



CHAPTER 3

The Regularization of Consolidated Informal Settlements



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

Policy 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.





Nuevo Usme, a large area south of Bogotá, Colombia, was earmarked for public investments and planned development, but some areas have been subdivided and occupied by "pirate" developers.

The same argument of trying to help the poor lies at the root of decisions not to charge property tax, even after the legalization of settlements, because the financial burden of formalization would fall too heavily on the residents. Belo Horizonte’s pioneering 1983 regularization law is one example with this provision. However, the failure to impose a property tax limits the possibility of expanding regularization policies and jeopardizes the continued provision of services (Smolka and De Cesare 2006). The lack of a tax also contradicts the principle that paying taxes is a condition of citizenship that is necessary for strengthening legal rights. Not paying taxes contributes to the stigma already affecting residents of informal settlements.

Absent any financial contribution from residents, regularization policies are unlikely to achieve the scale necessary for sustainable programs. In-kind payments have been used in some cases, such as the collective

mutual-help building process (*mutirão*), a practice imbedded in the Brazilian culture whereby neighbors help build each others houses. Nevertheless, few communities have taken the initiative of formulating and implementing regularization plans and projects, even when a public policy framework and technical assistance are available. Communities also rarely take the initiative to demand the judicial declaration of their nominal land rights, partly because of the costs.

In some proactive communities, negotiations led by public officials and/or private brokers have been more fruitful than legal proceedings. The founder of one such private company in Brazil, Terra Nova, won the 2008 Social Entrepreneur of the Year Award in recognition for his successful negotiations with former landowners that have benefitted thousands of families in several municipalities. Another example is the social urbanizer experiment in the metropolitan area of Porto Alegre (Damasio 2006).

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.