Why and How Informal Development Should Be Formalized Quickly, Inclusively and Affordably- Experience From UNECE Region

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In order to address a selected SDGs goals and indicators, and the fact that there are many informal developments happening worldwide, it is very important to improve the level of land records. In this context, this chapter is discussing about why and how informal development should be formalized quickly, inclusively, and in affordable manner, particularly discussing the experiences from UNECE region.

18.1 Introduction

As a result of a 20-year research by the author, partially in cooperation with FIG, the World Bank, UNECE and government agencies and local authorities in the field of formalization of informal development in the European region, and mainly in Albania, Cyprus, Georgia, Greece, Italy, Kosovo, Kyrgyzstan, Montenegro, North Macedonia and Turkey we have learned to identify the problem of current informality in real estate within the South-Eastern European and Caucasus regions as to its size and definition as well as its causes [15, 12].

“Informal building” is defined as an unauthorized property unit which may be lacking planning and building permits and in many cases may be lacking property titles as well, or real estate built in excess of legally granted permits. In most cases it is residential real estate. Such properties are considered to be illegal, therefore are out of the economic circle. They have been characterized

as illegal, are not accepted to be registered and cannot be transferred, rented, inherited or mortgaged.

We have also learned that there are a variety of types of informal buildings in each one of the various countries, varying from good and even multi-story constructions, as shown at [Figure 18.1](#), up to settlements of poor but permanent construction which constitute a considerable investment of labor and revenue and are worth rescuing as shown at [Figure 18.2](#). There are many similarities, as well. We have estimated that about 50 million people live in informal, self-made buildings in UNECE today [\[15\]](#).

FIGURE 18.1

Various types of multi-story informal constructions

Within the UNECE region there are slums, too, as shown at [Figure 18.3](#), but the core research interest so far is not directly focused on how to formalize slums, as this is not the major problem in the region [\[11\]](#). Past experience from Greece has shown that Roma slums may as well be formalized in a similar manner as other informal buildings. There are many examples in which slums have been formalized by recognizing informal tenure on occupied state or municipal land and providing ownership rights on the land to the occupants, or by providing ownership titles through a judicial procedure based on the adverse possession principle when privately-owned land was occupied illegally by Roma slum dwellers. Planning and structural improvements and integration of the land into a city plan was then provided according to the general practice in Greece [\[14\]](#). Recent examples of good practice of re-settlement

FIGURE 18.2

Informal settlements of poor quality but permanent construction

projects for slum dwellers have been identified in Kosovo region by providing ownership rights as well as job opportunities to the dwellers[10].

Major political changes coupled with rapid urbanization, poverty, massive internal migration, conflicts, marginalization, natural disasters, cumbersome authorization processes (planning and building permitting) and corruption may be listed as some of the causes. However, corruption should not be considered as a major reason for informality; one cannot claim that 50 million citizens, as well as the authorities who tolerated the phenomenon, were corrupt. Why is informal development not a major issue in western European countries? Human beings are similar, but there the infrastructure makes it easier and more attractive to be and remain legal, while in the regions under study there are weaknesses in the infrastructure and authorization process.

But the list of causes is even longer, including the absence of policies by the states and their failure to adopt pro-growth planning as well as affordable housing policies; serious weaknesses of the private sector and lack of professional regulations; the lack of knowledge and political will to develop land policies which would facilitate the recognition of existing tenure and provision of private property rights and would aid the transition from centrally planned to market economies; and the failure or reluctance of state agencies to implement measures to support structural reforms to facilitate the digital economy and the UN Sustainable Development Agenda 2030.

In brief, so far this research has identified the obvious: that when neither

FIGURE 18.3

Roma informal settlements are common in many UNECE countries (top); example of a formalized Roma settlement (by provision of ownership titles) (bottom).

the state nor the private sector provide the supply of appropriate real estate types and quantities to satisfy the current demand, people build informally. It is also important here to remember that demand in property markets is defined both by the need but also by the desire and the purchasing power of the consumers. In most of the informal cases in this region the state's housing policy is inadequate to meet the demand and people have built informally either because of their need for housing they could afford or because the private sector was not providing such a product (in many places the private sector is interested to serve the high income rather than the low-middle and middle income classes), while at the same time the state had not provided planning and permitting tools for affordable or social housing. In some cases there has been a demand for second housing, or a desire of people to “move up” to larger or better housing. The industry had not planned for an efficient mechanism to provide for such products and services.

Informality however, in the real estate sector and inevitably in real estate markets, is directly related to a general informal culture, a characteristic of development in the so called “frontier markets”; it may also exist in devel-

oped economies where its extent is less significant. Much of the building labor is self-provided by the occupants but there is also a great amount of construction material consumed, and services provided, informally. Informality is usually accompanied with fraud and lack of transparency; it affects public revenue, productivity and job opportunity; it creates non-productive capital, dead capital, and construction completion is indefinite.

18.2 Informality Is Considered a Social, Economic and Environmental Challenge

The most important social challenge of the existing informal settlements is *weak ownership rights*. Unclear ownership rights on a property unit are created when people either have built on land: (a) to which they have no ownership titles (e.g., occupied land that belongs to the state, or the municipality, or to a social enterprise, or to a third party); or (b) that they only have the right to use (recognized tenure), but usually the state or the municipality delays or refuses to provide ownership titles; or (c) has been illegally subdivided though they may own legally as a whole but due to zoning regulations parcel subdivision is forbidden or not regulated, and therefore the newly created parcels or property units in general cannot be legally registered; or (d) that they own legally but they have built without obtaining a planning and/or building permit, or they had obtained a planning and/or building permit but they have built beyond the scope of the permit and the newly created property unit cannot be registered.

In all the above cases people finally have weak or limited property rights and the property cannot be registered in the cadastre, transferred legally, taxed or mortgaged. Dwellers in informal settlements, informal land and real estate rarely have ready access to capital. The common practice applied so far in tenure regularization for informal settlement dwellers in other regions is of no value in the regions under research; this process often starts with the delivery of an administrative permit to occupy the land that can be conditionally upgraded to a leasehold and, at a later stage, to a long-term registered freehold. In general, improving tenure security incrementally by recognizing the occupation and providing dwellers with legally recognized tenure reaching from occupancy certificates to full property rights is a long, bureaucratic procedure that cannot directly provide for full exploitation of property assets and cannot help to achieve wealth for the poor. It simply delays the implementation of many SDGs of the UN Sustainable Development Agenda 2030 and therefore it is not recommended for any region when people have already invested a relatively significant part of their labor income to build a house to provide for their housing needs.

Registration improves security of tenure, establishes property rights over

investment, minimizes lending risks and provides access to credit and funding mechanisms; it also improves legal protection, as well as legal empowerment of occupants/owners.

According to [2] the great economic divide in the world today is between the 2.5 billion people who can register property rights and the 5 billion who are impoverished, in part because they have no ability to registered their property rights. Private rights provide people the assurance they need in order to invest and protect their properties from abuse. Security of property rights is one of the drivers of economic growth and freedom.

When informal development was identified in large numbers ((e.g., as indicated at [13], in Greece, in 2005, it was estimated that 1M buildings were informal, in Albania about 500,000, in Cyprus about 80% of condominiums and 40% of single family houses, in North Macedonia about 350,000, in Kosovo 450,000 and in Montenegro about 130,000)) the phenomenon demonstrated a systemic failure which shows that a great proportion of the population had no access to clear property rights, property units could not be registered and were kept outside the economic circle. Such a system needs improvement.

Allowing such large numbers of informal buildings as dead capital - that is, property units that cannot become productive for the people who have informal tenure - is contrary to the UN Sustainable Development Agenda 2030. Goal #1 (*end of poverty in all its forms everywhere*), and especially target 1.4. that “*by 2030, countries should ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance*”.

Similarly, SDG 11 (*make cities and human settlements inclusive, safe, resilient and sustainable*) and in particular SDG 11.1 expresses that *by 2030, states should ensure access for all to adequate, safe and affordable housing and basic services, and upgrade slums*.

Tenure security is a major step toward provision of adequate housing. The subject of adequate housing, though, is closely linked to a country's general land policy, economic development and to the provision of urban infrastructure. A country's housing policy is connected to its basic infrastructure development policy, such as provision of land for urban development and provision of utility services. It is broadly recognized that almost every country of the world will never have enough public funds to efficiently address the adequate housing issue for all, without the private sector participation, meaning that all countries are borrowing money to lend to their citizens. In order for states to be able to provide credit at low interest there is an urgent need to reduce lending risks by providing clear property titles for mortgaged-backed bonds. Therefore, providing clear ownership rights is a major priority if governments are to facilitate credit at low interest or other affordable housing tools for those in need.

In addition, land is referred to in SDG #2 (*ending hunger*) target 2.3: *By*

2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment, which requires access to credit and funding mechanisms in order to improve agriculture and business, and maximize quality and quantity of products.

In general, the right to adequate housing, good management of land and security of property rights is referred in the New Urban Agenda, and in many other SDGs such as Goal #5 on *gender equality*, Goal #13 on *climate action*, Goal #15 on *life on land* and Goal #16 on *peace, justice and strong institutions*. As it is stated at [3] these goals and targets will never be achieved without good land governance and well-functioning nationwide administration systems in place. In order for society to be able to meet these SDGs within the expected time limit major land reforms are required; to make such reforms successful unity is important. People should understand, trust and be willing to support the necessary activities and should voluntarily participate to provide information and to enhance procedures. In order to ensure unity and fairness and to eliminate conflict among society and the local communities, existing tenure and weak property rights on land, both formal and informal, should be recognized and registered. As mentioned in the [5] Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Voluntary Guidelines on Tenure) VGGTs, “States should facilitate the operations of efficient and transparent markets to promote participation under equal conditions and opportunities for mutually beneficial transfers of tenure rights which lessen conflict and instability ... states should take measures to prevent undesirable impacts on local communities.”

Once property rights are issued and registered the property units should be in the economic cycle. Past policies applied in various countries that required planning and construction improvements prior to formalization are not applicable today because they are time-and-cost consuming and they delay the resulting formalization and expected economic, social and environmental benefits [4]. Improvements of neighborhoods and basic services provision must be made available for social and environmental reasons but also to make such properties more attractive and improve their value for the benefit of the owners and the national economies immediately following formalization. There should not be a general rule and guide on how such planning and construction improvements may be achieved, however, as conditions may vary from place to place and/or from property to property. Such improvements may be initiated and funded according to local needs either by the dwellers (once they have access to credit) in cooperation with the private sector through development of small or medium-sized development and planning projects that will also include consolidation of parcels (as soon as relevant tools and regulations are in place), or by local authorities through urban planning and land readjust-

ment projects; the latter is more complicated, expensive and time consuming, however.

In general, a large number of informal buildings are rather self-made constructions (of 1 or max 3 to 4-story buildings), that may not comply with local planning and construction standards and they are usually built to provide for the housing needs for the next 30-40 years; such buildings once formalized should gradually be improved - if feasible - or replaced by better constructions as the financial situation of their owners and the state policies will improve. Planning and building regulations should be modified accordingly to provide incentives and facilitate such reforms as well as to enable the gradual increase of urban density in such areas and the sustainable development of such self-made cities in the 3rd dimension in order to avoid further urban sprawl; this maybe also valid for urban areas build formally but following such a pattern of construction.

In general, large demolitions and forced evictions are considered to be a serious violation of the international norms for adequate housing and, where demolition is necessary, decent resettlement is required.

In an effort to discourage informal development governments frequently deny basic utility services to informal settlements despite the many years of their existence. Informal settlements' dwellers are then led to proceed to further illegalities such as illegal connection to electricity that increases the risk of disasters in the settlements, or illegal drilling for water, and sewage disposal which has a negative environmental impact in the management of underground waters. Thus, such state policies should be considered to be among the most severe violations of the right to dignity, security, health and life. People living in informally developed areas are constantly at higher risk for fires, flooding and other disasters, and services must be provided to minimize such risks. Depriving informal settlement dwellers of fundamental services is a violation of the international objective of human rights for all. Adopting strategies for enabling the improvement of living conditions in informal settlements should be one of a government's priorities to ensure the fundamental human right to life, health and safety of dwellers.

Informality is an economic challenge, also, because it affects public revenues, productivity and job opportunities. The assets invested in informal real estate represent non-productive, dead capital. As a result of informality the tax base is limited while higher taxes must be levied on a subset of "legal" real estate and related business. Moreover, competition within real estate markets with a great level of informality is distorted due to a lack of transparency; in such markets personal, off-record negotiations matter more than rules-based transactions.

Through this research it became broadly recognized that indeed, informality remains substantial in countries where overregulation and bureaucracy, taxation, fees, penalties and related costs give significant incentives to build and work "under the radar".

Informality in real estate, its construction and operation as well as its de-

molition, is also considered a significant environmental challenge especially when it is spread over highly protected lands, or when, for instance, construction methods do not meet current standards for energy consumption.

When demolition is needed, not only is it expensive but it causes environmental impact and should by all means be followed by a special treatment of the debris. Where demolition is indicated it is important to communicate properly and to provide information in a timely manner to the occupants; the occupants should be involved as well as all affected other community members for the agreement for a meaningful and fair solution. Adequate compensation and alternative housing must be provided. It is also important that affected occupants and communities have access to affordable legal assistance.

18.3 Fit-for-Purpose Formalization Policies

As a result of this research and the derived knowledge we have systematically encouraged countries to initiate - where possible - formalization projects, and through cooperation with them we have discovered and assessed the several policies adopted in order to address this problem.

We have together identified policies that require improvements to informal properties in order to be in compliance with regulations prior to formalization. We have considered the high fees imposed upon owners or occupants of informal properties when buying land with missing property titles, and the penalties imposed for having illegally occupied or built thereon. Such policies are seldom affordable and do not provide for quick and inclusive settlement. If it was do-able and affordable to build legally according to existing rules and regulations the majority of people would not have chosen to do it illegally in the first place.

There are also policies that would provide planning amnesty, though accompanied by high penalties. However, in cases where property titles are missing this process seems politically more difficult. Again, such policies are not inclusive and affordable as they fail to solve the most important issue: weak ownership status.

In addition, there are policies that even when well intended, measures become bogged down due to administrative bottlenecks, or there are changes in government or government policy.

As a result, formalization is a lengthy, bureaucratic and expensive process in most places. In the meantime, through this research we have also managed to identify and quantify the annual GDP loss caused by delaying the formalization of the informal real estate sector, and have proved that it can be significant and worthy of serious consideration. The formalization of informal development is the most important step towards formalization in the real property market.

Today we have reached a stage at which we have decided to proceed with the compilation of an FIG/UNECE WPLA guide for the formalization process of informal buildings to assist policy makers, managers and staff of government agencies, as well as private sector specialists and members of civil society organizations. This guide is anticipated to become a mindset changer to provide understanding, inspiration and knowledge and to contribute to the global and national efforts towards the eradication of hunger and poverty by achieving the SDGs within the framework of the UN Sustainable Development Agenda 2030.

The guide spells out the accumulated knowledge and experience in a compact way, and is aligned with broadly recognized WB, UN Habitat, GLTN, and FIG publications such as the FAO VGGT in the Context of National Food Security and the FIG Fit-for-Purpose Land Administration, to mention a few.

A “fit-for-purpose” formalization procedure is giving priority to clearing out weaknesses in property titles and to providing for registration of property titles in an inclusive, affordable and timely manner. Informalities related to zoning, planning and/or construction regulations should never be connected to ownership rights or block property registration and transactions. Such informalities should not have an impact on the provision and registration of property titles, or affect the transaction or mortgaging of a property. It should be possible for a parcel with a damaged or half-finished construction that does not comply with regulations to be in the market for sale or inheritance. Construction efficiency and stability issues should not block the marketing of the parcel and/or building, however this important issue should be considered prior to issuing an occupation permit. Controls must necessarily be imposed upon comparatively large formalized constructions that will accumulate large numbers of people (e.g., for issuing an occupancy permit for multi-story, multi-family residential buildings, or operational permits for commercial real estate such as hotels, restaurants, schools, offices, cinemas). If the construction compliance of such buildings can be guaranteed by the private sector (maybe already involved in the construction of such buildings, as it is the case in some countries) then formalization should be quick, affordable and inclusive.

In the formalization process governments need to go beyond the established policies and practices in order to successfully deal with the property market challenges, the funding challenges, the structural stability challenges, the environmental challenges and the difficult ethical challenges and any hostile reactions to a formalization project. They need to argue for the contradictory concept to “legalize the illegal”. The above described rationale provides all the required justification for developing a strategy and a communication policy with all involved stakeholders and society.

A legal framework and administrative and regulatory process should be prepared and tested in pilot studies. As well, ways to raise awareness, when differing priorities among the parties exist; the socio-economic realities must be clearly demonstrated, with the relevant significant data [4].

The clear economic and social benefits of formalization of informal structures must be advertised via public awareness programs demonstrating, also, the economic cost of informality while allowed to continue.

Modern technology and its products (e.g., mobile services, apps, UAVs, satellite images, orthophotos, VGI and crowdsourcing) will help to overcome the lack of transparency and provide the base map and the methodology for data collection and cadastral mapping of informal and unregistered settlements (e.g., identification of constructions, adjudication of occupants, formalization of titles and registration of properties and property rights). [8, 9, 7, 1, 6]. The use of any available cadastral information or development plans is highly advisable in order to identify and register informal real estate and occupants/owners. This may be accomplished by engaging the involved professionals including notaries, constructors, civil engineers, developers and real estate agents as well as the local authorities that may have records, the various state agencies such as the tax office; occupants and society should also be engaged in the recording process.

For the formalization of the informal to be successful it is important that technical advice be employed on how to build inclusively, affordably and in a timely manner an efficient framework. It is vitally important to revise the planning and permitting systems to discourage and eliminate a continuation of informality in order to support market needs and growth while in parallel to define the lands and real estate that should be protected.

In considering formalization of all informal real estate by 2030 it is necessary to determine the duration and the costs of the project in each case and to prioritize needs. This will influence decisions related to title provision, planning amnesty, the requirement for any controls, planning for future improvements, optional future stability controls for issuing operational permits to commercial real estate, inspections, monitoring, demolitions, and resettlement.

Important legal decisions are required on how to deal with occupied private, state and municipal lands as well as land that belongs to social enterprises, and to ensure gender and ethnic equity when possible. Governments should prioritize the provision of good title, when possible, in order to be aligned with SDGs, VGGT, FFP LA and other objectives.

Administrative aspects such as the determination of the responsible authority for formalization and the required fees, the registration of informal constructions into the cadaster using modern and low-cost technology, should be considered, as well. Once registration is accomplished transactions and mortgaging should be facilitated.

Urban regeneration methods and planning improvements - if necessary - for informally developed areas should adopt simplified norms and standards. Similarly, structural stability controls may be classified according to the size and the operational use of buildings and should be adjusted to the limits and abilities of local knowledge and practice.

Information on how to implement a formalization framework based on

best practice through country-specific approaches including technical tools and methods, the role of professionals, state agencies and citizens, should be taken into account.

During and following formalization there must also be monitoring of the progress and of the situation especially in environmentally or socially sensitive areas to avoid future informal development. Automated monitoring of protected lands is highly recommended to avoid the need for on-site inspections and costs, while limiting the opportunity for corruption and bribery.

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