

**Achievements and Shortcomings
of the Venezuelan Government
in Value Capture**

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Abstract

The study begins with a bibliographic review of the historical background and the existing legal framework for the capture of value increments. It goes on to examine cases where value capture could have been applied and the modalities that were proposed for doing so. In Venezuela value capture is an eminently municipal revenue source, but it has not been prioritized by municipalities. In addition, current legislation regulating both the betterment levy and the levy on value increments presents difficult obstacles to their collection due to contradictory legal provisions and to requirements that must be met for the State to acquire revenue from these two sources and return it to the community. The opposition of political and social sectors to the betterment levy is also noted in the conclusions, as is the fact that due to “easy money” resulting from petroleum income the country lacks the cultural and ethical bases for the willing payment of taxes.

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Achievements and Shortcomings of the Venezuelan Government in Value Capture

Introduction

The goals of this essay are in keeping with those set out by the Lincoln Institute of Land Policy for its Program on Latin America and the Caribbean and the study of value capture.

An essay is by definition not an in-depth study. This is true in this case, but we have been able to organize some information that we had collected in various places and to obtain other, newer data.

We have joined this comparative network on the study of value capture in Latin America sponsored by the Lincoln Institute of Land Policy in response to the kind invitation of Martin Oscar Smolka last December 1998. The short time that we have had since then to prepare this essay by no means excuses any possible deficiencies or omissions. Nevertheless, we would like to have had an earlier opportunity to share with the esteemed participants in the network and in the seminars organized by the Lincoln Institute in order to contextualize our work with that of others. Thanks to the collaboration of Martin Oscar Smolka and Laura Mullahy, however, we have received some of their essays in their definitive versions. They have been extremely useful in preparing this essay of ours.

When we began this study, we assumed that there was very little data to collect and very little information to present on the topic, but the commitment we had made gave us the impetus and led us to more information than we had originally thought available, and we know now that even more information remains available for study.

For several reasons that we will discuss in this essay, this topic has never been very much in the public eye and has never been a priority for the State, despite its importance.

Finally we want to express our gratitude to Martin Oscar Smolka and the Lincoln Institute of Land Policy for the opportunity to include the Venezuelan case in the comparative network, hoping that its availability and distribution will lead to discussion, criticism, observations, and suggestions locally and in Latin American.

We would also like to recognize the valuable help of the Venezuelan friends and colleagues included in the list of interviewees at the end of this work, all of whom generously made time to offer us their valuable opinions on the topic of value capture.

1. The Historical Background and the Current Legal Framework for the Capture of Value Increments

With reference to the historical information that we have analyzed, cases of value capture were rare or perhaps nonexistent until the beginning of the twentieth century. Most of the cases that we found operated inversely in relation to the collective benefits that cities could have obtained as a result of road, transportation, colonization, and immigration projects as well as the development of port infrastructure and other projects carried out in the pre- and post-Republican periods within the territory that today constitutes Venezuela.

During those historical periods, a common thread ran through the projects of the ruling classes, a thread tied to the progressive and massive transfer of collective land property into private hands through very concrete actions that reflected the fundamental orientation of colonial and Republican elites, an orientation reflected in the decrees, laws, and constitutions that favored large land owners, especially those in the provinces of Carabobo and Caracas, in their efforts to maintain their privileges as land owners within a precarious but socially very significant framework of accumulation where the large hacienda property (latifundio) was the emblematic unit of production within the country's form of territorial organization.

It was only in the middle of the twentieth century and the 1947 law on eminent domain known as the Law on Expropriation for Public Use (Ley de Expropiación por Causa de Utilidad Pública) that the betterment levy was contemplated as a form of value capture. Later, in 1983, the capture of value increments was contemplated in the Organic Law on Land-Use Planning (Ley Orgánica de Ordenación del Territorio) and in 1989 in the Organic Law on Municipal Administration (Ley Orgánica de Régimen Municipal).

These historical junctures will be summarized below with an emphasis on the territory that today makes up the central region of Venezuela, which since the colonial period has been the seat of national power and home to the greatest concentration of population, services, infrastructure, facilities, roads, etc.

1.1 Summary Historical Background. Appropriation of Community Land and Valorization of Private Property

Very precise regulations were included in the Leyes de Indias (Spanish regulations governing its colonial territories in the Americas) in order to maintain and defend the collective use of land against its unregulated private appropriation. Within these legal texts, only rental, usufruct, and emphyteusis were put forward as means of obtaining rights to individual possession and use of land while the right to common property was preserved as it had been for centuries in the Castilian and Aragonese tradition.

Land was transferred to individuals, however, based on the rights of conquest established by the Spanish crown, and additional forms of individual appropriation appeared very quickly in Venezuela once colonial society was established. By the end of the

seventeenth and the beginning of the eighteenth century, the legal bases were consolidated in Venezuela to limit collective land holding and recognize the concentration of property in private hands.

Private property and private rights over land were legalized through Las Mercedes y Composiciones (Mercies and Compositions),¹ under which huge communally used areas in the central valleys of the Province of Caracas were transferred to socially powerful individuals, who increased their power as large land owners, or latifundistas, in the province, and formed the Caracas oligarchy.

The Real Audiencia's History of the Composition of Lands (La Relación de Composición de Tierras de la Real Audiencia), relates that 456,255 fanegadas (approximately 912,450 hectares) of agricultural land were incorporated into the private property of the land-owning Creole oligarchy during the seventeenth century under the concepts expressed in the laws of Occupation and Composition.² By the end of the seventeenth or the beginning of the eighteenth century, approximately 45% of the land in the Province of Caracas had been converted into private property, fundamentally concentrated in the hands of a small number of interrelated families, many of them descendents of those who had previously benefited from the advantages granted in Las Mercedes y Composiciones to appropriate the most fertile lands in the province's valleys.³

One of the most unusual appropriations of natural resources took place during this period through a project formulated by the provincial government and based on its opposition to the free and collective use of water and the transfer of property rights to the large latifundistas of the province. En 1788, the governor appointed two members of this social sector, the distinguished and influential land owners don Martin Felipe y Tovar and don Francisco Longa as expert consultants to determine the conditions of this transfer, and on February 12 of that year the transfer was institutionalized as law, transferring property rights to the governor of Caracas under legal interpretations determined by those advisers.⁴

From this point forward and for a considerable period of time, the Caracas oligarchy collaborated with important political actors to transform old Arabic-based concepts under which forests, pastures and waters were held communally into a rigid, absolutist, and monopolistic form of property and control.

¹ "Las Mercedes" was an instrument contemplated in Law 1, Title XII of the *Leyes de Indias* that established the legal basis for obtaining private property. "Las Composiciones y Confirmaciones" legalized the fraudulent occupation of land and were primarily used during the waning years of the sixteenth century. The material basis for these laws was the enslaved indigenous and Afro-descended population that was *encomendado* (tied to land properties), and who represented a value increment in relation to the land itself, guaranteeing the private rights and benefits of land owners. Quoted from Federico Brito Figueroa, "La Estructura Económica de la Venezuela Colonial." UCV, Caracas, 1963.

² Ibid., 157.

³ Ibid., 158.

⁴ Arcila Farias, Eduardo (1968). *El Régimen de la Propiedad Territorial en Venezuela*, in La Obra Pía Chuao de Venezuela. UCV/CDCH. Caracas, pp. 16-17.

With their increasing power and their consequent insertion in important colonial institutions such as the Real Consulado, the Intendencia, the Ayuntamiento, and others, they were able to manage to their advantage the most important changes taking place at that time and later in the composition of private land property, leading to ever greater concentrations of ownership through their ongoing participation in drawing up the projects, decrees, laws, and agreements related to actions that directly or indirectly affected their opportunities for expanding their own properties.

The law that abolished indigenous *resguardos* (reservations), and the Law on the Sale of Vacant or Crown Properties (*Ley de Venta de Tierras Baldías o de Realengo*) were two of the legal instruments that they used to appropriate communally held land and large areas not covered by the right of conquest authorized by Felipe II in the sixteenth century.

Other more recent examples can also be found beginning in the early nineteenth century in the 1811 Constitution of Caracas, which clearly states that in order to exercise their political rights citizens had to own considerable quantities of land or commercial enterprises.⁵ The situation was more democratic, however, in other provinces where property was not as concentrated among elites as in the more latifundista provinces of Caracas and Carabobo. Nevertheless, “democratic centralism” prevailed and the Constitution of Caracas was imposed in order to override other proposals. Indeed, other provinces were not even able to develop their Constituent Assemblies. On March 28, 1811 a commission of deputies, most of whom were from the Caracas land-owning oligarchy, was designated to draw up the Constitution, which was guided by principles established exclusively by representatives of the two central provinces.⁶

The same principles were maintained in the subsequent Constitution of 1821. The privileged position of large land owners in the central provinces of Caracas and Carabobo was maintained when the requirements for citizens to exercise the right to vote included “the possession of land property valued at greater than 20,000 pesos or an annual income of 500 pesos.”⁷

This progressive appropriation of land continued in the nineteenth century in the Province of Caracas with some changes in the structure of property holding that did not fundamentally change the profile of the social groups that had historically dominated land ownership. The theretofore characteristic profile only changed with measures adopted to avoid potential problems by distributing portions of the national wealth among *caudillos* (strongmen), military officers, and troops in payment for their combat service in the wars of independence.⁸

⁵ Gil Fortoul, José (1942). *Historia Constitucional de Venezuela*. Vol. 1, Chapter 4, p. 27. Editorial Las Novedades. 3rd Edition Caracas.

⁶ *Ibid.*, 228.

⁷ *Ibid.*, Vol. 1, Tomo III, Chapter 1, p. 430.

⁸ *Materiales para el Estudio de la Cuestión Agraria en Venezuela*. UCV/CDCH. Caracas 1964, Vol. I and II. This publication contains numerous examples of the confiscation of property and its appropriation by regional *caudillos*. Among them are accounts of individual assignments of property on pp. 161, 166, 168, 173-6, 178, 186, 182-4, and 250 and collective assignments of property on pp. 52-3, 109, 112-32, 137, 143-4, 146, 150-1, 155, and 157. Cited in Camacho, Oscar Olinto (1982). “The Spatial

Public land made up the greatest part of this national wealth and its distribution made the recipients, most of them of humble origin, into new land owners who aspired to the social prestige endowed upon them by virtue of their new condition according to the physiocratic principles that predominated at that moment in the development of Venezuelan society.

While many of the generals of the independence struggle obtained public properties and others confiscated large haciendas belonging to Spanish aristocrats and Creole oligarchs who had opposed independence, by 1826 the properties of soldiers were being purchased by high-ranking officers and old land owners, enabling the latter to reinforce their power by increasing their holdings.⁹

With the establishment of the Republic of Venezuela in 1830, and in response to the unjust benefit that the ruling circles (land owners, military caudillos, and merchants) were reaping at the expense of impoverished soldiers, on April 6, 1830 the Treasury Department issued a decree suspending sales of the national patrimony to individuals.¹⁰

This was another example of the transmission of territorial betterment from “the State” to the powerful groups that made it up without any benefit accruing to the former as a result of the unequal negotiations that historically took place in Venezuela and continued to do so until the first decades of the twentieth century.

Venezuela has had fourteen constitutions in the twentieth century and with the installation of the new government and president-elect last December the process for establishing another is under way this year. In none of these constitutions can we find precise references to national jurisdiction with regard to the use of public and private land that would serve as a frame of reference for subsequent state or municipal regulatory language dealing with value capture as part of a broader law on land use in order to control speculation and as part of an organized land use planning regime.

In the constitutions of the early part of the century, especially after the 1925 constitution, land and land resources were referred to as being subject to federal jurisdiction. Subsequent constitutions preserved the discretion of the federal executive to sell, rent, or assign without charge, under a framework of its choosing, any vacant land not reserved by law. It was additionally stipulated that proceeds of the sale of vacant land would revert to the national treasury.

Although the current constitution grants the State the right to obtain income deriving from certain natural resources and vacant lands, it is unlikely that a tax or assessment on increments to the value of private property can be established on that basis, even if those value increments are generated by a concrete public action carried out by the State or any

Concentration of the Venezuelan Economy 1777 - 1870.” PhD Thesis. University College, London England.

⁹ Ibid., Doc. 282 - 1826. Vol. I.

¹⁰ Ibid., Doc. 309 - 1830. Vol. I.

of its subordinate bodies. On the other hand, Article 17, Ordinal 4 of the 1925 Constitution in reference to the organization of State revenues (and similar language in subsequent constitutions) establishes taxes on different activities and other assessments as established by legislative assemblies. In other words, this article grants those assemblies the authority to consider the adoption of any other tax, including a tax on value capture.

Likewise, Article 31 of the current constitution stipulates that municipal revenues will include any other special taxes, fees, or assessments that may be established in conformity with the law, thus affirming the authority to include mechanisms for revenue based on vacant land, land in litigation, unused speculative land holdings, or any other circumstance allowing for the collection of special revenues.

The historical constant notable in the summary above is the continued practice of unlevied betterment, of private value increments generated by the public sector with no corresponding compensation paid to society. Thus the landed oligarchy kept social, political and economic power in the province of Caracas concentrated in its own hands on the basis of its land wealth. Paradoxically, their latifundista haciendas were powerful and prestigious social institution but not highly efficient production units like the large working cattle ranches known as hatos.

The hato was the dominant productive unit on the Venezuelan llanos, or plains, where land property was not concentrated since it was not the fundamental factor in the productive process. The breeding and raising of cattle was the dominant activity and cattle were the key product of llano society, with a social, economic, and political meaning separate and inferior in relation to the hacienda and its dominant status in Venezuelan society right up to the twentieth century and the period associated with petroleum wealth.

In the province of Caracas, latifundista haciendas belonging to large landowners came to make up the territorial basis for the development required by the growing and uncontrollable process of urbanization in Venezuela, and especially in its central region where the capital predominated over other cities in receiving population and in concentrating investment capital from oil revenues, benefiting from an unequal distribution of public spending. Agricultural land was converted to urban uses in ways that involved speculation and new forms of accumulation, stemming from the growth of the construction industry, the imbalanced property market, and the total absence of land policies with the capacity to bring the city's uncontrolled growth into check. This historical tradition of improper appropriation of land illustrates how many private fortunes were built on the wealth represented by public land as a result of transactions involving ignominious alliances from which the community, the collectivity, reaped no advantage. The attitude behind such transactions has strongly colored the approach of the dominant class in the twentieth century to the problem of land and its social, political, and fiscal ramifications. The position of the new political leadership that will begin the reorganization of power in Venezuela in the next few days is not yet known.

Our past is still very much with us, and the valuation of land, its uses and its beneficiaries, are still viewed in such a way that the importance of the collectivity is not prioritized with respect to individual rights, although this practice entails either intentionally or otherwise discounting its extreme political importance. The longer this approach is taken, the social dimension of land policy will become ever more difficult to discern and it will become ever more difficult to undertake State action to establish the necessary mechanisms to capture land value increments and direct them toward society as a whole.

1.2 The current legal framework for value capture

Three laws in Venezuela authorize the application of a tax to be based on the greater value acquired by real property as a result of a public works project or a zoning change:

- The Law on Expropriation for Public or Social Use (*Ley de Expropiación por Causa de Utilidad Pública o Social*) (Official Gazette No. 25,642 of 25 April 1958, amended from the law first passed on 4 December 1947).
- The Organic Law on Land Use Planning (*Ley Orgánica para la Ordenación del Territorio*) (Official Gazette, Extraordinary No. 3,238 of 11 August 1983).
- The Organic Law on Municipal Administration (*Ley Orgánica de Régimen Municipal*) (Official Gazette, Extraordinary No. 4,109 of 15 June 1989).

Legislators distinguish two types of levies. One is based on new construction or a new service; this is called a betterment levy. The second is based on a zoning change allowing for new or intensified use. This is called a value increment tax or recovery mechanism and is purely municipal.

The betterment levy

This tax is authorized for public works projects in Article 15 of the Law on Expropriation:

Real property increasing by a value greater than 10% due to its location contiguous to or near public works projects such as the opening or broadening of streets, avenues, plazas, roads, highways, parks, gardens, or water or sewer projects will be subject to the payment of three fourths part (3/4) of this greater value (value increment), which the public or private entity that executed the project will collect in conformity with the provisions of this Law.

The betterment levy will be defrayed in a single cash payment or in ten consecutive annual payments, in which case the assessment will be increased by 25%. Areas where property owners are subject to the betterment levy will be determined exclusively by the competent authorities.

Armando Rodríguez points out that the tax described in the Law on Expropriation may be national, state, or municipal, since the Law assigns the power to impose the tax to the level of government responsible for the execution of the works project or service.¹¹ What's more, the assessment is to be collected by the public or private entity that has executed the project, linking the recovery of resources directly to the entity that executed the work and not to the legal body authorized to impose it. The participation of private entities may include project contractors or licensees, a modality widely used in Venezuela, particularly with respect to the maintenance of interurban roads, where reimbursement is realized through the collection of tolls.

The Law stipulates that in order for the assessment to be applicable, the value of properties must have increased by more than 10% as a direct effect of their location with respect to the new works project or service. The Law also sets a maximum total payment not to exceed 75% of the cost of the works project.

The temporal and territorial aspects of the assessment should also be noted. It may be applied one time only in areas affected by the execution of a project and its application must be established by competent authorities.

With regard to municipalities, Article 113 of Organic Law on Municipal Administration (Ley Orgánica de Régimen Municipal - LORM) refers to this type of tax as an additional source of revenue to be applied by these local entities:

Art. 113. Municipalities will have the following revenues in addition to those indicated in Article 31 of the Constitution of the Republic:

3° The betterment levy on urban real properties benefiting directly or indirectly from the construction of public works or the establishment of services by the Municipality that are of evident interest to the community, in keeping with the provisions of the national law and respective Ordinances on this subject. The total amount collected under the betterment levy shall not exceed the amount indicated in national law, and if it does not exceed that amount it in any case shall not exceed 60% of the cost of the public works project or the installation of the service as determined by a budget approved and verified by the Comptroller General of the Republic.

Unless any provision of national law states otherwise, the amount of the betterment levy shall be calculated in relation to the actual value of affected properties, but the amount assessed on any given property shall not exceed 5% of the value of that property in relation to any individual public works project, group of projects, or installation of services effectuated on the same occasion.

¹¹ Rodríguez, Armando (1998). "VII. Las Contribuciones Urbanísticas." In *Tributación Municipal en Venezuela II. Aspectos Jurídicos y Administrativos*. PROHOMBRE. P.H. Editorial c.a. Caracas, 1998.

According to Rodríguez's analysis, this law is more restrictive with regard to the betterment levy than is the Law on Expropriation, for the following reasons:¹²

a) The application of the levy is restricted to urban properties, unnecessarily so according to Rodríguez:

In reality this was an option chosen by the Legislator arbitrarily, and did not seem essential or indispensable since while the Constitution assigns the Municipalities the authority to tax urban properties (Article 31, Ordinal 3) this does not prevent this authority from being broadened under the National Legal Code since the option spelled out in Ordinal 6 of the same Article, and which as has been indicated above, serves precisely this fiscal purpose.

Thus the range of application of this law could have been broadened to incorporate properties not characterized as urban.

As a result of this restriction, public works projects executed by municipalities but located outside of areas designated as urban, such as roads serving agricultural needs, rural service centers, irrigation systems, and others are excluded and may not lead to the application of the betterment levy.

b) Another limitation specified in the LORM relates to the total cost of the public works project or service that may be recovered through this tax, which is established in Art. 113, ordinal 3:

The total amount collected under the betterment levy shall not exceed the amount indicated in National Law, and if it does not exceed that amount, it in any case shall not exceed 60% of the cost of the public works project or the installation of the service as determined by the budget approved and verified by the Comptroller General of the Republic.

This provision sets up a certain contradiction between the Law on Expropriation and the LORM, by establishing a financing ceiling of 60% in the latter, while in the case of works projects financed or executed by national or state entities the ceiling for cost recovery may reach as high as 75%.

c) A third limitation of the LORM is the ceiling that it fixes for the tax, which is a maximum of 5% of the value of the affected property. In this regard the Law on Expropriation establishes that a property may only be assessed when there is a value increment greater than 10%, and the value of the levy will be $\frac{3}{4}$ of that increment, or 7.5% of the value of the property. This discrepancy illustrates the advantage to the states and the national government if they apply the Law on Expropriation, in comparison to the revenue opportunities of municipalities.

¹² Ibid.

Article 16 of the Law on Expropriation establishes the procedure to be followed in order to apply this tax. Its application must be approved by all affected parties. Nevertheless, the procedure is so complicated that it has never or nearly never been applied.

According to the law, the procedure is initiated by the corresponding administration, which will draw up a map of all properties contiguous to the project and carry out a valuation of all affected properties. The owners of these properties or their legal representatives should then be informed of these valuations and must then indicate their approval within five days.

After the project or that portion of the project that generates value increments is executed, a new valuation of the properties will be carried out and must again be approved by the property owners, indicating their approval in writing within five days. In both cases, the silence of a property owner will be taken to mean acceptance of the valuation.

In the case of any disagreement among the parties, the Law describes the following procedure:

The value of the property will be established by a Valuation Commission that will be constituted of three members. One of these members will be designated by the respective authority; one will be designated by the Civil Court Trial Judge in the relevant jurisdiction; and the third member will be designated by agreement between the first two; alternatively the third member will be named by the respective legal authority.

There are obstacles to this process such as the lack of up-to-date cadastres in most of the country's cities; out-of-date property valuation and a weak cultural tradition of paying taxes, especially the tax on real property that is collected by the municipalities. In light of these factors and of the procedure itself, which entails the valuation of all affected properties before and after project execution, the processes is excessively complicated and excessively expensive in relation to the value of the assessments to be collected.

In keeping with the requirements established in Article 14 of the LORM, municipalities must also draw up an ordinance specific to each use of the assessment in which the area of its application and other elements of its use are to be defined:

An Ordinance must be produced by the Council prior to the imposition of any special municipal obligation in the form of a tax, levy, or assessment. The Ordinance establishing or modifying this obligation must specify the cause, material basis, or act forming the basis for the obligation, its amount, the required mode, term, and manner of payment, any other obligations of those required to pay it, the administrative resources required and any pertinent penalties or sanctions.

The Ordinance required by this article shall enter into effect at a time no less than sixty days after its publication...

An additional requirement in Article 113 of the LORM for the municipal application of the betterment levy is that the budget for the works project or service to be executed must be approved and verified by the Comptroller General of the Republic.¹³

When a works project is to be financed through this process, this additional procedure is costly and delays the project's initiation.

The tax related to zoning for new or intensified use

According to legal scholar Allan Brewer Carías,¹⁴ this tax was anticipated in the Organic Law on Land-use Planning since municipal ordinances in Caracas established obligatory and uncompensated cession of land properties to municipal bodies for purposes of urban development, street and road projects, parks, and public areas. Nevertheless, no national law regulated cessions in kind to compensate for property value increments in cases where property owners performed no work, based on the idea that part of those benefits should be returned to the community. The application of the measure could be considered unconstitutional, for while the Constitution establishes the principle of the legal reserve in the regulation of property and stipulates that such reserves must be subject to the limitations, restrictions and contributions that may be established by law, these were not established prior to the promulgation of the law.

The 1983 Law on Land-use Planning reinforced the modality that was applied then and is still applied now as a form of capturing value increments when urban zoning was improved: the cession of land by developers or property owners for the construction of new streets or roads or new services, in conjunction with improved zoning codes or conditions for the development of urban land.

The recovery of value increments stemming from a change in use or in zoning is established in the law as follows:

"Art. 68. The increased value acquired by properties due to changes in use or intensified use as a result of urban plans shall be recovered by municipalities in a manner established by the Ordinances that they shall establish to this effect and which shall follow the principles and guidelines established in the Organic Tax Code.

In no case shall the special assessment established by municipalities in keeping with this article exceed 5% of the resulting value of the real property. The respective Ordinances shall guarantee the participation of property owners and corresponding resources in determining that final resulting value. "

¹³ Ibid.

¹⁴ Brewer Carías, Allan R. (1984). *Análisis sobre la Ley Orgánica para la Ordenación del Territorio*. Caracas.

Based on this principle, the LORM subsequently established in its Article 113, Ordinal 3:

The same percentage will revert to the municipality for the increased value of properties due to changes in use or intensity of use resulting from urban land-use planning in keeping with the procedures established in the Organic Law on Land-use Planning...

Both this tax and the betterment levy are admissible in light of Article 31 of the constitution, which stipulates that municipal revenues shall include any other taxes, levies or assessments established in keeping with the law.

It should be noted that property value increments are susceptible to this tax exclusively when it is demonstrated that property value increments were the consequence of zoning changes. Property value increments resulting from other factors including property market evolution and other actions may not be assessed.

As in the case of the betterment levy, the value of a property must be calculated before and after the implementation of an urban plan, and its application therefore presents the same problems as the levy. Expectations for the recovery of value increments are not clear-cut, and according to some analysts the application of the tax could have an inflationary effect.

The two taxes differ, however, in that the use to which revenues generated by the levy on value increments would be put is not specified. Once the ordinance is applied, it is up to the municipality to use its discretion in appropriating the resulting revenues.

This assessment is well motivated in cases of significant zoning changes or the incorporation of rural properties into urban areas where the value of land and buildings increases significantly, and the municipality consequently finds it necessary to invest in additional infrastructure and the incorporation of new areas into service networks, as well as the improvement of existing streets and roads or the construction of new ones. Investments in the latter category may also benefit from revenues generated by the betterment levy.

2. VALUE CAPTURE: OPPORTUNITIES, ATTEMPTS, AND SUCCESSES IN THE CARACAS METROPOLITAN AREA

2.1 The Caracas Metro subway system: lost opportunities for value capture

If any urban project has been studied in detail for its great importance in the urban development of the capital, it has been the Caracas Metro subway system, which is also publicly recognized as the best public service in the city as a result of the human resources behind it, the high technical quality of its management, and most importantly due to the support of the political sector in maintaining the administrative continuity of its president and professional team for almost 20 years.

In a study carried out by the Institute of Urbanism of the Faculty of Architecture at the Universidad Central de Venezuela on the impact of the Metro on the urban structure of Caracas and the Capital Region,¹⁵ it was pointed out that the Metro Company of Caracas (Compañía Metro de Caracas - CAMETRO) had passed up an opportunity to become a development corporation funded with mixed capital to promote more ambitious projects in areas around Metro stations. Instead, CAMETRO expropriated properties with no intention to retain or develop them, despite the fact that these expropriations were funded out of its own budget.¹⁶ Properties that were acquired were used exclusively for the construction of subway lines. Once this work was completed, adjacent land reverted to Caracas's urban renewal agency, the Simón Bolívar Center (Centro Simón Bolívar - CSB), whose work has always been subject to the party-driven policy making processes of different city administrations. Over time, this partisanship has greatly undermined confidence in the Center's image with regard to technical management, in contrast to the CAMETRO, which is known for the transparency and efficiency of its investments.

The land transfer by CAMETRO provided no benefit to itself since there was no mechanism for the recovery of its investment and no payment of any kind by the property owners within the project's areas of influence, who reaped private advantage as a result of public investment in the construction of the Metro's subway corridors.¹⁷

The president of CAMETRO commented to this effect in a March 15, 1985 interview:

CAMETRO intends to sell these properties, because the company is not interested in using these lands but rather in recovering its investments by other means... There will be a minimum of expropriations and demolitions in constructing the Metro because we want to clear the surface, not occupy it.¹⁸

¹⁵ Universidad Central de Venezuela (UCV). Faculty of Arquitectura (FAU). Instituto de Urbanismo. CONICIT. "Estudio del Impacto del Metro sobre la Estructura Urbana de Caracas y la Región Capital. 3 Volumes. Caracas. 1986

¹⁶ Ibid., Volume 1, p. 112.

¹⁷ Ibid.

¹⁸ Ibid., 112 and 113.

In the subsequent construction of the Chacaito-Palo Verde and La Paz-El Silencio lines (see map 1):

The land was rented for the period necessary for the construction of the projects. When the land owner regained his property he was free to rebuild on it.¹⁹

But the land was not the same; its value had increased significantly due to the betterment project and the zoning changes that almost always preceded Metro operations, particularly when these took place on the city's principal commercial arteries and especially on the Central Corridor.

By choosing these mechanisms CAMETRO lost the opportunity to develop a shared urban management process on the surface above the underground Metro together with the municipality and with the owners of those properties whose value had increased due to the greater accessibility afforded by the Metro. Because of its positive public image, its credibility, and its technical qualities, CAMETRO could have successfully established associations with private owners of newly-valorized land and with the municipalities to co-manage development in a way that the CSB could not.

Prior to the definitive decision in 1974 on financing for the first Metro line, in 1971 the Ministry of Public Works produced a legislative proposal to authorize the establishment of a special assessment for its financing, assuming that all the properties located within its area of influence would derive special advantages and assuming as well that the properties and business investments in adjacent areas would see their values increase to an extent equivalent to the cost of the project.²⁰

In the section of the law describing its goals it explains that the municipality, through the residents benefiting from the project, should share the burden of financing the project with the Nation, “the principal source of municipal support being a special betterment levy that the municipalities are authorized by national law to establish, taxing the benefits that will presumably accrue to certain land owners and owners of commercial establishments as a direct result of the project.”²¹

The law set a precedent with regard to value capture and illustrated the position of the Ministry of Public Works as to the need for the State to recover benefits through a betterment levy with regard to a project with such wide-ranging effects throughout the metropolitan area.

¹⁹ Instituto de Urbanismo. Op cit. pp. 109 - 110.

²⁰ Oficina Ministerial de Transporte. Ministerio de Obras Públicas, 1971. “ Proyecto de Ley para la creación de una Contribución para el Financiamiento del Metro. Quoted in Instituto de Urbanismo. Op cit.

²¹ Instituto de Urbanismo. Op cit.

But this position was not shared by the political groups represented in the national Congress. Although the law was introduced in May 1971, it was not approved in time for the construction of the first section of the Metro.

The law was reintroduced to Congress in 1982 with the same negative results, and it continues to lie dormant in that body without any updating of the technical studies produced prior to its original formulation.

In the meantime, all the real property transactions that have taken place in the Metro's area of influence have benefited from the revalorization of property and significant zoning changes implemented under the technical supervision of the Office of Urban Planning, whose criteria are reflected in the recommendations of the Study of Transportation in the Caracas Metropolitan Area and the Capital Region, that "we should favor the highest levels of density along the routes served by future Metro lines."²²

Far from promoting the application of a betterment levy based on the effects of the Metro, or of a value capture mechanism based on the impact of zoning changes, the State promoted urban land speculation to the benefit of a few taxpayers who were able to appropriate to themselves the economic benefits resulting from its own actions.

The detailed study by the Institute of Urbanism on the impact of the Metro used representative empirical evidence to demonstrate the logic behind the real estate operations and the manner in which economic benefits generated by the construction of the Metro were appropriated. The work of Marcano (1987) also details the relationship between land holdings and the Metro with case studies of properties relevant in terms of their scale and their location in the transportation corridors, demonstrating the economic and financial significance, advantages, and benefits accruing to the real estate groups that acted affirmatively when the State offered newly valorized urban land to private developers with nothing asked in return.

The effects of this process are demonstrated for 22 cases studied, specifying in detail the profits accruing to investors in real estate operations benefiting from the construction of the Metro and contrasting land-based income in highly valorized areas such as the central corridor with the situation in other parts of the city.²³

In addition, the study sheds light on the use of urban space, on the effects of the Metro project on the production of land property in its corridor and in adjacent areas, and helps determine which actors have directly benefited. While the quantification of these effects is not exact, as the report if the Institute of Urbanism itself points out, the information represents a quantitative reference point with which to evaluate the advantageous

²² Marcano Requena, Frank (1987). "Metro y Propiedad de la Tierra - Las zonas de Influencia de las Estaciones del Metro de Caracas". Universidad Central de Venezuela (UCV). Facultad de Arquitectura (FAU). Instituto de Urbanismo. p 338.

²³ For details on each case, see Universidad Central de Venezuela (UCV). Facultad de Arquitectura (FAU). Instituto de Urbanismo(1986). Vol. II. Op cit.

influence of the Metro on the valorization of nearby properties and the appropriation of value increments by private actors.

Within the text of the proposed law, it was stated that tax revenues would be generated by the following circumstances:

- a) general advantages to all the properties within the Caracas Metropolitan Area due to the construction of the Metro
- b) value increments to real property within the area of influence of Metro stations as a function of pedestrian distance
- c) value increments accruing to investments in commercial entities located in areas of influence

The proposed law also stipulated an equation to be used in calculating assessments related to individual properties based on the market value of affected properties and their location with respect to Metro stations. ²⁴

Given that the equation was based on the market value of affected properties and on their location in relation to Metro stations, it was not necessary to calculate the real value increment (a comparison between the property's value before the public works project and its value after it), which in both theoretical and practical terms is almost impossible to determine exactly at that level of the individual property.²⁵ The equation was even more difficult to implement due to obstacles to obtaining information with regard to the value of properties and commercial investments since the basic information provided by the municipal cadastre was out of date. An additional problem was that the proposed law did not differentiate properties based on their use. This presented difficulties in establishing criteria for establishing equity in the betterment levy by considering property use and the consequent weight that each property should have as a percentage of total revenues to be collected under the betterment levy in relation to all of the properties benefiting from the construction of the Metro transportation corridors.

2.2 An unsuccessful attempt to pass a law establishing a betterment levy

The idea of a betterment levy was again addressed in 1984, when a commission was assembled to write a Betterment Levy Law, which was duly written and introduced in the ordinary sessions of the national congress for study by that body.²⁶

As described in the above-referenced report by the Institute of Urbanism, the purpose of this law was to obtain fiscal resources by assessing a levy on parties deriving private benefits from the construction of collective urban assets. The proposed national law stipulated that only the National Treasury would have the authority to collect this

²⁴ Universidad Central de Venezuela (UCV). Facultad de Arquitectura (FAU). Instituto de Urbanismo(1986). Vol. II. Op cit.

²⁵ Ibid.

²⁶ Ibid.

assessment but that it could be delegated by the national government to state or municipal governments executing public works and service projects.

The law established a National Betterment Levy Fund, a central government account in which to deposit revenue generated by each works project. This fund would be used to provide resources for future projects that would benefit taxpayers.

The law also established the obligation to pay an assessment for the execution of a public works project and stipulated that this obligation would be incurred at the time that such projects were initiated. In order for this law to be approved an article on the betterment levy would have to be stricken from the Law on Expropriation and Eminent Domain.

The proposed law met with opposition for two primary reasons. Some argued that legislation on a betterment levy could not be so general as to be applied to all kinds of urban and rural properties. It was also argued that in order for legislation on urbanism to be organized coherently, this provision should be part of the Organic Law on Urban Planning.

Taxation was a major issue at this time, the beginning of the 1980s. However, this proposed law received little attention and went nowhere in the context of the oil boom. It would be very useful to bring it up to date and take it up again now that resources are extremely scarce, there is a fiscal deficit that will be difficult to overcome in the short term, and there is a growing crisis of urban public services.

2.3 Report of the Presidential Commission on Housing and Urban Development (1964)

Presidential Decree 15 of April 13, 1964 established the Presidential Commission on Housing and Urban Development in order to provide a diagnosis and formulate regulations for the adoption of policy regarding housing and urban-regional development.

The commission was made up of seven members, all of them architects, engineers, or urbanists of longstanding national renown who served without compensation and were advised by Luis Lander, 1959-1961 Director of the Banco Obrero (State Housing Institute, founded in 1928, and today the National Housing Institute (Instituto Nacional de la Vivienda - INAVI).

This report, later called the Lander Report since Luis Lander was the most politically influential member of the group and a member of the governing social democratic party (Acción Democrática), established the premise that the principal approach to urban development policy was to tackle the questions of land tenancy, scarcity, use, and cost.

The commissioners stressed zoning as the vehicle for state control over property in order to regulate the use of land and its real value. This principle was based on the fact that many of the urban land value increments that were (and still are) generated stemmed

from State investments in streets or roads and services, and that the absence of appropriate legislation impeded the partial or full recovery of land value increments resulting from State investment in public works.

This legislation would regulate behaviors such as the retention of urban land by property owners who do not urbanize or build on their properties, preferring to speculate on coming value increments rather than invest in property development and self-generated valorization. Another problem was the inequitable distribution of property valorization in areas affected by public works projects involving streets or roads and services. These problems led to the conclusion that the State should increase its control over land.

Based on these premises, the commission recommended that the following measures be adopted:²⁷

- a) a systematic policy for the acquisition of land by the State in order to accomplish the progressive and long-term municipalization of the properties and reserves corresponding to urban and regional developments. The sale of lands belonging to the national, state, and municipal governments would also be prohibited.
- b) establishing urban limits, anticipating areas of expansion, and acquiring the latter
- c) the levying of a tax on all land property in proportion to its value and rural or urban location. Vacant urban properties should be subject to a special progressive tax.
- d) the organization of a national cadastre to facilitate land and property tax management
- e) compensation for expropriated properties in keeping with tax values
- f) the national State and municipalities should make their land property available for rental and guarantee the continuity of its use.
- g) a review of the tax on valorization contemplated in the income tax
- h) the establishment of a betterment levy in relation to public works projects
- i) the establishment of municipal legislation to authorize the recovery of valorization stemming from zoning and other regulatory changes

The commission delivered its report in December 1964, in the words of Alfredo Cilento Sardi:

...rapidly leading to an intense internal confrontation between the president of the Commission and adviser Luis Lander on the one hand, and the Minister of Public Works on the other. The Minister obstructed the adoption of the commission's recommendations or their discussion by the cabinet... The leadership and technical advisers attached to the main opposition party also attacked the commission, describing its proposals as an attempt to carry out a socialistic urban reform.²⁸

²⁷ Report of The Presidential Commission on Housing and Urban Development, Caracas, 1964, pp. 57 and 58.

²⁸ Cilento Sardi, Alfredo (1996). "La visión estratégica del Banco Obrero en el período 1959- 1969" In

Despite its rejection of the so-called Lander Report, the Ministry of Public Works decided to move forward with the construction of the Avenida Intercomunal de El Valle in Caracas. Previous to the execution of this project, the Ministry proposed and carried out the expropriation of all adjacent lands on both sides of the proposed avenue in order to recover for the Nation the land valorization that would be generated by the construction of the road project. An area of about 330 hectares was expropriated and the Office of the Commission for the Construction of the Avenida Intercomunal de El Valle was constituted, made up of a technical team that would produce a Plan for the Urban Renewal of El Valle.²⁹

The execution of this project took two decades, during which time its architectural and urbanistic coherence fell by the wayside, due among other reasons to the indiscriminate assignment of lots to private promoters. Nevertheless, the strategic objectives of the Ministry were accomplished in that the valorization of properties resulting from the Avenida Intercomunal were retained by the Institution or transferred to the final users of housing in the affected area.³⁰ (See map)

The recommendations of the Report continued to have some effect in the Banco Obrero, and some of them were taken up by President Raúl Leoni when in his first message to Congress he included the following measures to stimulate the construction of low income housing in his 1965-1968 Housing Policy:

The cost of services will be recovered through the payment of corresponding rates or fees.

Land will be conceded in the form of emphyteusis with the right to purchase, in which case the beneficiary will compensate the State with the cost of the land and of basic sanitary services.³¹

2.4 The financing of road projects by developers in El Hatillo Municipality - Caracas Metropolitan Area

The Caracas Metropolitan Area suffers from a severe shortage of land. Its location along a narrow valley has led to an inevitable expansion onto bordering hills. It is made up of five municipalities. In one of these municipalities, El Hatillo, there is still vacant land. El Hatillo is located in the southeastern part of the valley and is the last of the municipalities to be developed. Its topographical characteristics and the fact that it is a bedroom community, in addition to problems of urban planning in Caracas, have led to traffic

Leopoldo Martínez Olavarría. Desarrollo Urbano, Vivienda y Estado. Compiled by Alberto Lovera. Fondo Editorial ALEMO. Caracas, 1996. p. 303.

²⁹ Ibid.

³⁰ Ibid., 304-305.

³¹ Ibid.

problems on access roads to the municipality and large traffic jams heading for the workplaces of the central city in the morning and returning from them in the evening.

This problem has had a significant influence on the characteristics of the municipality's growth and has led to efforts by its inhabitants to obstruct development.

In addition, since the municipality is highly residential it does not have the benefit of autonomous revenues sufficient to finance public works, especially road projects. Developers interested in establishing themselves in the zone have taken the lead in this area.

The Zoning Ordinance effective in Hatillo (Zoning Ordinance of the Southeast Sector, 1983) is out of date. At the time when it was promulgated, most of the area of El Hatillo was undeveloped, and the ordinance did no more than mandate a gross density.

As a result, commissions were subsequently established and studies were conducted to promote the cooperative engagement of residents, developers, and government in the development of the area.

The southeastern sector experienced a surge of development in the middle of the 1980s, which was opposed by inhabitants due to the area's inadequate road infrastructure. Discussions among residents, developers, and the city government led to a study conducted at the Universidad Simón Bolívar regarding the need for road infrastructure in the southeast, which prioritized specific road projects to improve accessibility to the area and its connection to the rest of the city. The Southeast Road Commission was formed in 1986, comprising representatives of the city and national governments as well as developers, to estimate project costs and divide them among the represented parties.

Growth in the southeast slowed at that time, the execution of necessary projects did not move forward, and under the circumstances those that had been proposed in preparatory studies seemed to become ever less realistic.

Although the commission also lost momentum, the cost of prioritized road projects was estimated and each developer was assigned a specific quota determined in relation to the number of inhabitants that would live in its development. Developers were willing to contribute their assigned quotas, but the city government lacked resources and due to bureaucratic impediments the contribution of the central government did not materialize.

The development of the southeast was paralyzed for about five years with twenty-nine housing projects suspended because they lacked certification of sufficient road infrastructure. Developers made their contributions, but the agreements were not carried out. Developers initiated a successful legal challenge to the suspension of their projects, and construction was resumed.

Road improvement projects were also reactivated, but residents always intervened to halt them. New municipal authorities operating from a pro-development perspective (and

heatedly derided for this “developmentalist” position), drew up agreements between the city government and developers for the execution of new road projects.

These were the circumstances under which one of the principal access roads to the municipality (Subida de Los Naranjos) was financed entirely by private developers and in particular by those that benefited directly from the road improvement. As explained above, each developer was assigned a quota related to the number of inhabitants in its development project. A trusteeship was established for the payment of these quotas by developers with projects adjacent to the roads and those whose projects were located in surrounding areas of the municipalities or that benefited from the road project.

The initial contributions of developers were later carried over proportionally to the housing units that they built. Ultimately it was the owners of these housing units that paid a large percentage of the cost of road improvements and were repaid with greater accessibility to their homes. The other inhabitants of the municipality and those who didn't live there but were users of its services also benefited.

Another road project that was executed under a similar modality, but that also received support from the Ministry of Transportation and Communication, was the access road to the central district of El Hatillo. This project was also opposed by some residents and merchants already established in the area, but went forward anyway and now functions to facilitate access to the central district and contiguous areas.

This is not exactly a case of a betterment levy as it is established in the law. However, by estimating the costs of needed projects, it has been calculated that each household that decides to live in El Hatillo will be faced with a cost of 500,000 Bolívares (US\$ 920).³² At the same time, no means has been determined to collect revenue from existing residents who also benefit from the projects. As a result, new residents formed the Association of New Residents of the Southeast, those who finance recent and future projects, which rejects the position of the longer-term and established residents. In extended conversations, the mayor expressed the opinion that a betterment levy was needed but that its implementation would be very complicated; residents do not currently pay even a property tax.

3. OBSTACLES TO THE APPLICATION OF VALUE CAPTURE IN THE CASES STUDIED

3.1. The Caracas Metro

The political influence of the real estate and construction sectors:

- a) While a bill was proposed in 1971 that would have authorized a special assessment to finance the Metro, it was not approved by the political groups

³² Information provided by architect Carlos Anato, who carried out development activities in the southeast.

represented in Congress. It proposed a modality by which properties would be assessed in keeping with their market value and their location in relation to Metro stations without requiring any calculation of real value increments as measured by the difference between assessments before and after the initiation of Metro service.

The hypothesis that the real estate and construction sectors played a decisive political role in blocking the passage of the bill is supported by the quantitative results of a 1986 study by the Institute of Urbanism at the Central University of Venezuela's Faculty of Architecture with regard to the size and rapidity of profits and the continuity of investments made by developers in the area of Metro stations.

This is a logical assumption, given that large real estate promoters are definitely the parties with the greatest likelihood of accessing the benefits of the Metro and benefiting from the revaluation of properties as they become available for sale and redevelopment, especially with the effect of stimulants in the form of zoning changes applicable to new land (usable urban land "produced" in the process of urbanization).

- b) The studies carried out to demonstrate the impact of the Metro in producing value increments on surrounding properties pointed to the opportunity lost by the Caracas Metro Company (*Compañía Metro de Caracas -CAMETRO*) by not promoting the capture of value increments and thereby enabling itself to become a mixed-capital development company able to produce appropriately scaled and spatially articulated urban projects in the areas around subway stations and along certain sectors of subway corridors that would make significant contributions to the overall conformation of the city.
- c) The petroleum boom that coincided with the introduction of the proposed special law impeded its consideration in Congress because political actors and others linked to the real estate sector had no intention of instituting targeted as opposed to general taxes at that moment in economic history.
- d) Perhaps the most difficult technical obstacle, and one that persists to this time, is the complexity of the law's application, requiring among other things the demarcation of affected areas, the determination of varying degrees of project influence, the rates to be applied and all related mechanisms, and the ability to manage a possible confrontation with the community in case the tax is not accepted.

3.2 Report of the Presidential Commission on Urban Housing and Development

- a) The Report of the Presidential Commission on Housing and Urban Development, which stated the necessity to establish a betterment levy in relation to work projects carried out by public entities, met with fierce political

opposition from the private sector, whose representatives decried it as “a socialistic urban reform proposal” given that the study proposed “the municipalization of urban land,” a proposal that was not viable within the framework of the free market in urban land. Nevertheless, the study made other very sensible proposals, short of the extreme of land municipalization, to increase municipal revenues through value capture.

b) The Report’s suggestions were implicitly taken into account, however, by the *Banco Obrero*, when it proposed its own expropriation of properties adjacent to the proposed Avenida Intercomunal El Valle, which when carried out captured value increments produced by the construction of the new road and transferred revenues arising from the betterment levy and valorization resulting from zoning changes to subsidies for new residential buildings for low income families.

3.3 El Hatillo Municipality

- a) Whereas developers have traditionally promoted and carried out their projects independent of the capacity of service networks to accommodate them, delegating the responsibility for urban infrastructure to the State, they played a more active role in the case of El Hatillo.
- b) Negotiations were dragged out by the systematic opposition of neighborhood associations to development. Whatever the reasons for the opposition of these associations may have been, they lacked technical data adequate to discount the viability of proposed projects and the discussions were bogged down in interminable, technically subjective, and poorly supported disagreements.
- c) Seeking to conciliate both parties and not to offend either, the municipal government did not push strongly for a resolution but pressed only for an agreement that both parties could be comfortable with. Municipal officials wished to maintain a balanced position in order not to endanger the political support of residents for the administration or their possible reelection, while at the same time they did not wish to reject outright the demands of economically powerful developers.
- d) Negotiations were impeded by the bureaucratic difficulties of national organisms involved in carrying out activities relevant to the process.
- e) The lack of precedents for this kind of collaborative urban management in the municipality retarded the process and the actions of the parties involved..

4. CONCLUSIONS

Although provisions for value capture mechanisms are included in various Venezuelan laws reviewed in this report, a number of obstacles have impeded their application.

While it is true that the existence of any given law does not guarantee its implementation, we may better understand the failure to implement these provisions if we consider certain aspects of this legislation's contents and language as well as other technical, political, social, cultural, and ethical factors that present obstacles to the capture of value increments:

- a) As was indicated, a first obstacle inherent to the legal framework for value capture is found in Article 16 of the Law on Expropriation for Public Use (*Ley de Expropiación por Causa de Utilidad Pública*) detailing an overly difficult and expensive procedure to be followed for the application of the tax, providing an inherent disincentive to its use.

The process is even more complicated in the municipalities, where additional conditions are imposed: a) the budget of the work project or service to be executed must be verified with the national Comptroller General in keeping with Article 113 of the Organic Law on Municipal Administration, and b) a municipal ordinance must be promulgated to regulate the collection of resulting revenues.

- b) In addition to these cumbersome legal restrictions, there are substantial technical difficulties involved in assessing the valorization resulting from actions covered by the betterment levy with the appropriate level of precision. The technical process involved in calculating value increments accruing to land property without construction as a result of zoning changes is much simpler and easier to accomplish, but despite this advantage the process has not been incorporated into the relevant ordinances to complement the regulation and intensity of use that they contemplate.
- c) Another technical impediment to the capture of these betterment levies or value increments is the lack of an integrated, modern, efficient, and up-to-date cadastral infrastructure (physical, juridical, economic, and social) that would provide each city with the basic support infrastructure to monitor the urban land market on a continuing basis.

Bringing and keeping tax collection up to date must be based on an ongoing review of real property cadastral values, these values being a necessary reference point for the application of tax legislation. The same is true of value capture: access to valid cadastral data is vitally important for its application. It will not help to produce new and streamlined legal and procedural instruments or to modernize the current ones unless they are to be applied in conjunction with an integrated and up-to-date cadastral system adequate to the task of making value capture a reality and carrying

it out in an efficient fashion.

- d) The political leverage traditionally exercised by the real estate and construction sector has served as an obstacle to the few attempts to pass a law establishing a betterment levy. We believe that the quantitative results contained in the 1986 study by the UCV-FAU Institute of Urbanism, with reference to the profits, speed of turnover, and continuity of investments made by the real estate sector in the area of Metro stations, supports the idea that the real estate and construction sector played a decisive political role in stalling the proposed law establishing a betterment levy, a conclusion that is also logical given the fact that large real estate operators are clearly those who are most likely to reap the benefits of Metro construction and to benefit from transacting properties newly revalued as a result of decisive stimulants to “newly created land” provided by zoning changes.
- e) The level of State intervention in Venezuela has played and continues to play a key role in urban and regional development that is difficult to understand unless seen in correlation with the huge public investments that have historically been made possible due to income from petroleum wealth. This and the long-term policy of providing subsidies combined to create a paternalistic image of the State in the context of what we believe to be the most pervasive culture of evading taxes in all of Latin America. Among the consequences of these factors is that the public conception of taxation, particularly among property owners, is that State actions that have the effect of increasing the value of their properties are seen as a kind of social benefit and as an obligation of the State. Among other groups these practices are considered unconstitutional and the great majority of people consider them unjust, a practice that is benevolent toward some in giving and asking nothing in return. At the same time, social sectors made up of taxpayers cast doubt on the capacity of the State to use revenues from taxes, assessments, levies, or fees in ways beneficial to society, and seek ever more ingenious ways to avoid paying them.

This has led to the consolidation of an anti-tax attitude. New sources of revenue are needed and a thorough reform of taxation is the only efficient way to bring them about. However, as State intervention has decreased there have been a series of agreements between the real estate sector and municipalities for value capture incorporated into new zoning ordinances in high income residential sectors in the Caracas metropolitan area in urban developments such as Las Mercedes in the municipality of Baruta and Campo Alegre - San Marino in the municipality of Chacao.

- f) The execution of public works projects by private licensees, especially in the case of interurban roads, has shown itself to be a significant alternative to traditional value capture procedures. It allows users the opportunity to recognize their contributions on a daily basis in the quality of service provided and the maintenance of the contracted infrastructure. The services provided by licensees clearly correspond to the fees that they collect.

- g) Historically, Venezuelan political actors have stood by passively as national, state, and municipal properties were sold to private interests in an uncontrolled fashion. As a result, much private wealth in the country is in fact the product of what was once public land.

The sale of public land to private parties by national bodies has been a historical constant, circumventing the right of municipalities to priority in the acquisition or reacquisition of land. Subsequent complaints by private parties directed at the State due to the expropriation of these properties, and the private appropriation of property valorization resulting from actions by the State bodies that sold land to private parties, have made this process prejudicial to society. At the same time, municipalities have lost large parts of their land patrimony, decapitalizing themselves through the sale of public, inalienable, and imprescriptible *ejido* lands, and granting vacant lands needed for urban expansion to the highest bidder with no concern to exploit opportunities to produce the revenues necessary to meet the demands of the community.

Among the gravest of these lost opportunities has been the opportunity to capture value increments deriving from changes in land use and zoning changes; assuming that revenues from the betterment levy are the most difficult to realize in the municipalities, most of which do not have the benefit of the expert legal and technical advice needed to implement value capture. Other impediments to this revenue source have been mentioned above.

- h) Finally we note that the issue of value capture has never been prioritized or prominent on the public agenda in Venezuela. We find no evidence of any significant debate on the importance of the issue, which is understandable for the reasons mentioned above, and because the State has been faced with more immediate issues such as the critical need for sorely-lacking housing and services. Value capture should be addressed as an element of the social concept of land and its importance to society. As such it is a fundamental political problem facing the State, one that elite sectors have chosen not to confront as such. Property should be regulated by means of an effective but not confiscatory land policy that respects the constitutional rights of property owners but understands those rights within a legal framework for its more just social use in the recognition that the collective also has rights.

At this historical moment there is a great deal of uncertainty as to the future political model that the new president-elect will establish with his governing team. He will take office in just a few days and it is assumed that there will be a referendum for a constitutional convention. Optimistically one can think that a legal and political framework for urban land policy may be defined in a new constitution so that the State may formulate a new approach to its social use and revenue implications.

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6. ENTREVISTAS (Interviews)

Anato, Carlos. Arquitecto. Promotor inmobiliario del Sureste del AMC.

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