



## 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.