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AND LAND POLICIES

Edited by Gregory K. Ingram and Yu-Hung Hong

Property Rights and Land Policies

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Gregory K. Ingram and Yu-Hung Hong

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Looking Beyond Land Titling and Credit Accessibility for the Urban Poor

Edésio Fernandes

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

I also draw from my more than 20 years of experience of regularly working with informal development and regularization programs, mainly in Brazil, but also in several Latin American countries, South Africa, Albania, Kosovo, and Syria. As director of land affairs at the Ministry of Cities in Brazil in 2003, I coordinated the formulation of the National Programme to Support Sustainable Land Regularisation in Urban Areas (Fernandes 2006). This chapter argues that the widespread adoption of large-scale titling programs by many countries and cities reflects an international tendency to reduce urban land regularization to its legal dimension, thus provoking a simplistic juridification of the more complex discussion of informal development. Such programs have been largely based on the assumption that land titling structurally impacts several processes, especially the conditions of access to formal credit, poverty eradication, security of tenure, and socio-spatial integration. However, these titling programs need to be reassessed from a broader and more qualified legal perspective. Far from resolving problems resulting from informal development, they have created several new urban and legal challenges. Instead of questioning the legal order that produced informal development in the first place, large-scale titling programs have repeatedly confirmed it.

Following a brief critique of the assumptions underlying large-scale titling programs, the chapter discusses the main causes of the informal development

process, as well as the broad context in which regularization programs have been formulated. The matter of land legalization is then reexamined within a more critical socio-legal framework, thus supporting the argument that land titling is indeed of utmost importance, but not for the reasons generally claimed. The chapter concludes that consistent progress in the complex field of land regularization will ultimately require the combination of new legal concepts and technical criteria, making possible the adoption of a broader concept of regularization as well as requiring suitable options for the legalization of informal settlements. The legal causes of informal development need to be directly confronted for successful regularization of existing situations, as well as for prevention of future informal development.

The process of informal access to urban land and housing is by no means new. Several cities have informal settlements constituted over a hundred years ago that still have not been regularized. In Latin America, where some 75 percent of the people live in urban areas, at least 25 percent of urban people—a conservative estimate—live in informal settlements. However, the process of informal development is clearly getting worse—increases in the number of informal settlements and the deterioration of living conditions in these areas—at the global level, especially in the current context of rapid urbanization in Asia, Africa, the Middle East, and Eastern Europe. UN-HABITAT numbers suggest that more than 1 billion people currently live in informal settlements. Globally, since 2007 the urban population exceeds the rural population. Whereas informal land development used to mostly take place in large cities, more recently it has also been verified in middle-size and small cities.

New processes of informal development, as well as new variations of old processes, have occurred in both public and private areas. Current processes of informal development in Latin America include the occupation of public and private land, the illegal subdivision of private and public land followed by the sale of individual plots, the development of rural areas for urban purposes, the illegal subdivision of previously existing legal plots, and the widespread occupation of water reservoirs and other environmentally protected areas, among others (Abramo 2003; Cravino 2006). Comparable processes have occurred in such countries as India, South Africa, and Turkey (Durand-Lasserve and Royston 2002; Huchzermeyer and Karam 2006; Neuwirth 2005).

The serious social, environmental, political, economic, cultural, and legal implications of this growing phenomenon have been widely discussed, but the centrality of the issue has not been properly recognized by governments, international development agencies, and financial institutions.¹ More than ever

1. Although the existing data are imprecise, several Latin American municipalities such as Salvador and Fortaleza, Brazil, and Caracas, Venezuela, admit to the existence of over 50 percent of informal urban development. About 50 percent of urban land development in Tirana, Albania, and Damascus, Syria, has been promoted informally. The list goes on.

before, informal land development has become the rule of access to urban land and housing, rather than the exception. It is not merely a symptom or a dysfunctional, isolated aspect of a territorial and socioeconomic development model, but rather has increasingly become the development model itself. Successfully confronting this phenomenon through both preventive and curative policies and programs to democratize access to serviced land in urban areas, as well as to promote better conditions of sustainable development, is a major challenge for policy makers globally.

Although from an immediatist perspective, the informal processes of access to land offer concrete and necessary housing alternatives to the urban poor, from a broader, more articulated perspective, the combined effects of the phenomenon have been fundamentally harmful to the cities increasingly produced this way; to the overall urban population; and to the residents of the informal settlements. For these reasons, the processes should not be condoned or left unquestioned. Above all, despite the commonly held belief, urban informality is not a cheap option. It generates expensive, fragmented cities; requires highly costly regularization programs; and results in increasingly higher land prices and services for people living in precarious conditions in the informal settlements (Abramo 2003). All parties lose.

Especially in countries such as those in Latin America where the urbanization process has already been consolidated, informal land development involves not only the urban poor, but also more privileged social segments. Moreover, the growth rates of informal development in these countries have been higher than the growth rates of poverty, thus indicating that other significant factors are at play. These factors need to be identified and understood to explain the phenomenon, beyond the traditional recourse to poverty growth as the sole cause of urban informality. In some cases, several agents have financially and politically benefited from the phenomenon, and an informal development industry has been identified (Fernandes and Smolka 2004).

Several financial institutions, international development agencies, and national and local governments have unreservedly proposed and/or supported large-scale titling programs aimed at legalizing consolidated informal areas in Peru, El Salvador, Albania, Vietnam, Cambodia, and many other countries. This approach has significantly reduced the scope of the complex debate over informal settlement and the nature and possibilities of state intervention in the process. Property rights are intrinsically and inevitably ideological, but the current uncritical fetishist treatment of titling programs can no longer be left unquestioned. Their negative effects have considerably outweighed the positive ones.²

2. Far-fetched studies have tried to link recent land titling programs to significant social transformations, such as the number of children attending school and an increase in levels of caloric intake.

The Limits of Large-Scale Titling Programs

There is an international dispute on conceptual paradigms about how to confront consolidated informal settlements. Whereas some governmental programs have proposed upgrading the informal areas, others have focused on the legalization—also referred to as titling and formalization—of the areas and of individual plots.³ Legalization has been the dominant approach for the last decade, due to a large extent to the influential ideas of Peruvian economist Hernando de Soto (Fernandes 2002a).

There are at least three different types of regularization programs:

1. Programs in both private and public areas where subjective rights have been created through time and/or have been recognized by legislation
2. Programs in areas of social interest that are expressions of the discretionary power of the public authorities
3. The discretionary regularization of informal development in areas that are not legally considered to be of social interest, such as those occupied by socioeconomic groups other than the urban poor

These are different legal situations that require different legal treatment. The specifics of each situation need to be taken into consideration by policy makers in charge of the formulation of regularization programs.

Large-scale titling programs have often been justified by policy makers on the grounds that land titling impacts access to formal credit for the urban poor, significantly contributes toward poverty eradication, promotes security of tenure, and guarantees socio-spatial integration. In particular, much has been made of the assertion that large-scale titling programs enable access to formal credit, increase the participation of residential and commercial mortgages in the gross national products of developing and transitional countries, and revive the gigantic amount of “dead capital” accumulated through informal development processes. Several countries, including Peru and El Salvador, have already implemented titling programs in different ways and to different extents, while other countries, such as Albania, are currently in the process of doing so. As a result, millions of individual freehold titles have been given to the residents of informal urban settlements (Calderón 2006; Zeledón 2006).

Now that considerable time has passed since the implementation of the pioneering Peruvian program and the first comprehensive analyses of it and other programs have been produced, this unqualified assumption can be criticized. Detailed research in the paradigmatic case of Peru has clearly shown that the

3. A good example is the paradigmatic case of the long-standing Favela-Bairro program in Rio de Janeiro sponsored by the Inter-American Development Bank, which only recently introduced, in a very timid way, a discussion of the legalization of the occupied areas.

level of access to formal credit by the urban poor over the years has not been significant. In the traditional banking and financial system, commercial banks do not readily lend to the poor and do not automatically accept the newly titled properties as collateral, especially in peripheral areas where properties have no significant market value (Calderón 2006). The financial and technical criteria used by the commercial banks, the bureaucracy involved, the required documentation and proof of income, and the banks' lack of confidence in the repossession process in the event of default have precluded access to official credit for most people living in informal settlements. This differs from unsecured micro-credit transactions, where a main assumption is not people's lack of capacity to pay back loans, but rather their incapacity to prove that they can pay according to the traditional formalistic requirements.

In the Peruvian case the available data have shown that employed workers who do not have property titles have had easier access to formal credit than have unemployed people who have titles (Calderón 2006). Moreover, as has long been the case in several countries such as Brazil, several governmental programs have regularly offered credit, mostly through public banks, for the acquisition of building materials, usually without requiring proof of property titles.⁴

Another factor identified by recent research—for example, in Colombia—is that many, if not most, people living in informal settlements do not want access to official credit through the commercial banking system; they have informal, more flexible, means of getting limited credit through their social and capital networks (Gilbert 2002). Furthermore, they fear the financial risks involved in offering their sole properties—usually their family homes—as collateral in exchange for the limited financing offered by the commercial banks. High interest rates, lack of flexibility, and ever-changing financial regulations add to their fear. Their trepidation seems to be justified, especially in light of the widespread credit crisis currently affecting the housing sector, with record numbers of repossessions in countries such as the United States and the United Kingdom. The credit crunch seems to indicate that the inclusion of mortgages in the calculation of the GNPs of several countries was highly artificial.

It is also clear that titles are not necessarily needed for people to invest systematically in their informal houses and businesses. The perception of security is sufficient to generate this effect (Payne 2002).

The catchy, albeit misleading, notion of dead capital requires critical understanding. In most developing countries, indirect taxation paid through services and consumption has long played a significant role in overall tax revenues, often

4. In Brazil, Caixa Economica Federal, the largest public bank, has long had a Building Materials Bank line of credit.

being more relevant than direct taxation of property and capital. For example, recent official data from Brazil, where most of the taxation is indirect, indicate that the poor pay 44.5 percent more tax than the rich. Most citizens, including those living in informal areas, decisively contribute to the national economy. Countries such as Greece and Italy have even started to systematically include the data from the informal economy in the calculation of their GNPs. This seems to support the argument that the categories of formal and informal, legal and illegal, and regular and irregular are limited conceptual and/or pedagogical attempts at describing complex processes. Rather than being static or monolithic, these processes are fluid, multidimensional, intertwined, and overlapping (Fernandes and Varley 1998).

The widely accepted assumption that titling contributes to poverty eradication also needs to be revisited in a more critical way. Upgrading programs bring concrete benefits to the residents' daily lives, but legalization programs per se do not fully include people in the market economy and thus have no structural impact on social poverty. Again, the paradigmatic case of Peru is revealing. While the country is South America's fastest-growing economy, fresh data indicate that poverty has fallen only slowly despite highly expensive investments in large-scale titling programs for over a decade. As a result, there is a growing sense of social dissatisfaction (Economist 2008, 10). In Peru as in other countries, effective poverty eradication requires consistent significant investments in infrastructure, education, and social policy as well as solid job- and income-generation strategies.

Policy makers have also commonly referred to the promotion of security of tenure and socio-spatial integration as effects of titling programs, as if they were the same thing, or as if one objective necessarily and automatically follows the other. Land titling does provide individual security of tenure and protection against forced eviction. However, as examples in several countries such as Vietnam and Cambodia have clearly demonstrated, the recognition of individual security of tenure, if considered in isolation, can lead to so-called expulsion by the market (or by land barons, property speculators, drug dealers, or other forces) and thus aggravate socio-spatial segregation. By the same token, as proved by the Brazilian case, it is possible to promote significant socio-spatial integration without distributing land titles (Fernandes 2002b).

The challenge is to conceive a legal-political formula to reconcile individual interests and rights with public interests and obligations so that individual security can be assured and the collective interests of maintaining communities in the upgraded and legalized areas affirmed. Doing so will guarantee that the urban poor will be the main beneficiaries of the public intervention. As discussed below, the Brazilian Special Zones of Social Interest formula might be a way to address all such concerns.

Large-scale titling programs have generated many positive effects, although in many cases failure to register the new titles in the official registration system

still undermines their legal validity.⁵ However, research has clearly indicated many negative effects resulting from large-scale titling programs conceived and implemented in isolation. Density has increased in legalized areas as more people have come to live in them, thus provoking further saturation of the precarious infrastructure. The mere announcement that titling programs will be implemented automatically leads to increases in land and property prices in the internal informal markets. Titling programs have also generated more informal development and further distortions in the broader land and property markets.⁶

Even in strictly legal terms, more problems have been created by unidimensional titling programs. As a result of the excessive emphasis on individual titling to the detriment of other dimensions of the process of land regularization, totally inadequate areas and constructions have been legalized, and many unsustainable situations have been worsened. Titles have been given in areas with disputed ownership, to people who have other properties, and to occupiers whose possession is contested by informal landlords, family members, or other parties. They have been given to occupiers of areas needed for the implementation of infrastructure and public equipment. The broader discussion of social housing rights has been reduced to a limited discussion of property rights, leading, among other factors, to the excessive privatization of public land and the failure to recognize the possible configuration of adverse possession rights in private areas (Fernandes 2002b).

Titling is indeed important, but not for the reasons usually claimed. Policy makers need to fully understand and address the causes of informal development so that they can properly confront it.

Causes of the Informal Development Process and the Context of Regularization Programs

The growing process of informal access to urban land and housing results from a combination of still little-understood reasons, and is itself an underlying reason for many other serious problems. Considered together with other factors, it can go a long way toward explaining what has been called the “structural inability” of local public administrations in many developing and transitional countries to guarantee sufficient access to serviced, central, accessible, and affordable land in urban areas.

5. Given the incapacity to effectively confront and modernize the anachronistic national registration system, a parallel system was created within the ambit of the land titling program in Peru, and consistent efforts to reconcile the two systems have only recently been made. Albania has the same problem.

6. There are several, still scattered, studies on Latin American cities sponsored by the Lincoln Institute of Land Policy that discuss a range of negative implications of land regularization programs.

The main causes of the phenomenon of informal development range from global macroeconomic factors to local variables. Five intertwined causes deserve special mention:

1. Lack of formal access to serviced urban land resulting from the nature of governmental land, urban, housing, and fiscal policies
2. The exclusionary dynamics of formal land and housing markets that do not cater to the needs of the urban poor
3. Long-standing political manipulation of the people living in informal settlements through renewed clientelistic practices
4. Elitist and technocratic planning systems of local administrations that often fail to account for both the socioeconomic realities determining the conditions of access to urban land and housing and the capacity of local administrations to implement the urban legislation
5. Fundamentally obsolete legal and judicial systems in many developing and transitional countries

The importance of the global and macroeconomic factors should not be underestimated, but a great deal can be done at the national and, especially, local levels to reverse the process of informal development. In particular, innovative and inclusive land, urban, and housing policies can be formulated. Unfortunately, this has not occurred in the vast majority of cases.

In particular, policy makers have not properly identified or addressed the legal problems at the root of the informal development process. Informal development involves one or more intrinsic violations of private and/or public ownership rights; of urban, environmental, and/or building regulations and standards; of registration requirements; and/or of taxation provisions. Although informal settlements often have the same physical expressions, their specific legal problems are distinct. A Brazilian favela, for example, cannot be treated with the same legal criteria used to confront a clandestine land subdivision; occupation of privately owned land in South Africa should not be treated with the same legal criteria used for occupation of public land.

The urban legal order has been one of the main factors in the increase of socio-spatial segregation in at least three main ways:

1. The limited, if not distorted, materialization of the notion of the social function of property through urban and environmental regulations
2. The bureaucratic and technocratic dynamics of the urban management process
3. The contradictory and confused workings of the overall legal and judicial system

These factors have combined to determine the formation of land and property prices in both the formal and informal markets, thus generating the exclusionary

pattern of urban development in developing and transitional countries. They have also determined the space reserved for the poor in urban areas, making it necessary for them to increasingly live outside of formally regulated areas, on public land, or in environmentally sensitive, unsuitable, or risky areas.

The tradition of unqualified individual ownership rights is still dominant in many countries, and people still believe that informal development is the result of the lack of urban planning. Most countries have at least an incipient planning tradition. However, planning systems have often involved unrealistic technical standards and elitist rules that do not take into account the socioeconomic realities determining access to land and housing (Verma 2002). In most cases, urban planning has expressed an alleged objective rationality. Failing to understand the dynamics of formal markets and the impact of urban and environmental regulations on those markets, the plans have been thoroughly appropriated by market forces and immediately translated into growing land and property values.

The plans include little flexibility to promote the gradual upgrading of new residential areas. They lack adequate legal instruments to allow for the full materialization of social and environmental rights. They do not oblige owners to develop and build, or to refrain from doing so. Serviced urban land is not earmarked for social housing. There is no consistent policy for the use of public land and property.⁷ As discussed below, local administrations could adopt several types of intervention in the land structure to promote a more inclusive urban order. Public authorities rarely try to recapture for the community some of the enormous surplus value generated by the implementation of public infrastructure, provision of services, and changes in land use and development regulations. In Latin America, Colombia has clearly led the way in discussion of the possibilities of recapturing surplus resulting from urban legislation (Maldonado 2006).

Existing urban planning schemes and territorial organization policies have not been properly integrated with housing, environmental, transportation, taxation, and budgetary policies at all governmental levels. As a result, while old land conflicts have gained new momentum, new forms of land conflicts have emerged. Despite the difficulty, attempts need to be made to overcome the tradition of conceptual, legal, and institutional fragmentation, as has happened in a promising way in Medellín, Colombia.

The cumbersome conditions of urban management have also played an important role in informal development. Excessive bureaucracy, long licensing procedures, the imposition of strict obligations and inflexible guarantees, the lack of institutional integration and of one-stop shops have together entailed high

7. Addressing South African local administrations in 2007, President Thabo Mbeki criticized them for having failed to promote spatially inclusive planning policies and for instead confirming apartheid practices through developer-oriented strategies and ignoring the need to earmark land for the development of social and/or affordable housing.

costs that have been systematically transferred to land and property prices. In many Latin American cities, the fragmented institutional procedures and excessive requirements cause the licensing of development applications to take up to five years.

Moreover, urban management tends to be technocratic, if not authoritarian. It fails to involve popular participation or to take into account the capacity of public administrations to act, especially at the local level. This has generated widespread tolerance of law violations and of impunity, thus fomenting the long-standing process and corresponding culture of informality.

This complicated picture has been aggravated further by the confused and contradictory workings of the legal and judicial systems in most developing and transitional countries. Some of the factors affecting urban management that are possible reasons for the reproduction of urban informality include the approval of legal institutions that are not adequate for the declared objectives, the lack of legal treatment of existing processes, ill-defined and imprecise legal concepts, conflicts between laws, excessive formalism and irrational requirements, obscure legal language, presumption of bad faith, lack of publicity and transparency, and lack of efficiency and accountability.

Costly and lengthy land and property registration practices, which have excluded an increasingly larger number of people from the legal security of tenure generated by the registration, are an important factor.⁸ Adequate mechanisms and processes for extrajudicial conflict resolution are lacking, and court actions have been characterized by long and costly procedures, unreasonable formal requirements, excessive numbers of appeals, ill-prepared judges and lawyers, conservative and anachronistic jurisprudence, lack of collective procedures, and all sorts of inconsistencies.

In sum, the combination of unrealistic technical criteria, heavy financial obligations, inflexible financial guarantees, tight schedules, undetermined licensing procedures, formalistic contractual rules, obsolete registration practices, and inefficient conflict resolution mechanisms produces a highly prohibitive legal formula. The role of law in the production of exclusionary urban development—and of informal development—must no longer be ignored, as attested by the existing data on housing deficits, vacant serviced land, abandoned or underutilized properties, environmental degradation, spatial segregation, and high rates of property speculation in urban areas.⁹

8. The importance of registration is even greater in countries such as Brazil, where the registration of the transaction at the registry office is all that constitutes ownership.

9. Brazil's housing deficit is currently estimated at 7,900,000 units, with 93 percent of it affecting families earning less than three minimum wages. The same census indicates a stock of abandoned and/or underutilized properties, both private and public, of over 5,500,000 units. In many Latin American countries, between 25 and 35 percent of the total serviced urban area is kept vacant for speculation reasons.

A process of so-called legal pluralism has been increasingly identified in many countries: given the crisis of the legal order generated by the growing gap between legality and legitimacy, several informal social processes and complex codes have been formed to promote the distribution of justice according to the claims of organized social groups, many of which are not legal. There is nothing unregulated in informal development processes.¹⁰

In many contexts, this process has corresponded to the growing social claim for the legal empowerment of local administrations in matters of urban regulation and territorial organization. Several tensions between representative and participatory democracy, as well as between local and national governmental levels, have been identified. They have been aggravated further, within the context of the globalization of land and property markets, by the adoption of unqualified privatization policies and by the pressure for deregulation and flexibility of the urban regulations in force (World Bank 2004). It is becoming increasingly clear that urban reform requires the reform of the legal order as well. This involves redefining ownership rights, integrating urban law and management, broadening the scope for popular participation in the decision-making process, and, above all, creating the basis of a process of land governance to support the democratization of access to land and housing.

Democratizing access to urban land and housing is no easy task. It requires the combination of several public policies:

- Inclusive urban policies and more realistic urban and environmental regulations and standards
- More housing policies and construction of new housing units by the public and the private sectors and by organized communities, for example, through housing cooperatives
- New mechanisms and strategies of urban management, especially through the recapture of land value increments
- The earmarking of serviced land for social housing
- Giving a social function to public land and property
- Compulsory development and/or utilization of vacant land and abandoned or underutilized properties
- Regeneration of central areas
- Regularization of consolidated informal settlements

It is in this broad and utterly complex context that the matter of land regularization should be discussed.

10. The codes of behavior in several Brazilian favelas, for example, have become increasingly complex, regulating civil, commercial, urban planning, and criminal matters. Building authorizations are paid for and recorded through informal mechanisms.

Rather than insisting on a perverse series of policies that favor unqualified deregulation, unsustainable housing subsidies, and questionable regularization programs, the public administrations need urgently to intervene directly in the land structure so as to break the vicious cycle that has long produced informal development.¹¹ Regularization policies are merely palliative and remedial. They need to be articulated with inclusive land development, housing construction, and innovative financing programs. Preventing informal development is cheaper, faster, and easier than regularizing informal settlements.¹²

Guaranteeing the permanence of existing communities in the consolidated settlements is of utmost importance. There is not enough serviced land to make adequate relocation possible. Sufficient financial resources for that purpose are also lacking. The environmental footprint of such a policy would be enormous. Consolidated communities do not want to be relocated, given the social and capital networks they have formed over the years. In many cases, communities have a legal right to stay where they live. The challenge is to reconcile the recognition of individual security of tenure with the socio-spatial integration of informal settlements and communities. This requires a broad approach to regularization, combining legalization, upgrading, and several other social programs, with the clear determination of a gender dimension. As stressed above, the legal specifics of each situation must be taken into consideration by the policy makers in charge of the formulation of regularization programs.

The Matter of Legalization

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

11. Although they are both impressive in terms of the scale and high numbers involved, the housing subsidy programs in Chile and South Africa have been increasingly criticized for having failed to confront the process of socio-spatial segregation and generating instead social, urban, and environmental problems as well as further informal development.

12. Many Latin American studies sponsored by the Lincoln Institute of Land Policy suggest this approach, although deeper, more organized and comprehensive research is still due.

Adequate responses are urgently necessary; policy makers and public administrators can no longer afford to keep reinventing the wheel. They should all learn from the experiences of more than 40 years of regularization programs, which provide enough elements at least to indicate what should not be done. In particular, African, Asian, and transitional Eastern European and Middle Eastern countries should look closely at Latin America, where the process of urban development has been consolidating for a while.

Even within the same financial institutions and development agencies, there is no organized knowledge of how to confront the phenomenon, and contradictory responses often result. All institutions and agencies need to take stock so as not to keep repeating the same old mistakes.

The main problem affecting the vast majority of regularization programs is that they have failed to directly confront the nature and above-mentioned causes of the phenomenon and, as a result, have often generated further distortions in urban land and property markets. They have not intervened in the land structure in a significant way, especially in that they have borne little relation to other public policies concerning vacant land, underutilized properties, and public land. Large-scale titling programs have not been properly reconciled with the broader set of policies on public land, urban areas, housing, and fiscal matters, and they have failed to reverse the long-standing unequal spatial concentration of equipment and services. Generally speaking, they have failed to reconcile their declared objectives with the necessary processes, mechanisms, resources, and instruments. Very often, they have been the object of political manipulation.

Moreover, large-scale titling programs have failed to address the above-mentioned problems of urban management and the legal, registration, and judicial systems. If anything, they have made them worse. In Albania, for example, besides being reduced to its titling dimension, the land regularization program currently being implemented does not fully interact with property restitution policies, the land registration system, and the urban land regulation framework, thus generating further legal, financial, and urban problems (World Bank 2007).

After decades of public investment through regularization programs, there are no adequate assessments of their efficacy; there are no clear indicators to be observed for that purpose. There appears to have been a significant waste of limited resources, and the beneficiaries of the programs have not always been the urban poor living in the regularized informal settlements. Among the many inevitable lessons is that regularization programs take time, are complex—skipping stages is not an option—and are intrinsically costly. It is easier and cheaper to prevent the process of informal land development from happening. Given the diversity of existing situations, there are no automatic, magic, simplistic, or one-size-fits-all solutions.

Given the scale of the problem, not regularizing informal settlements is no longer an acceptable policy. Given the lack of proper governmental action over the years, new international and national laws and judicial decisions have con-

sistently affirmed that traditional discretionary policies are not sufficient. There has been increasing recognition that the communities living in informal settlements have a right to have them regularized, often against the will of the public authorities. Land regularization has become a fundamental element of the widely recognized social right to adequate housing. In a growing number of judicial cases, eviction orders have been conditioned to offers, by public authorities or by private landowners, of acceptable relocation alternatives.¹³

The question is how to regularize. The conceptual format and institutional design of regularization programs should reflect the answers given by policy makers to three fundamental, interrelated questions: why informal settlements should be regularized, what regularization is, and what the objectives of the regularization programs are. In this process, policy makers should take into account the need to reconcile the scale of intervention with the proposed technical criteria, the existing institutional capacity for action, the available financial resources, and the nature of the rights to be recognized.

Ideally, regularization programs should combine several dimensions so as to guarantee the sustainability of the public intervention: (1) physical upgrading of the areas; (2) legalization of land, plots, and constructions; (3) socioeconomic programs aiming at generating income and jobs; and (4) cultural programs to overcome the stigma attached to the residents and to the informal areas. When discussing why they need to formulate regularization programs, policy makers should determine the terms for the distribution of rights and responsibilities, and duties and obligations, among all stakeholders, including the residents, who should participate in all stages of the process. A crucial aspect concerns the responsibility for financing the regularization programs; mechanisms such as planning gains and microcredit instruments should be considered. Involving the residents in financing the regularization programs is a difficult discussion in most Latin American countries, where the political understanding is that such programs are part of the social debt to be paid by the public authorities and society.

In this context, the question of the legalization of informal settlements becomes even more relevant and complex. The existence of titles is not a requirement for the occupiers to invest in their informal houses and businesses; as several studies have clearly shown, the existence of a solid perception of security resulting from a sociopolitical pact is sufficient for that purpose. There is no automatic access to credit resulting from legalization programs either; banks usually do not lend to the poor and do not easily accept their new titles as collateral. Above all, although regularization programs have certainly improved the residents' living conditions, they have had no structural impact on social poverty.

13. For example, several judicial decisions by the South African and the Colombian constitutional courts have clearly determined the materialization by the public administrations of the nominally recognized social right to housing.

However, legalization programs should be promoted as the main means to provide protection against forced eviction, to minimize family and other civil law conflicts, to promote some degree of economic realization of rights as well as of sociopolitical stability, to allow for increased taxation, and to clarify legal (land) regimes and facilitate investments. The sociopolitical pacts that generate the perception of security of tenure can, and often do, change, as attested by the worrying numbers of forced evictions recently identified in several Latin American cities (COHRE 2006). Land titling is and will remain the main way to promote full legal security of tenure, and the importance of tenure security cannot be underestimated.

The question, then, is how to legalize. Policy makers should take the three above-mentioned questions into account. They should think not only of the individual interests of the residents in informal settlements, but also of general interests of the broader urban population. There is a wide range of legal-political options to be considered, including individual or collective freehold or leasehold; permits, licenses, or authorizations; social rentals; and more. The choice will depend on the realities of each situation.¹⁴ This is not to say that there is a continuum of rights. Some rights are not intrinsically better than others; they are the best options only in a given context. There is no automatic, incremental process leading from a more precarious form of occupation toward a freehold title.

Moreover, there are important urban planning tools to consider. The Brazilian Special Zones of Social Interest corresponding to the demarcation of the areas occupied by informal settlements have kept land and property values low, thus allowing the original communities to stay on the legalized land. Above all, the demarcation creates a legal order of social interest, which allows for the establishment of specific regulations to express the specific characteristics of each zone. Settlements are upgraded and public spaces created with popular participation in the decision-making process. Land titling is considered in this broad, articulated context. Rather than creating urban ghettos, this approach recognizes the processes of socio-spatial segregation and offers a sort of legal protection to the communities, which hopefully will be dispensed with once the overall conditions of wealth distribution—so clearly imprinted on the territory—have improved in the country (Fernandes 2002b).

Policy makers should never forget the main role and obligation of the state, as recognized in international documents and national laws: to provide adequate social housing. This is by no means the same as exclusively recognizing ownership titles, let alone individual titles. Especially as regards settlements on public land, individual ownership may not always be the best option. There is

14. A particular fallacy of de Soto's argument is that the development of capitalism in Western countries was due to their having clearly adopted property policies, when in fact all industrialized and wealthy European countries have a range of public policies, including significant social housing and rental programs.

no absolute need to promote the privatization of public land for the social right to housing to be recognized. On the contrary, maintaining the public ownership of the land might be the best way to guarantee the permanence of the communities in the areas where they have lived. Confronted with new quotas of social housing units established by the national government, some local administrations in London, for example, have recently been trying to buy back some of the housing stock that has been privatized, paying for the surplus value generated by their own actions.¹⁵ Given the scale of informal land development, there is no way it can be tackled through the attribution of individual ownership titles only. Collective legal solutions need to be considered.

In that context, Brazil and Peru offer two distinctly different legal paradigms regarding regularization of informal settlements. In particular, the Brazilian legislation clearly expresses the understanding that settlements in public areas cannot be treated the same way as those in private areas. As a result, individual and collective forms of leasehold are proposed for the legalization of settlements on public land (Fernandes 2002b).

Conclusions

The main lesson for policy makers and public administrators is that there is an urgent need for integrated and articulated responses by the public administrations, with regularization programs being fully and directly reconciled with other land, urban, housing, environmental, and fiscal policies. Traditional bottlenecks need to be overcome, especially the lack of proper information and cadastres; the lack of institutional capacity to act, especially at the local level; the difficulties with anachronistic registration systems; and the many problems created by the conservative judiciary. In most cases there has been no proper follow-up of existing programs, nor a continued state presence in the regularized areas. Most newly titled properties have not been fully incorporated into taxation systems.

The ultimate lesson is that broad and solid sociopolitical pacts are needed to guarantee the success of future regularization programs. Solutions cannot be left to market forces alone or to the state alone. Proper responses will require national, truly public policies in which all sectors and stakeholders are involved, with renewed, but qualified, support from international development agencies and financial institutions. Permanent intergovernmental articulation is fundamental, as is partnership of the private, community, and voluntary sectors. This should be promoted within the context of a clearly defined, comprehensive, and articulated policy. Strong leadership is of utmost importance.

15. It can be argued that there is a growing general process of reevaluation of the nature and efficacy of many of the privatization strategies adopted since the 1990s in the U.K., since prices have gone up considerably in many areas and the quality of service provision has significantly decreased.

The promotion of consistent progress in this complex field will require new legal concepts and technical criteria allowing the adoption of a broader concept of land regularization and the establishment of options for the legalization of informal settlements. The legal causes of informal development need to be confronted as one of the main conditions for a successful regularization of de facto situations as well as for the prevention of future informal development.

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