

# Regularization of Informal Settlements in Latin America



EDÉSIO FERNANDES

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## **Policy Focus Report Series**

The policy focus report series is published by the Lincoln Institute of Land Policy to address timely public policy issues relating to land use, land markets, and property taxation. Each report is designed to bridge the gap between theory and practice by combining research findings, case studies, and contributions from scholars in a variety of academic disciplines and from professional practitioners, local officials, and citizens in diverse communities.

## **About This Report**

This report examines the prevalence of informal settlements in Latin America and analyzes the two primary paradigms for regularization programs that have been used with mixed results to improve conditions in these areas. The first, exemplified by Peru, involves the narrow legalization of tenure through titling. The second is Brazil's broader approach to regularization that combines legal titling with the upgrading of public services, job creation, and community support structures. The author takes a sociolegal approach to this analysis. While local practices vary widely, most informal land developments in Latin America exhibit violations of the prevailing formal legal order governing land use, planning, registration, building, and taxation, and therefore have fundamental problems of illegality. Resolving these problems does not link directly to improvements in public services unless service upgrading is provided as part of a broader regularization program.

Regularization itself remains a work in progress, and the Lincoln Institute of Land Policy's Program on Latin America and the Caribbean has long been concerned about how to address informality and its impacts. This report is part of an ongoing set of research, education and training programs, and related publications that document the work of many colleagues in countries throughout the region and the world. Additional information on this topic is available on the Institute's Web site at [www.lincolninst.edu/aboutlincoln/latin-america-caribbean.asp](http://www.lincolninst.edu/aboutlincoln/latin-america-caribbean.asp).

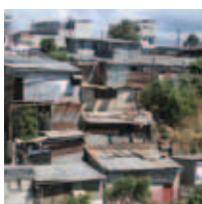
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**ON THE COVER:**  
A regularized settlement has new roadways and other services in the Nova Conquista area of Diadema, Brazil.



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# Executive Summary



**An expanding informal settlement on the periphery of Lima, Peru, serves an active community.**

**D**wellings in informal settlements generally lack formal legal titles, and they may exhibit irregular development patterns, lack essential public services such as sanitation, and occur on environmentally vulnerable or public land. Whether they are built on private or public land, informal settlements are developed progressively over many years, and some have existed for decades.

Such settlements often become recognized legally as part of the regular development of the city—through either official actions or the accretion of rights over time. Accordingly, the definition of informality is imprecise and multidimensional, covering physical, socioeconomic, and legal aspects. Differences in definitions lead to noncomparable metrics across space and over time, yet it is accepted

that informality comprises a significant share of urban development in large Latin American cities, ranging from one-tenth to one-third of urban residences.

A key aspect of informality is the lack of de jure or formal title, although many urban residents feel secure with de facto property rights of ownership based on customary practices. Residents in informal settlements developed on private land often have bills of sale or related documents, and these properties are bought and sold regularly.

Informality is attributed to many causes, including low income levels, unrealistic urban planning, a lack of serviced land and social housing, and a dysfunctional legal system. It generates large costs for residents, including insecurity of tenure, lack of public services,



discrimination by others, environmental and health hazards, and inequitable civil rights. It also poses both high direct costs for local governments when they undertake upgrading programs and substantial indirect costs when coping with other impacts of informality, such as public health, criminal violence, and related social problems.

Policies to regularize informal settlements have been attempted in most Latin American countries, and experience demonstrates that regularization programs need to be designed carefully to avoid either making conditions worse for the low-income residents the programs are intended to help or stimulating the development of new informal settlements. While the financial costs of regularization programs vary widely, residents of regularized areas rarely contribute any payments to compensate for those costs. Overall, the lack of revenue associated with regularization has inhibited the scaling up of such programs.

Regularization programs follow two main paradigms. The first, exemplified by Peru, involves the narrow legalization of tenure through titling. This approach is inspired by Hernando de Soto's hypothesis that tenure security is a trigger for development, stimulating access to finance, economic activity, and residential upgrading. From 1996 to 2006 Peru issued over 1.5 million freehold titles at an average cost of \$64 per household. Evaluations indicate that tenure security had little impact on access to credit, yielded some investment in housing, and may have contributed to some poverty alleviation, although the causal channels for the last effect are not clear. Secure tenure did increase property values by about 25 percent, well in excess of the titling cost.

Brazil's broader regularization programs combine legal titling with the upgrading of public services, job creation, and community support structures. At \$3,500 to \$5,000 per

household, these programs are much more costly than Peru's titling system, and Brazil has had more modest coverage of households. Ironically, service upgrading occurs more often with little or no change in legal tenure status, although the number of titles is increasing. The few evaluations that exist indicate that the increase in property values associated with upgrading exceeded its cost, as in Peru, albeit at a lower rate than in new urban developments.

Recommendations for improving regularization policy and specific programs must address the following issues:

1. Evaluate the performance of regularization programs, including the collection of both baseline data before program implementation and subsequent data on program costs and outcomes.
2. Customize policies and programs, because a single approach is unlikely to work well across all situations.
3. Use appropriate titling systems (freehold, leasehold, cooperatives, land trusts, or communal ownership) to ensure the socioeconomic sustainability of the community.
4. Seek the participation of both men and women to avoid building gender bias into the process and to increase its long-term effectiveness.
5. Make regularization more self-sustaining financially through property taxes; charges on urban infrastructure and service improvements to capture part of the resulting land value increment; and equitable fiscal burdens on all segments of the society.
6. Support more research and analysis to determine if the situation is improving or worsening in particular cities and to prevent the establishment of additional informal settlements, particularly when they are thought to be caused by regularization programs themselves.



## CHAPTER 1

# The Challenges of Informal Development



**Improvised housing offers an alternative but inadequate option for low-income families in Villa Nueva, Guatemala.**

Informal settlements constitute a long-standing form, and often a large share, of urban residential development in most Latin American countries.

Such development results in part from the illegal occupation or unlicensed subdivision of land, and in part from exclusionary practices that have contributed to historically unequal conditions of economic growth and wealth distribution. While informal processes to obtain access to land have provided housing to large numbers of the urban poor, they are ultimately an inadequate and inefficient means to meet the growing need for the sustainable development of safe and secure communities in Latin America and around the globe.

Typically informal settlements are established by illegal developers or new residents

who occupy public, communal, or private land. In most cases the developers or residents demarcate lots and begin to construct rudimentary dwellings. Public services such as pavement, street lighting, water, and sanitation are initially absent. Over time, buildings are expanded, more durable construction materials replace temporary ones, and some public services begin to appear. Public service provision often stimulates more building construction. This physical consolidation can go on for many years, creating communities with substantial masonry buildings with two or more floors, paved streets and sidewalks, and commercial centers.

In the early stages of such settlements, tenure is often insecure, particularly if the settlement takes place on public, communal,



or private lands that have been occupied illegally by the new residents. Settlements on private land typically lack any formal registration of ownership, but occupants often purchase illegally demarcated lots from the parcel owner or previous occupiers, and they may even possess bills of sale.

Over time, tenure security may increase, but it is normally *de facto* rather than *de jure*. In many cases, the informal settlements are regularized much later through formal recognition by public authorities, the provision or upgrading of public services, and formal acknowledgment of individual or other forms of plot ownership or legal possession. The continued lack of legal recognition of legal tenure can impede service provision, the availability of other urban infrastructure, and the overall legality of urban residency.

Public authorities, and public opinion, tend to be more tolerant of informal settlements in which precarious legal documents (e.g., bills of sale, contracts, receipts) establish the successive links in the chain of property transfer, but they deal more severely with settlements originally resulting from land invasion (Fernandes 2007). However, a basic legal principle holds that time generates rights, and precarious land claims may become full land rights over time, as through adverse possession.

### **SOCIOLEGAL ASPECTS OF INFORMALITY**

While local practices vary widely, most informal land development in Latin America exhibits violations of the prevailing formal legal order governing land use, planning, registration, building, and taxation. Thus, from a legal perspective, informal settlements have fundamental problems of illegality. However, this is often minimized by those who dismiss the legal order as illegitimate and use instead the notion of “legal pluralism” to explain informal land development.

This latter view holds that the same legal order can accommodate rights generated through both formal statutory processes and informal customary rules, such as some social practices (marital relations, for example) that simultaneously accommodate statutory and customary laws and norms.

It is also evident that informal rules do not emerge spontaneously; they reflect traditional processes and practices—such as those regarding building rights, permits, rights of way, sale, inheritance, and registration—and they are constantly adapted to suit the specific needs of the affected social groups. The distribution of rights and justice in informal settlements is usually highly but informally regulated. In many consolidated settlements, informal land use and development are strictly governed by established practices, and many transactions are authorized (with fees charged) by informal powers, even including an informal registration process.

However, legal systems undoubtedly favor those socioeconomic groups that can more easily find the instruments and mechanisms they need to effectively defend their land rights and interests. More often than not, the “other form of legality” of informal settlements means the recognition of second-class rights for second-class citizens. Residents in informal settlements not only lack full land rights, but they also lack the financial and other resources—literacy, information, education, networking, and access to lawyers—that are often necessary to have access to the administrative and judicial systems. Informal settlers are especially vulnerable as regards eviction and “negotiated” relocation.

Acknowledging the illegal aspects of informal development does not in any way mean that the people living in informal settlements have no rights, or that they should be repressed or evicted. In some cases they

may not have land rights of their own or the right to stay on the land they occupy, but they almost always have other rights resulting from their occupation status. These rights need to be recognized by policy makers and judges—for example, in the case of eviction, the resident's rights to be fairly compensated for their own building construction and community facilities.

Such rights do matter, and therefore the legal dimensions of the phenomenon of informal development cannot be dismissed, underestimated, or taken for granted by policy makers. Above all, those who fail to understand the extent to which informal development is a result of the prevailing legal order often foster a legal status quo that excludes a large number of people. Rather than opposing legitimacy and legality, the challenge is to construct a legitimate and inclusive legal order that respects the informal processes of distributive justice

reflected in the daily practices of these informal settlements.

## **BURDENS OF INFORMALITY**

From a broader perspective, the combined burdens of informal development have been fundamentally harmful to cities, to the overall urban population, and to the residents of informal settlements themselves. The implications of the phenomenon are serious and manifold in numerous ways: legal, social, environmental, political, and economic.

### ***Legal Burdens***

Informality principally means a lack of full security of tenure, which exposes the residents in informal settlements to the ever-present risk of eviction by the public authorities or landowners. Forced eviction was a regular public policy in some cities in the past, but the practice was largely abandoned after political democratization in

**Forced evictions and destruction of informal settlements make room for new high-rise development in Recife, Brazil.**



the 1980s and 1990s. However, worrying evidence shows that eviction has been recurring in both urban and rural areas in Latin American. One study indicates that between 2004 and 2006 nearly 150,000 people were evicted in 15 Latin American countries, with the largest numbers in Brazil (70,637), Peru (42,728), Mexico (10,374), and Venezuela (6,848) (COHRE 2006).

The lack of fully recognized land titles frequently means that the residents of informal settlements are deprived of basic citizenship rights. In many cases, they do not even have an official address, which makes it virtually impossible for them to have access to credit in shops and banks, receive mail, prove they are city residents, or require police to have a warrant to enter their premises.

### ***Social Burdens***

Communities in informal settlements have long been excluded from regular access to the benefits of urban development, including public services, infrastructure, public spaces, and collective facilities. Public authorities, such as police or fire services, are usually deficient in consolidated informal areas.

The cultural stigma attached to informal communities also means that residents are often excluded from the formal labor market and their communities are sometimes literally walled off from adjacent areas. Moreover, residents in informal settlements have often been identified by the public authorities and by popular opinion as marginal individuals, and as such they have been targeted by repressive policies, including the widespread use of indiscriminate police violence. The socioeconomic vulnerability of these communities has made them easy targets for predators, including drug-related and organized criminals, notably in cities in Colombia, Brazil, and Mexico.

### ***Urban-Environmental Burdens***

Informal development has generated fragmented cities and precarious neighborhoods, profoundly marked by many forms of health and safety hazards, environmental degradation, pollution, and inadequate sanitary conditions. The overall living conditions in these settlements are substandard: narrow streets, dense occupation, precarious construction, difficult access and circulation, lack of ventilation, lack of sanitation, and lack of public spaces. In many cities, the informal occupation of areas near water reservoirs, areas prone to landslides and flooding, or protected forests is another looming problem.

### ***Political Burdens***

The maintenance of ambiguous legal situations that are not fully recognized, and in which people do not have clearly defined rights, has long subjected the residents of informal settlements to political manipulation by parties from all sides of the political spectrum. The academic literature has repeatedly shown that traditional forms of political clientelism—where politicians make electoral promises to resolve the problems affecting informal settlements—have tended to perpetuate informality. The urban poor have often been disenfranchised and excluded by the political process in many ways, and living in informal settlements has made them even more vulnerable.

### ***Economic and Fiscal Burdens***

Economic burdens are perhaps the least discussed dimension of informal development, but the costs to society are surprisingly high. Although many believe that informality is an inexpensive option for gaining access to urban land and housing, informal development generates intrinsically inefficient cities and costly urban management. Regularization programs cost up to three times more than new, licensed urban development (Abiko et al. 2007).

The informal provision of services, such as water, is much more costly than formal provision. In Bogotá, the costs of regularizing informal settlements have been calculated as 2.8 times higher than the costs of developing serviced urban land for the poor. Improvised access to services is also more expensive, as illustrated by the case of Monte Olivos, Guatemala, where the price of water from a truck is seven times higher than from the pipe system. The irony is that the same private “utility” company provides both services—a perverse incentive against private investments in extending pipe service (Smolka and Biderman 2011).

Some informal settlements are excluded from official property tax systems, resulting in a loss of potential revenue for public administrations. This limited tax base makes it even more difficult for public authorities to provide services (Smolka and De Cesare 2006).

At the same time, in other informal settlements the residents are charged property tax by the public authorities despite their lack of valid land titles. Sometimes the same administrations that levy the taxes refuse to

provide services on the grounds that the situation is informal. In other cases, residents have sought to pay property tax as a means of strengthening their legal hold over the land.

## INTERVENTIONS TO RESOLVE INFORMALITY

Eliminating informality requires two types of interventions. One is to prevent the establishment of new informal settlements. The other is to address the deficiencies of existing settlements through programs that (1) provide formal legal recognition of the communities, as well as individual or other forms of ownership and legal possession; (2) remedy gaps in public services; and (3) promote local economic opportunities and growth.

While stressing the crucial importance of conceiving and implementing a set of preventive policies that widen the conditions of access to serviced urban land and housing, this report focuses primarily on a review of experience with the regularization of existing informal settlements. Within this experience, it pays particular attention to the legal aspects of regularization, and it also refers to other dimensions—such as access to infrastructure and service provision, upgrading requirements, building quality, and socioeconomic programs—particularly when these actions interact with legal dimensions.

Recognizing the difficulties involved in drawing general conclusions from policies and processes that are intrinsic expressions of national and local realities, this report organizes the main conceptual aspects of the sociolegal discussion on land regularization efforts in Latin America by focusing on the two most distinct legal paradigms in the region, those of Peru and Brazil.

The report aims to provide elements for a general assessment of the Latin American

**Informal settlers living on a former garbage dump in San Salvador, El Salvador, wrote: “We want you to fulfill your promises to the people for water, housing, lighting, wood, and roofing materials. Comply with accords that exist in the constitution.”**





**Metrovivienda, a public agency in Bogotá, Colombia, produced this new social housing development in the Nuevo Usme area.**

experience by international, national, and local institutions and organizations, as well as by national and local governments, all of which have been involved in the formulation of regularization policies in different ways. It also provides information to guide new regularization policies in other regions where the phenomenon of informal development is beginning to be recognized in a more consistent way, especially in Africa, Asia, and the Middle East.

It is not surprising that the evidence indicates that successful regularization initiatives have to be designed to fit the facts and history of the particular informal settlement and country context. To illustrate this, consider the narrow issue of how legalizing land titles must vary with the situation. In Colombia, addressing the occupation of privately owned land cannot be treated with the same legal approach as the occupation of public land, since the law prevents public

authorities from simply applying traditional contractual rules to public property.

By the same token, regularizing a Brazilian *favela* that originated from individual or collective land occupation requires a different legal approach from that used to confront an irregular land subdivision created by the illegal actions of land developers and promoters. Moreover, communal lands, such as the Mexican *ejidos*, have their own legal status.

While much can be learned from experience, understanding how to regularize informal settlements is still very much a work in progress. Different countries have tended to utilize different approaches, and each approach has strengths and weaknesses. However, current experience makes it well worth assessing what is currently known about the advantages and weaknesses of various regularization strategies.



## CHAPTER 2

# Defining and Measuring Informal Development and Assessing Its Causes



Informal settlements, new public housing developments, and established neighborhoods spread across the periphery of Panama City.

**A**n important debate has continued for nearly 50 years concerning the magnitude and persistence of informal access to urban land and housing in Latin American countries. Policy makers, legislators, and academics regularly discuss the causes and implications of informal development, and consider the nature and context of the public policies necessary to confront it, both to regularize existing informal settlements and to prevent the phenomenon from expanding. Progress is often difficult, however, because of a lack of agreement about what constitutes informality, and analysis has been hindered by long-standing, intertwined problems of definition and measurement.

### PROBLEMS OF DEFINITION

Several sets of characteristics are relevant in trying to define informality.

#### *Development Features*

Informal development encompasses many dimensions and variations in Latin American cities, including:

- occupation of public, communal, and private land, followed by self-construction (*favelas, barriadas, villas-miseria, villas-emergencia, chabolas, tugurios*), sometimes in originally approved subdivisions;
- the unlicensed subdivision of private, communal, and public land followed by the sale of individual plots and self-construction (*barrios, loteos piratas, loteamientos irregulares, loteamientos clandestinos*);



- irregular public housing projects (*conjuntos habitacionais*), some of which have gradually become extralegal;
- the urbanization and development of areas defined as rural;
- the unauthorized subdivision of previously existing legal plots for the construction of additional buildings (*casas-de-frente-e-fundo*);
- the widespread occupation of riverbanks, water reservoirs, mountain sides, and other environmentally protected areas; and
- the occupation of public spaces such as streets, pavements, and viaducts.

While differing in specific characteristics, settlements with one or more of these features are often categorized as informal. Such a general term has the advantage of being broad in scope, but its generality can impede effective public policies. For example, Calderon (1998) distinguished between illegal, irregular, and clandestine settlements to discuss the different situations of informal land development in Peru.

### **Physical Characteristics**

The various criteria used to identify existing developments as informal settlements often reflect the distinct professional backgrounds and academic or institutional outlooks of the involved policy makers and analysts. Such physical criteria may include precarious urban infrastructure, public services, and collective equipment; inadequate construction; environmental degradation; absence of public spaces and of leisure, community, and cultural facilities; and predominance of poor residents. In some of the surveys mentioned below, possessing one or two of these criteria has been enough to classify a settlement as informal.

However, the presence of one or more of these features does not necessarily distinguish these settlements from other so-called formal settlements. For example, some long-

consolidated Brazilian *favelas* are better equipped with urban infrastructure, services, or solid building construction than newer formal land subdivisions on the urban periphery. Indeed, incremental consolidation over time has been the general rule of informal development in Latin America.

The Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística; IBGE 2000) defines a “subnormal” census block as one that satisfies the following conditions: (1) forms a group of more than 50 housing units; (2) occupies the land illegally; and (3) exhibits a disorderly pattern of urbanization and/or lack essential public services.

### **Socioeconomic Characteristics**

The socioeconomic profile of the individuals living in informal settlements cannot be the main criterion to define informality. Most people living in informal settlements are indeed poor, and most socioeconomic indicators—literacy, education, health, mortality, income, and employment—demonstrate their low incomes and poor-quality living and housing conditions. However, residents in many informal settlements represent a wide range of socioeconomic categories, especially in high-value established urban locations where many residents are considered more middle-class.

Moreover, many poor people live in formal settlements. According to the Pereira Passos Institute (2002), 64 percent of the poor in Rio de Janeiro (here defined as families living on the equivalent of less than one Brazilian minimum wage) resided outside *favelas* in peripheral (both irregular and regular) *loteamentos* (IBGE 2000).

Neither is informal employment a hallmark of informal settlements. Rocinha, Rio de Janeiro’s largest *favela*, has a dynamic and diversified informal economy involving several social and capital networks, as well as the



**Informal housing expands upward in this neighborhood of La Plata, Argentina.**

increasing presence of formal providers of consumption goods and services.

### ***Legal Aspects***

If there is an underlying and characteristic determinant in virtually all types of informal settlements, it is the violation of the prevailing legal order in one way or another. Informal settlements often have similar physical characteristics, but their different, specific legal problems have varying implications. Informal development usually involves the existence of one or more intrinsic forms of illegality, through violations of private, public, or communal land ownership rights; urban, environmental, or building regulations and standards; registration requirements; and taxation provisions.

The key issues in addressing informal land development in Latin America are the determinants of legal security of land tenure and effective access to serviced urban land and housing. Unlike the matter of urban upgrading, the lack of full legal security of land tenure depends largely on the action of the public authorities, as there is a limited scope for what the individuals and communities can do by and for themselves.

## **CHALLENGES OF MEASUREMENT**

The large scale of informal urban land development is confirmed by various indicators from many sources. In Latin America, informal development has been one emblematic characteristic of rapid urban growth as millions of people have gained access to urban land and housing primarily through informal mechanisms. However, precisely quantifying informality remains a challenge. Information and data at all levels, from global to local, tend to be fragmented, imprecise, and often questionable.

UN-HABITAT, the World Bank, Cities Alliance, and other international bodies have attempted to provide reliable statistics. In a widely referenced report, UN-HABITAT (2003) suggested that more than one billion people were living in slums or informal settlements globally, and that this number would grow to 1.4 billion by 2020. UN-HABITAT more recently defined informal development or slums as encompassing at least one of five specific criteria (box 1).

Based on an assessment of the situation in 15 Latin American countries, MacDonald (2004) estimated that at least 25 percent of the urban population lives in informal settlements, increasing from 111 million to 127 million between 1990 and 2001. The World Bank (2007, 1) reported that informal tenure “is common, accounting for about one third of home ownership.”

The statistics vary in different countries, but the realities are similar. For example, 20 to 25 percent of the dwellings in the main cities of Brazil are estimated to stem from illegal land occupation. In Argentina, the population living in *villas-emergencia* in Buenos Aires has grown 25 percent over the past few years, housing some 200,000 people, a figure equivalent to almost 7 percent of the city’s inhabitants (Clichevsky 2006).

Different estimates of the size and growth

of informal developments reflect the difficult task of defining informality. For example, in Buenos Aires the percentage of households without secure tenure jumps from 1.37 percent, if the measure is defined as households not owning the land they occupy, to 10.19 percent, if it is defined as the lack of title or legal documents proving tenure security (Smolka and Biderman 2009, 14). Data in the Brazilian census indicate that the population living in “substandard” urban settlements declined from 7.0 million in 1990 to 6.5 million in 2000. Improved cartographic analysis may be able to identify more precise information on informal settlements.

Although most censuses and surveys have been more precise in determining the levels of public service provision, they have not been able to measure the number of dwellings with illegal land tenure. A recurrent survey problem is self-perception. When asked if they own their house, residents often respond positively, because this is how they perceive their status. The lack of efficient land cadastres and centralized land registries in many countries also limits the option of collecting alternative data on illegality.

While recognizing that the basic illegal nature of informal development may make its definition more precise, the many potential and overlapping layers of illegality also make quantification of the problem a serious challenge. The essential legal dimensions involve both land tenure aspects (occupation of private, public, and/or communal land, and informal subdivision of land) and urban planning aspects (mainly the unlicensed subdivision of one’s own land). Other legal aspects such as lack of registration, violation of building rules, and taxation matters are certainly important and need to be acknowledged, but they are not essential determinants of informal development.

The process of informal access to urban land and housing in Latin America

#### BOX 1

### UN-HABITAT’s Definition and Measurement of Slums

UN-HABITAT has developed a household level definition in order to use existing household level surveys and censuses to identify slum dwellers among the urban population. A slum household lacks any one of the following five elements:

- Access to improved water (*access to sufficient amount of water for family use, at an affordable price, available to household members without being subject to extreme effort*);
- Access to improved sanitation (*access to an excreta disposal system, either in the form of a private toilet or a public toilet shared with a reasonable number of people*);
- Security of tenure (*evidence of documentation to prove secure tenure status or de facto or perceived protection from evictions*);
- Durability of housing (*permanent and adequate structure in non-hazardous location*); and
- Sufficient living area (*not more than two people sharing the same room*).

Using this definition, UN-HABITAT estimates indicate that in 2001, 924 million people, or 31.6 percent of the world’s urban population, lived in slums. In developing regions, slum dwellers account for 43 percent of the urban population, compared to 6 percent of the urban population in Europe and other developed regions.

In 2001, Asia had 554 million slum dwellers, or 60 percent of the world’s total; Africa had 187 million (20 percent of the total); and Latin America and the Caribbean had 128 million (14 percent of the total). It is projected that in the next 30 years, the number of slum dwellers worldwide will increase to 2 billion if no firm or concrete action is taken to arrest the situation.

Source: UN-HABITAT (2006).

is by no means new. Informal settlements in cities such as Rio de Janeiro and Bogotá span many decades and have increased significantly over the last 30 years. Most informal land development used to take place in capital and large cities, but it is also observed in middle-sized and even small cities (table 1).

**TABLE 1**  
**Number of *Favelas* in Brazilian Municipalities by Population Size, 2000**

| Municipal Population Size Category | Total Number of Municipalities | Occupancy of <i>Favelas</i>    |                                    |
|------------------------------------|--------------------------------|--------------------------------|------------------------------------|
|                                    |                                | Total Number of <i>Favelas</i> | Total Households in <i>Favelas</i> |
| Up to 5,000                        | 1,371                          | 61                             | 1,995                              |
| 5,001–20,000                       | 2,688                          | 436                            | 39,104                             |
| 20,001–100,000                     | 1,275                          | 1,693                          | 132,834                            |
| 100,001–500,000                    | 194                            | 3,373                          | 532,047                            |
| More than 500,000                  | 32                             | 6,191                          | 1,654,736                          |
| <b>TOTAL</b>                       | <b>5,560</b>                   | <b>11,754</b>                  | <b>2,360,716</b>                   |

Source: IBGE (2000).

## CAUSES OF INFORMAL DEVELOPMENT

### *Low Income*

Poverty and underlying global and national macroeconomic factors, especially wealth distribution and job creation, play a central role in determining the process of informal development. Although most inhabitants of informal settlements are indeed poor, poverty is not the sole cause of informal land development. Some data indicate that the levels of absolute poverty have decreased while informality has grown (IPEA n.d.).

In Rio de Janeiro, for example, the rates of informal growth have been higher than the growth rates of both urban population and poverty. In 1961, when the city had a population of about 3 million, an estimated 300,000 people (10 percent of the population) lived in *favelas*. By 2009, the city had a population of 6 million, and reportedly about 1.25 million dwellers (more than 20 percent of residents) lived in *favelas* and other informal settlements. In São Paulo, informal dwellings were 6.9 percent of the total in 1991, but their share increased to 11.4 percent by 2001 (Dowall 2007).

### *Sociospatial Issues*

The process of informal access to urban land and housing results in part from factors

related to the configuration of the spatial order. The current situation reflects what has been called the structural inability of public administrations in Latin American countries, especially at the local level, to guarantee sufficient access to accessible and affordable serviced land and/or housing units in urban areas (Smolka and Lorangeira 2008). Infrastructure investment has typically been underfunded or spatially biased to high-income areas. Public authorities have rarely made a consistent effort to recapture for the community any surplus value generated by public infrastructure service provision and changes in land use and development regulations.

### *Shortage of Social Housing*

Informal development is also affected by the nature and scope of government housing policies. Insufficient social housing production is aggravated by the inadequate conditions of existing housing projects (many of which are illegal in some way, often because of lack of registration or municipal licenses, or violations of zoning and building standards). Moreover, the credentials required by many lending agencies to approve mortgage applicants have excluded most poor people from access to loans and even to many public housing programs.

In Brazil, for example, even following the recent launch of a significant national housing program, little formal housing is available for low-income families (those living on less than three Brazilian minimum wages). Only recently have the housing programs of Caixa Econômica Federal (the largest public bank in Latin America) started to reach out to lower-middle income groups (families living on less than five Brazilian minimum wages).

Chile is one of the few countries in the region that has implemented a large-scale social housing policy, but it has been criticized for concentrating the production of social



**Public housing provides an alternative for low-income residents in Santiago, Chile.**

housing in distant peripheral areas, thereby reinforcing sociospatial segregation (diPasquale and Cummings 2002).

### ***Formal Market Outcomes***

Combined with the unequal spatial distribution of urban infrastructure by the public authorities, the overall process of land and housing delivery through the formal market is characterized by prices that are high relative to incomes, and these high prices carry over to informal developments. Private developers traditionally have not catered to the needs of the urban poor in Latin American cities, especially in the absence of significant public subsidies, thus making room for informal land development opportunities. Even in many informal developments, prices for land, property, and rents are high, and services such as water supply are expensive. Informal development processes often involve highly profitable informal market operations (Abramo 2009; Smolka and Larangeira 2008).

### ***Political Clientelism***

The long-standing political manipulation of informal communities through clientelistic

practices also encourages more informal development. Questionable titles to public land have often been promised by politicians, who also have influenced which public areas are to be occupied. In some situations, false land titles have been given to the residents or official agents have benefited from new developments, both financially and politically. The actions of public authorities thus can affect the growth of informality as well as the action of land markets.

### ***Unrealistic Planning***

The urban planning tradition in major Latin American cities has reinforced informal processes, together with the lack of systematic public investment and service provision in the areas where most of the urban poor live. The resulting lack of serviced land then has the effect of creating more informality.

A recurrent criticism of urban planning highlights its poor integration of land, housing, environment, transportation, taxation, and budgetary policies. With few exceptions, local administrations have failed to promote a more inclusive urban order. Both existing planning laws and the approval (especially by local administrations) of elitist urban

New housing in this eroded area of Tegucigalpa, Honduras, is indicative of uncontrolled development and lack of planning.



planning regulations based on unrealistic technical standards often fail to take into account the socioeconomic realities determining the conditions of access to land and housing.

Regulations such as large minimum plot sizes, excessive development and construction restrictions, and prohibition of services, commerce, and small businesses in residential areas have had a fundamental role in generating high land and property prices. Only recently has research started to quantify how urban and environmental regulations have been translated into land prices and impacted the dynamics of urban land markets.

### ***Problems of Urban Management***

Informal settlements also stem from the exclusionary nature of the regulatory framework governing land development, as well as the bureaucratic nature of land and urban management systems that are arbitrary and fail to involve effective popular participation. In many Latin American cities, the licensing of subdivisions can take up to five years

(Larangeira 2002; Goytia, de Mendoza, and Pasquini 2010).

The imposition of strict obligations, the requirement of inflexible guarantees, and the lack of one-stop-shops to help potential developers or residents all contribute to high transaction costs. However, it remains difficult to quantify the extent to which bureaucratic costs are imbedded in land and property prices (Biderman, Smolka, and Sant'Anna 2008).

The cost and time needed to register land also discourages many people from obtaining legal security of tenure through that process. In Peru, for example, transactions in titled settlements are recorded for only one-fourth of sales, indicating that many others simply ignore the process (Calderon 2010). However, registration is the sole factor that constitutes legal ownership in many Latin American national legal systems.

### ***A Dysfunctional Legal System***

This complicated picture of informality is reinforced by the obsolete and contradictory workings of the overall legal and judicial

system in most Latin American countries. Tolerance for violating laws and the widespread lack of enforcement of existing laws are due in part to the public's lack of legal information and limited access to extrajudicial conflict resolution, and to the judicial system itself.

In short, the combination of unrealistic technical criteria, financial obligations, inflexible guarantees, lengthy licensing procedures, formalistic contractual rules, obsolete registration practices, and inefficient conflict resolution mechanisms has produced a highly prohibitive legal context contributing to informal development. The poor lack the legal, financial, and other resources necessary to defend themselves and their land rights, and more than other social groups they have felt the impact of the exclusionary legal order.

The prevailing urban-legal order in most Latin American cities has contributed to the formation of comparatively high land and property prices in both the formal and informal markets, abetting a pattern of socio-spatial segregation. These problems are more common than often realized, and violations involve socioeconomic groups other than the urban poor. For example, the widespread establishment of exclusive gated communities that prevent free access to public street systems and coastlines lacks a proper legal basis in many countries.

The occupation of public or environmentally protected land by more privileged groups is also common, and the systematic disrespect of building standards is widespread. The municipality of Belo Horizonte (Brazil) has acknowledged that 70 percent of its construction was irregular, including *favelas*. In Brasilia, land subdivisions, gated communities, and unauthorized construction are common (Distrito Federal 2006).

## SUMMARY

Informal development encompasses a wide range of activities from unauthorized private and market-based land subdivision to wholesale occupation of public land. While this breadth of characteristics makes it difficult to measure the extent of informality precisely, all estimates indicate that it constitutes a large share of existing residences in Latin American cities. One key attribute of informality is illegality, often including the lack of a formal title to the occupied land parcel. Unfortunately, public records do not readily support estimates of the number of illegal parcels now or in the past.

The causes of informal development are many and varied, involving a range of socio-economic, spatial, and institutional factors such as exclusionary planning, bureaucratic inefficiency, and the legal system itself. There is also a dynamic aspect to informality. Over time its patterns and the importance of its various causes continue to change. In this respect, our understanding of both the causes of informality and how to regularize existing settlements is still evolving.

**This sign in Bogotá, Colombia states: "This land is not for sale. Unscrupulous people may try to fool you. Get information at: Tel XX."**





## CHAPTER 3

# The Regularization of Consolidated Informal Settlements



**Matinha is a densely consolidated favela in Rio de Janeiro, Brazil.**

**P**olicy makers increasingly are responding to the phenomenon of informal land development by implementing land regularization policies, and a recent survey identified such policies in 17 Latin American and Caribbean countries (Angel et al. 2006). Many different procedures have been attempted—some more comprehensive or expeditious than others—with variable and often questionable results. Like informal land development, land regularization includes many different conceptual approaches and corresponding institutional frameworks.

While global and macroeconomic factors are part of the causal nexus supporting infor-

mality, a great deal can be done at the national and local levels to reverse the process of informal development. The promotion of inclusive land, urban, and housing policies can widen legal access to serviced neighborhoods. This involves redefining land ownership rights; integrating urban law and management; broadening popular participation in the decision-making process; facilitating access to the judicial system; and, above all, creating the bases of a process of land governance to support the democratization of access to land and housing.

It is in this broad and complex sociolegal context of land governance that land regularization should be discussed. While stressing



the need for preventive policies, it is crucial to also recognize the need for the appropriate treatment of existing consolidated settlements involving millions of people.

Because few policy makers fully understand the nature and dynamics of informal development processes, their poorly designed regularization policies often reinforce urban informality and sociospatial segregation, can be detrimental to the interests of the urban poor, and may result in benefitting land developers and other privileged socioeconomic groups. Gentrification, for example, may be one outcome of land regularization, but it often results from inappropriate regulatory policies.

However, given the scale and welfare costs of informality, as well as the land rights created over time, not to regularize informal settlements is no longer politically sustainable. Regularization policies must be based on a more consistent foundation that addresses security of tenure, legal rights for property owners, and the provision of urban infrastructure and services.

## **CHALLENGES OF REGULARIZATION**

Regularization policies deal with complex socioeconomic and urban-environmental realities and involve multiple aspects of land, registration, financial, urban, and environmental laws. They seek to ensure that residents of consolidated informal settlements are not evicted or relocated, but can remain on the land they have occupied with access to better living conditions. Moreover, to some extent regularization policies promote social justice and compensate for historical inequalities.

This approach does not exclude all relocation, however, since not all situations can or should be regularized. Environmental and public health concerns and the need for public spaces are legitimate reasons to justify some

relocation. However, suitable alternatives in nearby areas must be offered by the public authorities and even private landowners, and negotiated with the affected residents to help them retain existing social networks. This principle has been expressed in international standards, national laws such as the 2001 City Statute in Brazil, and judicial decisions in Colombia and Argentina.

An additional challenge is to define the level of consolidation that would justify regularizing a settlement and keeping the residents in place. Factors such as the number of residents and buildings, the degree of overall development, the level of existing services, and especially the duration of occupation are the main criteria being used. Political factors undeniably play a role as well.

## **WHY REGULARIZE?**

Approaches to land regularization vary greatly as they reflect the specific characteristics of different informal developments, but the following arguments are often used to advance the transformation of existing informal communities into consolidated settlements.

- Insufficient supplies of serviced land make it infeasible to require large-scale relocation.
- Cities have insufficient financial resources to implement major relocations.
- Enormous social costs would result from uprooting communities that do not want to be relocated, given the rich social and capital networks they have formed over the years.
- Public authorities have a legal obligation to enable the urban poor to have access to adequate housing.
- Relocating communities would often entail environmental costs and consequences.
- In many cases, communities have a legal right to remain where they are living.

Thus, a wide range of humanitarian, ethical, religious, sociopolitical, economic, and environmental arguments can justify regularization policies. More recently, arguments for regularization are also based on the legal notion of the social function of property.

In most Latin American countries, laws, public policies, and judicial interpretations have generated a legal culture stressing individual property rights, without a consistent concern for the fulfillment of a social function of property—a principle embodied in many national constitutions (Fernandes and Maldonado Copello 2009).

The legal culture that emphasizes the privileges of owners to the detriment of their obligations and other social, environmental, and cultural responsibilities resulting from property ownership has supported an essentially speculative, laissez-faire urban development process that has contributed to sociospatial segregation, environmental

degradation, and informal development. A growing countervailing force based on the social function of property has called for the legal empowerment of local administrations in matters of urban regulation and territorial organization, and for citizen participation in local decision-making processes (box 2).

Legal reform has been initiated in some countries, and others have begun to recognize the individual and collective rights of residents in informal settlements to stay on the land they occupy as an integral part of the social right to adequate housing. In Colombia and Venezuela, for example, land regularization has already become a fundamental element of the constitutional social right to adequate housing.

The 1988 Brazilian Federal Constitution recognized that those who had lived in informal urban settlements for at least five years had rights to the regularization of their legal

**An informal settlement in Guayaquil, Ecuador, exemplifies disregard for environmentally sensitive areas.**



ownership of occupied land up to 250 square meters. Individual and/or collective freehold rights were granted for settlements on private land through adverse possession, while individual and/or collective leasehold rights were granted for settlements on public land. In 2000, the social right to adequate housing was given constitutional status. The 2001 City Statute regulated the constitutional provisions and established a broad approach to land regularization, combining legalization, upgrading, and other supporting urban planning policies.

Over time, situations long ignored or tolerated by governments eventually lead to the generation of rights for the residents. This shift is accompanied by an erosion of the government's discretionary power over consolidated informal areas, even on public land. It can also result in the loss of public land ownership in cases where adverse possession rights are applicable.

### WHO CAN REGULARIZE?

The locus of responsibility to formulate and promote regularization policies is directly linked to the question of who has the power to regulate urban land development. In more centralized countries (e.g., Peru and Mexico), national governments tend to be in charge of regularization policies. In more decentralized countries (e.g., Brazil), local governments have played a leading role.

Several assessments of regularization policies have stressed that their efficacy (and the integration of all territorial organization and land development regulations) can be guaranteed only when all governmental levels participate in their formulation (Alfonsin 1997; 1999; Smolka and Larangeira 2008; Angel et al. 2006).

In addition to intergovernmental coordination, several types of partnerships have been formed between the public authorities, the private community, and voluntary organiza-

#### BOX 2

### The Social Function of Property and Urban Development

An important process of legal reform is underway in some Latin American countries, particularly in Brazil (mainly through the 1988 Federal Constitution and 2001 City Statute) and Colombia (mainly through the 1991 Constitution and Law 388/1997). This reform is based on two structural principles: the social function of property, and the integration of law and management with the governance of land and urban areas.

The emerging, redefined legal-urban systems aim for:

- a just distribution of the costs and opportunities of urban development between owners, developers, the public authorities, and society;
- an affirmation of the public authorities' central role in determining an adequate territorial order through planning and management;
- a clear separation between property rights and development/building rights;
- new criteria for calculating compensation under expropriation;
- reduced duration of occupation for adverse possession to take place; and
- strengthened recognition of the rights of occupiers and tenants.

In Brazil, the social function of property is fulfilled when the current use of land is consistent with the master plan. The concept of the social function of property has also been extended to public property and property registration. A range of collective rights has been approved to guide the processes of land use and development, such as the right to urban planning; the social right to adequate housing; the right to a balanced environment; the community's right and public authorities' obligation to recapture the land increment generated by the action of the public authorities and urban legislation; and the right to the regularization of consolidated informal settlements.

Source: Fernandes and Maldonado Copello (2009).

tions. In Venezuela, for example, community organizations (Comités de Tierras Urbanas) have taken the lead in the regularization process. Academic institutions and international development agencies also have had a fundamental role.

Given the interdisciplinary nature of regularization, professionals from planning, architecture, engineering, and legal backgrounds have begun to work together more closely. In countries such as Venezuela and Brazil there is a growing public architecture and engineering movement that aims to provide technical solutions that address the realities of informal settlements. The involvement of legal professionals—e.g., registration officials, prosecutors for the government, public defenders, lawyers, judges—also is crucial to help solve the complex legal problems accumulated over the years.

### WHO PAYS THE BILL, AND HOW?

Regularization programs traditionally have been financed by national and local budgets, titling fees, loans from international financial institutions, and contributions from bilateral development agencies. Providing public services, especially sanitation infrastructure, makes such policies expensive.

To achieve the necessary scale of public intervention, regularization policies need to be

more self-sustaining (Smolka and Larangeira 2008). This will require obtaining funds from new sources, such as city revenues from linked development, urban operations, and surplus value recapture processes. Bogotá has promoted this kind of financial redistribution in the *Nuevo Usme* urban operation, which integrates several public mechanisms to intervene in the land market. Of special note is Colombia's policy of capturing private land value increments for public benefit in order to offer affordable serviced land to the urban poor, with the public administration thus replacing the traditional pirate developers (Maldonado Copello and Smolka 2003).

Cities have had little success in getting residents of informal settlements to contribute to the financing of regularization policies. Over the years, popular participation has been encouraged in many ways, from the discussion of project layouts to decisions regarding relocation and allocation of resources, but resident payment of the resulting costs has been strongly resisted.

A recurrent argument holds that the regularization of a consolidated informal settlement is the payment by the public authorities and society of a historical debt to the urban poor, who should not be penalized further by the imposition of financial obligations. A counter argument is that regularization directly benefits residents and raises their property values. In some cases, land titles have been granted freely or for a small or symbolic sum, as in the case of CORETT in Mexico, where the typical titling fee levied is only \$0.50–\$2.00 per square meter (Angel et al. 2006).

**New housing produced by private developers in Bogotá, Colombia, offers public subsidies to assist low-income residents.**





## WHAT ARE THE RESULTS?

While scores of regularization projects have been introduced across Latin America, systematic reports on their results remain relatively rare. Most common are reviews of project implementation and outcomes without much quantitative information, let alone any comparative analysis of alternative procedures to address regularization issues. More than 120 such projects in Brazil are described in a report by Carvalho and de Campos Gouveia (2009).

A handful of other reports by implementing agencies and a few independent third parties cover several projects or experiences across cities or countries. Examples include a review of the experiences of ten cities in Brazil (Larangeira 2002); a comparison of experiences in Mexico, Brazil, and Peru (Angel et al. 2006); a comparison of experiences in Brazil, South Africa, and India (Krueckeberg and Paulsen 2002); and a review of experiences in 13 countries with 71 programs (Clichevsky 2006).

Relatively few reports use evaluative methods and present quantitative findings. Thus, it is often difficult to determine how many households actually received access to urban services or titles. In addition, the lack of an evaluative element in the project often means there are no baseline data for comparisons before and after implementation.

Furthermore, few reports evaluate projects in terms of their own objectives, utilize evaluative criteria such as efficacy and efficiency, or present information on how actual costs and implementation times compared to those proposed. Typically, both costs and implementation times exceed projections, while results fall below expectations. For example, of the 71 programs reviewed by Clichevsky (2006), only six included comparisons of actual numbers of people served with original projections, and for none of the programs did the number

served exceed 40 percent of the target.

The small number of comprehensive evaluations of regularization programs suggests they have not been fully successful at all governmental levels, generally due to fundamental problems of scale, format, and content (Alfonsin 1997; Smolka and Larangeira 2008; Rojas 2010). Government policies and programs tend to be isolated, fragmented, sectoral, marginal, and seriously underfunded (Payne, Durand-Lasserve, and Rakodi 2007). At the same time, ad hoc regularization programs have become a component of the national housing policies in several Latin American countries, together with public policies favoring housing subsidies, the deregulation of the urban-environmental legal order, and indiscriminate amnesties for illegal developments.

Nevertheless, lessons can be learned from the 40 years of experience with regularization programs, dating from the original Peruvian regularization law in 1961 and Mexico's CORETT program in 1974. Peru's COFOPRI program, introduced in 1996, reduced the time to obtain a title from 7 years to 45 days, the number of required steps from 207 to 4, and the cost from US\$2,156 per title to essentially zero (Guerinoni 2004). Other reports of experiences in multiple countries show consistent results from titling in terms of its effects on land values (around 25 percent increase); its relatively low cost; and the benefits of titling in relation to the timeframe of related reforms (Brakarz, Greene, and Rojas 2002; Angel et al. 2006). Some also indicate that regularization can have the effect of sanctioning a process of systematic improvements that produce functioning neighborhoods.

Project reviews also indicate less productive approaches. For example, regularization has been more successful in addressing settlements on publicly owned land than on privately owned land because of the high

costs of clarifying titles (Clichevsky 2006). Because many regularization projects have been done in isolation as special cases and at a small scale relative to the size of the problem, they are subject to administrative discontinuities and lack integration with other policies. As mentioned, rigorous evaluations are rare, and most projects have little or no data on costs, making it impossible to analyze project efficiency.

These examples provide enough elements to indicate what should not be done, yet potentially contradictory programs continue. For example, the Brazilian Ministry of Cities has two parallel and ongoing land regularization programs. Habitar Brasil BID–HBB (Housing Brazil), sponsored by the Inter-American Development Bank, focuses on urban upgrading, whereas the National Program to Support Sustainable Land Regularization in Urban Areas proposes an integrated approach to achieve sustainability (Fernandes 2006).

Even today regularization policies, such as UN-HABITAT campaigns, the Millennium Development Goals, and other national, regional and/or local programs, address only a small part of the problem. For example, Target 11 of Millennium Development Goal 7 is to reduce the worldwide number of people living in informal settlements by 100 million by 2015, but this is only one-tenth of the one billion such residents estimated by UN-HABITAT (2003).

The very fact that informal development has not ended, either inside or outside regularized settlements, is a clear indicator of the limits of these programs. In Belo Horizonte, for example, the municipal regularization policy and supporting programs have been implemented continuously since 1983, but the percentage of people living in *favelas* has remained virtually the same. In many cases, regularization programs have been as much a part of the problem



as the solution in their impacts on new informal settlements (Smolka 2003).

### SUMMARY

It takes many years to implement a fully integrated regularization program, especially if legal and judicial disputes are involved. Given the diversity of existing situations, there are no automatic, magic, or simplistic answers, or one-size-fits-all solutions. It is easier, faster, and cheaper to prevent the process of informal land development from happening in the first place. However, with all their shortcomings and constraints, it is undeniable that regularization policies decisively contribute to improving the precarious living conditions of those in the affected communities. The challenge is to improve their design and implementation in ways that do not stimulate new informality.

**Before and after images show the Parque Royal settlement in Rio de Janeiro that was upgraded through the Favela-Bairro program.**



## CHAPTER 4

# Experiences with Regularization: The Cases of Peru and Brazil



**Villa El Salvador is one of the most well-known informal settlements in Lima, Peru. Through various public programs and self-organized local initiatives, some houses have titles and services whereas others do not.**

**A**pproaches to regularization efforts vary, reflecting the different country contexts and objectives of policy makers, but there are two main paradigms. The first envisions formal legalization of ownership through issuance of individual freehold titles as a catalyst or trigger that will promote private investment in housing, facilitate access to official credit and markets, and lead to poverty alleviation.

While the Peruvian experience with this approach is best known, Mexico's legalization program is much older. Since 1974, Mexico's CORETT program (and later PROCEDE) promoted the regularization of informal settlements through expropriation and

titling, mostly on *ejido* communal land. Over 30 years, 2.5 million titles have been distributed, but the process has lost momentum in recent years, partly due to changes in 1992 to the *ejido* legislation allowing privatization. The PROCEDE program, implemented from 1992 to 2006, ultimately provided individual land titles to the residents of 26,000 *ejidos* (about 90 percent of the 29,000 *ejidos* in the country).

The second paradigm has a broader scope and consolidates legal security of tenure using a set of sociospatially integrated interventions that link land tenure legalization with upgrading of public services, urban planning, and related socioeconomic policies. This

approach is reflected in Brazilian national legislation that embodies a social right to adequate housing. While there is more evaluative evidence about the approach used in Peru than that in Brazil, summaries of experience with regularization in both countries reveal useful lessons.

### **TITLING AS A TRIGGER FOR DEVELOPMENT: THE PERUVIAN EXPERIENCE**

The dominant approach to land regularization internationally and in Latin America for the last two decades has focused on legalizing tenure of individual plots—also referred to as titling or formalization—as a self-contained program. This has been the focus of Peru’s regularization policy, which has been greatly influenced by the ideas of Peruvian economist Hernando de Soto (box 3). These ideas have dominated the debate on land regularization, and have been translated into large-scale legalization policies.

Many countries, including Peru, El Salvador, Cambodia, and Vietnam, have implemented large-scale titling programs, while others such as Albania are starting to initiate them. All of the programs have promoted changes in the national legal order, created a centralized institutional apparatus, and invested heavily in data, mapping, and cadastres. As a result, millions of individual freehold titles have been given to residents of informal urban settlements.

Peru is a leading practitioner of titling programs. In 1996, then-president Alberto Fujimori created the Commission for the Formalization of Informal Property (COFOPRI), an organization supported by the Urban Building Registry (*Registro Predial Urbano*) and other legal instruments (especially for prescriptive acquisition). The titling program has been financed with national, international, and World Bank funding.

The formalization process has involved

#### **BOX 3**

#### **Hernando de Soto’s Proposition**

**H**ernando de Soto’s international bestselling books—*The Other Path* (1989) and *The Mystery of Capital* (2000)—intertwine several dimensions: the dynamics, innovation, creativity, and entrepreneurship of informal processes; the close links between informal housing and informal businesses; the economic value of informally created assets; and the impediments caused by complex legal and registration systems and by bureaucracy and corruption. However, de Soto’s key point is his proposal that formalizing property rights triggers economic development in low-income and transitional countries.

His proposition is that poverty and economic underdevelopment will be reduced by removing legal and institutional barriers to the ownership and transfer of economic assets produced informally. Providing legal tenure security in the form of land titling and registration would enable occupants of informal settlements to access official credit and finance their housing and business investment.

de Soto’s ideas are appealing because they are simple and his estimates of their benefits are very large. He projected that land titling would mobilize US\$9.34 trillion of “dead capital” (US\$6.74 trillion in informal housing alone) resulting from informal development. This would integrate the urban poor into the market and eradicate poverty.

As a result, large-scale legalization policies have been proposed widely as the antidote against urban poverty, and de Soto’s proposition has been supported by both multilateral and bilateral development agencies. In 2006—with support from de Soto, former U.S. Secretary of State Madeleine Albright, and the United Nations Development Programme (UNDP)—the High Level Commission on Legal Empowerment of the Poor was created with an original mandate that emphasized property rights and land titling.

three stages: (1) the production of information on land and on existing obstacles to formalization of settlements; (2) identification, demarcation, and registration of plots and buildings; and (3) identification of entitled occupiers. Nearly 1,600,000 freehold titles were distributed in Peru between 1996 and 2006 (table 2).

### ***Critiques of Titling***

While praising the scale of the Peruvian program, academics and policy makers have debated the nature and validity of its underpinnings and evaluated the results of its implementation. Some critics believe that the narrow focus on the formalization of settlements broke with the earlier tradition of regularization policy in Peru, which included upgrading policies and other socioeconomic programs to promote the sociospatial integration of the informal areas and communities (Riofrio 2008).

Rather than discussing settlements, neighborhoods, and communities, formal titling focuses on individual units, property rights, and free market transactions regardless of the social context and consequences. Titling is implemented without mention of social safety nets and welfare, or cooperatives and public goods. Moreover, Peru's titling approach utilized old-fashioned universal registration, when other models, such as land recording, would likely be more suitable to the realities of informal settlements (Arruñada 2009).

A central feature underlying the use of titling as a singular intervention regards de Soto's (2000) evocative notion of "dead capital." Besides embodying the value of informal property that could be used as collateral, this notion implies that the economic resources amassed by the urban poor through informal housing and business processes are outside the boundaries of national accounts and finances.

However, this notion that the capital generated through informal processes is "dead" is misleading. In developing countries, indirect taxation on services and consumption often produces more revenue than direct taxes on land, property, and capital. Recent official data from Brazil, for example, indicate that the poor pay a larger share of their income in taxes than the rich because most taxation is indirect (IPEA 2009). Although a recurrent argument holds that regularization policies benefit people who do not pay taxes, most citizens living in informal areas decisively contribute to the national economy.

A Georgist critique stresses that the focus on freehold titles to land (in order to provide

TABLE 2  
Titles Granted Annually in Peru, 1996–2006

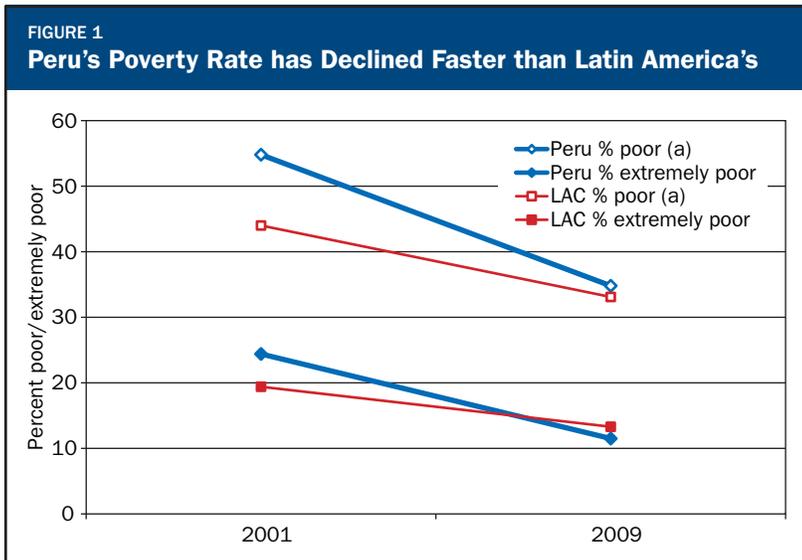
| Year      | # Total Registered Titles | # Titles in Lima | % Titles in Lima to Total |
|-----------|---------------------------|------------------|---------------------------|
| 1996      | 33,742                    | 32,750           | 97                        |
| 1997      | 129,392                   | 125,768          | 97                        |
| 1998      | 149,574                   | 107,490          | 72                        |
| 1999      | 322,053                   | 110,986          | 34                        |
| 2000      | 419,846                   | 170,250          | 41                        |
| 2001      | 115,599                   | 29,457           | 25                        |
| 2002      | 123,827                   | 38,450           | 31                        |
| 2003      | 70,401                    | 16,696           | 24                        |
| 2004      | 65,598                    | 12,002           | 18                        |
| 2005      | 71,300                    | 8,866            | 12                        |
| 2006      | 68,468                    | 8,194            | 12                        |
| 1996–2006 | 1,596,800                 | 660,909          |                           |

Source: Calderon (2007a).



| TABLE 3<br>Lending for Building Materials Increased in Peru, 2003–2006 |                  |                       |            |                |
|--|------------------|-----------------------|------------|----------------|
| Year   | Number of Titles | Titles with Mortgages | % of Total | Average Credit |
| 2003   | 1,332,481        | 52,000                | 3.9        | US\$5,596      |
| 2006   | 1,549,340        | 306,000               | 19.7       | US\$2,075      |

Source: Riofrio (2008).



Source: CEPAL (2010).

Note: (a) includes the extremely poor.

of property titles. Access to credit has also been linked to other factors such as contacts, language, and education (Smets 2003).

Despite the existence of land titles and the increase in property values averaging 25 percent after titles were issued (Angel et al. 2006), most banks still have difficulties lending to the poor, require collateral valued higher than loans (especially in peripheral areas where properties have low market value), and do not trust the repossession system (Calderon 2006). The financial and technical criteria used by the commercial banks, the associated bureaucracy, and the required proof of income all create high transactions costs for the poor to borrow.

Ironically, research also shows that most people living in informal settlements do not

want official credit from commercial banks, preferring other informal, more flexible sources of credit through their social networks. Moreover, they fear the risks involved in pledging their sole property (usually the family home) as collateral to obtain the rather limited financing offered by the commercial banks (Field and Torero 2006).

**2. Investment in housing.** Titling helps, but is not a *sine qua non* to promote investment in housing consolidation. Most Latin American cities demonstrate that titles are not needed for people to invest systematically in their informal houses and businesses. Once residents feel secure and do not fear eviction, they routinely increase their housing investment activities (Payne and Fernandes 2001).

**3. Poverty alleviation.** There is more to poverty than the lack of property titles, and more to informality than poverty, but titling per se may have some association with poverty alleviation. For example, figure 1 shows that while Peru was implementing large-scale titling programs over the 2000s decade, its poverty rate declined compared to the rate for Latin America as a whole.

Of course, effective poverty eradication requires consistent and significant investments in public goods such as infrastructure, education, and social policy, as well as in employment and income generation strategies. Research does indicate an association between formalization policies and increases in children's nutrition rates, improved education, and reduced number of days missed at school (Galiani and Schargrotsky 2004); increased labor force participation (Field 2007); or lower teenage pregnancy rates (Field 2006). However, the causal linkages remain obscure, and it is difficult to attribute these changes to land titling.

TENURE SECURITY AS  
AN INTEGRATED PROGRAM:  
THE BRAZILIAN EXPERIENCE

While it is in the interest of all urban dwellers to have all consolidated settlements properly regularized, the challenge for policy makers has been to reconcile the individual interests and rights of the residents in informal settlements with the public interests and obligations of all. The sociospatially integrated approach to regularization tries to ensure individual tenure security while maintaining communities in their original locations in order to ensure that the main beneficiaries will indeed be the urban poor. Of course, the full recognition of legal tenure security remains a goal, as it guarantees that residents are not evicted or pressured by public authorities or landowners.

However, achieving sociospatial integration requires a broader set of strategies and measures, ranging from promoting urban and environmental sustainability to strengthening local communities and empowering women.

Motivating this integrated approach in Brazil is the social right to adequate housing, promoted by the UN Housing Rights Programme (UNHRP) among other organizations, which includes the right of all to live in dignified conditions and to participate fairly in the opportunities and benefits created by urban development.

The question is how to achieve both tenure security and sociospatially integrated regularization. Some regularization policies have combined tenure legalization (also formalization or titling) with upgrading of informal areas, and others have also had a socio-economic dimension (to generate income and job opportunities) or a cultural dimension (to overcome the stigma attached to residing in informal areas).

Legalization has not necessarily followed upgrading easily, and vice-versa. Providing tenure security without considering other issues has sometimes created new urban, environmental, and financial problems. For example, legalizing some plots complicates



**The Rio das Pedras favela in Rio de Janeiro, Brazil, spreads out next to a newer public housing complex.**

| TABLE 4<br>Regularization and Titling Results in Brazil, 2009 |                          |               |                  |
|---|--------------------------|---------------|------------------|
|   | Households               |               |                  |
|   | Regularization Initiated | Titles Issued | Titles Completed |
| Number  | 1,706,573                | 369,715       | 136,974          |
| Percent   | 100%                     | 21.7%         | 8.0%             |

Source: SNPU/Mcidades (n.d.).

the widening of streets or other infrastructure investment and raises the cost of necessary expropriation related to upgrading.

### **Successes and Failures**

Brazilian municipalities have been far more successful in upgrading informal settlements than in legalizing them, although the majority of the upgrading programs did not lead to titling. The internationally acclaimed *Favela-Bairro* program in Rio de Janeiro resulted in only 2,333 titles in a universe of more than 50,000 families, but only 145 actually completed the registration process (Larangeira 2002). One reason for this low titling rate is that occupants have to work through a complex bureaucracy on their own to complete the process. A review of regularization programs in 385 municipalities in 27 states involving 2,592 settlements indicates that the issuance and registration of titles is making some progress, but the completion rate is low (table 4).

The *Favela-Bairro* program, recently replaced by the *Morar Carioca* program, involves a large public investment in infrastructure, services, public spaces, and community facilities, combined with continuous housing consolidation by the residents. It has improved living conditions even without full legal tenure security, but has also led to higher land and property prices and rents accompanied by significant changes in the socioeconomic composition of the local community (Abramo 2009).

Introduced in 1994, the first two phases of the *Favela-Bairro* program involved 253,000

residents in 73 settlements and expenditures of about \$4,000 per family. The program and its successor aim to promote their inclusion in the formal sector of the city, after an initial physical and urban planning upgrade that involved residents and local NGOs. Only recently was legalization introduced in some of the occupied areas, through both adverse possession claims and leasehold titles. The program had lost momentum in recent years after changes in the local political administration, but recently it has been repackaged and renamed.

One particular problem has been the failure to scale up interventions (Rojas 2010). Most existing regularization policies have addressed only a small number of informal settlements. For example, of the 1,200 *favelas* in Rio de Janeiro, the costly *Favela-Bairro* program has covered fewer than 100 in number, although they are among the largest settlements. Over the years even as some regularization policies have become more technically sophisticated, more environmentally sensitive, and more participatory, they continue to benefit a small number of people mainly because of their high financial costs.

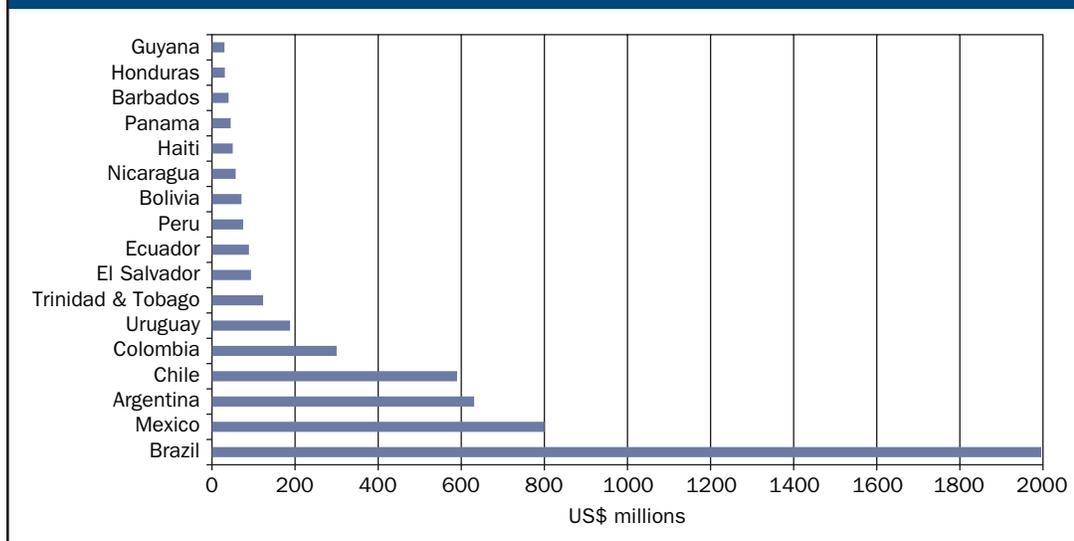
Porto Alegre's regularization program is limited in scale, but is among the most comprehensive because it integrates socioeconomic, financial, and urban-environmental sustainability through physical upgrading; introduces legalization; and provides socioeconomic and cultural programs aimed at generating income and jobs (Smolka and Damasio 2005). Moreover, spatially limited regularization programs do affect population mobility and increase land and property prices. Such impacts might be much smaller if policies were applied more widely.

### **Costs and Benefits**

Regularization programs are costly. While upgrading expenditures by country are not available, total expenditures on projects



**FIGURE 2**  
**Total Expenditure on IDB Funded Upgrading Programs, 1986–2008**



Source: Rojas (2010, 142).

sponsored by the Inter-American Development Bank (IDB) indicate that Brazil has spent much more than other countries on such programs (figure 2). In contrast, the IDB-related expenditures by Peru, with less emphasis on urban upgrading, have been about 4 percent of those by Brazil.

Upgrading costs per dwelling vary a great deal depending on the specific geography of the neighborhood, its distance from existing infrastructure, and the extent to which households need to be relocated to provide infrastructure. However, examination of several projects does produce meaningful averages, and the results substantiate that retrofitting services in established neighborhoods is two to three times as costly as service installation at the time of original construction.

Upgrading costs in the *Favela-Bairro* program in Rio de Janeiro were around \$4,000 per household. Comparably calculated upgrading costs for the Guarapiranga project in São Paulo were \$5,000 per household, and those for the Ribeira Azul project in

Salvador were about \$3,600 per household. Paving, sewerage, and drainage costs in all projects comprised 50 to 60 percent of expenditures (Abiko et al. 2007). One driver of costs has been the increasing complexity of upgrading projects over time—for example, by adding components related to health, income generation, and community development.

Only a few analyses have calculated benefit-cost results for upgrading projects. A report by the IDB for the *Favela-Bairro* program used increases in property values to measure benefits (Rojas 2010). For example, Cuenin (2010, 206–207) reports that calculations for property valorization resulting from improvement programs in Pando Norte in interior Uruguay and the northern area of Montevideo produced internal rates of return of 28 and 25 percent respectively—much higher than the reference rate of 12 percent. In the *Favela-Bairro* program, the rate of return was found to range from 13 to 71 percent with an average return of 42 percent (Cuenin 2010, 207).



**The Favela-Bairro program provided a community center for a neighborhood in northern Rio de Janeiro.**

Even with their existing shortcomings, sociospatially integrated regularization policies can have enormous social and economic importance. They can promote the socioeconomic development of the communities, their political stability, the rationality and efficiency of urban management, and the minimization of social and environmental impacts. They certainly will not end urban poverty, but they can improve the housing and living conditions of millions of people.

### **ASSESSMENT OF REGULARIZATION EXPERIENCES**

Large-scale titling programs in Peru have increased tenure security within informal settlements—a major accomplishment. They have also increased the value of the properties of the affected residents at relatively low cost. However, those programs have also created many problems that could be solved by implementing more sustainable processes. Given their low cost, it is ironic that one issue with titling programs is financial sustainability. The immediate financial cost of the first phase of COFOPRI's operation

(1996–2004) was US\$66.3 million, co-financed by a 1998 World Bank loan and the Government of Peru. During this period, 1,481,000 property titles were issued, benefiting some 5.7 million urban dwellers. No substantial user fees were charged to the beneficiaries for titling or registration (Angel et al. 2006).

The apparent low cost (averaging \$64 per title) seems to contradict the argument that large-scale titling policies are not financially self-sustainable. Indeed, many of the beneficiary households could have paid for the titles in Peru, especially considering that their property values increased. Moreover, they could also pay property taxes, although many legalized areas have not been integrated into the property tax system.

Where land regularization has been reduced to its titling dimension alone, little attention has been paid to the need to promote sociospatially integrated urban development, which is very costly. This approach has not addressed the underlying causes of informal development or of poverty. Moreover, such titling programs have created the expectation that all informal settlements will eventually be legalized. This expectation has stimulated further informal development, especially on public land, where the vast majority of titles in Peru have been issued. Unfortunately, some settlements that have been regularized are not sustainable from an urban and environmental perspective.

Most formalization programs have failed to reform the obsolete registration system for land and property rights, and they sometimes generate parallel and conflicting systems. Only recently have efforts been made in Peru to reconcile the public registry system with the parallel urban land cadastre created by COFOPRI. This is an important matter because in many Latin American countries the registration of the land title at the public registry is what constitutes ownership.

The Brazilian approach to informal settlements has emphasized that security of tenure and sociospatial integration should be pursued jointly to guarantee the permanence of communities, with better living and housing conditions on the land they have long occupied. Brazilian regularization policies have linked legalization with upgrading policies—and sometimes socioeconomic programs—and also emphasized effective popular participation in all stages of the process.

The Brazilian experience applies different legal solutions to different situations, uses different legal instruments to address informal settlements on public land versus private land, entails much higher costs per household given the costs of urban upgrading, and has covered many fewer households. Nevertheless, Brazil now has approximately 1 million titles in process, albeit through a fragmented system led by local administrations, unlike the centralized process in Peru.

It is not sufficient to “legalize the illegal” without provoking changes in the legal-urban system that led to the illegality in the first place—especially in the name of fighting poverty. Titling per se provides legal security of tenure to the residents, a necessary step, but it is not sufficient to promote sociospatial integration and may undermine the permanence of the legalized communities.

### **UNANTICIPATED CONSEQUENCES**

By failing to confront the nature and causes of the phenomenon of informal development directly, regularization policies often generate unanticipated consequences. When conceived in isolation from the broader set of land development, urban, housing, and fiscal policies, regularization policies have borne little relation to other issues such as vacant land, underutilized properties, and available public land. Typically they have not addressed



he prevention of new informal development, although the PRIMED program in Colombia is an exception.

While several expected objectives of large-scale titling programs such as those in Peru have not materialized fully, research has revealed unintended consequences related to the impacts on informal land markets; the formalization of unsustainable settlements; gentrification; political manipulation of regularization policies; and problems with the registration of new land titles.

Some studies indicate that regularization policies have increased land prices in informal markets. Physical improvements have attracted more people to live in these areas and to exhaust the remaining capacity of newly implemented infrastructure, equipment, and services. Distortions and abuses of titling also have occurred, such as so-called “tourist plots” in Peru, where people who do not live in a neighborhood demarcate plots there in expectation of being given land titles (Riofrio 2008).

New informal settlements have been formed in the expectation that they will be legalized, and titling has been viewed as

**Speculators improvised possession of open land in anticipation of future public improvements and titling in Chincha, a coastal area of Peru.**

a kind of license to invade. While approximately half a million title deeds were distributed in Lima between 1996 and 2000, for example, land invasions also multiplied during those years at an unprecedented rate (Calderon 2007b). An increased likelihood of land regularization thus has had the ironic effect of stimulating the process of informal development (Smolka 2003; Smolka and Larangeira 2008).

While regularization programs provide individual security of tenure and protection against legal eviction, they can also cause gentrification, especially in centrally located and valuable areas where land developers and promoters may pressure residents to sell their parcels (Durand-Lasserve 2006). Many traditional communities in São Paulo, for example, have been converted from informal settlements to middle- and upper-class developments.

Legalization policies have also led to growing expectations for gentrification in Vidigal, an old and well-located favela in

Rio de Janeiro. A newspaper article reported that a developer had been gradually buying parcels in the informal market (prices have been around R\$35,000 or US\$20,000), in the expectation that the area will be legalized. He planned to construct a hotel but was denied a license to operate one there (Azevedo 2010).

Some regularized areas were, and remain, unsustainable in urban-environmental terms, such as precariously constructed buildings. Many legalized settlements still lack sanitation, water, utility services, infrastructure, and public spaces—in some cases 10 years after their regularization. Few measures address the mitigation of existing environmental problems, and only recently have systematic efforts been made in Peru to provide infrastructure and services.

Regularization policies have sometimes been used as vehicles for political patronage in “titles for votes” schemes. In other cases, the political process fails to redress historical gender imbalances. Many women in infor-

**Modern commercial buildings tower over the remnants of Favela Coliseu near Faria Lima Avenue in São Paulo, Brazil.**





mal settlements still lack full legal control over their assets. In Peru, however, 56 percent of COFOPRI titles have been granted to women, which is also related to increasing female participation in the labor market.

Given this mixed record, has titling failed, and would the residents in consolidated informal settlements be better off if left to their own devices? The answer is no. Such titling programs are partial housing policies, and to be fully successful they need to be reconceived within the broader context of preventive land, urban, housing, and fiscal policies that effectively widen the conditions of access to serviced land and housing. From this perspective, the question of legalizing informal settlements becomes even more relevant, and more complex.

Titling policies are very important to:

- promote tenure security and offer protection against forced eviction;
- help governments to fulfill their obligation to ensure the social right to housing;
- ensure that proper compensation is paid to residents in cases of relocation;
- minimize future family and neighborhood legal conflicts by clarifying property rights;
- define land and property regimes to secure future investments by residents and others, within the conditions imposed by regularization policies;
- make it easier for residents to offer their properties as collateral, or to gain access to other types of formal housing or consumer credit;
- strengthen communities, recognize basic citizenship rights, and promote sociopolitical stability;
- redress gender imbalances; and
- generate data on plot boundaries and existing buildings for the local property tax system.

## SUMMARY

Regularization has employed two primary approaches that have been explored in two case studies: legalizing tenure through titling in the expectation that it will trigger development, as applied in Peru; and upgrading services more broadly while legalizing tenure, as applied in Brazil.

Peru's legalization was implemented at a large scale, covering nearly 1.6 million households over ten years and at the relatively low cost of \$64 per household. No fees were charged to households, and property values increased an average of 25 percent—an increment greater than program costs. Of the expected accompanying effects, there were some dwelling improvements and some reduction in poverty, but little evidence of improved access to credit.

Brazil's broader upgrading program has been much more limited in scale and had per household costs of \$3,500 to \$5,000—from 50 to 80 times higher than those in Peru. Though there are few benefit-cost studies of Brazil's program, those that exist find that property value increments exceed upgrading costs, yet at a rate below the increment resulting from new urbanization.

Both programs have experienced countervailing or unanticipated effects. A main issue, as in most amnesty programs generally, is that they stimulated more of the negative behavior—in this case, informal settlements—that the programs were trying to remedy. Other effects included gentrification, mainly in centrally located neighborhoods. Overall, both programs have been successful in providing more secure tenure and producing benefits that exceed program costs, although neither one met all of its objectives.



## CHAPTER 5

# Additional Legal Issues Related to Regularization

Private developers have built serviced housing on former *ejido* lands in Mexico, but self-built occupation continues outside the walls.



Promoting progress in the complex field of land regularization encounters a number of legal issues and collateral objectives. Given the importance to society of housing its people, policies that relate to regularization will be expected to address social objectives beyond tenure security, which itself is complicated because there are many forms of tenure other than freehold title that can provide security to occupants.

### TYPES OF TENURE RIGHTS

The residents of consolidated settlements often do not consider titling to be a top priority because they already view their tenure as secure. Some even think that titling is harmful to their interests, as it entails potential future financial burdens and may constrain their ability to use and dispose of

their property if their newly titled property is subject to urban and environmental regulations. However, land titling should matter to all of those living in consolidated informal areas because the understandings that generate the perception of tenure security shared by many residents can and do change.

Land titling remains the main way to promote full legal and durable security of tenure, although tenure security can be provided to occupants by many different types of titles or enforceable rights:

- full individual or collective freehold, obtained mainly through sale, donation by the public authorities, or adverse possession;
- individual or collective leasehold over public land (including variations of long-term leases such as the Concession of Real Right to Use and Concession



of Special Use for Housing Purposes widely used in Brazil);

- the demarcation of Special Zones of Social Interest (ZEIS) allowing the initiation of a new chain of property transfer, made possible by a 2009 Brazilian federal law;
- surface rights, which refers to ownership of the surface land only, with other rights being reserved;
- the *anticretico* right, as used in Bolivia and Ecuador. This is a rental contract wherein the renter pays the landlord a fixed sum at the start of the rental period in lieu of monthly rent; at the end of the rental period the tenant receives the original advanced rental payment back from the landlord; should the landlord fail to return the money, the tenant acquires ownership;
- community land trusts, where a community organization owns the land in a given settlement;
- cooperatives (still influential in Uruguay, for example);
- *titulos supletorios* (supplementary titles) that acknowledge possession, as used in Nicaragua and Venezuela, for example;
- temporary permits or occupation authorizations; and
- social rental contracts.

When land rights are ill-defined or not clearly recognized by the legal system, titling policies may adopt an incremental approach that augments the residents' legal status over time. But this does not mean there is always a continuum of rights or an automatic process leading from a more precarious legal form of occupation to a freehold title.

For example, leaseholders may become freeholders as a result of evolving land policies, but there is no guarantee that this will happen. Nor is there a reason to believe that leasehold is an inferior form of tenure. As a means of enhancing the permanence

of the communities on regularized land, leasehold titles may be a better option than freehold, while collective titles may be better options than individual ones. The choice of legal instrument depends on the realities in each given situation.

Collective legal solutions—such as collective freehold or leasehold, community land trusts, social property (*propiedad social* as in Venezuela), collective property (*propiedad colectiva*), and other forms of communal rights such as the Mexican *ejidos*—may correspond more closely with the collective nature of many informal development processes. Such solutions may also make sense where defining individual plots is difficult because of densely configured settlements and where it is necessary for regularization programs to reach a sustainable scale.

However, collective titling requires rules to be established to define the collective decision-making process for a wide range of issues, including the future sale of legalized land and buildings, or how property and building matters will be decided by a collectively titled community. Economic pressure to bypass such rules and sell plots informally became widespread in Mexican *ejidos* located near fast-growing cities, thus undermining the original community goals.

## LEGAL ISSUES OF LAND OCCUPATION

Three main legal situations of informal land development require different legal approaches and therefore different regularization policies:

- settlements mainly occupied by the urban poor, in which the residents have their own (individual or collective) rights to the regularization of the occupied areas and are recognized by the legal order;
- settlements mainly occupied by the urban poor, in which the public authorities have broader discretionary power to

BOX 4

Regularization of Nonpoor Settlements

Although it is in society's interest to regularize informal settlements occupied by the nonpoor (sometimes called regularization of specific interest), these settlements cannot be treated with the same legal and technical approach as that used to regularize settlements occupied by the urban poor. After all, nonpoor residents had the option of formal access to land and housing, but chose to live outside the law.

When nonpoor informal settlements are on public land, the direct transfer of the plots to the occupiers without an auction process to achieve the highest possible price cannot be justified using the same laws that authorize the transfer of public land to the poor residents of informal settlements for reasons of social interest. Middle- and upper-class occupiers of public land may be entitled to preference rights at an auction, and to compensation if they are outbid, but in principle they should not be entitled to free direct transfer and privatization of the public land.

- determine the conditions of regularization programs; and
- informal settlements in which the occupiers are not mainly the urban poor (box 4).

One fundamental legal aspect to be taken into account is the original regime of land ownership, since the regularization of consolidated settlements on public land must be implemented differently from the regularization of settlements on private land. Direct transfer of public ownership to land occupiers, be it through sale or donation, usually requires specific legal authorization. When transferring public property under regularization programs, a common confusion is often made between property rights and housing rights.

The main legal role and obligation of the public authorities normally is to ensure access to adequate social housing to those who need it. This is by no means the same as exclusively granting ownership titles or

individual freehold titles to land. In fact, for many settlements on public land, individual land ownership may not be the best option.

Legal systems also vary regarding the legal recognition of ownership by adverse possession. Some countries require a judicial declaration and others, such as Peru, use administrative channels. Adverse possession of private land is often based on the social function of property: occupiers of someone's private property are eventually entitled to being recognized as the legitimate owners following a period of their continuous and pacific occupation. They, unlike the original landowner, have given a social function to the property. Local laws establish the specific conditions for operationalizing this right, such as duration of occupancy and maximum size of land to be adversely possessed.

Brazil's adverse possession policy, known as a special urban entitlement (*usucapiao especial urbano*) requires five years of uncontested occupation and is applicable up to 250m<sup>2</sup>. In Colombia, for cases where the possession was obtained irregularly without good faith or any fair titling, only three years are currently required with no area maximum. This rule applies only to social housing currently defined as being worth the equivalent of about US\$35,000, as defined by article 51 in the urban land reform act of 1989 (*Ley 9 de 1989 [Ley de reforma urbana]*).

Although this is a civil matter between private parties, the public authorities can support communities in having their land rights fully declared, for example, by providing them with technical, legal, and financial help. Whenever adverse possession rights apply, the public administrations need not expropriate the occupied land to promote its regularization, as the residents already have rights that only need administrative or judicial declaration.

The same rationale does not usually apply for occupations of public land. Unless

the legal system explicitly recognizes adverse possession of public property, regularization can be implemented by granting the occupiers tenure status other than freehold. Leasehold forms (such as those being used in Brazil) constitute real rights promoting tenure security and can be registered, transferred, or inherited. Leasehold and social rental housing are two valid alternatives that may be more suitable to the interests of both policy makers and residents of informal settlements. Privatizing public land is not necessary to fulfill the social right to housing; on the contrary, maintaining public ownership of land might well be the best way to guarantee the permanence of communities.

**ENSURING THE DURABILITY OF BENEFITS FOR THE POOR**

No specific form of land titling protects residents against pressures exerted by market forces. In some cases, increases in the value of legalized properties (especially when

located in central city areas) have prompted developers to encourage residents to sell their houses. Many residents have reportedly done so and some have then occupied public or private land illegally, thus starting the process over again. Accordingly, in Peru, in the Brazilian cities of Recife and Porto Alegre, and in Buenos Aires among other places, policy makers have restricted the transfer of newly legalized properties by requiring sales to be approved by residents' associations, or they have banned sales for several years. Such schemes have not worked out well and have merely generated new types of informal transactions (Angel et al. 2006).

Learning from these experiences, some local administrations have moved from focusing on the actions of current residents to seeking ways to guarantee that the land upgraded and legalized at public expense remains in use as housing for less-favored social groups. Rather than imposing constraints on future sales, public authorities use urban



**High- and middle-income residents of Rio de Janeiro expand penthouse apartments informally, with the expectation that they will be regularized later.**

planning regulations and land management tools to guarantee that low-income households continue to be in the majority in the regularized areas, thus minimizing “eviction by the market” or capital gain events.

Some Brazilian municipalities have created Special Zones of Social Interest (ZEIS) that include areas occupied by the consolidated informal settlements. In line with mechanisms of democratic management, each special zone has to approve its own urban regulations. This provides an opportunity to create land use and development procedures to prevent these newly legalized areas from being acquired by property developers and the traditional communities from being replaced by other socioeconomic groups.

The demarcation of ZEIS is a zoning strategy like those for special land uses (e.g., industrial districts or environmental protection zones) or to meet social needs (e.g., exclusive zones for residential use).

Interestingly, such zoning strategies have not been questioned in the same way that the demarcation of land for social housing has been.

A 2006 study of the ZEIS in Recife concluded that antigentrification zoning measures, such as limits on plot sizes, building heights, and number of plots allowed per individual, can significantly reduce development pressures in newly regularized communities when used in conjunction with titling programs (Angel et al. 2006). Rather than creating urban ghettos, as some critics argued, this approach has provided legal support to the poor communities. The special zones are compatible with any form of land titling, and some have recognized individual or collective freehold and leasehold rights. Such regularization of informal settlements may lead to sociospatial integration and guarantee the permanence of the communities.

**Low-rise informal settlements are protected from removal and redevelopment through the ZEIS program in Recife, Brazil.**





**A community meeting gives residents of an informal settlement in Guatemala an opportunity to share concerns and plans.**

**GENDER AND LAND RIGHTS**

Land regularization policies also address the rights of the women living in consolidated informal settlements (UN-HABITAT 2005). Women have long been active agents in the informal markets in Latin American cities, selling and buying land, building and renting dwellings, and developing and maintaining vibrant social and capital networks. In 2009, one-third of all Venezuelan households were headed by women. However, the legal recognition of women’s land rights is often a challenge, as legal systems have traditionally considered the man as the household head, and therefore presumed that the man controls property rights. This presumption is made more complicated by the frequently informal nature of marital relations in the region.

Although women tend to remain on the land with the children, legal systems often do not fully protect them. In some cases, customary traditions prevent women from inheriting land from their husbands or fathers, and they, with their children, have been

evicted from their homes and lands upon the death of their husbands. Other traditional statutory laws discriminate against women by not enabling wives to stop their husbands from selling land. If they divorce or are abandoned by their husbands, they have no legal right to the land. Even when women may legally own their land, patriarchal customs sometimes prevent them from making decisions about its use.

The recognition of women’s equal legal status in relation to land and property rights is an important objective, regardless of the legal nature of marital arrangements. In both Peru and Brazil, land titles have been given jointly to husbands and wives. Progressive judicial decisions have strengthened women’s land rights, such as by cancelling the man’s title when separation is due to domestic violence.

But, there is still a considerable way to go. In the aftermath of the 2007 earthquake in Peru, the government ignored the country’s decades-long tradition of recognizing women’s equal status regarding land

rights by offering a financial bonus for house reconstruction only to men who were officially considered to be heads of households, including in some cases ex-husbands. In other cases women have reportedly asked for their names to be removed from titles, for example in Mexico, because they feared retaliation from abusive husbands or some form of cultural discrimination.

### **ENVIRONMENTAL PROTECTION**

Many consolidated informal settlements have been formed in environmentally sensitive areas, including wetlands, water reservoirs, or steep slopes such as the hillsides of Rio de Janeiro, Caracas, Bogotá, and Medellín. In several cases, conflicts have emerged, with environmental values opposing public policies to regularize or legalize settlements.

In other cases, the environmental opposition may be a veil covering social prejudices against the urban poor, especially those living in central city areas. The same concern may not be articulated when the environmentally protected areas are occupied illegally by middle- and upper-income households. Nor are such concerns so strongly manifested when the informal settlements occupy environmentally sensitive areas on the urban periphery.

Of course, consolidated settlements need to be dealt with pragmatically. Finding solutions where environmental damage is minimized or compensated to some extent has required compromises. An interesting experience of regularization in an environmentally protected area of Santo André, Brazil, illustrates an agreement reached with the informal settlers to promote changes in their behavior to protect the watershed. The participatory process involved more than 10 stakeholder groups, including residents' associations, former landowners and devel-

opers, and the public administration. Residents have participated in the process by preventing further land occupation, planting trees, implementing several ecological measures, and by helping to finance the installation of local sewage treatment systems (van Horen 2001).

Other studies show that intrinsic environmental risk is relatively rare, and the problem is more often lack of risk management. Experience with the PRIMED program in Medellín, for example, has shown that whenever possible risk management strategies are more adequate and less costly than the physical relocation of the communities.

### **SUMMARY**

Providing secure tenure typically involves giving freehold title, but tenure takes many other forms—leasehold, collective ownership, and cooperatives—some of which may be more appropriate for particular situations in terms of enhancing the permanence of settlements. The design of regularization programs will also depend on the characteristics of the residents, the extent of their acquired rights, and the original public or private ownership status of the land. Many countries do not recognize adverse possession of public land or the uncompensated transfer of public land to private owners.

Maintaining neighborhood occupancy by deserving groups (most notably the poor) can be a challenge following upgrading, and some countries, such as Brazil, have taken special steps to maintain community integrity. Moreover, property rights of women often need special attention, as cultural practices may contradict their legal rights. Settlements in environmentally sensitive areas also can raise difficult tradeoffs between protecting the environment and maintaining the community.



# CHAPTER 6 Recommendations on Regularization Policy



**R**egularization remains a work in progress in Latin America. Different approaches have been tried in different countries, ranging from those narrowly focused on formal titling to those attempting to improve all neighborhood services. The costs of full regularization are 50 to 80 times greater than those of titling alone, but available evidence indicates that the benefits to the occupants, measured in increased property values and improved services, exceed the costs of both approaches.

While regularization has long been resisted or implemented slowly, it is now becoming a political imperative in Latin America.

Recommendations for improving regularization policy and specific programs must address the following issues.

**1. Evaluation.** More systematic efforts must be made to evaluate the performance of regularization programs, including the collection of both baseline data before program implementation and subsequent data on program costs and outcomes. Conceptually, program impacts should encompass welfare at the household level, services at the neighborhood level, and the extent of informality citywide. Performance evaluations also are needed for alternative modes of addressing regularization issues.

**Metrocable provides an innovative solution for mass transportation and sociospatial integration between peripheral informal settlements and central areas of Medellín, Colombia.**



**A former slum area in San Salvador, El Salvador, was upgraded with the help of FUNDASAL, a pioneering agency created in 1968 to promote improvements in low-income neighborhoods.**

**2. Customized Approaches.** Successful regularization policies need to be adapted to the facts, context, and history of each settlement, because a single approach is unlikely to work well across all situations. Moreover, such policies are likely to require revisions over time as conditions and practices evolve. Regularization should be considered as part of a broader social policy aimed at social integration. This may mean that program elements go beyond infrastructure services to include such components as employment, training, public education, and health services.

**3. Appropriate Titling.** Freehold titles are most common in regularization programs, but other types of titles and rights, such as leasehold, cooperatives, land trusts, or communal ownership, may be more appropriate in settlements that are highly irregular in physical layout or located on public lands. In some cases, possession titles may be more effective than freehold titling to protect occupants and ensure the socio-economic sustainability of the community.

**4. Gender Equity.** Regularization programs also need to seek the participation of both men and women to avoid building gender bias into the process by assuming that household heads are always male. The direct involvement of all the program's beneficiaries in its design will also increase its long-term effectiveness.

**5. Financing.** Regularization needs to be more self-sustaining financially. For example, payment of property taxes after regularization produces local revenue and also strengthens the legal claims for citizenship and services. Charges on urban infrastructure and service improvements to capture part of the resulting land value increment should reflect payment capacity and be based on principles similar to those applied in formal areas that are benefited by public interventions. If services in formal areas are paid by the municipality, they should also be paid in regularized neighborhoods. All in all, cost recovery in regularization programs should not impose a relatively higher fiscal burden on the poor than on other segments of the society.

**6. Research and Analysis.** More consistent definitions of informality should be based on readily available data, such as census reports, so that informal settlements can be tracked reliably over time and credible determination can be made if the situation is improving or worsening in particular cities. For progress to be made, more work is needed to prevent the establishment of additional informal settlements, particularly when they are thought to be caused by regularization programs themselves.



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## GLOSSARY

CEPAL: *La Comisión Económica para América Latina* (ECLAC: Economic Commission for Latin America and the Caribbean; formerly known as ECLA), United Nations, Santiago, Chile. [www.eclac.org](http://www.eclac.org)

COFIDE *Corporación Financiera de Desarrollo* (Development Finance Corporation), Peru. [www.cofide.com.pe](http://www.cofide.com.pe)

COFOPRI: *Comisión de Formalización de la Propiedad Informal* (Commission for the Formalization of Informal Property), Peru. [www.cofopri.gob.pe](http://www.cofopri.gob.pe)

COHRE: Center for Housing Rights and Evictions, Geneva, Switzerland. [www.cohre.org](http://www.cohre.org)

CORETT: *Comisión para la Regularización de la Tenencia de la Tierra* (Commission for the Regularization of Land Tenure), Mexico. [www.corett.gob.mx/index/index.php](http://www.corett.gob.mx/index/index.php)

IBGE: *Instituto Brasileiro de Geografia e Estatística* (Brazilian Institute of Geography and Statistics), Brazil. [www.ibge.gov.br/english](http://www.ibge.gov.br/english)

IPEA: Instituto de Pesquisa Econômica Aplicada (Institute for Applied Economic Research), Brazil. [www.ipea.gov.br/portal](http://www.ipea.gov.br/portal)

PROCEDE: Programa de Certificación de Derechos Ejidales y Titulación de Solares (Program for Certification of Rights to Ejido Lands, called PROCEDE), Mexico. <http://web.ku.edu/~mexind/PROCEDE.htm>

PRIMED: *Programa Integral de Mejoramiento de Barrios Informales en Medellín* (Integrated Program for the Improvement of Informal Neighborhoods in Medellín), Colombia. <http://habitat.aq.upm.es/bpal/onu98/bp002.html>

SNPU/Mcidades: *Secretarias Nacionais Programas Urbanos/Ministério das Cidades* (National Secretariat for Urban Programs/Ministry of the Cities), Brazil. [www.cidades.gov.br/ministerio-das-cidades](http://www.cidades.gov.br/ministerio-das-cidades)

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# Regularization of Informal Settlements In Latin America

**D**wellings in informal settlements generally lack formal legal titles, and they may exhibit irregular development patterns, lack essential public services such as sanitation, and occur on environmentally vulnerable or public land. Whether they take place on private or public land, informal settlements are developed progressively over many years, and some have existed for decades. A key aspect of informality is the lack of de jure or formal title, although many urban residents feel secure with de facto property rights of ownership based on customary practices.

Policies to regularize informal settlements have been attempted in most Latin American countries, and experience demonstrates that regularization programs need to be designed carefully to avoid either making conditions worse for the low-income residents the programs are intended to help or stimulating the development of new informal settlements. Regularization programs follow two main paradigms. The first, exemplified by Peru, involves the narrow legalization of tenure through titling and is inspired by Hernando de Soto's hypothesis that tenure security is a trigger for development. Brazil's broader regularization programs combine legal titling with the upgrading of public services, job creation, and community support structures.

Recommendations for improving regularization policy and specific programs must address the following issues:

- Evaluate the performance of regularization programs, including the collection of both baseline data before program implementation and subsequent data on program costs and outcomes.
- Customize policies and programs, because a single approach is unlikely to work well across all situations.
- Use appropriate titling systems (freehold, leasehold, cooperatives, land trusts, or communal ownership) to ensure the socioeconomic sustainability of the community.
- Seek the participation of both men and women to avoid building gender bias into the process and increase its long-term effectiveness.
- Make regularization more self-sustaining financially through property taxes; charges on urban infrastructure and service improvements to capture part of the resulting land value increment; and equitable fiscal burdens on all segments of the society.
- Support more research and analysis to determine if the situation is improving or worsening in particular cities and to prevent the establishment of additional informal settlements, particularly when they are thought to be caused by regularization programs themselves.

