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Fernandes has lectured and taught in courses at the Lincoln Institute for several years and he coordinates the Institute's Latin American Network on Urban Land Regularization. He helped organize and teach a course on informal land markets and regularization held at Lincoln House in October 2001, and is teaching the course again in November 2002 (see page 19). This conversation with Martim Smolka, senior fellow and director of the Lincoln Institute's Program on Latin America and the Caribbean, explores some of these issues.

Martim Smolka
How did you become interested in informal land markets and regularization policies?

Edesio Fernandes
My interest in the problems of informal land markets goes back to the early 1980s, shortly after I graduated from Minas Gerais Federal University Law School in Belo Horizonte, Brazil. I began working at PLAMBEL, the state agency in charge of the metropolitan planning of Belo Horizonte, one of Brazil's few historic planned cities. However, its detailed plans and maps did not reserve areas for the lower-income people who built the city, and as early as 1895, two years before its inauguration, 3,000 people were already living in favelas.

This number grew considerably over decades of intensive urbanization. In 1976, a pioneering zoning scheme was approved, but the favelas were again ignored and treated as unoccupied areas. In 1983, I participated in the interdisciplinary Pro-FAVELA team that drafted a legal formula to incorporate these areas into a revised zoning scheme. It was through this early work as a city planner, and by building academic bridges between legal and urban studies, that I came to explore the nature of the relationship between law, planning and sociospatial exclusion in third world cities.

MS: Has that legislation had any effect on the status of favelas in Belo Horizonte and Brazil in general?

EF: Until the 1970s, the official policy in Brazil towards favelas was eviction or neglect, with the occasional introduction of limited services for political convenience. The Pro-FAVELA program was a groundbreaking experience that sought to materialize the city's newly recognized democratic commitment to sociopolitical and sociospatial inclusion of the favelas into the urban fabric. The approved formula has become a paradigm for urban land regularization in most Brazilian cities. The notion is that "special zones of social interest" should be created within the city's zoning scheme, permitting planning and zoning regulations to be adapted to the specific requirements of the favela dwellers. Moreover, the formulation of specific land tenure policies should be combined with both inclusive urban planning mechanisms and participatory institutional processes of city management. This allows for the integration of informal settlements into the formal planning apparatus and for the introduction of services and infrastructure to redress long-standing inequalities.

MS: Are these goals now well integrated into the legal and administrative systems in Brazilian cities?

EF: Urban legislation has evolved in Brazil, but most Brazilian law courses do not offer specialized modules on urban land use and development control. Legal professionals in Brazil, and throughout Latin America, have long been trained to adopt an obsolete and individualistic approach to legal matters, typical of unreformed classical liberal legalism, and particularly the notion of absolute property rights. As a result, they are still largely unacquainted with recent legal developments, uninformed about the legal implications of socioeconomic dynamics and the challenges posed by rapid urbanization, unaware of the potential of different legal principles supporting urban legislation, especially the notion of the social function of property, and thus they are unprepared to deal with inevitable conflicts over the use and development of urban land.

A groundbreaking legal development, though, took place in Brazil in 2001, with the enactment of Federal Law No. 10.257, entitled City Statute, which aims to regulate the original chapter on urban policy introduced by the 1988 Constitution. The new law provides consistent legal support to those municipalities committed to confronting the grave urban, social and environmental problems that directly affect the 82 percent of Brazilians who live in cities. In conceptual terms, the City Statute broke with the long-standing tradition of civil law and set the basis for a new legal-political paradigm for urban land use and development control. Municipali-

ties must formulate territorial and land use policies, balancing the individual interests of landowners with the social, cultural and environmental interests of other groups, and the city as a whole. They are also required to integrate urban planning, legislation and management so as to democratize the local decision-making process and legitimize a new, socially oriented urban-legal order. The City Statute also recognized legal instruments to enable municipalities to promote land tenure regularization programs and facilitate access to urban land and housing.

MS: Can you elaborate on the connections between regularization, security of land tenure and broader concerns of poverty and social justice?

EF: On one hand, regularization programs focusing on upgrading projects have tended to neglect underlying land tenure issues, for example in the highly acclaimed Favela-Bairro program in Rio de Janeiro. As a result, these programs have frequently produced unintended perverse effects, such as occupation by drug lords, expropriation by force, and even, given the increasingly complex relationship between formal and informal land markets, what has been called "eviction by the market." On the other hand, regularization programs focusing exclusively on the formal titling of individual plots, such as the large-scale programs inspired by the ideas of Hernando de Soto, have tended to reinforce unacceptable housing and living conditions in unserviced areas that are frequently remote and environmentally unsuitable.

In my experience, those programs that have tried to combine the two dimensions, upgrading and legalization, tend to be the most sustainable in urban, social and environmental terms. Comprehensive programs also tend to have a more controlled impact on both formal and informal land markets. Thus, they can be more effective in guaranteeing that the ultimate beneficiaries of the public investment will indeed be the residents in informal settlements, not the land developers and promoters who, by failing to offer affordable, sufficient and adequate housing options to the poor, have provoked the process of informal development in the first place.

MS: To what extent have these regularization programs really addressed or helped to resolve the problem of poverty alleviation?

EF: Regularization programs are always curative and need to be integrated with preventive urban planning policies, fiscal and legal measures, and management strategies aimed at promoting overall urban change, thus breaking with the cycle that has long produced urban informality. Moreover, they can only have a more significant impact on urban poverty if they are combined with programs aimed at broadening access to urban services and generating jobs and income to alleviate poverty.

There are many assumptions in this discussion that should not be taken for granted, especially given the findings of recent research. An enormous amount of money has been invested in regularization programs over the years, and it is about time that a comprehensive and critical review was promoted. There are many questions still left unanswered regarding the nature of the processes leading to irregular settlements, the means to address the issue and the method of actually implementing policies: How are informal settlements produced? Why is it important to regularize them? When and how should regularization programs be formulated? Who should pay for them, and how? What happens after the program is completed?

MS: What have you learned, as a lawyer, about the legalistic approach to titling?

EF: In particular, one should question critically the widely accepted argument that titling is the fundamental condition for residents in informal settlements to have access to services and credit, and thus to invest in their houses and businesses. On the whole, in consolidated situations where informal land occupation has been supported by sociopolitical mobilization of the residents, access to services and infrastructure has taken place regardless of their legal status. Research in several countries has already indicated that a set of socioeconomic and political-institutional circumstances may create a perception of security of tenure, thus encouraging people to invest in home improvements, even when the legalization process has not been completed. Research has also shown that jobless poor people have failed to gain access to formal credit even when they have titles, whereas some untitled but employed people do get access to formal credit.

MS: Are you suggesting that the formalization of titles is not that important?

EF: No, what I mean is that it may indeed provide individual security of tenure, but it does not necessarily guarantee access to formal credit and does not produce sustainable settlements. Regularization alone usually fails to achieve what I think should be the ultimate objective of regularization programs—the sociospatial integration of the informal areas and communities.

That said, titling is indeed important from many perspectives, such as to resolve domestic, family and neighborhood conflicts and to legally recognize sociopolitical rights. The challenge is to promote the recognition of individual security of tenure in a way that is compatible with the provision of social housing, thus reverting, or at least minimizing, the process of sociospatial segregation. The only way to do that is through a combination of urban planning mechanisms and city management strategies with innovative land tenure policies, stressing that there is a wide range of legal options other than individual freehold rights.

In closing, I would like to emphasize the importance of legal education and discourse. Urban change requires legal reform, which in turn requires an adequate understanding of the nature, problems and shortcomings of the prevailing legal order, as well as the possibilities for change that it entails. Comparative research and teaching activities, such as those already supported by the Lincoln Institute, are crucial to promoting positive urban change.