
Urban Land Regularization Programs: State of Knowledge

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INTRODUCTION

The gigantic scale of the phenomenon of informal urban land development has been repeatedly confirmed by recent data from all sorts of sources (see Davis 2006). However, the structural nature of the process is still to be fully recognized by policy makers and public administrators at all levels. This chapter aims to present some of the main findings resulting from international research and academic literature on the matter of urban land regularization—not a rosy picture—in an effort to contribute to improving future policies and programs.

The process of informal access to urban land and housing is by no means new; in fact, there are cities with informal settlements that were constituted over a hundred years ago and that still have not been regularized. In Latin America, where some 75% of the people live in urban areas, at least 25% of that urban population live in informal settlements. The process is clearly getting worse at the global level, especially in the current context of rapid urbanization in Asia, Africa, and Eastern Europe. Whereas in the past informal land development used to take place mostly in large cities, more recent processes have also been verified in middle-size and small cities. New processes, as well as new variations of old processes, are occurring both in public and private areas.¹

The serious social, environmental, political, economic, cultural, and legal implications of this growing phenomenon have already been widely discussed, but the centrality of the issue has not yet been properly recognized by governments, international development agencies, and financial institutions. More than ever before, informal development has become the rule of access to urban land and housing, and no longer the exception. It is not a mere symptom of a territorial and socioeconomic development model, or a dysfunctional, isolated aspect of it, but rather has increasingly become the development model itself. Successfully confronting this phenomenon through

1. For an account of life in informal settlements in four countries—Brazil, Kenya, Turkey, and India—see Neuwirth (2005); for an analysis of the South African and Brazilian experiences, see Huchzermeyer and Karam (2006).

both preventive and curative policies and programs is one of the main challenges for policy makers globally, in order to democratize the conditions of access to serviced land in urban areas.

The process of informal access to urban land and housing results from a combination of still little understood reasons, and is itself one of the underlying bases for many other serious problems.² Of the main causes, which range from global, macroeconomic factors to local variables, five deserve special mention, namely: the lack of formal options resulting from the nature of land, urban, housing, and fiscal policies; the exclusionary dynamics of formal land markets that do not cater to the urban poor; the long-standing political manipulation of the people living in informal settlements through renewed clientelistic practices; the elitist and technocratic planning systems put in place by local administrations, which fail to take into account both the socioeconomic realities determining the conditions of access to urban land and housing, and the capacity of local administrations to act to implement urban legislation;³ and last, but not least, the obsolete nature of the legal and judicial systems prevailing in many developing and transitional countries. The importance of the global and macroeconomic factors should not be underestimated, but the fact is that a great deal can be done at the national and especially at the local levels, specifically regarding the formulation of inclusive land and urban policies—and it remains to be done.

Although from an immediatist perspective such informal processes do offer concrete housing alternatives to the urban poor, it is fundamental to stress that, from a broader, more articulated perspective, the combined effects of the phenomenon have been fundamentally harmful to cities produced in such a way, to the overall urban population, and even to the residents in informal settlements themselves, and as such it should not be condoned nor left unquestioned. Above all, despite a commonly held belief assuming otherwise, urban informality is not a cheap option, in that it generates expensive, fragmented cities; requires highly costly regularization programs; and results in increasingly high land prices and services for the people living in informal settlements. In the last analysis, all parties lose (see Fernandes and Smolka 2004).

2. For an historical analysis of the processes that produced informal development in Brazil, India, and South Africa, see Durand-Lasserve and Royston (2002).

3. For a critical analysis of how planning policies have been responsible for the process of informal land development in India, see Verma (2002).

It should also be mentioned that, especially in the context of countries where the urbanization process has already been consolidated, informal land development has involved not only the urban poor, but also other, more privileged social segments. Moreover, in these countries, the rates of informal development growth have been higher than the rates of poverty growth, thus indicating that there are other significant factors at play, beyond the traditional recourse to poverty growth as the sole cause of informality. In some cases, a true “informal development industry” has been identified, as several agents have indeed financially benefited from the phenomenon.

INSTITUTIONAL RESPONSES

Given the lack of acknowledgement of the phenomenon and its implications, most of the institutional responses so far have proved wanting, and there seems to be a growing, dangerous tolerance of the process of informal urban land development. In fact, institutional responses at all levels have not been adequate, generally having fundamental problems of scale and content. Important as they are, UN-HABITAT campaigns and the Millennium Development Goals, as well as existing national, regional, and/or local programs, have been only small drops of change in the vast ocean of informal land development. On the whole, governmental policies and programs have tended to be isolated, fragmented, sectoral, marginal, and seriously underfunded.

In this context, in which adequate responses are urgently necessary, policy makers and public administrators need not, and can no longer afford to, keep reinventing the wheel. Instead, they should learn from the experiences accumulated over about forty years of regularization programs, which already provide enough elements at least to indicate what should *not* be done. In particular, African, Asian, and transitional countries should look closely at Latin America, where the process of urban development has been consolidating for a while. However, even within the same financial institutions and development agencies, there is no organized know-how about dealing with the phenomenon and contradictory responses are often given. All such institutions and agencies need to take stock so as not to keep repeating the same mistakes.

Perhaps the main problem affecting the vast majority of regularization programs is that they have failed to directly confront the nature and causes of the phenomenon and, as a result, they have often generated further distortions in urban land and property markets. Such programs have not intervened in the land structure in a significant way, especially in that they have borne

little relation to other public policies concerning vacant land, underutilized properties, and public land. The programs have not been properly reconciled with the broader set of public land, urban, housing, and fiscal policies, and they have failed to reverse the long-standing, unequal spatial concentration of equipment and services. As such, these policies and programs have failed to break the vicious circle that has long produced informal land development and have failed to reconcile their declared objectives with the necessary processes, mechanisms, resources, and instruments. Very often, they have been the object of political manipulation.

After decades of public investment through regularization programs, there are no adequate assessments of their efficacy, because there are no clear indicators to be observed for that purpose. In any case, there are many elements indicating that there has been a significant waste of limited resources, and that the beneficiaries of the programs have not always been the urban poor living in regularized informal settlements. Among the many inevitable lessons that can be learned, it should be stressed that regularization programs necessarily take time, are complex—jumping stages not being an option—and are intrinsically costly. Indeed, it is easier and cheaper to prevent the process of informal land development from happening. It can also be said with certainty that, given the diversity of the existing situations, there are no automatic, magic, simplistic, or one-size-fits-all answers or solutions.

Given the scale of the problem, not to regularize informal settlements is no longer a valid policy. Moreover, given the lack of proper governmental action over the years, new international and national laws and judicial decisions have consistently affirmed that traditional discretionary policies are not sufficient: there has been an increasing recognition that the communities living in informal settlements have a right to have them regularized, often against the will of the public authorities. Land regularization has become a fundamental element of the widely recognized social right to adequate housing, and in a growing number of judicial cases eviction orders have been conditioned on the offer, by the public authorities or even by private landowners, of acceptable housing alternatives.

LESSONS FROM POLICY MAKERS

The question then is *how* to regularize. As a principle, the conceptual format and institutional design of regularization programs should reflect the answers given by policy makers to three fundamental, interrelated questions, namely: why

should informal settlements be regularized? what is regularization? and what are the objectives of the regularization programs? In this process, policy makers should take into account the need to reconcile the *scale* of intervention with the proposed technical *criteria*, the existing institutional *capacity* for action, the available financial *resources*, and the nature of the *rights* to be recognized to the occupiers.

When discussing why they need to formulate regularization programs, policy makers should determine the terms for the distribution of rights and responsibilities, onuses and obligations among all stakeholders, including the residents, who should participate in all stages of the process. A crucial aspect concerns the responsibility for financing the regularization programs; mechanisms such as planning gains, microcredit instruments, and others should be considered.

Regarding the conceptual definition of what regularization is, there is internationally a dispute of paradigms: whereas some programs have only proposed the upgrading of the informal areas, others have focused merely on the legalization of the areas and individual plots. Ideally, regularization programs should combine several dimensions so as to guarantee the sustainability of the public intervention: physical upgrading; legalization; socioeconomic programs aiming at generating income and jobs; and cultural programs to overcome the stigma strongly attached to the residents and to the informal areas.

When discussing the objectives of the programs, policy makers have commonly referred to the promotion of security of tenure and sociospatial integration as if they were the same thing, or as if one objective would necessarily and automatically follow the other. As many examples in several countries have clearly demonstrated, the recognition of individual security of tenure, if considered in isolation, can lead to the so-called “expulsion by the market” (or by other forces, such as speculators and drug dealers) and thus contribute to aggravating the conditions of sociospatial segregation; by the same token, it is possible to promote sociospatial integration without distributing titles. The challenge then is to conceive a legal-political formula that reconciles individual interests and rights with public interests and obligations, according to which individual security can be assured while at the same time affirming the collective interests to keep the communities in the upgraded and legalized areas; this would guarantee that the main beneficiaries of the public intervention will indeed be the urban poor.

THE MATTER OF LEGALIZATION

In this context, the question of the legalization of informal settlements becomes even more relevant—and complex. Legalization programs are certainly important,

but not for the reasons usually given. The existence of titles is not a requirement for the occupiers to invest in their informal houses and businesses; several studies have clearly shown that the existence of a solid perception of security, resulting from a sociopolitical pact in force, is sufficient for that purpose. Neither is there automatic access to credit resulting from legalization programs, as banks usually do not lend to the poor and do not accept their new titles as collateral; in fact, there are many official programs recognizing access to credit to buy building materials even without titles. Above all, it should be stressed that, although they have certainly improved the residents' living conditions, regularization programs have had no structural impact on social poverty. However, legalization programs are very important to provide protection against forced eviction; minimize civil law conflicts; promote some degree of economic realization of rights as well as of sociopolitical stability; allow for increased taxation; clarify legal (land) regimes and facilitate investments; and so on.⁴

Once again, the question then is *how* to legalize. Policy makers should take into account the three abovementioned questions (“why/what is/what for”), and think not only of the individual interests of the residents in informal settlements, but also of the general interests of the broader urban population. In this larger context, there is a wide range of legal-political options to be considered, individual freehold being one. Individual/collective freehold/leasehold, permits/licences/authorizations, social rental, and so forth—there are many possible choices, which of course will depend on the consideration of the existing realities in each given situation.⁵ This is not to say that there is a “continuum of rights,” as some rights are not intrinsically better than others—they are the best options only in a given context—and there is no automatic, incremental process leading from a more precarious form of occupation to a freehold title. Moreover, there are urban planning tools to be considered: the Brazilian experience demarcating Special Zones of Social Interest corresponding to areas occupied by the informal settlements has proved to be effective in terms of keeping land and property values low, thus making it possible for the original communities to stay on the legalized land.

Policy makers should not forget that the role and obligation of the state, as recognized in international documents and national laws, is to provide adequate social housing. This is by no means the same as recognizing ownership

4. For a critical analysis of Hernando de Soto's ideas, see Fernandes (2002).

5. For a comparative study involving several different legal-political solutions, see Payne (2002).

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titles, let alone individual titles; in fact, especially as regards settlements on public land, individual ownership may not always be the best option. Moreover, given the scale of the phenomenon of informal land development, there is no way it can be tackled only through the attribution of individual ownership titles, and collective legal solutions need to be considered.

CONCLUSION

The main lesson for policy makers and public administrators is that there is an urgent need for integrated and articulated responses, with regularization programs being fully and directly reconciled with other land, urban, housing, and fiscal policies. Traditional bottlenecks need to be overcome, primarily those concerning the need for proper information and cadastres; the lack of institutional capacity to act, especially at the local level; the difficulties with anachronistic registration systems; and the many problems created by the conservative judiciary. Another recurrent issue refers to the “day after,” in that in most cases there has been no proper follow-up of the existing programs, nor a continued state presence in the regularized areas.

The ultimate lesson is that the formation of broad and solid sociopolitical pacts is necessary so as to guarantee the success of future regularization programs. Given the scope and gravity of the phenomenon, solutions can be left neither to the market forces alone, nor to the state alone. Proper responses will require national, truly public policies, in which all sectors and stakeholders should be involved, with renewed, but qualified, support from international development agencies and financial institutions. Permanent inter-governmental articulation is fundamental, as is the partnership among the private, community, and voluntary sectors.

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