

**COPING WITH INFORMALITY AND ILLEGALITY
IN HUMAN SETTLEMENTS IN DEVELOPING CITIES**

**A ESF/N-AERUS Workshop
Leuven and Brussels, Belgium, 23-26 May 2001**

**Draft orientation paper
For discussion and comment**

24/11/00

The purpose of this draft paper is to initiate a reflection and to contribute to the debate on informality and illegality in human settlements and housing in cities in the developing countries. Questions raised in this paper are expected to give rise to further questions. By reference to your own professional practice, you are invited to reflect upon its contents and respond with comments.

Based on your suggestions for additional questions, your comments in answer to the questions posed, and your criticisms of the contents of this paper, the ESF/N-AERUS Scientific committee will prepare the background paper for the Workshop to be held in Belgium. That document - which will not present a consensus - will be widely disseminated by the end of February.

We ask you to send your comments and proposals before December 30 to:
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This paper is also a call to contribute to the Workshop. It aims to give to potential participants information to stimulate the preparation of their own papers.

1. OBJECTIVES OF THE SEMINAR

The ESF/N-AERUS workshop scheduled for 23-26 May 2001 will analyse the foundations, the content and the characteristics of public policies with regard to informality and illegality in human settlements.

For at least three decades - that is to say since the expansion of irregular settlements has been perceived as a lasting structural phenomenon - the debate on housing policy insistently refers to the question of the informality and illegality of human settlements, without reaching any satisfying solution. For a long time it appeared that, in order to get rid of this problem, it would have been sufficient to combine measures of repression of illegal occupations, prevention measures legal tenure regularisation and large-scale programmes of land delivery to the poor. Informality is usually understood as a process : this approach does not take into account the urban form in its cultural, physical and spatial dimension, which is essential to evaluate the

relevance of these measures. The results have been limited and disappointing. In many developing cities, the map of illegality - corresponding to a large extent to that of poverty - indicates a steady sprawling of the phenomenon, particularly at the periphery of cities, and this in spite of a slackening of their demographic growth and the emergence of governments which are more sensitive to the aspirations of civil society.

The question of the dealing with informality and illegality (mainly related to land and planning) remains to be answered: how can city authorities cope with informality and illegality in urban settlements and housing that accommodate the majority of the population of cities in developing countries? In order to tackle this issue it is necessary to question the actual nature of this informality and illegality.

The issue of informality (of activities, employment, markets, neighbourhoods, settlements, housing) has given rise to a great deal of literature, at least during the last three decades. Regarding urban management, it has produced various adjustments and compromises. This does not apply to illegality, as if it posed a series of politically embarrassing problems which city authorities are helpless to address, such as the unequal access to resources, exclusion and repression

2. WHAT MEANING DO WE APPLY TO THE TERMS INFORMALITY AND ILLEGALITY?

Regarding human settlements, the term «informality» raises the same definition problems as when it is applied to economic activities and to employment: it is defined negatively. Its main characteristics are known, but in many situations, the borderline between formal and informal remains blurred. A settlement with the same characteristics regarding land, urban planning and housing, depending on the contexts and public authority interpretations, will be considered either as formal or informal. In how many settlements are inhabitants in «legal» conformity, with regard to land, layout, construction, services and fiscal obligations? Certainly very few. Informality is not a sufficient offence to justify a repressive policy; we can however speak of abnormality, of irregularity of a habitat that does not obey either authority, or legal right, or norms and standards.

The term «illegality» poses the same problem of definition, but with a distinctively more repressive connotation. Used often by the administrative authorities (officials in charge of urban management, and especially of state property or land register offices), it reveals a clearly repressive intention, or hints at a menace. It can even - which comes to the same thing - underline the meekness public authorities want to demonstrate towards populations at fault, under the condition, obviously, that they keep quite ... We can therefore see «informal» settlements become «illegal» - or the inverse - depending on the undergoing political or social circumstances.

Illegality, is what we must not do, what does not conform to «what one should be» according to jurists, what is outside of the law. We must focus on two meanings equally detrimental to the populations living in the concerned settlements.

The first meaning reflects a situation marked by the repressive character of the reactions enforced by public authority and consequently by the precariousness of the settlement and occupancy of it. The most visible expression - if not the most common - of repression is the demolition of the settlement (mostly outside any judicially organised legal procedure, hence in disregard of the law : it is to be noted). Fortunately, public authority is not always able to eradicate illegal settlements: as we observe more and more frequently, it does not dare or cannot do it.

The second meaning reflects the abnormality, the marginality of the settlements. The illegal settlement is tolerated and its population is generally not threatened by eviction. However, this settlement does not conform to official norms and standards. It cannot therefore expect to be provided with the infrastructure, the services, the improvements and the management to which the « official » city has access.

The ESF/N-AERUS seminar will deal with issues of informality and illegality regarding land, planning, services and construction, failures to enforce safety, public health and environmental protection rules, and institutional and administrative inconsistency.

3. THE EXTENT OF THE PHENOMENON

On a strict legal basis, we can estimate that between half and two-thirds of the built-up area in developing cities and four-fifths of residential and commercial are informal or illegal (even if they have some attributes of legality), or they have been illegal in the past, before public authority decided their regularisation.

In reality, a situation is not always predominantly illegal. It is common that one building or settlement considered illegal has a few legal features. For example, the sale of a plot might be legal but its construction is not; the construction might be legal but does not conform to current norms and standards; the occupation might be considered as illegal but dwellers do pay certain taxes and rents, and so on.

When it appeared that the extension of informal and illegal settlements was a long-term structural phenomenon, a consensus progressively emerged, among officials and decision makers, city authorities, experts, international aid agencies and third-sector organisations, combining the following action principles: (i) some actions aiming at preventing illegal occupation, (ii) the provision of serviced land at a low cost and (iii) selective tenure regularisation measures at settlements level.

These policies have responded to certain expectations (ensuring social peace and limiting the effects of marginalisation of the settlements), however, the objective of massively reducing the proportion of urban population living in informal and illegal settlements has not been achieved. The issue is rather to know how the city officials can face, on a long-term basis, the illegality (mainly regarding land and planning) of human settlements, where the majority of the population of developing cities is living

It is accepted that the implementation of these principles requires, (i) a revision of the norms (legal, planning, infrastructure, construction norms), (ii) measures intending to enable households concerned to have access to housing (establishing financial systems adapted to

low-income household needs, organising the population), (iii) the provision of sufficient public resources and (iv) a long-term political will.

We assume that it is the very notion of illegality and the qualification «legal-illegal» that is politically and scientifically unacceptable. It is dangerous, restrictive and inoperative. It is dangerous because it is arbitrary, it is abusively prescriptive and it justifies the worst repressive options, low-income settlements being often assimilated into illegal settlements. In this sense, it is equally dangerous to formulate a judgement on a neighbourhood or a settlement in strictly yes or no terms. It is grossly restrictive to do so, as often this illegality is a simple non-conformity to modest regulations established by a bureaucracy in charge of planning and land management looking for profit. Apart from judicial and technical contentions, it tends to perpetuate the cycle from poverty-marginalisation-precariousness-sub-services.

4. QUESTIONS FOR A DEBATE

1. Renewal of ways of thinking and treating illegality of human settlements

On what assumptions are founded the different ways of thinking about and treating illegality in human settlements? On which technical, political and ideological premises are they based? When a settlement is designated as illegal or informal, this exempts and excuses public authorities and experts not to try to understand how and why this settlement was formed and to raise the question of its legitimacy. Reference to legality and norms tends to conceal the main issue, which is that of legitimacy.

2. Does the notion of illegality of human settlements refer to the law or to regulations?

When we examine the criteria of illegality, we notice that, except for the occupation or « theft » of land owned by people having bought in good faith the property rights in question, the legality invoked is not that of the state of law. It rather refers to modest rules and regulations decreed by government administrations in order to consolidate their own power. It is therefore more appropriate to talk about non-conformity to regulations than of illegality. It is not the law which is set at naught, but rather bureaucratic norms and regulations. Then, the question must be reversed: it is these norms and regulations that need to be adapted to population practices.

3. Legality and legitimacy in respect of the plurality of the law system

In some cultural contexts, the notion of legality does not form part of a coherent discourse, the legitimacy of which is obvious, largely accepted, and enforced by universally recognised institutions. The notion of legality may have several (sometimes contradictory or overlapping) references e.g. a set of cultural traditions, inherited colonial rules, and a new legal system of international law-making. Furthermore, it has to deal with the existence of partial judicial practises, which are fragmented but still referred to by the great majority of ordinary people. This is well known in Sub-Saharan Africa in urban planning and land matters.

4. A bundle of norms applicable to each urban dimension

Instead of a supreme and unique or simple judicial norm, the objective would be to define a number of particular norms applicable to each urban dimension. Each norm would express: (i) a minimum under which there is an unacceptable tenure insecurity, a threat to social order, an insufficient services, or a hazardous habitat, and (ii) an objective to be reached, taking into account both the revenue of concerned households and public subsidies available

5. Urban forms and utilizations as expression of diversity.

Various forms and utilizations of urban areas may not correspond to present (or accepted by a conventional groups in society) notions of "good" or "adequate standard" settlements, as they emerge from historical heritage or cultural practices of the past, or of minority groups or simply of alternative modes of living. This however does not constitute a sufficient basis to disqualify these areas as "unplanned", "informal", let alone "illegal"

6. Understanding the situation of illegal housing in its dynamics

It is essential to understand the situation of low income housing qualified as informal or illegal in its dynamics, to locate/position it in an improving or, on the contrary, a worsening trajectory. If we are in a phase of improvement-appreciation-valorisation (this is what happens in the process of tenure regularisation-legalisation of the settlement), we can accept those housing conditions at the settlement level as being mediocre and the provision of services and infrastructure temporarily insufficient.

7. The offer and the demand of legality: cultural and economic dimensions

We can conclude that access to legality is a cultural and an economic question. It is only possible when an offer of legality accessible to all income groups responds to a demand for legality. If the social offer of legality is not sufficient as to quantity and to quality, we cannot expect anything from ordinary citizens.

8. A legality shaped for the poorest?

The project by some authorities to create a « second legality », a second model shaped for the poor, appears to us to be based on false and potentially dangerous premises. It should be discussed.

9. Has the legalisation-regularisation of illegal settlements a perverse effect? What and how?

The simple legalisation-regularisation of a housing unit results in a rise of its market value. It is nevertheless not certain that this improvement, combined with its new negotiability, can lead its resident-owner to upgrade the dwelling, or contribute to the improvement of the neighbourhood environment, as suggested by many partisans of massive regularisation

operations. The inhabitant involved does not always desire to do so, or does not necessarily have the required means. Sometimes, he/she will prefer to sell and go to live elsewhere. Thus, it will be the new buyers - of a higher income group - who will undertake the improvements.

10. Does the legalisation/regularisation of the illegal settlements constitute an effective means of fighting poverty?

Administrative authorities very often sustain the argument according to which the legalisation of a settlement favours land speculation by the urban poor. It deserves further attention. Legalisation-regularisation measures generate indeed incremental value that benefits the resident-owners. Thus, if we really seek to improve the economic situation of the low-income urban populations, as declared by the responsible authorities of the poverty alleviation programmes, we must recognise that to induce the poor to be able to capture - for once - this incremental value can be considered as a poverty alleviation method. It can be thus more effective than many other expensive integrated programmes that require complex organisation such as professional capacity building, support for employment, community participation and micro-credit. This is rarely accepted by ruling classes, and with them, a part of the international experts. The inhabitants of low-income settlements are denied the right to capture incremental values generated by the regularisation of their settlement.

11. Illegality, legalisation and rental housing

Housing produced informally or illegally is often used for rental. The non-respect of standards associated with the precariousness of the settlements allows for the production of low-cost dwellings with a rent accessible to low-income households. The legalisation of these settlements may result in drastic social change in their social composition: a rise in land and housing prices, and consequently also in the rent, the lowest-income households will tend to leave the neighbourhood, handing over the space to a better-off part of the population.

12. Land and housing development, and illegality

A striking phenomenon in southern cities is the development of a formal land and housing development sector operating at the limits of legality. The land and housing developer will operate either within a legal framework or an illegal one (unauthorised land subdivision, illegal land sale procedures, etc). The same developer will often play on the two registers. Part of the operation will be legal (the land sale, for example), the other will not be legal (non-conformity to the planning documents or to the norms regarding services and construction). The developer will shift from one frame to the other according to circumstances and the risks of repression. Who bear the costs of these practices? Who benefits from them?

13. Illegality of human settlements and environmental protection

The environmental issue (or the legislation related to the protection of environment) is more and more often used by the most affluent segment of the urban population to call attention of the officials at city level to low-income illegal settlements and to demand their removal or

eradication. The environmental argument is thus raised to legitimise the old but undeniably segregationist claim of the middle and upper urban social classes. What is the impact of such claims and statements regarding the legalisation of the illegal settlements?