

Guidelines for the formalization of informal constructions



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Guidelines for the formalization of informal constructions



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FOREWORD

Worldwide, there are an estimated one billion urban dwellers living in informal settlements – compared with three-quarters of a billion in 1996. These settlements have been built outside the formal system of laws and regulations that ensure tenure, legal ownership and safe, resilient structures. Informal development is not a new issue for the UNECE region. However, over the last 30 years, informal development has become an increasingly urgent matter. In 2007, it was estimated that more than 50 million people lived in informal settlements in 20 member-states of the UNECE region. Europe has experienced a rise of urban dwellers who cannot afford to pay rent, with housing costs rising particularly rapidly in the more prosperous large cities. This is especially the case for the Southern and Eastern parts of the region, while Western European countries are said to have more than six per cent of their urban dwellers living in insecure housing conditions.

The importance of tackling this issue is undeniable and addressed in several United Nations Sustainable Development Goals (SDGs). SDG target 1.4 stresses that governments should ensure that all men and women, particularly the poor and vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property and inheritance. SDG 11 stresses that cities and human settlements should be inclusive, safe, resilient and sustainable.

In 2009, the UNECE Committee on Urban Development, Housing and Land Management published their first study on informal settlements entitled 'Self-Made Cities: In Search of Sustainable Solutions for Informal Settlements', and in 2015, 'Formalizing the Informal: Challenges and Opportunities of Informal Settlements in South-East Europe'. The 'Guidelines for the Formalization of Informal Constructions' continues the discussion begun by these studies.

Based on the lessons learned from the previous studies, this publication provides general guidance for formalization projects in countries facing the challenge of informal development and is an excellent example of cooperation between UNECE and the International Federation of Surveyors (FIG). Such cooperation and exchange of knowledge is an effective way of contributing to the formulation, implementation and monitoring of land policy and the promotion of sustainable land management to more readily achieve the 2030 Agenda and the SDGs.



Olga ALGAYEROVA

Under-Secretary-General of the United Nations
Executive Secretary of the United Nations Economic Commission for Europe

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PREFACE

This publication is a brief, practical and easy-to-read guide, explaining how to structure a programme for the formalization of informal constructions. It shows how to do this in an affordable, reliable, inclusive and timely manner so that governments can meet the SDGs by 2030 and implement the New Urban Agenda. The focus is on the formalization process itself, but there are also descriptions of the preparatory work needed to analyze problem magnitude, as well as how to find political acceptance, identify post-formalization factors, and identify the root problems that cause future informality.

This guide focuses on economic and broader land-market benefits accruing from formalization, and integration of informal parcels within the formal market. It shows that a properly-integrated formalization process can have economic, environmental and social benefits for everyone. A key benefit from formalization and an improved registration process is increased security of tenure and right to adequate housing. It helps achieve SDG 11: “make cities and human settlements inclusive, safe, resilient and sustainable”, as well as achieving right to land ownership – a key condition to “eliminate extreme poverty” as mentioned in SDG 1.

In many cases informal constructions could be a commodity that will benefit their inhabitants, it is only fair that cadastral formalization of ownership rights, and registration of informal constructions, proceeds quickly, independently, and at low cost. This is on condition that no-one should be taking advantage of formalization to further disadvantage of vulnerable groups or broadening corruption in land markets. Such formalization is a key step in encouraging a healthy land market, reducing lending risks and formalizing the real property market. It will facilitate easier access to credit and may therefore provide funds for necessary construction improvements and upgrades, as well as the general improvement of the life of the inhabitants including education, health, and business.

Apart from formalization of ownership rights, informal settlements, when formalized also need to be upgraded to a standard where people can live in dignity, peace and security. Therefore, economic, planning and construction-stability issues must be seriously considered. Improvements to neighbourhoods and basic service-provision must be made available for social and environmental reasons, but also to make these properties more economically viable and become a part of the broader legal land market. Better service provision and incentives to upgrade improve real estate values for owners, as well as for the broader national economy through a more efficient land sector. It is difficult to access credit where there is limited interest in purchasing housing due to a weak land market infrastructure. Improving this will make the sector more fluid, enhancing all other economic sectors. However, there is no “one size fits all” general rule. A guide to how planning and construction improvements may be achieved must recognize that conditions and needs vary according to place, society, and property.

Environmental, planning, construction, and utility-provision improvements can be initiated and funded by inhabitants, or by the national government in cooperation with local authorities. Inhabitants can carry out improvements using the private sector for development of small or medium-sized projects. Once relevant tools and regulations are in place these may also include consolidation of parcels when fractionalization is a significant problem. It is recommended that local authorities initiate improvements through urban planning, though occasionally urban land readjustment projects can be used.

These improvements, however, should be considered as post-formalization factors, requiring major reforms as well as general public acceptance. The best results will be achieved when people have understanding, trust, and willingness to act to secure ownership rights to their houses. Voluntary participation in providing information and enhanced procedures will lead to a successful outcome. Existing tenure and weak property rights, both formal and informal, should be quickly recognized and registered to ensure unity, fairness, and conflict-minimalization between the general population and local communities. This guide will assist in all aspects of the informal construction formalization process, to the benefit of inhabitants, governments and stakeholders.

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LIST OF ABBREVIATIONS

CESCR	Committee on Economic, Social and Cultural Rights
CFS	Committee on World Food Security
EvIA	Eviction Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FIG	International Federation of Surveyors
NGO	non-governmental organization
NUA	New Urban Agenda
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDG	sustainable development goal
UNECE	United Nations Economic Commission for Europe
UN-Habitat	United Nations Human Settlement Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure
WPLA	Working Party on Land Administration

EXECUTIVE SUMMARY

In the developing world about 33 percent of urban dwellers live in informal settlements, and there are more than 50 million informal dwellers in twenty-member states of UNECE. This burdens the lives of all affected peoples and hampers the economies of these countries.

There is no simple solution to informal development. The problem is linked to national economic wealth in combination with the level of social and economic capital. Solutions to informal development are a function of consistent land policies, good governance, and well-established institutions and systems. There is a continuing need for guidelines and tools to address and reduce informal urban/suburban development, aligned with the trends and challenges of achieving the SDGs.

There are many definitions of “informal development” and “informal settlements”. For clarity, this document focuses on informal development in the UNECE region, which is mainly of fair-quality, permanent constructions where inhabitants have invested to serve their family housing needs for some years to come. However, it can also include more transient housing such as those utilized by Roma, but such settlements do not represent the majority of informal constructions in Europe.

In many countries, informal construction was tolerated in the absence of sufficient affordable or social housing. Apart from issues related to the right to adequate housing and lack of secure tenure, it represents significant under-utilized, non-productive capital which, with appropriate policy measures, may be converted into more productive capital for its inhabitants and can in parallel support the national economy. This guide uses the term “informal settlements” as defined by the United Nations (UN, 2001)¹: i) residential areas where a group of housing units has been built on land to which the inhabitants have no legal claim, or which they occupy illegally; ii) unplanned settlements where housing is not in compliance with current planning and building regulations.

Many countries have not developed adequate policies, institutions and capacities to prevent informal development. There is, therefore, a need to improve relevant land-related institutions, as well as provide professional education at all levels. This will create local expertise, organize sharing-experiences and raise public awareness about the importance of land management tools to minimize future recurrence.

As a response to the challenges presented by informal development, many governments have undertaken formalization projects. These tend to focus on integrating informal development in the economic circle by “privatizing” the occupied state- or municipal-owned land - providing ownership titles to inhabitants as well as registering titles to encourage formal property transactions, mortgaging and fair taxation. Many also focus on revising zoning, planning, and permit regulations, as well as on regularizing and upgrading informal settlements and individual constructions when needed.

These guidelines for formalizing informal construction are designed to help alleviate land-related problems which prevent countries from achieving their social and economic goals for social advancement. They offer clear steps, set priorities for recognizing informal tenure and weak ownership rights, how to provide clear ownership titles and registration. They also describe the expected challenges, benefits, and rationale for how a formalization programme should advance, in addition to what should be done before, during and after such a programme.

The right to adequate housing is an internationally recognized human right. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has underlined that the right to adequate housing should be seen as the right to live in security, peace and dignity². The elements of the right to adequate housing are clarified mainly in CESCR General Comment No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions. There are seven elements to the right to adequate housing³.

1 United Nations, 2001. Indicators of sustainable development: Guidelines and methodologies. Available at <http://www.un.org/esa/sustdev/publications/indisd-mg2001.pdf>

2 Committee on Economic, Social and Cultural Rights, General Comments No. 4 (1991); No. 7 (1997).

3 United Nations, Office of the High Commissioner for Human Rights, “The Right to Adequate Housing Toolkit”. Available at <https://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx>

Legal security of tenure: Regardless of the type of tenure, everyone should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Affordability: Personal or household financial costs associated with housing should not threaten or compromise the attainment and satisfaction of other basic needs, for example, food, education or access to health care.

Habitability: Adequate housing should provide adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.

Availability of services, materials, facilities and infrastructure: Housing is not adequate if its inhabitants do not have, for example, safe drinking water, adequate sanitation, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage and refuse disposal.

Accessibility: Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not considered, such as the poor, people facing discrimination; persons with disabilities or victims of natural disasters.

Location: Adequate housing must allow access to employment options, health-care services, schools, child-care centers and other social facilities, and it should not be built on polluted sites nor in immediate proximity to pollution sources.

Cultural adequacy: Adequate housing should respect and consider the expression of cultural identity and ways of life.

Governments are challenged with solving the problems of current informal urban development and preventing further informal or illegal construction. The purpose of these guidelines is primarily to show how to formalize existing informal urban development. If the policies and administrative causes creating informality are not addressed, it will begin appearing again. Other UNECE publications focus on how to improve relevant institutions to eliminate and prevent it in future.

Existing informal settlements urgently need to be formalized and integrated into the economy, affordably and inclusively, to maximize benefits and ensure no one is left behind (2030 Agenda for Sustainable Development and its SDGs, NUA)⁴. Moreover, such settlements should gradually have their safety and service provisions upgraded, as well as having their urban density increased if needed.

The challenge of eliminating the phenomenon in future is complicated, as it requires a series of comprehensive and consistent land policies and economic reforms that influence tools such as the Voluntary Guidelines on Tenure (VGGT) for good management of land. These include: property registration, pro-growth planning and permits for flexible development, property valuation, fair taxation and affordable housing policies. As well as other issues relevant to the establishment of well-functioning and transparent real estate markets, there is a need for funding mechanisms, professional education, professional ethics and an effective role for the private sector (UNECE, 2010)⁵.

These guidelines outline three phases within the proposed formalization process:

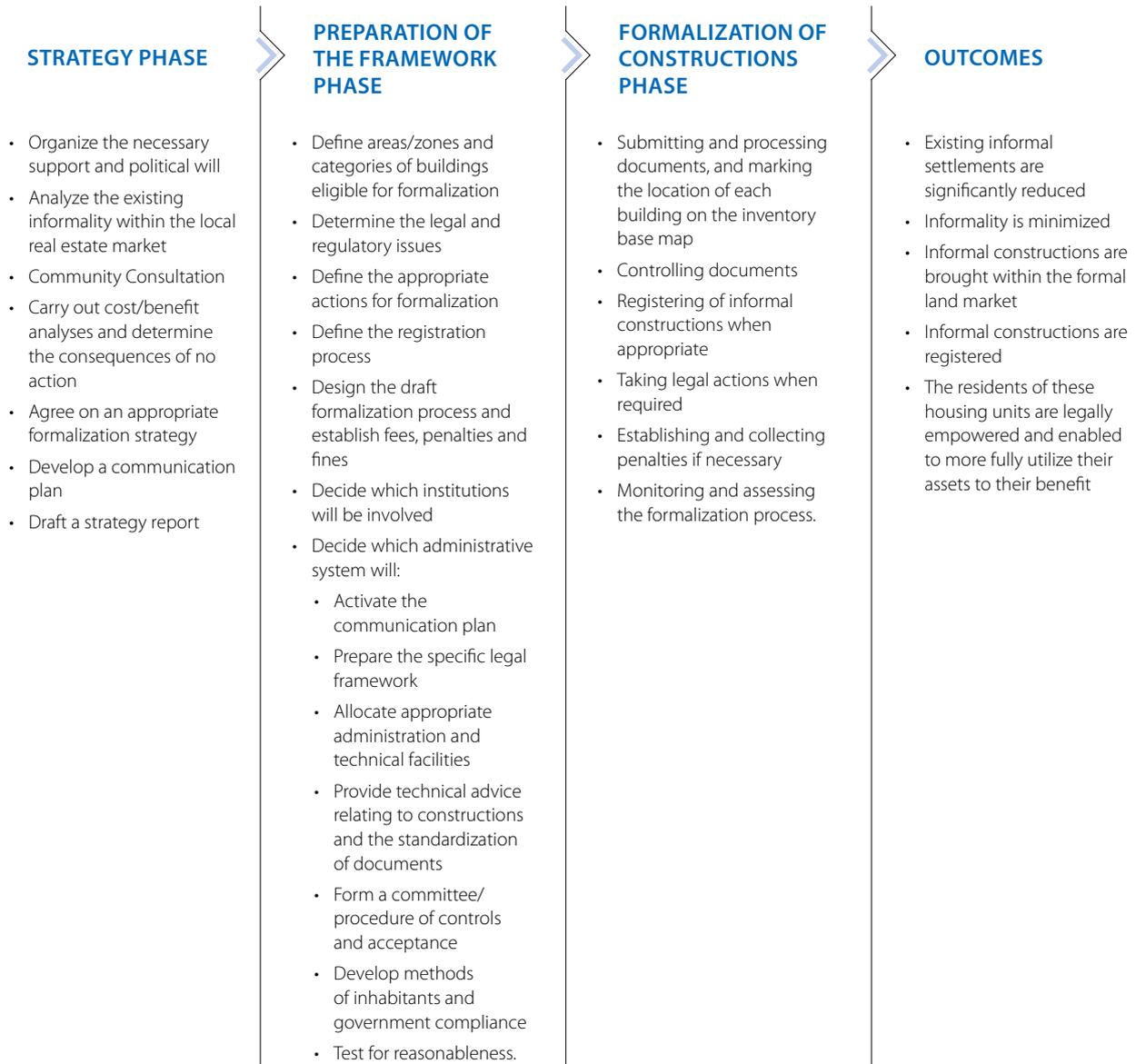
- (a) The Strategy Phase;
- (b) The Preparation of the Framework Phase; and
- (c) The Formalization of Constructions Phase.

4 Food and Agriculture Organization, Voluntary Guidelines on the Responsible Governance of Tenure. Available at: <http://www.fao.org/tenure/voluntary-guidelines/en/>

5 United Nations Economic Commission for Europe, Policy Framework for Sustainable Real Estate Markets. Available at: <https://www.unece.org/index.php?id=11059>

FIGURE I

Formalization process



The *Strategy Phase* includes the following steps:

- (a) Organize the necessary support and political will;
- (b) Analyse the existing informality within the local real estate market;
- (c) Community Consultation;
- (d) Carry out cost/benefit analyses and determine the consequences of no action;
- (e) Agree on an appropriate formalization strategy;
- (f) Develop a communication plan;
- (g) Draft a strategy report.

In short, this phase gathers support, analyses the problem, proposes the solution, and communicates the plan for the formalization process.

The *Preparation of the Framework Phase* is a series of logical steps based on the specific plan of action considered most appropriate in the strategy phase.

The steps within the *Preparation of the Framework Phase* include:

- (a) Define areas/zones and categories of buildings eligible for formalization;
- (b) Determine the legal and regulatory issues;
- (c) Define the appropriate actions for formalization;
- (d) Define the registration process;
- (e) Design the draft formalization process and establish fees, penalties and fines;
- (f) Decide which institutions will be involved;
- (g) Decide which administrative system will:
 - (i) *Activate the communication plan;*
 - (ii) *Prepare the specific legal framework;*
 - (iii) *Allocate appropriate administration and technical facilities;*
 - (iv) *Provide technical advice relating to constructions and the standardization of documents;*
 - (v) *Form a committee/procedure of controls and acceptance;*
 - (vi) *Develop methods of inhabitants and government compliance;*
 - (vii) *Test for reasonableness.*

This phase designs and creates the infrastructure used through the entire formalization process. This framework must be carefully defined and set up. All the provisions such as development of a legal framework, organization, the approach for the formalization process itself, institutional and professional responsibilities, budget planning and many more related details will require description and development.

Following these steps, the *Formalization of Constructions Phase* begins. This includes a wide variety of administrative and legal functions, fee collection, registration, and appropriate monitoring. The overall process should be transparent, inclusive, corruption-free, sustainable and flexible enough to adjust to different situations. It includes:

- (a) Submitting and processing documents, and marking the location of each building on the inventory base map;
- (b) Controlling documents;
- (c) Registering of informal constructions when appropriate;
- (d) Taking legal actions when required;
- (e) Establishing and collecting penalties if necessary;
- (f) Monitoring and assessing the formalization process.

The outcomes should be:

- (a) Existing informal settlements are significantly reduced;
- (b) Informality is minimized;
- (c) Informal constructions are brought within the formal land market;
- (d) Informal constructions are registered;
- (e) The residents of these housing units are legally empowered and enabled to more fully utilize their assets to their benefit.

Land market integration should allow everyone, without discrimination, to realize their right to adequate housing, security of tenure, right to ownership of land and property, access to credit, and access to better and more reliable support services. Special attention should be paid to raising awareness and discouraging future informality by adopting,

for example, appropriate planning and permission procedures, affordable housing policies and flexible regulations. Until these sectors are improved, informal construction may reoccur. Therefore, it is important that the legal framework should be flexible enough to integrate new informality into the economy, smoothly and appropriately.

Several activities are recommended in parallel with the formalization programme. Formalization should be an independent process, and not delayed by systemic implementation or improvement, but success will be helped by strengthening the supporting pillars of formal land markets. These include regularizing the registration and titling processes for informal assets, improving the urban planning process, creating a fair and efficient construction permissions process, improving professional education in construction and ethics and improving monitoring and control systems.

Throughout the formalization process most of the key elements to prevent future informality should have been considered and be enhanced. They are as follows:

- (a) Increase inhabitants' security and sustainability of tenure, and work towards the realization of their right to adequate housing;
- (b) Keep ownership rights secure, and property title registries current - private ownership of land and real property should be treated as a fundamental human right;
- (c) Continue to keep planning and building codes relevant to evolving social and environmental needs in a way that does not negatively affect security of tenure and ownership rights, or disrupt the economic processes necessary for communities' continued livelihood;
- (d) Consider and protect the rights of vulnerable and marginalized groups;
- (e) Apply only appropriate fee structures with the proper balance of affordability and cost-covering, maximizing benefits for all and also maximizing participation. These should include real estate taxation, if used, as well as utilities, infrastructure legalization, formalization and other methods of taxation and revenue generation.

After formalizing the informal constructions and minimizing the causes of informality, the long-term benefits of a stable, transparent, fair and inclusive real estate market will benefit all members of society.

1

INTRODUCTION

1.1 Background

Depending on the definition of “informal” used, it is estimated that in the developing world about 33 per cent of urban dwellers live in informal settlements (UN-Habitat, 2010). Of the total population living in informal settlements worldwide, more than 50 million people are located in member States of the UNECE region. This daily tragedy burdens the lives of our inhabitants and hampers the economies of all nations. Squatting on state and private land occurs in urban and suburban areas, weakening land tenure security and creating environmental and social problems. However, in the majority of cases, illegal construction in Europe is well-built and can be considered as “affordable housing” rather than as “slums”.

The UNECE Committee on Urban Development, Housing and Land Management published a study on informal settlements: *Self Made Cities: In Search of Sustainable Solutions for Informal Settlements in South-East Europe* (UNECE, 2009), and continued the discussion with *Formalizing the Informal: Challenges and Opportunities of Informal Settlements in South-East Europe* (Potsiou, C. et al., 2015). These reports presented an overview of the issues, current response policy recommendations, lessons learned, and best practice recommendations to respond to these challenges.

Many countries have not yet managed to coordinate responsible land-related agencies and relevant projects. Planning and provisions for legal rights to land, all involve politics. During the last 30 years, the UNECE region has experienced large unified land reforms that focused on denationalization, restitution and provision of property titles, privatization of land and buildings, as well as property registration. However, in many countries, there are several political debates around common themes related to aspects of planning and land management. Under centrally controlled economies, spatial and urban development planning are government roles in which people have little or no involvement. The transition from central planning therefore left a significant lack of knowledge and experience.

This creates a need to improve relevant education at all levels, to create local expertise, and share experience. There is also a need to raise public awareness about the

importance of land management tools like cadastres and spatial data infrastructures, property registration, property valuation and taxation, planning and construction best practices, and appropriate development of the private sector. Professional ethics must be improved for population well-being, and there must be broader improvement of national economies through superior land management. There is also a need for stakeholders, local experts, professionals and inhabitants to realize these tools must be co-ordinated. Experience shows that informal development will continue, if, instead of the above-mentioned actions, legalization and registration are delayed by planning and construction institutional enhancements, high fees to purchase occupied land, and high penalties including imprisonment or demolition (Potsiou, 2010).

UNECE and FIG recognize that the European region continues to need guidelines and tools to address informal urban/suburban development. Informal buildings of reasonable quality must be formalized and integrated into the economy, as well as reduced as a phenomenon in the near future.

This study builds upon the experience gained from previous research in UNECE countries and mainly deals with “permanent” informal constructions. These are usually well-built, but do not comply with technical and planning standards and often lack titles but are not characterized as “slums”. Slums within the UNECE region are being formalized separately by smaller local projects with a holistic approach of upgrading the settlement, providing a mechanism for issuing ownership titles and creating job opportunities within the settlement. Usually such projects are not nation-wide but small in size and financed by donors, or the state (Potsiou, et al., 2017; Potsiou, C., 2014; Potsiou, C., and Dimopoulou, E., 2012).

Informal development is best described as a spectrum of formality (UNECE, 2009). Part of the solution is for policy makers to have a deeper understanding of the nature, types, and socio-economic consequences of various types of informal constructions. The categories of informality can be described by:

- (a) Type and nature - title or ownership informality and/or construction or use informality;

- (b) Extent - from single dwellings to small estates, and whether these have a significant economic effect;
- (c) Type of building improvements - property type such as single-family home, multi-floor apartment building or flat, retail, industrial, office or special purpose building.

Causes of informal development include major political changes coupled with rapid, often uncontrolled urbanization, lack of available and affordable housing, poverty, internal migration, conflicts, marginalization, natural disasters, and cumbersome authorization processes for home modernization and improvement.

The list also includes the absence of good practice policies by states, and their failure to adopt pro-growth planning. Other factors include limited affordable housing policies, private-sector weakness, lack of political will to develop land policies facilitating recognition of existing tenure and private property rights to aid transition from centrally planned to market economies, and finally the failure or reluctance of state agencies to implement measures supporting economic reforms.

The following pictures show different types of informality and their causes.

GREECE



Shows many informal houses in an unplanned area in Greece (2019), all without a permit to build.



Shows a relatively new construction of good quality built in rural and unplanned land without a building permit (2019).



Smaller construction in the same area, similar informality (2019).

NORTH MACEDONIA



Shows balconies and the informal conversion of balconies into a room in North Macedonia. It also shows the unfinished side of the building. Once the apartments were sold the work stopped and new projects were started showing bad practice, including lack of legislation and professional ethics (2010). The building is legal, but the extra space of balcony cannot be a closed area, thus is informal. Similar situations exist also in Greece. In both countries they have legalized the informality.

MONTENEGRO



Malo Brdo, a suburb of Podgorica, Montenegro, informal constructions in unplanned, state land, lacking ownership of land (2011).



Montenegro, in protected forest land.



Montenegro, in highly protected rural land.

It is also important here to remember that demand in real estate markets is defined, not only by consumer need, but also by desire. Generally, this is expected to be met by the private sector, and poorer people's housing need is usually met through social and/or affordable housing policies where the state sets the rules and develops necessary frameworks. When neither the state nor the market provides enough formal housing solutions, people turn to informal solutions (Potsiou, C. et al., 2015). This leads to risky investment of income in informal constructions. Security of tenure and housing is a fundamental social issue and human right, however, within the global economy, security of ownership rights and titles to these informal constructions is an equally important social issue as it is fundamental to well-being. Security of tenure rights alone cannot facilitate access to credit, while security of ownership rights can.

Therefore, informal development is considered a critical social and economic challenge in many European countries. Adequate improvements and basic services must be provided to informal inhabitants or, in the case of demolition, decent resettlement. Failure to do so has broader negative impacts on surrounding formal markets and all residents in affected communities. In addition, informal constructions typically limit state planning by not being within registration systems, cannot be mortgaged, formally transferred, inherited, or rented. Title provision and registration of informal constructions improves security of tenure, establishes property rights over the investment, minimizes lending risks and provides easier access to credit and funding mechanisms. It also improves legal protection, as well as legal empowerment of inhabitants or owners, and helps ensure their economic freedom. The assets invested in informal constructions represent non-productive, dead capital prior to formalization and inclusion in the broader land markets.

Informal development is also an economic challenge because it affects public revenues, productivity and job opportunities. Furthermore, it hampers economic development and the synergies between factors of production (land, labour, capital, and entrepreneurship) which underlie a nation's economic, social, and cultural performance. As a result of informal development, the tax base is smaller and higher taxes may have to be levied on a smaller subset of constructions and their related businesses and inhabitants. Moreover, competition within real estate markets with a high level of informal development is distorted by a lack of transparency, and personal relations often matter more than rules and laws. It is also broadly recognized that informal development remains substantial in countries where overregulation

and bureaucracy, taxation, fees, penalties and related costs give significant incentives to build and work "under the radar".

Informal development, its construction, operation, and demolition, can also be a significant environmental challenge. This is especially true when it is on highly protected lands, or when it does not meet current standards for energy consumption or public safety. When demolition is needed, not only is it expensive economically and socially but it also can damage the environment and may need to be followed by special treatment of debris. For these reasons, any necessary construction or planning improvements should justify the costs and general benefits following formalization of titles.

As a response, many countries within the UNECE region undertook formalization projects. These tended to focus on "privatizing" the occupied state or municipally-owned land by providing free or appropriately priced ownership titles to inhabitants, and registering them, to encourage formal property transactions. Many projects also focussed on revising zoning, planning, and permit regulations, as well as necessary regularizing and upgrading of informal settlements and individual constructions.

UNECE has been addressing land administration and management challenges since the 1990s. The transition from centrally-planned to market-based economies created challenges and opportunities for many countries. Good land administration, spatial planning, secure tenure and ownership rights, and healthy land markets were steps toward sustainable development, alleviation of poverty, protection of the most vulnerable groups, and more resilient and prosperous economies. These processes are still underway.

The 2030 Agenda for Sustainable Development refers to *Ending poverty in all its forms everywhere* in SDG 1.⁶ In this respect target 1.4 mentions that by 2030 countries should ensure that everyone, 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. SDG indicator 1.4.2 focuses on the proportion of the adult population with secure, legally-recognized and documented tenure rights who perceive these as secure, by gender and type

6 United Nations, Sustainable Development Goals Knowledge Platform, "Sustainable Development Goal 1". Available at <https://sustainabledevelopment.un.org/sdg1>

of tenure. Unlocking the full potential of land parcels improved with informal constructions and bringing them into a well-functioning economy will be a good step forward in strengthening tenure to this population sector, often among a nation's most vulnerable people.

In addition, a key target of SDG 11⁷, *Make cities and human settlements inclusive, safe, resilient and sustainable*, 11.1 clearly calls for countries to ensure access for everyone to adequate, safe and affordable housing and basic services, and to upgrade slums and informal settlements by 2030. SDG 5⁸ aims to achieve gender equality, empower all women and girls, and end all forms of sexist discrimination everywhere [...]. Using target 5.a and its indicators 5.a.1 and 5.a.2, this goal brings informal constructions into formal markets, strengthening tenure rights. It also makes this part of land markets more transparent, spreading the rule of law as fair and unbiased legislation is expanded.

These Guidelines link with many SDGs, including SDG 10 to *Reduce inequality within and among countries*, and SDG 16 to *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*, and to the 2030 Agenda more broadly. In addition, the New Urban Agenda⁹, adopted in October 2016, also deals with informal settlements and the right to adequate housing in, for example, paras. 13, 31, 77, 105, 107, 109, 110, and how to implement policies to address these issues.

The UNECE Real Estate Market Advisory Group Policy Framework for Sustainable Real Estate Markets, approved and published in 2019, states in Principle 1 that:

- (a) A well-developed real estate sector contributes to the conversion of unused or underused resources into productive capital, increasing employment and other economic opportunities and reducing poverty;
- (b) Sustainable housing and urban development are key factors in achieving a better quality of life for inhabitants;
- (c) Efficiency in land administration is a component of economic development.

7 United Nations, Sustainable Development Goals Knowledge Platform, "Sustainable Development Goal 11". Available at <https://sustainabledevelopment.un.org/sdg11>

8 United Nations, Sustainable Development Goals Knowledge Platform, "Sustainable Development Goal 5". Available at <https://sustainabledevelopment.un.org/sdg5>

9 United Nations, New Urban Agenda, 2017. Available at <http://habitat3.org/the-new-urban-agenda/>

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (also referred to as Voluntary Guidelines on Tenure or VGGT) were officially endorsed by the Committee on World Food Security (CFS) in May 2012. The CFS is the highest authority of the United Nations for reviewing and following-up policies concerning world food security. The Guidelines were developed through a broad global partnership of different types of international, regional and national organizations that work together to achieve global changes in tenure governance. The VGGT serve as a reference and provide guidance to improve governance of tenure of land, fisheries and forests. The overarching goal is to achieve food security for everyone and support the progressive realization of this goal.

In line with the above international principles and trends, this guide will assist policy makers in formalizing informal development, mainly the type not characterized as "slums", to meet the SDGs in reasonable time. It offers clear steps in the process, sets priorities for recognizing informal tenure rights, provision for clear ownership titles, and registration. It describes the expected challenges, benefits, and rationale for a formalization programme, and what should be done before, during and after it. Concepts and principles of these guidelines may also be applicable to slums, and other informal settlements of poorer quality. When doing so, pilot projects should be used, and consideration given to local socio-economic realities as well as the funding mechanisms and job opportunities of each country. It is vital when slums are formalized that additional measures should be taken to ensure job opportunities, access to basic services, logical socio-economic transition processes for residents, as well as access to funding mechanisms in parallel with property-title provision.

This guide does not provide detailed guidance on eliminating future informal construction, as this requires a number of consistent and coordinated policy and regulatory reforms and is the subject of another guide. However, a general framework for the formalization process and a discussion regarding the root causes of informality is included for more in-depth understanding and appropriate forward-thinking strategies.

Informal settlements often imply deficits in social and technical infrastructure, including limited health care services, insufficient public space, sewerage and utility services as well as deficient public transport. Informal settlements may also be in areas prone to natural disasters, with deficient facilities for evacuation (Tsenkova & Amann, 2011).

The privations of living conditions in long-term informal settlements make them one of the most pervasive violations of the human rights of dignity, security, health and life worldwide. It is critical that this is recognized, and appropriately rapid responses to this crisis undertaken¹⁰. States should make the greatest possible use of available resources to address inadequate living and housing conditions. Options such as homeownership should be considered in parallel with alternative affordable schemes and policies such as rental and good tenant protection/support, social housing, housing subsidies, grants, and housing support programmes for specific vulnerable groups.

There are inefficiencies present in even well-designed land-market government policies and institutions. This Guide focuses on presenting a reasonable formalization process when it is deemed beneficial to its inhabitants and minimizes vulnerability. It does not directly address possible broader risk prevention and other human rights violations related to land. It is a tool for increasing security of tenure and ownership rights, the protection and promotion of human rights and achieving the goals of the NUA and the SDGs.

1.2 Terminology

There are many definitions of “informal development” and “informal settlements”. The terms have been used to refer to **unregulated, illegal** and **unauthorized** construction, arising from conditions and regulations in various countries, including “spontaneous”, “unplanned”, “unauthorized”, “illegal” or “squatter” settlements. The term “informal” may also be used for settlements of refugees or vulnerable people, overcrowded and dilapidated housing in cities, or slums.

The United Nations has used the term “informal settlements”¹¹ to refer to:

- (a) Residential areas where a group of housing units has been built on land to which the inhabitants have no legal claim, or which they occupy illegally;
- (b) Unplanned settlements where housing is not in compliance with current planning and building regulations (unauthorized housing).

¹⁰ For more on this topic, see the report of the United Nations Special Rapporteur on adequate housing on informal settlement (A/73/310/Rev.1).

¹¹ United Nations (2001); UN-Habitat (2003), UN-Habitat (2013), The State of the World Cities Report 2012/13. Refer to Issue Paper No. 9 on Land for definition of ‘security of tenure’.

Similar definitions are used by the Organisation for Economic Co-Operation and Development (2014) and the World Health Organization (2014).

For clarity, this guide addresses informal development in the UNECE region which is mainly development of fairly good quality. It deals with informal development with illegal aspects that fall into the following categories (Potsiou, C. et al., 2015):

- (a) **Related to ownership and tenure rights.** This includes informal developments built on illegally occupied state or private land, implying that inhabitants have built either in violation of existing legislation on state, or municipal-ownership rights, or in violation of formally registered cooperatives or private-property rights.
- (b) **Related to non-compliance with state regulations on the use of land, or technical specifications for construction.** The implication is that owners have built without, or in excess of, one or more permits: (1) planning permit; (2) building permit; (3) occupancy permit; or (4) operational permit in the case of constructions used for purposes other than private residence - for example, commercial constructions. These illegalities may include illegal subdivisions of land, or illegal deviations from approved land use, usually on the urban fringe, for example from “rural” or “forest” to “residential” or “mixed”. This can happen in violation of existing legislation such as zoning, planning, construction, or safety regulations, and in some cases also in violation of the country’s constitution.

When the factors leading to informal development are widespread, an informal real estate market begins to form. In most countries suffering from widespread informal development, informal transactions inadvertently support this economic sector, meaning that people invest in informal constructions based only on mutual trust without any security of tenure provided by a legal system.

The term “illegal” is a special type of informality which refers in most cases to the lack of legal right to occupy a piece of land (The World Bank Group, 2007b), or non-compliance with planning regulations. However, this term is negatively charged and should not be used if the phenomenon is a significant portion of the market. In such cases, it is more likely an indication of a failure of the system rather than individual abuse of the law, and the term “illegal” may be counterproductive. In this report this term “legal informality” is used referring only to the illegal occupation of land that belongs to somebody other than the occupant, and to illegal use of land without a permit.

With other type of informalities, such as exceeding the permits or non-compliance with technical standards the term “technical informality” is used.

It is worth mentioning that informal development is usually part of a greater “informal sector” (The World Bank Group, 2007a). In this case not only are people illegally occupying land, but builders, carpenters, plumbers, electricians, as well as real estate agents and even notaries may work informally, creating an “informal economy” (Becker, 2004) composed of labour and capital. These are sustained by the institutional, social and legal characteristics of the communities that spawned this “informal sector and economy”.

Formalization of informal settlements can have significant positive social, environmental and economic benefits to inhabitants, but also to residents of nearby formal neighbourhoods and to the national economy in general, as it will enable a greater portion of economic activity to be integrated. It is, however, important that countries also undertake reforms to address the causes of informal development. Not addressing formalization and its root causes can, in contrast, exacerbate these issues, expanding their negative effect.

1.3 How to deal with informal development

Governments are challenged with the problems of informal urban development and preventing future informal or illegal construction. These two issues are closely interrelated, but they require different approaches. In general, existing informal settlements, if possible (see 1.3.b), need to be quickly formalized and integrated into the economy circle affordably and inclusively, for reasons related to the SDGs.

It is also important that such settlements upgrade safety and service provision. The challenge of eliminating their future recurrence is important but complex, requiring comprehensive land policy and economic reforms which influence the tools for good land management. These include property registration, pro-growth planning and flexible permitting of developments, planning for affordable housing, property valuation and taxation, as well as other measures to establish a functioning and transparent real estate market. It also requires funding mechanisms, professional education, professional standards and ethics and an inclusive role for the private sector.

The VGGT discuss these issues in detail. The main implementing principles are incorporated in procedures and laws, as well as discussions on monitoring and

reporting (chapter 10, 26, and others are relevant). The VGGT is a good complement to this guide.

Governments may respond to informal settlements in several ways.

a. Ignore the problem

In many countries, governments have openly recognized the inability of the state to fulfil the need for affordable and social housing. Therefore, they have tolerated informal constructions as an alternative affordable housing policy. However, this ought to be considered a temporary solution to the housing problem and should be accompanied by an appropriate plan for formalization, upgrading and integration over time.

Whilst this is the easiest response, ignoring the presence of informal settlements and constructions and delaying formalization means that the factors creating them can grow and become more socially entrenched. Some of the negative economic, environmental and social effects of ignoring the problem include direct or indirect loss of state revenue from unregistered properties, unregistered transactions, untaxed real estate, undeclared income, environmental risks, marginalization, insecurity of tenure, and limited access to credit with an increased social and economic impact stemming from this “dead capital” (de Soto, 2000; Brefort, 2010).

In response to the 2030 Agenda for Sustainable Development, governments should assess if such negative impacts are so small that it is acceptable to ignore the problem. In countries where informal development is extended, governments should reform their policies to align with the above principles. They cannot afford to continue ignoring the problem.

Well-informed local or international investors will not be willing to invest in informal real estate with an unknown future status. However, middle- and low-income people without other choices are led to invest, sometimes in significant amounts, and create local informal markets.

However, no country provides affordable housing for everyone without the contribution of private investment (local or foreign) either through the banking sector or directly in land or real estate markets. This in no way decreases the need for a fair and transparent legal and governmental infrastructure to ensure fair distribution of these improved markets.

A major problem caused by the existence of informal constructions is that the banking sector cannot attract local or foreign investment to provide loans backed by informal real estate that carries high risks. Informal real estate markets

are characterized by high risks and legal problems and are not easily integrated into the global economy unless formalization takes place. In addition, in rural informal settlements, farmers have no access to farming funding sources without clear ownership titles to their land plots. It is important that the state recognize informal tenure on land and provides and registers clear rights so owners can use their properties as collateral to access capital.

When strategic local or international private investment in real estate is encouraged, the existence of informal construction is problematic. Similarly, land consolidation and any other readjustment projects, as well as expropriation and other necessary land reforms, may severely affect those with informal rights, causing social instability (FIG, 2010b). As mentioned in the VGGT, “States should facilitate the operation of efficient and transparent markets. This promotes 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.”

b. Demolish the informal constructions

Demolishing a construction of relatively good quality means significant capital investment is lost. Removing individual informal constructions tends to be economically, environmentally and socially costly.

Furthermore, a system that creates informal development is resistant to demolition. Informal buildings are created by an economic or social need and while greater regulation, more severe penalties, and more inspections may curtail it over time, these solutions are costly and subject to corruption. Worse still, the social and economic need still exists, and this will cause the problem to adapt, change, and possibly expand. At the very least it will alter the negative socio-economic foundation that originally created the informal development, the informal construction, and the informal market.

When demolishing individual informal constructions there are usually significant costs: economic, legal, administrative, court, social, political, equipment, physical demolition, carbon footprint, and environmental. These are rarely worth the benefits of demolition. In addition, resettlement is usually required when there is no other residence. Forced evictions have been recognized as gross violations of human rights. The United Nations provides guidance concerning eviction when there are no other options – these need to be carried out with respect to

due process and human rights¹².

The guidelines for development-based evictions and displacement (A/HRC/4/18)¹³ call for a mandatory Eviction Impact Assessment (EvlA) to be conducted first. This should be done in a comprehensive and holistic manner to mitigate risks. To ensure this, OHCHR and UN-Habitat have developed a Handbook on “Assessing the Impact of Eviction”, to assist public duty holders ensure that evictions do not violate human rights (UN-Habitat/OHCHR, 2014). It advises that an EvlA should consider all potential risks, costs and damages arising from an eviction or displacement. It also advocates consultation with affected individuals, households and communities and proposes alternative solutions be considered. The assessment further disaggregates data with a focus on the most vulnerable, to account for the differential impacts of forcible eviction on, for example, women, children, the elderly, or persons with disabilities. When eviction is justified, the process should never be discriminatory, or render someone homeless or vulnerable to other human rights violations. Eviction and resettlement must be carried out with due process, in accordance with international human rights law, and in a sustainable and socially inclusive manner. This includes:

- (a) Communicating properly, and providing information in a timely manner;
- (b) Facilitating the involvement and participation of the members of the affected community for a meaningful and just solution to be reached for everyone;
- (c) Providing adequate compensation and alternative adequate housing;
- (d) Ensuring legal remedies are available and affordable for affected communities;
- (e) Following up once resettlement has occurred, to ensure that access to basic services and livelihoods was not compromised.

The social and political impacts of demolition can create huge instability and are often accompanied with corruption, or the perception of corruption. Additionally, evicted persons tend to be among the most vulnerable, marginalized and poor groups in society and their displacement will result in perpetuating informality and related issues, including possible violations of human rights (as mentioned at paragraph 16.9 of [CFS VGGT, 2012]).

12 See UN-Habitat/OHCHR fact sheets 21 (the right to adequate housing) and 25 (forced evictions). Available at <https://www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx>

13 Available in various languages at <https://www.ohchr.org/EN/Issues/ForcedEvictions/Pages/Index.aspx>

c. Formalize informal constructions

Individual informal constructions need to be formalized when informal construction is widespread, creating informal settlements. Much of the incentives for continued market informality can be erased by understanding their root causes, followed by appropriate prioritization, prudent regulation, and an inclusive and open-minded approach to incremental solutions. Existing informality can be brought within the formal sector and, through these processes, future informality can be lessened or removed.

Cost/benefit analysis of these options usually proves that formalization is the most beneficial solution. Additionally, the best way to reduce future occurrences and gradually reverse the growth of a broader informal sector consists of improving institutional structures, increasing flexibility in upgrading city and zoning plans, reducing bureaucracy in planning and permitting of construction, as well as adopting appropriate fee structures and legal processes. Unfortunately, ignoring the problem or proposing unproductive or counterproductive legal and administrative measures, high penalties, demolition or even imprisonment is common practice, and these often exacerbate the problem.

A variant to formalization is to formalize the informality for a limited period and impose high penalties for noncompliance. This is meant to allow the state to rescue the informal constructions for a limited period. In future the state will provide a framework to include them more permanently in existing regulations for permits and legal registers. This approach is not recommended as it only delays solutions, and expenses to society and the national economy persist. There is a high risk that a new government will not be willing to continue, and formalization will fail. The implementation of high fees for owners does not bring the property fully back into the formal market, no security of tenure is provided, costly risk and uncertainty is attached to the constructions, and users of the constructions (often vulnerable groups). Other obstacles, like difficulties in the case of disposal or mortgaging, still remain and such constructions still have very limited marketability.

A formalization project should not have collection of state revenue as a primary goal. Politicians need to recognize that high fees and penalties paid by inhabitants or owners-to-be to become or remain legal usually cannot be justified.

d. Conclusions

There are only two viable options: demolish or formalize. Doing nothing or “rescuing for a limited period” are not

viable unless the issues have only negligible overall market impact. Since demolition is sometimes performed without adequate justification or due process and tends to make people homeless causing a domino effect of humanitarian, environmental and economic problems, it is only an option in rare cases, for example, individual real estate parcels of high risk/impact if left informal. Practically speaking formalization is the only alternative when informality has significant economic and social impacts and people’s lives, livelihoods, and dignity are at stake. For that reason, this publication focuses on this option. Formalization and upgrading of informal settlements is in line with a human rights-based approach to housing, and therefore should be promoted.

Providing secure tenure and clear ownership rights is a first priority. In terms of planning, the more over-regulation, the more informality and corruption will be created to avoid it. A small amount of such informality is actually acceptable – it takes stress off the economy and fills niches in even a fairly well-crafted legal planning structure. It may well be healthy, both socially and economically at a small-scale level. Therefore, planning regulations and permitting requirements should be flexible and not over-prescribe detail of construction and penalty processes. Technical education and specifications for construction stability (updated seismic construction standards), as well as appropriate services and professional ethics for the private sector, are also important to ensure the quality of future constructions. More detailed occupancy and operational permits for constructions that accommodate many people and related public activity is an issue to be regulated more closely.

All these sectors are dependent upon a good property registration system, and a healthy property transaction marketplace. Planning and construction informalities should not hinder the provision of security of tenure, clear ownership property rights, and their registration. Transactions and mortgages should be enabled following registration, and even a land parcel with ruins should be transferable. In parallel, to eliminate recurrence, other secure-tenure and affordable housing solutions should be considered in agreement with the private sector. These could include a healthy rental market through construction of housing appropriate for the needs of low- and middle-class families either for renting or selling. Other creative options to housing problems should be considered if they are culturally acceptable, adequately serve people’s needs, are economically viable and pose no significant health and safety risks.

2 WHY FORMALIZE?

2.1 Impact of no formalization

The formalization of informal constructions brings them back into the economy, so that real estate transactions such as rent, sale, inheritance, use and mortgaging will be legally, administratively, technically and fiscally supported. Greater access to capital comes with stronger links to broader markets and will create conditions for further improvement and the refurbishment of supporting infrastructure and utilities.

Not formalizing real estate assets can have the following negative effects:

a. Direct economic loss

It is difficult for governments to regulate, collect fees or permit charges, license or tax most classes of unregistered informal constructions. More importantly, extended informal development makes it difficult to regulate, encourage and tax businesses and residents of informal settlements fairly. Rental markets, mortgage credit, and inheritance of such assets becomes inefficient, unobtainable or legally complex. The cadastral system will not work in such regions, and extra-legal systems will only partially replace it. Necessary land reforms, such as privatization, urban or rural land consolidation, land readjustment and expropriation will not be efficiently and fairly accomplished.

b. Indirect economic loss

There will be minimal long-term or quality investment in informal constructions over time other than through local markets, due to higher associated risks and lack of credit. When property titles are weak there is a high risk of abuse of associated constructions, and new investors will be less willing to invest in improving these assets. Currently, informal constructions are built to satisfy their inhabitants' housing needs for the next 20 years or so, but since they cannot be legally transferred, they will at best stay in the family or possibly become unusable ruins. When large groups of assets are affected, it can have a blighting economic effect on the wider area, clogging infrastructure, while negatively impacting labor, fixed assets, and capital. Additionally, formal and efficient markets tend to be more economically productive, whereas informal markets perform more poorly for the overall economy.

c. Social impacts

Informal constructions have insecure tenure and spawn their own informal processes. Widespread informality leads to unfair evictions, potential corruption, susceptibility to crime due to poor police security and lack of illuminated public areas, possible governmental eviction/demolition, greater exploitation of vulnerable groups, and indirectly higher social and economic costs to surrounding formal markets. Other downsides include a lack of basic services such as schools, hospitals, efficient electricity supply, fresh water supply, sanitation networks, garbage collection, lack of proper address and mail systems, lack of proper road network and fire brigade service. Public transportation and public spaces are also usually missing, to the detriment of residents and visitors. Lower health/safety standards in construction, design, real estate asset location planning, density and infrastructure will result in negative effects to social stability, as well as less efficient labour, fixed asset and capital markets. In particular, the right to adequate housing, the right to life, the right to health, the right to water and sanitation are likely to be violated in informal dwellings.

Informal constructions have little or no access to credit markets and tend to be risky investments, so residents cannot access capital for emergencies or business investment. This puts a strain on the residents of the formal and informal markets in the area. Labor markets can be more rigid and are often exploited by residents' limited options regarding mobility, housing and jobs. Instead corruption, distorted competition and poorer social support networks prevail in communities with widespread informality. Formalization increases economic freedom for residents of informal settlements.

d. Environmental impacts

Informal constructions are likely to be susceptible to flooding, adding pollution to air, soils, drinking water sources, and waterways, overburden underground waters due to uncontrolled drilling for fresh water and poor installation of septic systems, and cause unexpected havoc to community infrastructures. Energy systems can also become compromised through usage beyond capacity, poor efficiency, illegal tapping and lower health and safety standards.

Residents of informal settlements are more exposed to natural disasters and manmade emergencies. Emergency teams such as fire, police, ambulance, and other response teams may have increased response times, or blocked access due to informal constructions' effects upon road networks. Poor-quality utility services increase the

chances of fires and other emergencies, affecting nearby formal and informal residents and assets. Illegal electricity connections, and risks related to forest settlements where residents may have little information about risks and the necessary preparedness measures, are very likely to increase risks for all. Disasters within informal settlements such as flooding, fire or earthquakes have increased human and economic loss. Disaster recovery and the provisions for humanitarian support become even more difficult due to limited information available to response teams (FIG, 2010a). Non-action on formalization would therefore further discriminate against those living in such areas.

Understanding increased disaster risk (both natural and manmade) within informal settlements is critical in strengthening disaster risk governance, investing in disaster reduction, enhancing disaster preparedness, and “Build Back Better” in recovery, rehabilitation and reconstruction. The formalization of informal constructions and their inclusion within formal markets will help accomplish this goal as well.

2.2 Key concept underlying the need for formalization

One major step in achieving the UN SDGs by 2030 is the promotion of greater formalization rates of real estate thereby improving livelihood and alleviating poverty. Informal settlements urgently need to be upgraded, improving residents’ health, and living and working conditions. Clear, fair, affordable and transparent property titles help legally empower inhabitants and allow them to better participate within the formal sector. This improves their living conditions and enables them to use their assets as collateral for capital.

A stable and transparent framework for transactions is vital for any national economy, bringing greater economic growth and economic freedom to its inhabitants. This allows greater access to credit, more fair, transparent and unbiased economic systems. By extension, this fosters improvements in health, environment, business activity, access to appropriate housing, better management of land and real estate, funding of planning improvements, efficient management of disasters, and environmental improvement. It allows more resources to be applied to education and other key social resources. It can also foster lower risk-related costs in a country’s real estate sector, encouraging mortgage-backed foreign investment.

Housing, apart from its basic role as a shelter, is a typical way to create wealth and savings for ordinary inhabitants

and is directly linked to economic development, national prosperity and stability. Improvements in the broader economic foundation translate into greater prosperity. This leads to increased contribution to the tax base, and funds improvement and advancement in all sectors. Therefore, provision of clear, fair, affordable and transparent property titles should be a high priority of the formalization process.

2.3 Improvement of housing stock and infrastructure

Formalization of constructions should be followed by an upgrade programme for supporting infrastructure. This will incorporate the new housing stock within the broader market and allow for services to be adequately and efficiently supplied. However, to combine formalisation and upgrading of housing and infrastructure houses runs a high risk of severely complicating and delaying the programmes. In general, formalisation can be done in a relatively short period of time with limited financial resources (see case study page...), and for this reason upgrades to infrastructure and housing stock is best carried out as a separate programme.

Formalization can be followed by a settlement upgrade, with improved road networks, wider roads and public spaces, and adequate social and technical infrastructure. In many cases, more housing units and an increase in urban density may also be needed in parallel with infrastructure and public space expansion. To achieve this, expropriation of land or land readjustment and urban land consolidation projects may be required on a case by case basis. However, existing informal rights should certainly be recognized and legalized prior to any land reform. In this way residents will be more fairly treated and are more likely to support reforms.

It is important to raise awareness among local communities, experts and politicians about the importance of adopting fair policies for settlement upgrade. The cost of settlement upgrade and/or land consolidation and readjustment projects often exceeds the financial capacities of municipalities and should only be undertaken when the benefits of the programme are likely to exceed the costs. Small-sized projects are always preferable. Various types of financing are possible, including involvement of the private sector and land owners.

In most European cases, quality of infrastructure, quality of housing stock and financing options are at acceptable levels. This section is meant as a starting point for further analysis by relevant actors.

2.4 Why do we need guidelines and a strategy?

There are several reasons why guidelines are useful to set up and support a programme of formalization:

- (a) The problem of widespread informal constructions, as well as most of its causes, is well known, but its negative impacts are not always fully realized. Political will is easily subverted to other projects with greater appeal but generally lesser positive effect, and the inhabitants themselves do not always understand why it is important to formalize informal constructions.

In some cases, those who live in informal settlements may believe that it is better to live and work “under the radar”, in some cases avoiding taxation and other additional costs especially when their income is very low. Owners of formal constructions also may not fully understand the general economic benefits to everyone of formalizing the informal.

The concept of “formalizing the informal” or even worse “legalizing the illegal” is usually a difficult argument politically, as it may appear the government favours those who do not respect the law. Opposition is often strong, but normally comes with a lack of understanding of the benefits of formalization, or the ongoing costs of doing nothing. For instance, taxes on real estate will be more fairly collected if informal constructions are registered and their value can be better estimated. Furthermore, the national economy and banking sector will improve if the majority of the real estate of a country is formalized, with clear rights and responsibilities.

- (b) Solutions to informality-related problems require mid to long-term strategies, broad-based understanding, and sustained political will. Comprehensive strategies are often missing, and when governments change, priorities may shift and the momentum to formalize can be lost. This often results in partially completed programmes having minimal or no impact.
- (c) Conflicting policies are often applied to deal with the problems of informality. Solutions should not be lengthy, or costly to complete, and should be broadly inclusive. Implementing a solution may be difficult, even if it is truly understood that the effort and cost is worth it. Usually the expected benefits only gradually become visible, and this should be

expected. Systemic change needs to mature in the market and accepted and understood before the full economic benefits of formalization occur. However, increased tenure security and greater protection for society’s most vulnerable groups is to be a benefit obtained early in the process, after formalization and land titling.

An appropriate solution is needed to meet the needs of the community, and the SDGs, reliably, inclusively, affordably and in reasonable time. For this reason, guidelines on why and how to accomplish this task are a useful tool to keep political will focused, increase the likelihood of a successful formalization processes and limit the chances of further informality.

2.5 Who can benefit from the guidelines?

A very broad group will benefit from this technical guide, but the primary focus is on providing assistance to the state in how informal settlement formalization can be efficiently and fairly accomplished, and the benefits of doing so. It also explains the process, conditions and complications they can expect, such as costs, time frame and likely roadblocks.

In this context, the state includes national governments, governing bodies, and local authorities. Secondary users of this technical guide include private sector such as real estate professionals or agents, lawyers, planners, economists, notaries, surveyors, engineers, construction contractors, appraisers, investors, and financial institutions. They also include broader societal institutions: schools, academia and NGOs.

2.6 How can these guidelines be utilized?

A careful analysis of the guidelines should be made while considering the local informality context, causes, scope, size and character. These guidelines are broad-based and will need interpretation so that “fit for purpose” and locally pragmatic, inclusive and affordable approaches are used. This will more adequately address local and specific issues and better utilize existing information, increasing the chances for successful implementation and socio-economic benefits.

FIGURE II

Who can use the guidelines?

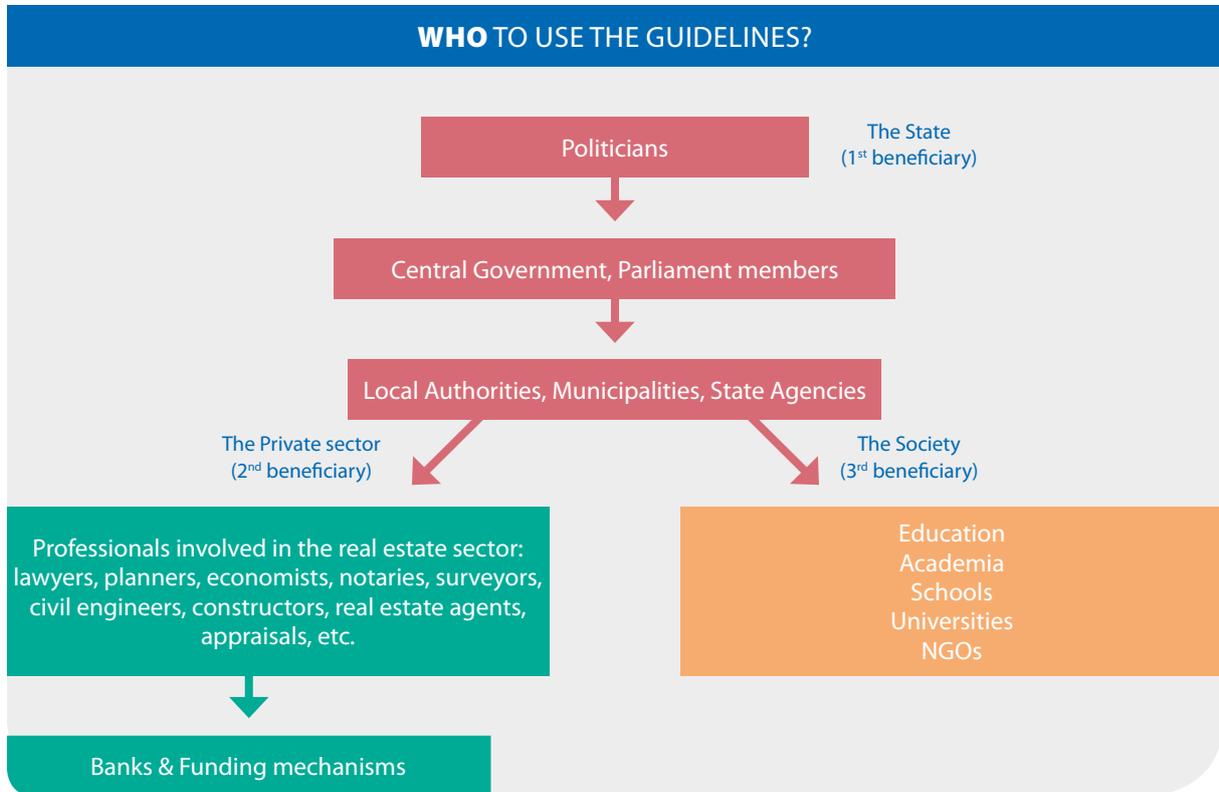


FIGURE III

How to use the guidelines?



3

OVERALL PROCESS OF FORMALIZATION

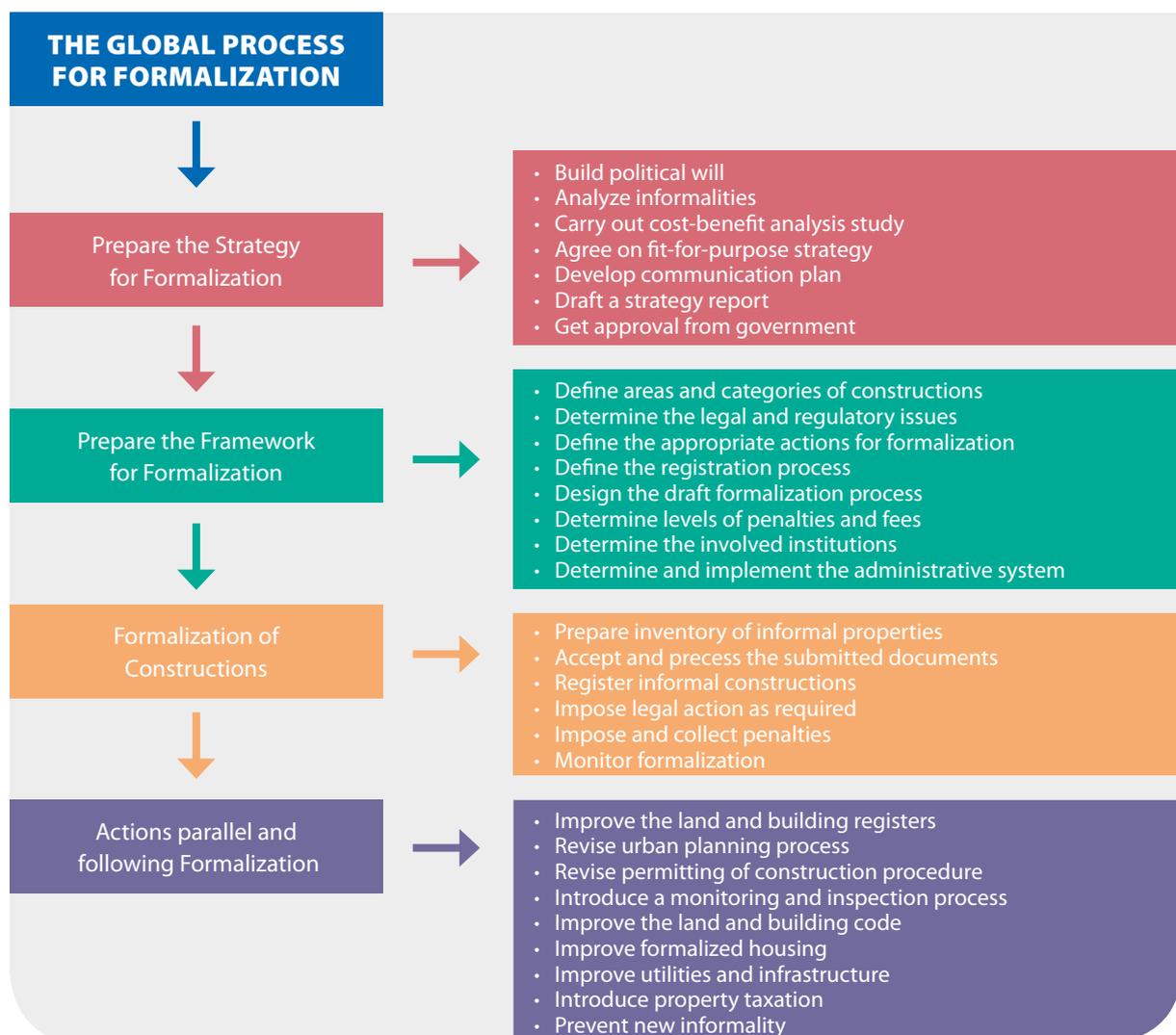
3.1 Introduction

The overall process of formalization proposes an expected “work flow” of items to be considered, information to be gathered, and work to be performed. This chapter shows a list of these process items.

In the next paragraphs contain a short description of the three main processes.

FIGURE IV

Overall process for formalization



3.2 Prepare the formalization strategy

This phase is a vital part of the programme. It sets conditions for success, organizes political and stakeholder support, and also gathers all background and informality data to inform future formalization decisions. It sets priorities, carries out the cost/benefit study leading to a fit-for-purpose formalization programme, and proposes a communication plan for all parties.

The following actions are performed within the strategy phase:

a. Analyze the housing stock (formal and informal) and prepare a background paper

The background paper will accurately describe the formal procedures and the causes, type, location and extent of informal constructions at the national level. It will also include relevant detailed socioeconomic, environmental, and broader based data. Based on this study, a case can be made to gather the necessary support and political will necessary for a successful programme.

b. Organize the necessary support and political will

Relevant ministers and stakeholders should be approached to promote the formalization of informal constructions. The principles and goals of the UN Sustainable Development Agenda 2030 should be incorporated, along with national socio-economic realities. General costs and benefits of the programme should be expressed realistically, so expectations are appropriate. This typically includes the participation and support of the ministries of finance, justice, physical planning, environment and transportation. Typically, the ministry of housing takes the lead. Chapter 2 & 3 of this guide provide the necessary arguments to give the background paper the relevant local context.

c. Prepare an Informality Inventory base map and paper

Determine the location and scope of informal construction. It is important to be inclusive, especially in terms of poverty, vulnerability, gender and ethnicity. At this stage, it is important to determine if there are areas or individual real estate parcels that should be protected. Such areas may be places of high cultural and environmental value. Informally developed areas of urban density should be excluded from the list of protected lands, so that existing informal settlements can be formalized. Informal settlements over a certain density within forest lands, state lands, or highly fertile rural areas should also be included in formalization projects. Future regular automated monitoring of defined protected areas will help to preserve them. Automated

monitoring is preferable, as face-to-face on-site controls are costly and involve too much potential for corruption.

d. Carry out cost/benefit analysis and determine the consequences of no action

This includes an overall cost/benefit analysis explaining economic, social and environmental benefits can be expected from formalization, what resources/costs are needed, and what direct and indirect revenues can be expected.

e. Agree on an appropriate formalization strategy and goal

The informality inventory background paper, as well as the formalization strategy, should be clearly aligned with the guiding principles of responsible tenure governance. It should follow the principles of human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approaches, consultation and participation, rule of law, transparency, accountability, and continuous improvement over time (FAO, 2012).

The strategy should also clarify that any land reforms, such as urban upgrades and increased building safety, need to follow the formalization of titles. This may include land consolidation and readjustment, utility provision, expanded road infrastructure both for cars and footpaths, public squares and evacuation roads, public transport, as well as measures to finance those interventions. The role of the private sector is critical, and any reforms undertaken should show adequate achievable benefits. It should, however, follow the recognition of informal tenure rights, the provision of ownership rights, and their registration. In many cases upgrades will need to be implemented using reduced standards and alternative measures.

It is not possible to prescribe in detail what reforms may apply and how they might be carried out. Feasible land reform may vary within a country according to local needs, available resources, political will and the specific situation of each settlement. The important point is that formalization and legalization should not be predicated upon the completion of these reforms – the reforms should be made in parallel, or, more likely, afterwards.

f. Develop a communication plan and strategy report

The role of the private sector is critical as some professional interests may oppose the formalization project. State or municipal authorities with permitting powers also should support the formalization. Many will probably insist on on-site detailed controls which may increase the costs and duration of the project: hiring large numbers of employees,

offices and equipment for example. This increases the chance of corruption and must be avoided, because gathering and sustaining political will is critical to successful implementation and achieving long-term benefits for all.

The communication plan therefore aims to raise awareness about the scope, objectives and expected benefits of the programme. This is fundamental and should obtain the necessary attention among politicians and society, including education institutes, state and municipal agencies and the private sector.

It should instruct government, local authorities and inhabitants-participants regarding their role, and tell professionals on how to act in alignment with project priorities, as well as how specific profession can fit in. It should make clear that there are often financial benefits to professionals who participate. The communication plan may include seminars, training, workshops or videos to accurately portray costs, benefits, and likely actions of all involved parties.

Once the data has been analyzed, and the strategy proposal structured for local context, the specific local informalization problem, and as the aims of stakeholders and government, a strategy report must be produced. This should summarize the findings, analyses, and proposed strategy to formalize informal constructions and settlements. It should clarify both how and why formalization should proceed and communicate effectively to solidify support.

The strategy report is the culmination of the strategy phase, detailing a broadly accepted political decision to start the formalization programme. This is likely to oppose current practice and legal framework, and will require decisions on legal reform, as well as a general understanding of the roles of all actors. The deliverables of this process are several reports and a clear path for future work.

FIGURE V

Most important deliverables



3.3 Prepare the framework for formalization

Policy, legal and organizational frameworks must be consistent with their current obligations under national and international law. However, the frameworks depend on a broader reform to the legal system and public services to ensure maximum tenure recognition, including existing tenure rights that are not currently protected by law. It should also facilitate, promote and protect the exercise of such tenure rights, as mentioned in the (FAO, 2012), and provide planning amnesty for constructions built in contravention of building and planning permits.

The framework for formalization must be carefully defined and set up. All provisions will need to be fully described and developed, such as categories of informality, legal issues, general organization, registration processes, the formalization process itself, fees and penalties, institutional and professional responsibilities, budget planning, necessary resources and implementation. This framework must also respect the overall strategy and the decisions made at high political levels.

An important step in the framework is preparing the organizational structure for formalization, which includes appointing the responsible ministry, the institute or agency charged with implementation, and the list of involved institutions, municipalities, tax authorities, land registry and cadastre agencies. Each institution should clearly understand their role in the process, and a reasonable financial and resource budget should be created to ensure adequate performance.

Preparing the framework will explain:

- (a) What informal constructions can or cannot be formalized;
- (b) What action processes are needed to formalize each separate class of informality;
- (c) What technical requirements, procedure and condition are needed to formalize;
- (d) How inhabitants can comply, and governments can monitor compliance with the technical, legal, and physical steps required to formalize;
- (e) Legal status and title after formalization for various classes and types of informalities;
- (f) How to accomplish titling for various classes of ownership and title registration;
- (g) What, if any, penalties and fees are to be applied, how they are calculated and collected, and how registration should be carried out.

The framework document will analyze and allocate staff, appropriate administration and technical facilities, budgets as well as outline the preparation needed for formalization, including the monitoring of all aspects of the development process. This may include a “committee of controls and acceptance” which will provide monitoring and statistical data, ensures and approves standardized documentation, maintains records, or oversees other institutions entrusted with these functions. Classification of informalities and controls should be simplified and standardized so this “committee” will not be overburdened. On-site inspections should be minimized to reduce corruption, time and costs.

It will provide technical advice about constructions and their registration and maintain a flexible and transparent approval process. This ensures results are effective while minimizing corruption in the system.

The framework document will also test for reasonableness, so that the procedural framework accomplishes the overall goals as analyzed in the cost/benefit analysis and prior strategy phase, as well as accomplishing maximum participation in the programme. A focus on short-term fee and penalty maximization can be attractive to some governmental officials but is likely to increase inhabitants’ distrust, create fertile ground for corruption, lower participation. This greatly decreases long-term benefits and so this strategy should be avoided.

The following actions are performed in the framework phase:

- (a) *Define categories for formalization* (note the categories should be taken from the strategy document so that appropriate formalization can proceed).
 - (i) *Type of construction: location, age, quality, size and use of construction;*
 - (ii) *Type of informality-legal: ownership and land-use illegality;*
 - (iii) *Type of informality-technical: construction safety or non-compliance with technical regulations/standards.*
- (b) *Determine legal and regulatory issues* and decide the administrative structure and legal framework in the design of the formalization system.
 - (i) *Define appropriate action for formalization including proposals on how to act on specific types of technical and legal informalities.*
 - (ii) *Define the registration process for unregistered parcels and how tenure problems will be addressed.*

- (iii) *Design the draft formalization process (and establish penalties and fees) considering local realities and using appropriate strategies.*
- (iv) *Determine the involved institutions, gather political support, and prepare the administrative structure.*
- (v) *Determine and implement the administrative system*
 - a. Activate the communication plan;
 - b. Prepare the legal framework specifically;
 - c. Allocate appropriate administration and technical facilities;
 - d. Provide technical advice relating to constructions;
 - e. Form a “committee of controls and acceptance” which provides monitoring and statistical data throughout the process;
 - f. Develop methods of inhabitant and government compliance;
 - g. Test for reasonableness that each step of the procedural framework meets expected needs, has resources, and won’t bottleneck the process if a problem is encountered.

3.4 Formalize the constructions

Once the strategy and framework for formalization has been decided, the actual process begins. This involves a wide variety of administrative and legal functions, fee collection, registration, and monitoring as appropriate. Within this process the previously created inventory of informality base map should be used to determine areas to be formalized, process informality registration sustainably, impose and collect penalties, set controls and methodology for the first registration of informal parcels, and monitor the formalization process. This monitoring process will give feedback and allow for its efficient operation, as well as achieving the goals set in the strategy phase. The overall process should be transparent, inclusive, corruption-free, sustainable, and flexible enough to adjust to unexpected situations. Steps include:

- (a) *Submitting and processing applications.* The administrative structure was designed in the framework phase and resources allocated, but it is now that the actual work is done, and acceptance and processing of documentation starts.
- (b) *Control of documents* and marking the location of

each building on the inventory base map if this has not already been done. Any flaws in the system, either in processing or document design, should be noted by the administrative staff, inhabitants, or monitoring body, and corrected at once. Privacy laws and adequate protection for inhabitants' data should be ensured.

- (c) *Registration of informal constructions* when appropriate. Those constructions with legal informality need to be formalized urgently, and property titles must be issued, registered and brought within the cadastre so that they can become part of the formal market system.
- (d) *Legal actions when required.* Including existing tenure recognition: title dispute resolution, government/municipal land privatization, necessary subdivisions, inheritance issues, and adverse possession issues. Also included are planning amnesty issues: allowing connection to utility services, health and safety action plan determination, environmental risk-assessment as well preparing for action once properties are registered in the cadastre and funding access becomes possible.
- (e) *Impose and collect penalties*, and consider deferrals, low fees, special transaction taxes and installments. The ability of all informal residents to pay should be carefully weighed against governmental revenue desires.
- (f) *Monitor and assess the formalization process* and gather data for future improvements to make formalization sustainable, make sure the pace is acceptable, corruption is minimal, the programme is fair, transparent, inclusive, and that advantage is not taken of vulnerable groups.

The outcome should be that informality should be minimized, settlements are formalized and brought into the land market, constructions are registered, so that their residents are empowered and able to more fully utilize their assets to benefit themselves and the nation.

Special attention should be paid to discourage future informality by adopting appropriate planning and permitting procedures, appropriate construction standards and seismic codes, professional ethics code, affordable housing policies and flexible regulations. Following formalization of property titles, special consideration should be paid in order to issue operational permits to the legalized constructions, especially those that accumulate a large number of people. Detailed guidelines of instructions on these issues is a topic for another publication.

4 PREPARE THE STRATEGY FOR FORMALIZATION

4.1 Introduction

This chapter describes the strategy phase of formalization in greater detail. Within this early phase we:

- (a) Organize the necessary support and political will;
- (b) Analyze the existing informality within the local real estate market;
- (c) Carry out cost/benefit analyses and determine the consequences of no action;
- (d) Agree on an appropriate formalization strategy;
- (e) Develop a communication plan;
- (f) Draft a strategy report.

In short, this phase gathers support, analyses the problem to propose a solution, drafts the policy and communicates the plan for the formalization process.

The following two phases (The Framework of Formalization and Formalization of Constructions) go into greater detail on how the supporting institutional and legal frameworks are designed and implemented. This includes how the process will proceed and interface with the government. The registering of land properties, and how the entire system will be monitored to ensure inclusiveness, lack of corruption, and protection for vulnerable groups are examples of important aspects of the project that are planned in the strategy document but designed in greater detail and implemented in later phases.

The goal of formalization is to remove the current level of informality and provide an opportunity for settlement and construction upgrading. It should also make the formal market more sustainable, in that it discourages future informality. To do this, it is important to understand the root causes of informality so that these underlying problems are adequately addressed and mitigated. These concepts are considered in the cost/benefit study, which leads to deciding appropriate solutions to informality problems. The formulation of the strategy should take long-term formalization goals into account when it considers available data and plans the most appropriate response.

Additionally, an important outcome of this phase is the creation of sufficient sustained political will to provide the required legal reform. This leads to the development of a realistic overarching strategy that will bring existing informalities into the formal market while discouraging future informal development.

4.2 Organize the necessary support and political will

The most important outcome of the strategy phase is the political decision to start the formalization programme, as well to promote understanding of the process by all participants. If this is not accomplished, or if political, public or stakeholder support is insufficient, then a delay should be considered until it is. Raising awareness is very important.

This step includes organizing the support of involved relevant ministers - usually of finance, justice, physical planning, environment, transportation and housing. Later in the strategy phase, as more data is available, a communication plan focused more on inhabitants, professionals and the business sector may be released.

It is vitally important that gathering support is politically connected to the local governing body, stakeholder priorities, and other powerful groups or individuals. It would be impossible to detail every possible scenario, so this must be done on a case by case basis. Education plays a crucial role, therefore international trends and United Nations, FAO, FIG and World Bank publications relevant to the good management of land, land administration and property markets should be included in documents for professional training. Media, schools, religious institutions, professional associations and political parties also are responsible for sharing information; they educate their members, raising awareness creating political will. The 2030 Agenda for Sustainable Development, and its major principles and goals, should be widely communicated among local groups. Support will strengthen during the rest of the strategy phase as the cost/benefit study is prepared and analysed, and the full scope of the project is better understood by all parties.

4.3 Analysis of the existing informality within the targeted real estate market

a. Prepare a background paper

This step of the strategy phase analyses and prepares a background paper on the root socioeconomic causes, size, types, and extent of informal development, informal

market and informal buildings. It also summarizes broader effects: social, economic, cultural, and environmental forces. It is assumed that at this stage relevant stakeholders have been identified and are aware of the informal development negatively affecting the economic and social performance of an area. These may include:

- (a) Relevant state authorities: municipalities, utility agencies, relevant ministries, planning and permitting agencies, cadastre, taxation office, land registry and privatization agencies;
- (b) Professionals and private sector: lawyers, valuers, real estate agents, surveyors, civil engineers, construction firms, electrical and mechanical engineers, notaries, registrars, architects, planners;
- (c) Other market actors: the banking sector, NGOs, academics and economists.

Before the impact extent can be analysed and solutions considered, a background paper on the broader formal and informal sectors, and how they interact with society, should be commissioned. Real estate markets do not operate in a void - they impact most levels of societal activity. A thorough understanding of the core issues concerning informal construction greatly increases the chance that the recommended solutions will achieve their desired positive results.

b. Prepare informality inventory base map and descriptive paper

Determine the geographic locations by marking the informal settlements on a base map, orthophoto map, or GIS, showing types and extent of informality in the real estate of the affected region. List and analyse relevant informality data from any other available sources, for example local authorities, privatization agencies, ministries, tax offices, utility services and private sector functionaries such as constructors, lawyers and notaries. A descriptive report or paper on informality in its many forms should be prepared to as good a detail level as available data affords. This will help frame solutions to the identified problems and suggest the process for an effective formalization programme. It will also enable better understanding of the socio-economic impact of these informal markets on the broader economy, society and culture.

The analysis should identify the specific location of informal development, as well as the category of location, such as if the construction is in urban or in rural areas, or if it is on protected land. It should identify the type of informality, such as legal or technical, informal tenure

or ownership of the land, and any lack of permits for planning, construction, lack of occupancy or purpose. It should identify the scale of the informal sector as a whole by, for example:

- (a) Estimated figures for number of floors;
- (b) Area in square meters (m²);
- (c) Type of use, number of parcels of each type;
- (d) Which land uses are affected by which type of informality;
- (e) Where they are located relative to formal and other informal constructions.

If possible, it should also identify how many and what types of people live within or utilize these assets regularly - size of families, income and ethnicity - as this could also be useful. Classification should be as simple as possible while sufficient to understand and address problems appropriately. For example, merging various categories to create groups of construction types does not negatively impact the formalization programme, or put residents at greater risk of injustice. It avoids complexity and saves time and costs. Classification may be done according to construction age, size (single family homes, multi-story apartments, and commercial constructions) and the quality. For simplicity, or better understanding of the nature of the informality, informality types can be combined here as well, such as old and poor-quality residential construction in urban and rural areas. Combinations can also be made based on the types of informality (classified as technical or legal; See section 6), environmental, political or societal impact.

In general, a thorough understanding of informal assets and their relation to the surrounding society and economy will allow more prudent formalization decisions to be made, as well as enabling a more accurate cost/benefit analysis. In most cases a compilation of pilot projects may help significantly in identifying the problems and bottlenecks and may allow for fast and efficient improvements in a broader programme.

4.4 Carry out cost benefit analysis and determine the consequences of no action

This chapter discusses the consequences and potential losses of taking no action, allowing informal settlements to continue and develop. Estimating the benefits of formalization uses the same methodology undertaken when estimating the costs of no action. This cost/benefit analysis is a critical first step in determining what if a formalization process should be undertaken, its form

and scope, and if this is the right time for it. Generally, demolition is not likely to be the optimal option socially, environmentally or economically. Demolition options are appropriate when social, environmental or health safety concerns are critical, but should only be applied on a case by case basis following a technical control and cost-benefit analysis.

The formalization of informal real estate assets will have many direct and indirect economic benefits. A careful study can be made to estimate such affects and over what time period they will likely be realized (Potsiou and Nystrom, 2016). So far, unfortunately, some examples of bad practice in this field have already been identified such as long, costly and complex formalization procedures being justified because they keep engineers, surveyors, lawyers, planners, architects and valuers busy for a long time. The formalization process is not intended as a benefit to those groups, or as a make-work projects for other professionals, favouring only specific social groups instead of the whole community. Neither is it intended as a tool for state revenue collection, and a focus on this should be strongly resisted as it can jeopardize the success of the project and quickly turn away public support.

Delaying formalization limits a country's economic development and prevents its people from realizing their full potential. Environmental and social cost/benefit studies can analyse the type, form and scope of the benefit of formalizing informal constructions. These environmental and social cost/benefit studies are more subjective and value-driven by the society and culture, but no less important, despite a lack of objective measurement tools.

Within any culture, the social cost of informal development is significant. Small scale informality sporadically located throughout a community has a lesser effect in terms of social and economic costs than widespread and pervasive informality. Living conditions in large informal settlements pose a threat to people's right to life and health. They are among the world's most pervasive violations of the human rights to dignity, security, health and life. Improving the condition of those settlements therefore should become a state priority.

Residents of informal constructions are often marginalized people and have weaker tenure security and homes at risk of demolition. They are therefore more vulnerable to threats, both public and private. They cannot use their property as a collateral to obtain access to funding for home improvements, business, education, health emergencies, or for the welfare of their families. Formalizing informal settlement advances the right to

adequate housing, and tenure. Tenure security is a core element of “adequate housing”. Therefore, formalization is expected to benefit those, in the low to middle-income classes most, who seek economic freedom, as well as freedom from corruption. However, a more efficient land market underpins a successful national economy and thereby also benefits high-income groups through lower risk and improved performance of their assets. This is often misunderstood or simply overlooked.

Once the benefits of formalization have been reasonably estimated, these should then be compared to formalization costs to decide the best procedure to maximize benefits and minimize costs. These include social, cultural, economic, time, environmental, and political costs and benefits. Additionally, the benefits study should also consider the related costs of formalization, as well as political realities. For instance, depending on the scale and scope of formalization, does it formalize informal tenure rights, a portion of informal tenure rights, propose a continuum of rights or interim tenure with planned strengthening later, or does it only provide planning amnesty? What proportion of a region’s informality does it include? What is the scale of the entire project? What are the inherent problems and associated costs that can be expected and are local society-based? Should the programme focus on informality in one region first before focusing on another region or should all informality be addressed in one program?

Both the costs and benefits estimated could change greatly depending on these decisions. The appropriate level of formalization chosen should take into consideration the economic, social and cultural costs and benefits expected over the short and long term. The importance of this step can’t be overstated.

4.5 Agree on a fit-for-purpose formalization strategy

This part of the formalization process allows for comparison of the estimated benefits of formalization under various scenarios, relative to the costs of various formalization options. These options include, ignoring the problem in whole or part, broad or region-based formalization, or case study programs to start or large-scale formalization.

Following this analysis, and possibly after some case study or pilot programmes, it is usually determined that fast formalization of as many informal buildings as possible is the most appropriate and cost-effective way forward, to achieve maximal benefits. However, the economic, political, environmental, cultural, social and time cost of formalizing informal constructions must to be estimated

to determine what type of formalization will achieve the best results. Specific types of informalities may be easier to deal with and formalization may be accomplished faster and cheaper than with other types. Examples include parcels with no land ownership concerns, old constructions of small or medium-size buildings lacking construction permits, single family houses up to 400 m² built without a planning/building permit, or illegal extensions of legally built houses. Other formalization may require more documentation or be problematic legally. These could include multi-story blocks of apartments that are built without permits on plots that are lacking ownership titles, multi-story restaurants, schools or hospitals, public or private offices, environmentally or socially sensitive parcels, large scale facilities, or facilities of broad societal importance.

This stage of the strategy phase calls for a re-examination of the strengths and weaknesses of political support for formalization, the expected societal and cultural support, and the range of anticipated benefits and associated costs of each possible formalization programme. Now that all these components have been gathered separately, they need to be reconciled against each other to show the optimal solution. At this stage it is important to identify champions within the informal communities, governmental institutions, and political arena to help promote understanding of the process and minimize arguments in the political and resident communities.

A realistic formalization plan should be proposed in the strategy phase based on expected costs, benefits and political realities. Several different formalization possibilities should be explored which consider these variable costs and benefits, as well as consideration of interim step solutions. No one size fits all programmes, nor will even a good plan work in all situations. Choosing the best one for a given region should be based on local realities, and the mix of short and long-term net benefits for society.

Additionally, the appropriate solution should adhere to the United Nations SDGs, be transparent, inclusive, and attempt to alleviate social pressure for society’s most vulnerable groups. Officials should attempt to foresee likely problems based on the types and extent of informality identified.

When analysing the background, informality types, informality scale, and solution options, officials should be open and inclusive regardless of who the inhabitants are, and sensitive to issues of ethnicity, gender and vulnerability. The analysis should include all informal settlements regardless of where they are built, or land-use type, remoteness of location, type of informality, or who the landowner is. Officials should strive to be fair,

transparent, and objective in gathering and considering of this data, as well as in developing the proposed methodologies and services as mentioned in the VGGT.

By doing so, it is intended that many types of social, economic, legal and administrative problems can be avoided or minimized, and conclusions and solutions will be more accurate and beneficial for everyone. This data-gathering, analysis and proposals is vital to understanding and solving problems.

4.6 Develop a communication plan

This is when the formalization plan develops a communication programme, but communication should build across the entire programme. Initially the communication plan should focus on gathering sustainable political will and stakeholder support. However, once the technical analysis of the cost/benefit studies has been made, and solutions are proposed, a more detailed and broad-scope communication plan will be needed. This will educate institutions, professional organizations, the business and international communities, as well as informal and formal market residents.

This developed communication plan should promote international programs, the UN Sustainable Development Agenda 2030, and the VGGT. Documents should clearly show the objectives, scope, and reality of the costs and benefits in a streamlined easy-to-understand fashion. A simplified version should be distributed to the informal settlements and to educational or religious institutions. It should tailor the data to give the most relevant details to each group based on their need and understanding – more technical data will be given to those with the appropriate skills. Workshops and publications, via professional channels, social, and news media, should be made available and timed for advance release to minimize unreasoning opposition and maximize creative and useful input by the associated involved parties.

4.7 Draft a strategy report

After the data is analysed, costs and benefits have been examined, and the general plan has been structured to be appropriate to the local society, culture, and environment, considering specifics of local informalization, as well as the aims of stakeholders and government, a Strategy Report is required. This Strategy Report should summarize findings, analyses and the proposed strategy to formalize the informal constructions and settlements. It should also clarify areas and types to be formalized, and which constructions should be demolished due to severe

environmental or social damage, always with respect for people's rights. It should furthermore clarify both how and why formalization should proceed.

It should also communicate effectively, solidifying support by using all the concepts in this section. Additionally, the strategy report will probably have some revisions as the communication plan proceeds and more people contribute. However, the formalization plan should move forward as quickly as possible to minimize time-related costs and maximize chances for success while political and stakeholder support continue.

This report should contain a summary of any necessary legal reforms and enable protected areas with informal development to be included within the formalization zones. It should include legal requirements and documents for formalization, as well as the main characteristics of the adopted policy and procedure. For example, whether penalties will be applied, should formalization be compulsory, how cost is to be distributed, who bears the registration cost or costs for technical reports. For example, penalties and fees for ownership rights may be low or even non-existent to speed up the privatization and property registration process for primary residences. Structural improvements of large constructions should be required at a later stage following property registration, so that their cost can be paid by current or future inhabitants. It is strongly recommended that formalization of ownership rights should be made compulsory prior to a transaction and an operational permit should be issued compulsory prior to the use of any large, commercial, public and/or multi-story building.

5

PREPARE THE FRAMEWORK FOR FORMALIZATION

5.1 Introduction

This chapter describes how a framework is set up in a series of logical steps. This will elaborate the plan chosen in the strategy phase and will be implemented in the next phase.

The general steps of the framework phase are:

- (a) Define the areas and categories eligible for formalization, and define any necessary actions to legally enable formalization;
- (b) Determine the legal and regulatory issues to be resolved;
- (c) Define the appropriate actions for formalization;
- (d) Define the registration process;
- (e) Design the draft formalization process;
- (f) Determine the involved institutions and their roles: government, private sector and wider society;
- (g) Determine and implement the administrative system to:
 - (i) *Activate the communication plan;*
 - (ii) *Prepare the specific legal framework;*
 - (iii) *Allocate appropriate administration and technical facilities;*
 - (iv) *Provide technical advice relating to constructions;*
 - (v) *Form committees for controls and acceptance, as well as for monitoring progress;*
 - (vi) *Develop methods of inhabitant and government compliance;*
 - (vii) *Test for reasonableness.*

This phase designs and creates the infrastructure to be used throughout the formalization process, carefully defining and setting up the framework for formalization. All provisions like law, organization, the approach for the formalization process itself, institutional and professional responsibilities, budget planning and many others will require description and adequate development for a smooth formalization process.

5.2 Define areas and categories of constructions for formalization

The strategy phase led to a thorough understanding of informal assets and their relation to the surrounding society and economy. That led to a proposed formalization strategy for the specific local economy, society, culture and environment. Part of that decision determined actions for informal construction groupings, and the number of categories to be used.

For instance, the appropriate response for minor informality, where there is clear ownership, registration, good-quality construction, and no significant negative societal or environmental impact could be very

streamlined, with minimal costs or no inspections. Possible examples include additions to good quality legally-built homes or violations of size, use, or approval permission. In contrast, another category may be of high potential risk to the public such as illegal squatted development on environmentally risky areas, such as radioactive areas. A development like this may threaten the health and safety of the broader community. These two potential categories could be defined at this stage so that efficient responses can be developed.

There are broad categories of informality that can be used to categorize a specific region. However, local conditions, political reality, society and culture should always be the core foundation for creation of categories, so each category of informal constructions can be processed in a fair, transparent and inclusive manner.

However, the following multiple categories may apply to an individual property. These are a starting point for stakeholders to decide their groupings within the formalization process. Merging categories should be used to simplify the process: for example, the new constructions may be merged with those of good quality and the old with those of poor or medium quality.

a. Zones for formalization and type of construction

First the areas within which formalization will be made possible, and areas that should and can be protected, need to be delineated on the base map. Areas with informal settlements should be included in the areas to be formalized and upgraded, even if deregulation is needed. Protected areas should be monitored regularly, preferably by automated methods. Individual illegal constructions within these areas may be examined separately to determine if they should be rescued or demolished.

Within the areas under formalization and upgrading, various types of construction should be identified, such as single-family residences, multi-floor apartment facilities, commercial uses including retail, industrial, office, hospitality or special purpose, as well as other miscellaneous building improvements. It should be noted that specific individual constructions may still not be eligible for formalization, for example individual constructions built in central public areas, in the route of main roads, streams, or near airports.

The type of real estate may impact what formalization steps and documents are needed. For instance, relatively small-sized single family self-made residential homes may be processed very differently from large facilities accommodating many people, such as schools,

restaurants, cinemas, hotels, or multi-story residential buildings. Each is likely to have very different types of impact on the surrounding area and will therefore follow different processes.

b. Type of informality (legal)

Types of legal informality include absent or incomplete land titles, absence of planning, absence of occupancy permit or building permission. Examples of the latter are buildings in areas where construction is forbidden, such as highly productive agricultural land, forest land, archaeological sites or coastal zones.

- (a) Legal formalization steps should be defined for informal constructions on someone else's private land, or belonging to the state, municipality, social enterprises, cooperatives, or where only another body has the right to use it. Even if the land is owned by the informal builders, the construction may exceed, or not have, a permit. Furthermore, informal buildings may be subdivided or partly sold through informal agreement. Such issues should be legally solved, improvements according to building codes accomplished when possible, and clear property titles given.
- (b) A political decision is needed to allow title provision and determine fees and costs for every combination of construction type, informality category and title defect. Rights of use are usually transformed into ownership rights free of charge, depending on duration, or with a symbolic or scalable fee. As an example, when providing ownership titles to condominiums it may be preferable to provide shared group ownership rights on the rest of the parcel and on the common parts of the building, too. Maintenance costs for the common parts of the buildings will be shared to co-owners accordingly. Therefore, if there is a need for future reconstruction, all current co-owners of the land will easily share the units of the new building accordingly. Such issues are dealt with in the civil code but in many countries this remedy is still missing. A specific formalization procedure for this occurrence, if common, may be an appropriate category in the formalization programme.
- (c) Planning and construction informalities can affect the right to use buildings but may also cause ownership problems. For instance, 'construction permit informality' refers to construction without permits in areas that may or may not be dedicated for construction, exceeding or without permits,

or to different buildings than allowed by their permits. When building on land not planned for construction, such as highly-protected agricultural or forest land, even if the land is legally owned, the buildings may be considered illegal. In this case, building registration is not allowed, and transactions or mortgages are forbidden. In some cases, state ownership of land with significant value may be protected by law, or even by constitution, such as agricultural or forest land. Recognition of existing tenure rights may require a major legal reform, which should be carefully considered.

- (d) Formalization steps should be prepared for settlements built both on legally owned land, and those which are not. Formalization should be prepared for all the above informal constructions, with planning amnesty which also recognizes ownership rights. The buildings will then be registered in the cadastre and included in formal land markets.
- (e) Priority should be given to formalize property titles first. The process should be different if a construction is on legally-owned land, if the construction or alteration is built without or exceeding a permit, or for an illegal use. Formalization procedures should define various classes or categories, requiring documents and fees accordingly.

c. Type of informality (technical)

This type of informality includes unclear rights to use a building for a specific purpose due to technical developmental or construction problems. Usually, operational permits are required either for residential or commercial use. Operational permit informality may include a permitted construction being used for other purposes, or initially-permitted constructions which have not gone through final safety and compliance inspections and therefore do not have final approval. Such informalities should also be classified in terms of importance and risk. For example, inspections for safety should be a priority in issuing operational permits in multi-story buildings accommodating a large number of residents, or for commercial and public use. Relatively small and single-family constructions may acquire operational permits without inspections, assuming inhabitants accept the risks and are aware of actions to be taken for safety purposes, and the health and safety of the broader community is not jeopardized.

Priority should be given to the provision of clear ownership rights and property registration. Transactions

should be independent of the existence of an occupancy permit and should be allowed even if a construction is condemned. Of course, using the building will require a legal occupancy permit and construction upgrades may be required, but this can be accomplished by current or future owners, who may choose another use for the building and land.

To summarize, the classes or categories for a given region should take the following into account, much of which was analysed within the strategy phase and the development of the informality inventory. The decision on how to group the classes should include combinations and consideration of all of these factors:

- (a) Type of Informality (legal or technical): various classes could apply under this category;
- (b) Scale, size or number of various groupings of informalities;
- (c) Environmental, political, or societal impact.

5.3 Determine the legal and regulatory issues

At this stage, the likely administrative structure and legal framework should be decided to proceed with designing the formalization system, which has only been theoretically prepared so far. Formalization political, legal, and administrative functions will preferably work in reasonable harmony, but they may get into conflict depending on how well thought-out these processes are.

It is therefore important to prioritize title provision and registration according to SDGs and VGGT and define the procedure for adjudication of inhabitants or owners, ensuring equity on the grounds of gender, vulnerability groups and ethnicity. Technical aspects, adoption of modern technologies, planning amnesty, environmental balancing measures, and international legal and ethical standards should use current legal frameworks as much as possible. Any weakness in national or local land laws should be informed by international standards for similar laws, and, when necessary, new laws should handle issues expected to arise from formalization.

The adoption of new laws or improvements of old ones will have to be considered on a case-by-case basis as no two countries will have the same legal system or informality problems. As such, legal solutions should be adapted to specific local challenges. This can be the most challenging part of the formalization process, and an insufficient legal structure that provides wrong incentives or promotes special interest groups can derail the entire programme.

Great care will be needed defining what the legal status, title, permit or license for use, and tenures will be the most appropriate in formalizing various types of informality. Legal and administrative support for this must have sufficient capacity to formalize large numbers of informal constructions.

Local legal, political and technical experts, working with stakeholders who are international legal and technical experts, should examine legal challenges and derive solutions to bridge the gap between existing laws and what is needed to maximize successful formalization. Local resident groups, business, technical communities and interested stakeholders should be involved so their early input can be considered in drafting any new or changed laws. Getting the support and input of these parties early will publicize the legal aspects of all interests and could mean much less opposition during implementation. All this needs to be considered when deciding how to change the law to accommodate formalization, and how to involve other relevant parties while maximizing mutual success.

The committee responsible for monitoring project progress should be able to propose legal amendments, therefore the legal framework should be flexible. Flexibility in defining procedures and technical approaches is also important. Deadlines should be avoided within the formalization laws to avoid adding legal controversy regarding extensions.

5.4 Define the appropriate actions for formalization

Based on the classes of informal buildings and types of informalities, the appropriate action for each class is designed at this stage. This should be based on the overall formalization strategy and the economic, political, societal and cultural impact of each informality class.

Minimal action may be taken when an owner is informed that the informality is formalized and that no further actions are required, or future penalties imposed. Maximum action should be taken when public health and safety is at risk from an informal construction, and the danger must be corrected, or the construction removed. For example, settlements built in protected lands may be formalized, but environmentally balancing measures should also be provided.

Within this phase, the action process should be defined for each separate informality type, as should their technical and financial requirements and condition to formalize. This should be done in an inclusive fashion.

Possible actions can be tabulated to show various combinations of constructions, public impact, and informality types. Using this table, the combinations can then be matched to a specific list of procedures for administrators, and legal or technical experts to follow. Lists of actions to be performed will be very specific to a region's problems, legal structure, economy, formalization time frame, budget, political will, and local societal situations.

To speed the process and avoid conflicts of interest, the roles of various stakeholders and actors should be clarified. Data about constructions and inhabitants should first be gathered from public sources such as state and municipal agencies, then from the private sector, and finally from NGOs and the general population, possibly through crowdsourcing techniques.

To obtain maximum participation and remove informality from the market, the action process should be as open, inclusive, transparent, fair, affordable in time and cost, and not designed primarily for fee collection as this may cause mistrust and delays.

5.5 Define the registration process

Informality can be classified into “technical” and “legal” informality. Technical informalities in buildings should not hinder properties from being registered, mortgaged or transferred legally within relevant governmental systems. This assumes that the legal informality issue such as permit violations, will be solved by an amnesty with simplified procedures, and, if needed, restoration of titles. Technical issues related to safety of large-scale buildings in excess of building permits may be guaranteed by the original constructors ensuring all important factors have been taken into consideration during construction. If a constructor cannot be located or cannot guarantee the construction's safety, such buildings may require on-site risk-assessment. After the assessment operational permits might not be issued unless improvements or upgrades issues have been made. Such inspections should be made by the private sector to avoid hiring more state employees for a temporary assignment. However, property titles, registration, mortgage and transfer should be unblocked to facilitate market processes such as a sales and mortgages. Extensive improvements or upgrades, if required, may be accomplished by current or future owners with new operational permits.

Those constructions that have “legal” informality in terms of titles or land-use are likely to have legal defects, and not be properly registered within the land registration

or cadastre system. These include constructions built on government land and improperly permitted subdivision of land into small residential plots. They should have to have the option of registered property ownership rights brought within cadaster and added to relevant maps. Each different classification of legally informal constructions may require different types of rights improvement, registration and tenure recognition. Good practice will usually recognize long-existing informal tenure rights or rights to use and will allow easy, affordable or free, and inclusive transformation into ownership rights.

The term “affordable”, when referring to occupation of state or municipal land, should mean a standardized nominal or low charge for provision of ownership title when this property is the occupant's only residence. For instance, one euro per square meter, free, or deferred payment at sale or transfer. In cases where an occupant has built in more than one place, or legally owns other land parcels nearby, then the charge should be closer to the property's market value. In all cases it is best to allow deferred payment and incentives for occupiers to participate in formalization to ensure maximum take-up.

Issues to consider when defining and designing the registration process for “legal” informal constructions are:

- (a) Is the construction on private, cooperative, communal or state land?
- (b) Is there a serious environmental or health/safety risk involved?
- (c) Has the parcel of land been illegally subdivided into smaller units?
- (d) Are there unusual tenure factors to be incorporated during registration?
- (e) Are there ownership disputes between landowners and occupiers?
- (f) Are these resolvable by the existing legal framework?
- (g) Is there unacceptable uncertainty over ownership of land and buildings?
- (h) In the case of government-owned land with informal constructions and inhabitants:
 - (i) *Is there a long existing right to use the land offered to the inhabitants?*
 - (ii) *If not, are long-term equitable leases, licenses, land grants, or deferred land payment sales or rentals possible legal solutions?*

These questions should be part of the registration process design for informal constructions. Actors need

to define legal status and title following formalization for various types of informality. They also need to define how to accomplish this titling. There will need to be legal questions, cooperation with government authorities, as well as long-term fair and transparent solutions protecting society's most vulnerable groups whilst also being fair to the general public, stakeholders and the political and social realities of local and national government.

5.6 Design the draft formalization process

This will determine the institutions involved in formalization, and the steps necessary to prepare the administrative system. After creating the draft formalization process, a matrix of procedures, penalties and fees based on types of informality should be drawn up.

The following steps should be planned for – many of them have been considered within the overall strategy but refinements will have been made as more information becomes available at this stage. Further refinements will be made throughout the process:

- (a) Involve related governmental institutions and choose lead ministries;
- (b) Commencement of communication plan;
- (c) Creation and application of the legal framework for formalization;
- (d) Planning for legal actions;
- (e) Planning for administration and the electronic system to accept and process documents;
- (f) Allocation of resources, administrative, and central technical facilities;
- (g) Dissemination of technical requirements for submitted documents;
- (h) Creation and application of a monitoring process: a committee of controls and acceptance to monitor progress and evaluate the process;

- (i) Guidance on how inhabitants, private professionals and institutions will comply with formalization;
- (j) Planning for imposition and collection of fees and penalties;
- (k) Testing for reasonableness and refining the process as applicable.

These items are discussed in this and the following sections. However, it is now that the entire draft plan should be put together, as it will be more difficult to alter during implementation.

Throughout the formalization process, penalties and fees may be applied as necessary. On the following pages is a sample matrix demonstrating the type of construction, type of informality, actions and penalties.

In the situation of informal development on government land, consider granting the land at a fair or nominal cost, deferred payments over time, long-term nominal rental payments, and similar solutions taking into account many residents' limited ability to pay upfront costs. In cases where informal constructions are built on someone else's private land, take into account the occupant's means, whether this is their only residence, duration of occupancy, and any legal reactions of the owner. Solutions include compensation to the registered owner before the occupant can receive a new title. In cases of poor and vulnerable inhabitants, the state may consider the option of land exchange for the registered owner. In the case of the informal occupant having other residences or non-residential informality, formalization should be charged at land market value. Maximum participation benefits all citizens and the quantity and nature of informality should be considered carefully when the government is making these broad policy decisions.

In the case of illegal and unregistered flats or commercial units with no health or safety concerns, the formalization process could allow all inhabitants full-ownership rights

TABLE 1

Sample overview of actions taken – legal informality

<i>Type of Construction</i>	<i>Type of informality legal</i>	<i>Action</i>	<i>Penalty</i>	<i>Remark</i>
House	no land ownership	Register in title register and in cadastre	Fee for registration Penalty to pay for the land	The law distinguishes different types of status
Flat building	no land ownership	Provision of ownership rights to the association of owners Registration of all owners	Fee for registration Penalty to pay for the land	

TABLE 2

Sample overview of actions taken – technical informality

Type of Construction	Type of informality legal	Action	Penalty	Remark
House	No building permit to build	Register in title register and cadastre Technical inspection if the area size is more than 2 floors & larger than 400 m ²	Fee for a permit Fee for registration Fee for technical inspection if needed	Legalize ownership and fulfill building code
Flat building	No building permit to build	Register all owners in title register Technical inspection if the area size is more than 2 floors & larger than 400 m ² In case of block of apartments: guarantee from the constructor required or technical inspection	Fee for permit Fee for registration Fee for technical inspection if needed	Legalize ownership and fulfill building code

and titling, or for shared-ownership rights on the land parcel and building common parts. This can help in rights' restitution in case of disaster and also in sharing common maintenance expenses. The shared-ownership rights on land and building common parts building could be distributed to the owner of each flat proportionally to the area of each flat, or by a simple unit count regardless of unit sizes. In the case of multiple owners of a flat, all rights should be shared according to law or contracted agreement.

5.7 Determine the involved institutions

At this stage the institutional structure for formalization should be prepared. This includes appointing the responsible ministry, the institute or agency charged with implementation and other of involved institutions, municipalities, tax authorities, land registry, cadastre, and professionals as well as inhabitants. Sometimes the establishment of a new agency to handle formalization is preferable, or an existing e-services agency experienced in data-handling as well as information and communication technology. In any case, technical equipment and qualified personnel may be required and the team should be staffed adequately. Most of the services should be provided electronically, and mobile services are preferable.

Each involved institution should clearly understand their role. A reasonable financial and resource budget should be included to ensure good performance, and obviously this should not be funded by fees and penalties.

When private notaries are required to keep records about informal agreements, fees should be allocated for them to prepare and submit this into the system. This also true for contractors being asked to deliver plans and stability certificates for their buildings.

Key aspects are:

- (a) Sustainability and flexibility of the programme over a possible extended period;
- (b) Monitoring and flexibility for legal/technical reforms;
- (c) Some degree of independence from political changes;
- (d) Adequate financial mechanisms and technical support resources;
- (e) Good leadership, a history of adequate past performance;
- (f) Good familiarity with the relevant legal, economic and governmental forces that will be involved in the formalization process;
- (g) The organization of political support, as key resources and responsibilities are beginning to be allocated.

5.8 Determine and implement the administration system

At this point the strategy and decision-making is generally complete. The plan for the supporting structure and administrative system is ready, and the project launched.

The following is a list of formalization supporting structures which should now be launched.

a. Activate the communication plan

Some aspects of this plan should already be underway, primarily related to gathering political and technical support. However, many aspects of the communication plan should be delayed until the full formalization plan is developed by stakeholders so that there is flexibility to make improvements right up to launch.

This communication plan should now engage inhabitants, technical and legal professionals, local and state authority staff, and general society. It should begin creating greater public awareness of what the project will entail and its long-term benefits. It should also define how inhabitants can comply, and how the government will monitor compliance with the technical, legal, and physical steps required to formalize. It should show how the programme progress will be transparent to stakeholders and inhabitants, and how it will be monitored. Workshops and public forums may be organized to educate the public and help reach maximum formalization coverage and minimize misunderstandings. Expected future responsibilities following formalization should also be made clear to all involved players.

b. Prepare the specific legal framework

The adoption or improvement of compliance laws should be carried out by a team of legal experts. Specific legal solutions should be considered in advance and adapted to local challenges and situations which will, of course, have been considered in advance. These solutions should formalize the legal informalities related to unclear property rights and the planning informalities, such as building in unauthorized areas or in excess of planning permits.

Some issues will require new or changed laws, such as privatization of squatted state or municipal land, property rights for all owners of apartments, transformation of use rights into ownership rights, enabling the adverse possession principle in case of long-squatted private land, provision of planning amnesty, and prescription of responsibilities. The ownership rights, title, use permit, or tenures for various classes of informality will soon be launched, so any needed forms, staffing, or legal drafting needs to be prepared. Adequate legal and administrative support should also be readied.

Local legal, political and technical experts working with similarly-skilled international stakeholders should bridge the gap between existing laws and what is needed to maximize formalization success. Local resident groups,

business, and technical communities, along with interested stakeholders, should have a voice during this crucial legal finalization.

Some legal informality may be difficult to address, for example, changing regulated high-fertility rural or forest land into urban land, especially if the land is protected by the country's constitution. There may be similar issues with areas of cultural, historic or environmental significance. These such challenges must be carefully addressed by the local legal experts and creative balanced solutions found.

Monitoring the flexibility, efficiency and inclusiveness of the legal framework is important to long-term success. Legal failures should be identified as early as possible since they can be particularly difficult to overcome. Strict deadlines for building construction dates for formalization should be avoided until all informality causes are treated, or a new generation of informal development may happen, damaging programme participation. The formalization period deadline should be extended if most constructions have not been formalized, as near-complete coverage of the programme will produce the greatest long-term benefits.

c. Allocate appropriate administrative and technical facilities and resources

This step includes preparation for formalization and monitoring of all aspects of development. Resources must be allocated for legal drafting, in anticipation of a large influx of new contractual and ownership documentation and possible dispute resolution.

Controls of applications and submitted documents should be standardized to avoid bottlenecks and speed registration. Many registrations will require subdivision from land boundary lines or complex ownership changes. Administrative institutions need the resources to handle an influx of documentation, creation and processing of documents, fees and penalties, high volumes of questions and complaints, and changes to formalization systems with associated legal issues. Electronic submission of documents and registration applications, as well as electronic question resolution, should be provided and regular workshops should be organized.

A fast and simple system of formalization will maximize the coverage and benefits of formalization. If insufficient resources are made available, the system will be perceived as unfair or corrupt, jeopardizing project success. Political objection takes the form of starving the project of resources, and this should be avoided by any realistic means possible so that long-term benefits can be enjoyed by everyone.

d. Provide information about technical aspects relating to constructions

Administrative institutions will need definitions of technical requirements, conditions and the necessary documents to formalize or legalize, as well as general technical expectations relating to informal constructions. This should allow for flexible determinations on compliance for physical aspects of constructions. The results should minimize corruption, avoid extra costs, and screen out health and safety or environmental threats. They should be aware of the reality of informal housing responses to the economic and societal conditions that previous laws have created.

Massive scale on-site technical inspections are not suggested as they can be very costly, time-consuming, decrease participation and may increase corruption. They could bottleneck the project, and greatly decrease participation. Detailed inspections may be needed primarily for multi-story, multi-family residential buildings or hotels, offices, commercial centres, hospitals, restaurants, schools, large facilities or any others that significantly affect community health and safety. If health and safety concerns are minimal, technical inspections of these large-scale constructions should follow formalization of titles and property registration but be done prior to issuing an operational permit.

All stakeholders should recognize that the short-term goal is maximum formalization and registration of informal constructions, so long as ownership disputes and health or safety issues are not significant. To minimize health or safety risks, interventions may be needed to improve living conditions and thereby building value – access to capital is vital for this. Therefore, it is important that titles and property registration should be independent from other planning problems and should be given first priority, assuming health, safety and environmental concerns are negligible.

Once registration is accomplished, and transactions and mortgages are allowed, incentives can be provided so that owners can make feasible health or safety improvements. Examples include installing solar water systems or improving insulation by changing doors and windows. Examples of unfeasible improvements include improving stability of a two- or three-story construction to enable further extensions where the construction is in the last few years of its useful economic life and does not comply with current standards.

To speed up the process, money from any applied penalties could be used directly for area infrastructure or technical

improvements by inhabitants, instead of being collected by the government. The benefits of this policy include increasing the likelihood the informal neighbourhood is improved and stays formal, improving the value of building, providing job opportunities in the local market, and potentially reducing environmental impacts.

Technical documentation of a construction under formalization typically includes submission of a surveying plan that shows building location and size. Detailed measurements about the dimensions of small-sized buildings may not be necessary. Determination of specificity can be based on the structure's community importance, health, safety or environmental concerns, property value, current or future division among different inhabitants and so on. Small, low value, single-user constructions will not need the same level of technical and surveying detail. Fit-for-purpose determinations should be applied to decide when to accept higher costs for greater technical specification.

It is important to locate the building is on the base map, and to document the volume of the construction and the land area that has been improved – for example, with constructions or paving. This information can be provided by inhabitants with possible support of professionals through e-services, or from aerial images. This type of transparent data is the foundation for informal land becoming part of a broader land market, allowing government and inhabitants to be able to make better-informed judgements.

Once such constructions are formalized, the law should allow for modifications, improvements and all necessary changes to make these constructions safe and productive additions to the formal real estate market. Further development within the formalization areas should have flexible permit procedures for permits, streamlining their integration into the formal market. Take care that the supporting infrastructure can handle this larger formalized market - some adjustments to infrastructure should be expected. Any further development activity should always follow planning and construction regulations and standards.

For formalization of larger constructions, it is best if the original constructors can submit plans to save time and cost of producing operation certificates. If such plans are no longer available, the constructor company may be willing to provide a guarantee, possibly at some additional cost. In such cases formalization may be based on the location of the building. Other descriptive data may be in past informal agreements or deeds for purchase, possibly at a notary office. If this is not available, a detailed declaration

with information about the apartment, building or unit should be submitted.

In some cases, construction companies may hesitate to provide a guarantee, or admit to working on an illegal building. Additionally, inhabitants may have made changes following building purchase affecting liability, health, safety or legality. In such cases the owners' association could be made responsible for building safety with on-site technical inspections to address risks, carried out by the private sector. The owner's association could also be responsible for further building and plot maintenance; however, this would need some provision for the association to raise funds or charge owners, and the state should provide regulations and incentives for this. For such large constructions it is absolutely necessary to check the seismic stability of the building following title registration and before issuing an operational permit. In the unfortunate situation that a stability control will delay, especially in large multi-story buildings, it should be made clear to the inhabitants of the buildings and to the future buyers, on the property title, that such technical stability control is still missing. In the case of hotels, restaurants, public buildings, etc., an operational permit should not be issued prior to the technical stability control.

The long-term social benefits from formalization are so important that technical construction standards should be applied flexibly at the formalization and registration phase. Reduced accuracy, fewer required documents and on-site inspections will speed the process and minimize costs. These may be supplemented by mobile services and crowdsourcing techniques, as well as orthophoto maps or aerial photos as mapping tools. This also reduces costs for inhabitants. Unstable geomorphology, flooding and slide risks-if existing, should be early identified and people/occupants and municipalities should be aware of those risks. An emphasis on improvements and continuous post-formalization monitoring of such areas should be given to avoid disasters.

e. Develop a monitoring and evaluation system for formalization

A monitoring system and a committee of standardized controls and acceptance should now be created. The monitoring system for formalization projects provides statistical data, ensures and approves standardized documentation, maintains records, and manages delegated institutions. If agencies need certificates, these should be electronically forwarded after the occupant applies. In many cases multiple copies of certificates may be needed, for example for the cadastral agency, property

registration, technical agencies and the bank. Certificates should be free, or nominally charged.

The system should increase transparency fairness and inclusiveness. Proper monitoring and oversight should minimize corruption and allow stakeholders a better understanding of how each project part is being handled. More importantly, monitoring should uncover early problems, allowing for more rapid solutions.

To make monitoring easy, governments use a GIS-based or orthophoto map on which informal settlements and buildings are marked. All construction built within settlements before the base map production date should be formalized within the programme.

f. Develop methods of inhabitants and government compliance

Inhabitants and technical and legal professionals will need clear direction on programme compliance and expected roles. The monitoring system oversees the process, but clear forms and directions will be needed for success and public trust. Valuable information about informal buildings may be available in private sector records. Builders may have plans and individual unit size or construction safety, while notaries or real estate agents may have records of informal private agreements, including transaction prices.

Cooperation with these professionals will speed up the process of data collection and adjudication of owners. Municipalities or tax offices may also have useful records. Collection of this information should be prioritized and used to easily, cheaply and quickly update the base map. Only then should an open call for declaration submission be made.

As the programme progresses, changes in systems may be required to avoid bottlenecks, setbacks, and misunderstandings. Pilot projects may be useful in cases of extended or varied informal development in large countries. A streamlined process with clear expectations will minimize problems.

g. Test of reasonableness

A test for reasonableness should be performed for each step of the procedural framework. A step is reasonable if it efficiently and fairly accomplishes its goals as analysed in the cost/benefit analysis and strategy phase and accomplishes maximum participation.

The monitoring system should have access to all levels of the process for review only, and progress should be judged regularly. These tests of reasonableness should

be performed early but should also be considered later by stakeholders. They should test that all actions at all levels are optimal, realistic, efficient, fair, inclusive and transparent. Some of the results could become part of the communication plan and show quick responsiveness to issues.

6 FORMALIZATION OF CONSTRUCTIONS

6.1 Beginning the formalization procedures

After strategy and frameworks for formalization are decided, the actual process begins. This includes a variety of administrative and legal functions, fee collection, inspections, registration, and monitoring. Within this process, the informality inventory will be used to process registration in a sustainable manner, impose and collect penalties, set controls and methodology for the first registration of informal parcels, and monitor the formalization process.

6.2 Accepting and processing applications and documents

Formalization will create demand for new and historical documentation related to existing rights, registration processes, cadastral data, evidence of ownership or lease, as well as permit, technical inspection, and subdivision data. Historical evidence, legal documentation and penalty or fee records may also be needed. Certificates should be provided free of charge, preferably electronically, to reduce bureaucracy, time and costs.

6.3 Registration of informal constructions

Constructions with legal informality need to be prioritized and property titles must be issued, registered and brought within the cadastre. In some projects, informal constructions are registered in a special evidence list and property rights are not clarified immediately. This is not recommended - it increases bureaucracy and slows the process down.

Technical informalities such as pending technical inspections or improvements may be mentioned in registry records – this will be decided by the stakeholder

and state agencies. At this stage cadastre systems do not usually include information about planning and building permits; only about the parcel, building and title. Other information is typically kept at the municipal office. Transactions should be allowed even if the construction is of poor quality, so the informal construction can remain of limited use, or possibly upgraded.

There have been many examples worldwide of registration projects taken on by international stakeholders in collaboration with state agencies, and these are a useful source of key learning and good practice.

6.4 Impose legal action as required

Formalization process requires a wide variety of legal actions, both during and after the process. Some will be complex political legal changes, and others will focus on individual land parcels.

During implementation there will be a demand for legal interpretations and advice from people responsible for submitting data. Electronic services for answers and public consultation are recommended, especially where there is good public online access. This will also aid identification of common problems.

At this stage, some pre-planned actions will have to be changed to address unexpected demands. Formalization is a lot of work, because issues that have been ignored for many years are finally being addressed and resolved to the benefit of everyone.

6.5 Impose and collect penalties and fees

The imposition of fees and penalties can give rise to corruption. The formalization monitoring process must be able to minimize this. Affordability and appropriateness of fees, costs and penalties is a complex and very important part of the formalization programme. Fees and penalties should be generally minimal and used as a mild deterrent. “Minimal or mild deterrent” should generally be less than two months of typical rent, possibly much less for low-income residents, with provisions for payment over time or other creative payment options. Fees and penalties should also be balanced against actual administrative costs, with these being budgeted at maximum to discourage the public authority from using these fees for revenue.

6.6 Monitor formalization process

The monitoring system should be fully activated at this point. Previously it will have focused on feedback for the

framework design, but now its primary duty becomes monitoring the actual programme. It should provide open access to statistical data for everyone, help ensure standardized documentation, maintain programme records, and oversee other institutions entrusted with these functions. It should be tracking the formalization process, the decreasing number of informalities, legal issues, inspections, registrations, and provide feedback to responsible institutions.

The system was designed to increase transparency, fairness and inclusivity. It will minimize corruption, provide understanding of how each project part is being handled, uncover problems early, extend deadlines if needed, provide incentives, allow for rapid responses. It will also help protect vulnerable groups and provide a good final project outcome. If the monitoring process is not accomplishing this, some adjustment may be required.

Reporting the progress at frequent intervals is vital, as are reports on any obstacles and suggested improvements. These reports should be open to the public to enhance transparency.

7

ACTIONS TO BE TAKEN IN PARALLEL WITH TO THE FORMALIZATION

7.1 Introduction

Several activities should run in parallel with the formalization programme but should not delay it. However, land, labour and capital will all benefit from activities which slow the growth of informality, possibly even reversing it.

7.2 Registration and titling process for informal constructions

The registration process must be well prepared for the influx of informal assets being registered. There may be broader within the registration system in a specific country, and improvement to the registration system

and cadastre should proceed in parallel with registration of the informal assets. Other activities which promote the long-term sustainability of formal land markets and remove incentives which create informal assets should also be undertaken.

7.3 Revise the urban planning process

Revising the planning legal framework to become pro-growth, clearly defining protected or environmentally sensitive lands and government-owned property can remove reasons for informality. Improving the planning and approval processes will help deliver housing and land-related products to the market, limiting the incentive for informality. An analysis of planning and approval processes and laws should therefore be performed in parallel with the formalization process, aiming to remove exclusionary, overly complex or costly policies which impede demand from a significant social sector.

Planning systems have various planning tools available. This should help create consistent, compatible plans to meet the challenges of climate change, disaster management, affordable housing, urbanization, and regeneration of dilapidated urban areas. Planning for affordable housing for specific target groups is also important.

7.4 Revise permitting of construction procedure

In parallel with formalization, revising development-permitting procedures to become quick and affordable, and revising construction standards from ideal levels to practical ones that meet social needs can remove the incentives for informality. Again, this should not delay the process, however, analysis of how to make the system more responsive to social needs without producing risk to health and safety should be regularly undertaken. The system should be explored for ways to make it less costly and more efficient – this benefits society, even when it is not a significant source of informality.

7.5 Introduce a monitoring and inspection process

Inefficiencies can be uncovered by automated monitoring of protected lands instead of on-site inspections, fit-for-purpose technical inspections, use of technology in record-keeping and processing, reviewing the affordability and efficiency of development and permitting fees, and regular review of land market processes. Correcting these and other structural land market weaknesses, limiting

corruption, improving professional education and ethics, making transfers and rental markets safer, less costly, faster and less risky can have huge benefits for the economy. A review of current monitoring and inspection processes should determine if any changes could increase efficiency and performance.

8 ACTION TO BE TAKEN AFTER FORMALIZATION

8.1 Introduction

What is needed to prevent future informalities? Formalization of existing informality is a first step to unlock this dead capital and begin to link it to the broader economy, while also protecting residents, who are often the most vulnerable groups.

Informality can be caused by major political changes coupled with rapid uncontrolled urbanization, lack of available and affordable housing, poverty, internal migration, conflicts, marginalization, natural disasters, cumbersome authorization processes for home improvement, and corruption. Other causes include absence of adequate policies, failure to adopt well-designed pro-growth planning, unaffordable housing policies, private sector weakness, lack of political will to aid transition from centrally planned, and the failure of state agencies to support economic reforms.

The benefits of formalization will not be sustained if the root causes of informality are not mitigated. While some informality may be realistic, widespread informality creates overt and subtle weaknesses within a socio-economic system.

8.2 Improve housing policies

Often, a significant reason is lack of clear, accessible, and affordable housing. This is often due to a lack of a sound housing policy that includes a programme for adequate affordable housing and housing stock improvement. The public sector should carefully consider if their housing

stock is sufficient, particularly for the vulnerable and low-income sectors.

Many buildings formalized will be significantly below building code standards for energy efficiency, structural stability, housing density, utilities service, environmental impact and other relevant codes. Urgent steps should be taken to improve all informal settlements, and this requires funding. Countries that suffer from extended informal development usually do not have public funds to do this, or provide demolition, resettlement or debristreatment.

Therefore, the newly-recognized owners should undertake much of this task. Incentives should be available to newly-formalized inhabitants to improve without overburdening their limited resources in any given year. A good banking system could provide lending opportunities for an incremental improvement process.

8.3 Improve utilities and infrastructure

Utility services are often lacking in areas where informal constructions are common. The formalization process should not be stalled while these infrastructure and utility service expansion issues are considered and planned, but instead enhanced in the longer term. Existing urban regeneration methods should be adapted for informally developed areas with simplified norms and standards. The success of the process will hinge on a harmonious balance between formal and newly-formalized areas.

The potential for displacement and further human suffering is exacerbated if residents are priced out of the newly-integrated and formalized land without sufficient options in the locations where they are needed. See the VGGT for a more detailed discussion on these topics (CFS VGGT 2012; section 16, chapter 13 & 18).

8.4 Introduce or extend property taxation

Annual property taxation is often a major source of income for municipalities and the state. It is also considered one of the most efficient and non-economically distorting sources of taxation, despite being fairly unpopular. Property taxation is a primary motivation for governments to improve tenure security, have a reliable cadastre, formalize informal constructions, and improve property market functionality. All of this, and the supporting legal, financial, valuation and institutional infrastructure need to be present before property taxation can be fully effective.

Additionally, introducing such a tax should be accomplished incrementally and based on transparent

public valuations. Small, transparent and fair charges should be applied early so that trust and competence are built over time. The greatest chance of success is when inhabitants understand that tax money benefits their local community, the amount is fair, and there is no corruption.

Real estate taxation is often a significant revenue source for advanced economies, but the greatest benefits of formalization, and improved land market function, are primarily subtle social benefits and improved economic performance over time. The VGGT discuss Valuation and Taxation in sections N 18 & N 19.

8.5 Prevention of new informalities

The primary purpose of this guide is to show how to formalize informal constructions. However, as a practical matter, if the root social causes that created the informality in the first place are not addressed, it will again begin to appear.

The VGGT note that states should take all appropriate measures to limit informal tenure resulting from overly complex legal and administrative requirements for land use change and development. Development requirements and processes should be clear, simple and affordable to reduce the burden of compliance.

Throughout the formalization process most of the key elements to prevent future informality have been considered, and these should be strengthened. An understanding of the root causes of informality should focus on the following:

- (a) Keep ownership rights secure, and property title registries current. Do not block ownership rights and assets due to planning or structural informalities. The property market will only function and create revenue if the legal and administrative infrastructure can keep up-to-date records, data is transparent, and ownership rights. It must be corruption-free and incorporate a reasonable fee structure.
- (b) Adopt flexible, proactive and pro-growth planning to meet rapidly changing needs. Continue to keep planning, development and building codes relevant to evolving social needs and the environment. Raise awareness about the environmental, social and economic benefits of an efficient land market. Avoid lengthy or costly approval processes or inefficient bureaucratic institutions that prevent societal needs from being met. Raise awareness about the risks of non-compliance with safety standards.
- (c) Protect the rights of vulnerable groups. If legal or economic systems are prejudicial, these can

create pressure in informality-creating markets by removing legal housing options for these groups, increasing economic and societal problems.

- (d) Apply only appropriate and affordable fee structures. Markets are forced into informality by high upfront costs, utility charges seen as unfair, uncertainty about the government, and inhabitants' unwillingness or inability to pay.
- (e) Show protected land on maps and adopt automated procedures for monitoring it. Avoid on-site inspections as they are expensive and can encourage corruption. It is important to stop illegal construction on protected lands at an early stage.
- (f) Once good land and zoning policies are implemented, they should be enforced without resorting to demolitions, imprisonments, or high penalties. This is a careful balance, as it is uncertain if land market improvements can solve future informality problems. They can and should evolve over time, along with evolution in societal needs, values and beliefs.
- (g) It is important to raise awareness among politicians and society about the value of an affordable housing policy. Informality can only be prevented if this has sufficient scope, funding sources, and residents can afford a legal house or to formalize an informal house.

After formalizing the informal constructions and minimizing the root causes of informality, the long-term benefits of a stable, transparent, inclusive and fair land market will begin to be enjoyed by all members of society.

9

CONCLUSIONS AND RECOMMENDATIONS

Considerations for the set-up of a formalization program

When designing the formalization programme, there are a few broad-ranging rules that should allow for better final results.

- (a) **Keep it simple.** Commission only the technical reports needed to get the job done. If a costly

report seems necessary, determine the benefits and costs and decide. This decision should be made by a panel with broad-ranging skills - what seems necessary to a surveyor, engineer, planner, valuer, banker, judge, governmental official, elected official or informal resident may be very different. There are many subtle benefits from utilizing simple solutions – they can increase support and take-up, reduce costs and speed up implementation programs.

- (b) **Make it fit for purpose.** The solutions to informality should only be as detailed, costly or wide-ranging as needed to address the problem. Small, or limited-scope informalities may not have much or any negative impact on social or economic well-being. Flexible, fit-for-purpose solutions should minimize informality's negative impact.
- (c) **Do it fast, do it right.** The benefits of formalizing informality do not fully begin to accrue until the programme is complete and are usually subtle and build over time. Additionally, disruptions and uncertainty within economic markets will have an impact during the process. The sooner the programme is completed, the sooner benefits can accrue, and uncertainty will fade. The time frame will depend on the problem scope, but completion within a few years is a good target.
- (d) **Do it cheap.** Formalization should be accomplished cost-effectively manner for both government and private inhabitants. Governments should be aware of the overall benefits and keep costs within reason, not shortsightedly seeing formalization as a revenue source. From the inhabitant's perspective, doing it cheap relates to affordability in their lives. Affordability will vary in different societies, but a good rule of thumb is the entire process should cost the resident no more than one month's salary. Higher costs could make participation rates plummet.
- (e) **Do it fairly.** Formalization should be accomplished in as fair, transparent and unbiased a manner possible. No-one should be taking advantage of formalization to further disadvantage vulnerable groups, broaden corruption in land markets, or strip valuable assets from inhabitants. It should fairly strengthen land markets, economies and society, which benefits all parties. A focus on short-term gain for special interest groups could undermine benefits greatly and lead to land-related conflicts that would be otherwise avoidable.

Success of any formalization programme hinges on proper conditions to foster implementation. This has the benefit of creating a more fertile environment to foster growth in land markets.

- (a) Draft a legal framework that is robust enough to adequately support formalization and the sale, rental, mortgage, and inheritance of land. A core part of formalization and the removal of the causes of informality is the drafting of fair, unbiased, and transparent legislation to underlie the process, and normal land market operation.
- (b) Create an accurate inventory of informality and understand informality's root causes. Formalization will only be successful in the long term if these are addressed. Creating an accurate and complete map and understanding of the informalities will allow the programme to be more effective.
- (c) Once a full understanding is accomplished, formalization should have clear priority-based targets. These allow for better implementation as well as better understanding by the public, the government, and other stakeholders, as well as indicating successful completion.
- (d) Create a well-designed organizational plan for implementation of formalization up to national and institutional levels. A well-organized structure with national and institutional support will greatly increase chances for successful implementation and may enhance broader land markets function. Done properly, the subtle benefits from a good organizational plan could also improve the land market function for many years after formalization is complete.
- (e) Keep short-term politics away from the formalization programme. Elected officials' short-term political motivations are very likely to add bias, unfairness, and decrease transparency. The maximum long-term benefits will arise from a systematic formalization of as much informality as is reasonable, in as broad, cost-effective and fair manner as possible. While politics will be necessary to achieve the necessary support and changes, short-term political motivations and special interest groups focusing on immediate economic benefits should be avoided. At the very worst, they should be incorporated in such a way that the implementation is still accomplished in a fair, unbiased, and transparent manner.

Land markets underlie and support every national economy. They are a crucial production factor in every

product, household, community and society. When informality reaches a certain level, it has serious negative effects on land markets and the societies that depend upon them. Often the most vulnerable groups suffer the most from this. Raising awareness among society about the benefits of formalized property rights and ethics and compliance with safety standards is fundamental for the functioning of sustainable real estate markets.

This guide aids the process of bringing these assets back within functioning land markets and help protect the vulnerable groups that live and work in them. Change, even positive change, involves some conflict, and some parties can benefit more than others in the short term. A proper implementation of formalization should produce

small winners and big winners, instead of winners and losers. As time goes on the benefits to everyone should increase, although it may be subtle and difficult to measure.

The authors and contributors to this guide hope that our insights and advice help produce a good formalization programme and that both short and long-term benefits are achieved. We hope that peace and prosperity for all members of society, especially the most vulnerable groups, can be enhanced as the functioning land market broadens to include what was formerly informality but has now been titled, registered, and formalized with the root causes of informality greatly decreased.

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Guidelines for the formalization of informal constructions

The overall goals of the Working Party on Land Administration are the promotion and improvement of land administration and land management in the UNECE region so as to adequately respond to a changing environment and emerging needs and contribute to the 2030 Agenda. The Working Party aims at supporting security of tenure, improving and creating more effective land and cadastre registries, a widened usage of geospatial data and promoting sustainable land use policies.

In Europe, 50 million people live in informal constructions. These are not included in the economic cycle, or registered, or inheritable, mortgageable, transferable or taxable. They therefore cannot generate value for their occupants. Why is informal construction a major issue in some European countries and not others? Generally, informal development takes place in countries where large sectors of the land market, often serving societies poorest members, rely on extra-legal development because of inadequacies in land policies, strategies and regulations, construction-permitting and planning for affordable housing. People often build informally when neither the state nor the private sector provide sufficient adequate housing in quantity, type and location.

The private sector also has a role to play, enabling private access to credit at fair or reasonable interest rates and, along with the public sector, helping reduce lending risks. In order for states to facilitate private credit access at reasonable rates, they must reduce lending risks by providing clear property titles. This helps support a healthy mortgage market, as well as possible mortgaged-backed bond markets. These measures are in addition to other risk-reducing legal, social, educational, and institutional infrastructures, needed for an efficient credit market backed by land and property.

In 2009, the UNECE Committee on Urban Development, Housing and Land Management published their first study on informal settlements entitled 'Self-Made Cities: In Search of Sustainable Solutions for Informal Settlements', and in 2015, 'Formalizing the Informal: Challenges and Opportunities of Informal Settlements in South-East Europe'. The 'Guidelines for the Formalization of Informal Constructions' explain how to set up priorities, then programme the formalization of informal settlements and constructions in an affordable, reliable and inclusive manner.

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