and servicing.

#### 4.4.3 Companies limited by guarantee<sup>10</sup>

Companies limited by guarantee, or joint venture companies, are a means of bringing public and private sector groups together to jointly develop land and allocate benefits according to the value of their respective contributions.

In Birmingham UK, a City Partnership Program was formed to encourage government, developers and local communities to collaborate in revitalizing declining inner city areas. Birmingham Heartlands Ltd was a partnership established by the City Council with five major construction companies. BHL was established by the Labour City Council in 1987 with the full support of the Conservative government and at a time of plentiful financial resources.

In 1992, BHL was converted into an urban development corporation with a board consisting of 50% representation from the city council, private commercial companies and the local community. This made it eligible for government and European regional development fund grants. The partnership approach has had considerable impact in revitalizing the area at

---

<sup>9</sup> See Home, R. (2007) 'Land readjustment as a method of development land assembly: A comparative overview' *Town Planning Review*, Vol. 78 (4), pages 459-484.

<sup>10</sup> See Archer, P. (1999) 'Public/private sector partnerships in the UK context' Intermediate Technology Publications, London 1999.

minimum public cost and provided opportunities for professionals in both public and private sectors to collaborate in realising public policy objectives within a market framework.

#### 4.4.4 Mandated social elements in commercial residential developments

This option has been applied in the UK and Malaysia and involves a requirement that a specified proportion of all dwelling units in commercially developed residential schemes must be allocated on a social basis through a local authority to those in need. In London, under the previous mayor, the requirement was for 50% of all units to be allocated for low-income groups by local municipalities. In Malaysia, the regulation defined the proportion of private sector housing units to be allocated to high, medium and low income households.

#### 4.4.5 Site development briefs<sup>11</sup>

Site Development Briefs are statements by public sector land agencies specifying the minimum social, financial and environmental requirements which need to be included in a proposal in order to obtain planning approval.

A good brief should be clear and based on criteria that can yield an acceptable return on investment by developers in return for the reduction of risk involved. The benefit of this approach to a developer (whether a commercial developer, NGO or community), is that it eliminates risk by specifying in advance the conditions required in order to proceed.

Preparing a brief requires the ability to place oneself in the mind of a reader who may not share the same assumptions or objectives. A good site development brief should:

- Be based on a realistic assessment of the likely development costs (including short term finance), selling prices and potential profit margins for each project component.
- Specify the social and environmental requirements necessary to maximize public benefit of a development without deterring potential developers.
- Concentrate on aspects of particular public concern.
- Distinguish between elements which are mandatory and those which are optional.
- Be concise and unambiguous. Only provide information which potential developers need to know when preparing proposals.

Options for increasing the proportion of non-profitable elements, such as low-income housing, will be increased if provision is permitted for a proportion of more profitable components. The balance between these will vary according to the characteristics of each site and the extent to which a mixture of activities and social groups is acceptable locally. Assessments of costs should be based on current commercial rates of interest.

Once a feasibility study has confirmed an appropriate range of development options for the site, steps can be taken to prepare the site development brief. This should specify:

- Any restrictions on permitted uses and their location.
- Requirements regarding public open space, road reservations, landscaping and amenities.
- Requirements regarding plot size, set-backs, floor area ratios and density levels.
- Requirements regarding building materials and construction systems for initial development, together with levels of initial services provision.

---

<sup>11</sup> See Davidson, F. and Payne, G. (Eds) (2000) 'Urban Projects Manual' Liverpool University Press, pp140-141.



- Requirements regarding the extent and nature of any non-profitable, social, or environmental components to be included in the development.
- Details of any financial or other contribution by the public sector.
- Requirements regarding phasing, especially the provision of less profitable components.

It is vital that briefs contain a clear and concise summary of development policies applicable to the site. Any aspects which are open to negotiation, or on which requirements may be optional, rather than mandatory, should also be specified. The views of all key stakeholders should be sought before finalizing individual briefs and comments incorporated to ensure widespread public acceptance.

Once the brief has been published, a wide range of interested parties can be given time to submit proposals. Time taken at this stage can realize considerable savings later, by reducing local hostility to new development proposals. Once the decision has been taken on the successful proposal, the developer can begin on site as soon as convenient. Project costs can be reduced considerably as a result and savings passed onto consumers as lower unit prices.

#### 4.4.6 Transfer Development Rights (TDR)

TDR is a tool for plan implementation which originated in the USA, but has been implemented in Brazil<sup>12</sup> and the Indian city of Mumbai<sup>13</sup>. TDR applies to owners of private lands on which non-remunerative uses are prescribed in the development plan, are compensated by awarding transferable development rights for use in other approved areas. By separating the development rights from the ownership of land, TDR seeks to guide development from areas where it is discouraged to those where it is desired. The land owner can use the TDR on any remaining area of land owned, use it on any other land, or sell it to others who can use it on other lands.

The land on which TDR is granted must be first surrendered to the authority administering the process unencumbered and free of cost. The amount of TDR granted is equal to the plot area surrendered, but if the amenity for which the plot is intended is also built and handed over free of cost by the land owner, an additional TDR to the extent of built area of the amenity is allowed.

TDR programs are very complex and can be very difficult to administer, so they require a strong commitment to the program by local political leaders. A TDR program takes time to work and must be mandatory for landowners in the sending area and for the higher density building in the receiving areas. Smart developers usually can gain extra density through variances or other means and will have little incentive to purchase TDR unless the zoning process is relatively inflexible and incorruptible. Political pressure to revert to the old ways may be very strong.

---

<sup>12</sup> See, for example, Acioly, C. (2000) 'Can urban management deliver the sustainable city? Guided densification in Brazil versus the informal compactness in Egypt' in Jenks, M. and Burgess, R. (Eds) 'Compact Cities: Sustainable Urban Forms for Developing Countries' Spon, London, pp127-140.

<sup>13</sup> See, for example, Adusumilli, U. (1999) 'Partnership approaches in India' in Payne, G (Ed) (1999) 'Making Common Ground: Public-private partnerships in land for housing' Intermediate Technology Publications, London, pp17-45.

For TDR to be successful, the following factors must be in place<sup>14</sup>:

- a well developed land-use policy that is strictly enforceable, and enforced
- a well defined zoning policy that guides the development of a city, directing development in desirable directions
- conservation and preservation policies for landmark sites, heritage sites etc
- an efficient land pricing market to arrive at values for TDRs
- a developer community that functions “efficiently” with the right market incentives
- organised community participation that has a voice in the TDR process for a particular site, either sending or receiving, or even purchasing TDRs for their own resource development.

In India, Ramanathan (2005) concludes that none of the above is in place, which suggests that TDR is not a universally applicable model. However, it has been used extensively in Brazil, where Acioly (2000) reports that implementation is facilitated by the high level of political, administrative and fiscal autonomy accorded to local government. It was adopted in Sao Paulo in 1969 and legislation was enacted in the 1980s to facilitate social housing production by the private sector in return for increases in Floor Area Ratios (FAR) and the modification of zoning regulations. It was also adopted in Curitiba, where it helped to increase overall densification, while also safeguarding the building heritage.

Preconditions for the success of TDR are a stable and growing property market, an adequate receiving base and an effective land administration framework for applying TDR in a way which is consistent, yet also market sensitive.

## **5 Administrative options for regulating land markets**

In addition to the policy options for regulating land markets reviewed above, government agencies have equipped themselves with a vast array of administrative mechanisms to which any commercial or individual developer must conform in order to obtain official permissions and approval to develop land. These technical mechanisms can be broadly classified under three headings: planning and building standards, regulations and administrative procedures.

Regulatory frameworks for land administration are invariably based upon inherited or imported norms and assumptions, or aspirations, rather than current local needs and resources. As a result, they often impose unaffordable costs and risks, forcing a significant proportion of the urban population into unauthorized means of accessing land. Such processes already represent between 30-70% of all land development in some cities and are increasing more rapidly than formal land supply in others. For example, over 60% of Nairobi’s population live in informal settlements occupying less than 5% of the total residential land and more than 50% of Mumbai’s population are slum dwellers living on only 8% of the land, indicating how distorted and dysfunctional land markets and regulatory frameworks can become. Yet commercial developers are fighting to get their hands on land in places like Dharavi in order to build projects for middle income earners, without acknowledging the important contributions of the urban poor to the economy. It is therefore important that regulatory frameworks are reviewed and, if necessary, revised to reflect current social and economic realities.

---

<sup>14</sup> Ramanathan, S. (2005) ‘Comments on the proposed amendments and legislation’ Government of Karnataka, Urban Development Department. Online access: [http://www.janaagraha.org/core/Transfer\\_of\\_Development\\_Rights\\_in\\_Karnataka.PDF](http://www.janaagraha.org/core/Transfer_of_Development_Rights_in_Karnataka.PDF)

### 5.1 Planning and building standards

Planning and building standards are technical specifications which stipulate the level or quality to which all officially acceptable land and building development should conform. They cover requirements for plot size, road widths, public open space and infrastructure provision, whilst building standards address the minimum acceptable quality of design and construction. A key consideration is that no matter how relevant planning standards may be environmentally or socially, they can only be enforced if developers, residents or governments are able to meet their costs.

Two key considerations in planning standards are the areas occupied by public open space, including rights of way (roads and pavements/sidewalks) and privately occupied plots for residential, commercial or industrial use. Since the total cost of a development has to be paid for by the privately occupied land, the lower the proportion of the total area it occupies, the higher the unit price of land will be. For example, in a typical residential development, studies have shown that communal facilities, such as primary schools, health clinics and places of worship, etc., occupy about 15% of the total area<sup>15</sup>. If these are assumed to be financed by the relevant agency providing them, the unit price of land will be significantly influenced by the proportion of the total area of privately occupied land to that of public land. The lesson is that planning standards should seek to maximize the proportion of private land available for development, since land occupied by circulation areas still has to be accounted for, but is non-revenue generating and requires recurring maintenance expenditure. Reducing rights of way standards for roads to the minimum for safe circulation and making sure that all public open space is put to good use can be a highly effective means of reducing unit land costs.

Official standards and cultural norms relating to plot sizes also exert a significant influence on access to land by the urban poor. Whilst Indian authorities have progressively reduced the minimum official plot size to 25m<sup>2</sup> for low-income groups, in Lesotho, the official minimum is 600m<sup>2</sup>, making it too expensive to provide access roads and public utilities to many areas. Small plots enable a large proportion of the urban population to access land legally. This suggests that plot size standards should be based on socially acceptable norms, for which existing informal settlements provide useful guidelines.

It should not be assumed that standards upgrading and new urban development be identical. The high densities found in many unauthorized settlements may make it impractical to impose the same standards that are required for new developments. For example, in the Kampung Improvement Programme in Indonesia, pathways are routinely just 2 metres wide and plot sizes may be smaller than 30m<sup>2</sup>, though in new developments the official minima are 3.5 metres and 54m<sup>2</sup> respectively. To impose new development standards in inner city kampungs would require the relocation of a high proportion of existing residents. The main difference is that with upgrading it is possible to negotiate options with the existing community, so a compromise can be agreed.

### 5.2 Planning and building regulations

Planning regulations stipulate what development is officially permitted on a parcel of land. They have a bearing on planning, zoning, land use and plot development, building heights and setbacks, space allocation and infrastructure services and the ratio of the total permitted

---

<sup>15</sup> This proportion inevitably increases with the scale of a development, as higher order facilities, such as secondary schools, colleges, hospitals, etc., need to be included.

built area for a given plot area (the Floor Space Index, or FSI<sup>16</sup>). Regulations may be determined and enforced through a range of legal and semi-legal instruments and may include statutory, court or local rules, orders-in-council, proclamations, notices, guidelines, ministerial directions, codes of practice, etc. They influence the potential for making full use of a parcel of land and generating socially and economically acceptable development.

Regulations are often excessively complex and not in a form intelligible to non-specialists. Whilst some may be essential and enjoy widespread public support, such as zoning regulations to prevent polluting industries locating in residential areas and provide protection from natural hazards, such as earthquakes or landslides, others, such as ‘building setbacks’ do not enable residents to fully develop their plots and may achieve no benefit for the wider community. The fact that they may be based on concern over fire hazards can be resolved by constructions which are fire resistant. According to Deininger (2003:176) citing Durand-Lasserve and Royston (2002), there is an inverse relationship between informality and the imposition of regulations. They cite the case of India, where the informal sector is 55% of the total in highly regulated Mumbai but only 22% in Bangalore, which has significantly fewer restrictions. To be effective and acceptable to the general public, it is essential that planning regulations are perceived as relevant to the local context and not be unduly restrictive. In addition to issues of cost, regulations often take no account of the positive or negative impacts of development on livelihoods, for instance through home-based economic enterprises or sub-letting.

Among regulatory constraints, Floor Space Index (FSI) has been widely criticized as a major constraint to efficient urban land markets (e.g., Bertaud and Brueckner, 2005; Brueckner 2007) and, if considered in purely economic terms, this has some justification. Certainly, land in central urban locations generally commands the highest prices in most cities and a low FSI restricts potential returns and increases unit land and property prices. According to such analysis, a higher FSI would reduce unit land prices and implicitly facilitate access to land in prime locations for lower income groups. However, such research has not been able to demonstrate that cities in which the FSI is determined largely by market forces has improved low-income access to land or housing in prime locations. Such analyses also exclude other considerations, such as the heritage value of an area.

While a “common-sense FSI” as advocated by Bertaud and Brueckner (2005) is clearly advisable, and there are moves in some cities, such as Mumbai in India, to relax current levels, FSI remains a useful means of guiding development to what are considered more appropriate locations and helping to create a multi-nucleated urban spatial structure<sup>17</sup>. A further consideration is that the physical constraints applicable to Mumbai make increasing densities and FSI in the Island City impractical in terms of public transportation capacity, apart from the even greater concerns about environmental vulnerability due to climate change and possible increases in sea level. This is where the judicious application of FSI, TDR and public-private partnerships can help in regulating land markets for the benefit of all.

---

<sup>16</sup> Thus, an FSI of 2.0 would indicate that the total floor area of a building is twice the gross area of the plot on which it is constructed. The FSI is also known by the term Floor Area Ratio, or FAR.

<sup>17</sup> This can be seen in the case of the self-financed development of Navi Mumbai across the estuary from Mumbai, linking to the other major city of Pune and locally to a new container port and cargo airport serving other Asian countries. This strategic development opens up vast economic potential and, together with the proposed road/rail bridge linking the island to the mainland, presents the possibility that south Mumbai could evolve into an administrative and heritage enclave serving a niche role in the wider conurbation.

### 5.3 Administrative procedures

Standards and regulations relating to land management are enforced through administrative procedures. These encompass all activities from applying to register, develop, or transfer land for housing, changing land use, to obtaining permission to build, or upgrade existing settlements. Procedures may be listed in codes of practice, administrative orders, management instructions or other statutory instruments.

Applicants for land development all too often find administrative procedures relating to land markets are cumbersome, time-consuming and expensive, without even the certainty of a positive outcome. The number of steps, the time and cost required to register or transfer land and to obtain development permission leads large sections of the population to develop land and modify property without official approval<sup>18</sup>. For example, in Peru, it can take 83 months to obtain all the official permits required to access and develop a plot of land legally (de Soto 1989:142) and several years in Kenya.

In India, standards, regulations and administrative procedures for urban land management were introduced during the colonial period. Since independence, a process of accretion has made these ever more opaque and one recent study<sup>19</sup> found that:

- Administrative procedures are too varied and complicated and few people understand what they are supposed to do due to lack of clarity and information.
- There are severe delays in the processing of applications.
- Bribes and informal charges levied during the procedures amount to 15 per cent or more of total project costs and, if not paid, lead to consequent delays and increases.
- Formal costs are too high.
- Obtaining development permission may take up to four years.

In some states, India is pioneering ‘one-stop-shops’ or E-Centres<sup>20</sup> enable citizens to process a wide range of applications online with the help of locally based staff, dramatically improving urban governance.

## **6 Policy, legal and institutional responses**

The wide range of policy and administrative instruments for regulating land markets listed above demonstrates that innovative approaches have been formulated and implemented in many countries. However, these have not been replicated at anything like the pace and scale required to improve legal and affordable access to land by the increasing urban populations in developing countries. The following sections identify some issues that need to be addressed.

A key consideration is the degree to which central, regional and local governments are committed to undertaking the necessary actions to regulate land markets in ways which benefit all sections of the increasing populations, including the poor, women, indigenous and other vulnerable groups.

---

<sup>18</sup> Research in six countries found that administrative procedures were the single greatest constraint to efficient regulatory frameworks. See Payne, G. and Majale, M. (2004) ‘The Urban Housing Manual’ Earthscan, London.

<sup>19</sup> See Payne, G. and Majale, M. (2004) ‘Urban Housing Manual’ Earthscan, London, p42.

<sup>20</sup> Services are provided within 60-120 seconds. The centres operate on working days and public holidays and citizens are not charged for any utility payments. See [www.esevaonline.com](http://www.esevaonline.com)

### 6.1 Policy framework

Policy makers seeking to regulate land markets have to negotiate a delicate path between powerful political and economic interests and the broader concerns of social development and environmental protection. Central concerns are the need for security of tenure to protect both investments and residents, together with clear, simple and affordable procedures for effecting land transfers and development. It is important that policies are formulated with full political support and with clearly articulated lines of responsibility for implementation.

Changes in principle, policy or priorities between political parties, or between different levels of government may impede the ability of land administration agencies to regulate land markets effectively since they reduce investor confidence. Administrative, as well as political commitment and continuity are vital to realize progress on the ground.

Technical aspects of land market regulation are usually the preserve of professionals. In theory, this makes it easier for professionals to review and revise them. However, many professionals are understandably reluctant to be seen to lower standards, even when these present a major barrier to poorer households accessing land legally. This is not helped by inadequate clarity in the policies advocated by international development agencies<sup>21</sup>. The emphasis should be to focus on key issues and permit incremental steps for realising conformity.

### 6.2 Legal framework

There is a tendency in many countries to pass laws on land and other issues which add to the existing body of legislation, rather than replace it. As such, inconsistencies arise which provide opportunities for developers and officials to exploit, but which generate uncertainty and bring land management into disrepute. A study of statutory regulatory requirements applicable to urban development in Kenya revealed that a potential developer has to contend with over 22 Acts of Parliament relating to urban development. In addition, some are enforced at the discretion of specific officials, giving them powers which are open to abuse. If legislation is not clear, consistent and intelligible to all those to whom it applies, this reduces the ability of potential developers to submit acceptable proposals. To encourage conformity to planning laws, it is important that the legal requirements be made available in terms and languages which are not dependent upon legal or professional experience.

### 6.3 Institutional framework

A number of important institutional issues need to be considered when formulating, reviewing or revising regulatory frameworks on land markets.

An initial consideration is the ability of land management agencies to enforce official norms. Where the number of competent staff or resources (eg. phones, transportation or computers) are inadequate for the challenge faced in a town or city, priorities will need to be defined regarding which standards and regulations are considered critical, so that all efforts can be focused on them. Non-essential norms should be removed or relaxed.

Another critical issue is that of bureaucratic inertia. Research on regulatory frameworks in several countries found considerable bureaucratic resistance to institutional reform. Land management agencies which penalize risk taking or initiative find it difficult to attract or

---

<sup>21</sup> For example, the 'Cities Without Slums' campaign may be interpreted by some as justifying the removal of slum settlements, rather than an opportunity to upgrade existing slums and reduce the need for future slums.

retain ambitious, enterprising staff, whilst frequent changes in senior management discourage innovation. Finally, any real or perceived threat to existing staff benefits can be expected to produce active or passive opposition.

## **7 Conclusions and ways forward**

A number of options exist for realising progress in both policy *and* practice. As stated in the introduction, the scale and complexity of the challenge facing policy makers in government and international development agencies are greater than at any previous stage of urbanisation. This requires an ambitious effort by governments and donors to address the challenge.

### **7.1 Land markets, regulation and accessibility**

At the policy level, the broad objective of urban land management should be to create pluralistic systems of supply which respond to variations in demand and needs within available resource levels to realize social, economic and environmental policy goals. For existing slums and unauthorised settlements, policies and institutional frameworks need to strengthen the ability of communities to negotiate directly with developers to ensure that their needs and interests are protected and that they benefit from redevelopment proposals. Where residents have acquired rights to land, through adverse possession or legal (even if unregistered) purchase, then their interests should be of *primary* consideration in realising official development plans.

The role of the public sector in this context requires the creation and maintenance of a 'level playing field' in which different suppliers of land, services, credit and building components can compete on equal terms. It also suggests that land management needs to address city-wide issues to improve governance and improve access to land by all those in need. Whilst individual projects cannot address the limitations of inefficient and inequitable land or housing markets, they can serve as experiments to test innovations in costs, design, standards, management, regulations and procedures for wider application. The need is to involve all key actors in the process - public authorities, land-owners, developers, NGOs and communities in order to incorporate the legitimate needs of each. A range of partnerships between public, private and people based sectors in land development can help achieve these objectives.

Adopting a city-wide approach requires that careful consideration be given to the issue of subsidies as these place a heavy burden on scarce public resources and have market impacts which are not always those intended. For example, subsidizing housing construction costs or interest rates for the poor may generate inflationary pressures which raise prices overall and require even more subsidies, creating a vicious spiral. However, subsidies on health, education or clean water, have widespread benefits and no such negative external effects. This suggests that initial proposals should be based on market costs in order to maximise economic viability and at least make clear the nature and extent of any external subsidy required to meet needs. Where such subsidies are not available, this will indicate the extent to which changes in provision are required. In cases where some form of subsidy *is* available, it can then be allocated to elements which will minimize market distortion and not undercut or discourage other suppliers.

A key component of successful land market regulation will therefore be to identify and build on established systems and processes that work well. Once this has been done, it will be equally important for urban managers to identify and exploit their comparative advantages to potential investors. Land management therefore has to be entrepreneurial as well as socially

and environmentally responsible. However, where regulatory frameworks operate to protect the interests of political, economic, or social elites, such groups can be expected to try and protect their advantages. Resistance, or inertia, may well come from officials or others whose interests are closely linked to the status quo. Under such conditions, it will be important to create incentives to overcome resistance or inertia or identify and support potential ‘champions of change’.

## 7.2 Institutional capability

Senior officials responsible for regulating land markets are no doubt aware of the limitations of policies based on provision, direct control or conventional master plans. However, changing attitudes and practices to more indirect methods of guiding land markets to realize social and environmental objectives may require a major shift in attitude and practice. This will not be easy and may take time, even with external support. Exposure to examples of innovative approaches can help to build confidence. Short term training programs and practical experience on innovative pilot projects can achieve similar results. Since a key element of land market regulation requires sensitivity to the ways land markets operate, it may be desirable to appoint senior staff with private sector experience, since they will be able to identify options for extracting a public benefit from private developments. Similarly, joint ventures which bring public and private sector staff into collaborative working arrangements can facilitate the cross-fertilization of expertise in market management.

This suggests that regulatory frameworks should focus on the key elements which should be protected at all costs, such as public health and safety, and those which are less critical and on which some flexibility or relaxation is possible. An equally important consideration is the ability and willingness of the relevant authorities to enforce such regulatory requirements efficiently and consistently, since any failure or abuse has the potential to discredit the whole regulatory system. A precondition for achieving an efficient and responsive land market is therefore to review the existing regulatory, legal and institutional frameworks to ensure that they do not present a significant barrier to accessing land by all those that need it. Such a process involves the following steps:

1. Undertake a regulatory audit to:
  - Identify and protect the public interest, especially relating to health and safety and the environment.
  - Focus on assessing and, where appropriate, revising planning and building standards, regulations and administrative procedures relating to the processes of registering land, or applications for development.
  - Ensure that all standards and regulations are clear and based on the ability of the relevant agencies to enforce them.
  - Identify and remove key constraints to more affordable land and acceptable housing.
2. Review the legal framework to ensure it is consistent with policy objectives, or modify it as necessary. In doing this, it is vital to ensure that legislation enjoys social and cultural legitimacy.
3. Review the institutional framework to ensure it is consistent with policy objectives, or is revised as necessary. Stability of key personnel will be important, as will an appropriate set of incentives to ensure good governance.
4. Undertake a land budget and housing needs assessment to identify and plan for future land needs for housing and other uses, together with the most appropriate options for meeting them.



## **Bibliography**

- Acioly, C.** (2000) 'Can urban management deliver the sustainable city? Guided densification in Brazil versus the informal compactness in Egypt' in Jenks, M. and Burgess, R. (Eds) 'Compact Cities: Sustainable Urban Forms for Developing Countries' Routledge, London.
- Adusumilli, U.** (1999) 'Partnership approaches in India' in Payne, G (Ed) (1999) 'Making Common Ground: Public-private partnerships in land for housing' Intermediate Technology Publications, London.
- Archer, R.** (1999) 'The potential of land pooling/readjustment to provide land for low-cost housing in developing countries' Intermediate Technology Publications, London 1999.
- Archer, P.** (1999) 'Public/private sector partnerships in the UK context' Intermediate Technology Publications, London.
- Archer, P.** (1991). 'Guided land development for urban expansion in Indonesia' Urban Land Program, Human Settlement Division Asian Institute of Technology, Bangkok.
- 'Bajaj Plans to Liquidate land bank'** India Real Estate Monitor. 17.09.2009. Online access: <http://indiarealestatemonitor.com/property-news/bajaj-plans-to-liquidate-land-bank>
- Bertaud, A., & Brueckner, J.** (2005) 'Analyzing Building-Height Restrictions: Predicted Impacts and Welfare Costs' Regional Science and Urban Economics, Vol. 35, pp109-125.
- Bird, R. & Slack, E.** (2007) 'Taxing Land and Property in Emerging Economies: Raising Revenue...and More?' International Tax Program Papers, Institute for International Business, Joseph L. Rotman School of Management, University of Toronto. Online access: <http://www.utoronto.ca/mcis/imfg/pdf/Taxing%20Land%20and%20Property%20in%20Emerging%20Economies%20July%202006.pdf>
- Brueckner, J.** (2007) 'Government Land-Use Interventions: An Economic Analysis' 4th Urban Research Symposium, World Bank, Washington, D.C.
- Davidson, F. and Payne, G.** (Eds) (2000) 'Urban Projects Manual' Liverpool University Press.
- De Cesare, C.M.** (1999) 'Challenges to Property Tax Administration in Porto Alegre, Brazil,' in *Land Lines*, Vol. 11 (5). Online access: [https://www.lincolninst.edu/pubs/dl/329\\_linc\\_landlines%208.99.pdf](https://www.lincolninst.edu/pubs/dl/329_linc_landlines%208.99.pdf)
- De Soto, H.** (1989) 'The Other Path: The Invisible Revolution in the Third World'. I.B. Taurus, London.
- Deininger, K.** (2003) 'Land Policies for Growth and Poverty Reduction' World Bank Policy Research Report, Washington DC.
- Durand-Lasserve, A., and Royston, R.** (2002) 'Holding their ground' Earthscan, London.
- Harrison, K.** (2007), 'International Land Banking Practices: Considerations for Gauteng,' Gauteng Department of Housing and Urban Landmark Trust.
- 'Investing in the BRIC Land is investing in the future.' Online access: [http://www.bric-investment.com/bric\\_land.htm](http://www.bric-investment.com/bric_land.htm)
- Home, R.** (2007) 'Land readjustment as a method of development land assembly: A comparative overview' Town Planning Review, Vol. 78 (4), pages 459-484.
- Lam, A. & Wei-cho Tsui, S.** (1998) 'Policies and Mechanisms on Land Value Capture: Taiwan Case Study' Lincoln Institute of Land Policy Working Paper 4. Online access: [https://www.lincolninst.edu/pubs/dl/144\\_LamTsui98.pdf](https://www.lincolninst.edu/pubs/dl/144_LamTsui98.pdf)
- Payne, G., and Majale, M.** (2004) 'Urban Housing Manual' Earthscan, London.
- Ramanathan, S.** (2005) 'Comments on the proposed amendments and legislation' Government of Karnataka, Urban Development Department. Online access: [http://www.janaagraha.org/core/Transfer\\_of\\_Development\\_Rights\\_in\\_Karnataka.PDF](http://www.janaagraha.org/core/Transfer_of_Development_Rights_in_Karnataka.PDF)
- UN-HABITAT** (2008) 'State of the World's Cities 2008/2009' Earthscan, London.
- United Nations** (2003) 'The Challenge of Slums' p. XXV and Foreword by Kofi Annan, Earthscan, London.

**Web links:**

Cities Alliance: [Citiesalliance.org](http://Citiesalliance.org)

Centre for Housing Rights and Evictions: [cohre.org](http://cohre.org)

Geoffrey Payne and Associates: [gpa.org.uk](http://gpa.org.uk)

Lincoln Institute on Land Policy: <http://www.lincolninst.edu/>

United Nations Centre for Human Settlements: [unhabitat.org](http://unhabitat.org)

World Bank: [worldbank.org](http://worldbank.org)