

Report from South America (Brazil)

Purpose

To distill themes and shared learning from the South America Regional Consultation hosted by the HLCLEP on April 19, 2006.

Consultation Background and Format

On April 19, 2006, the High Level Commission on Legal Empowerment of the Poor hosted a one-day regional consultation at the Instituto Fernando Henrique Cardoso in Sao Paulo, Brazil. After an introduction from Commission member and former President Cardoso, four panels of national and regional experts discussed the causes and effects of legal, economic and social exclusion, and considered past and present initiatives that have sought to address this exclusion. Panelists participated along with an audience of local Brazilian NGO's and other key stakeholders. The following is a summary of panel topics and speakers:

Panel One

Land and Property Rights in Urban Environments

- Luiz César Queiroz, Researcher on Urban Planning, IPPUR/UFRJ
- Cibele Ribe Rummel, Expert on Urban Planning, Government of São Paulo
- Paulo Teixeira, Counsellor, Municipality of Sao Paulo
- Edgardo Mosqueira, Senior Public Sector Specialist, Poverty Reduction and Economic Management, World Bank

Panel Two

Labor Informality, Business Regulation, and Access to Finance

- Juarez Brandão Lopes, former consultant, Federal Ministry of Labor; Professor, University of São Paulo
- José Pastore, member, Fórum Nacional de Trabalho; Professor, University of Sao Paulo
- José Márcio Camargo, Professor, Faculdade de Economia, PUC Rio
- María Valenzuela, Gender Specialist, ILO Chile

Panel Three

Rule of Law, Legal Systems, and Access to Justice

- Joaquim Falcão, Director, Fundação Getúlio Vargas Law School; Member, National Justice Council
- Luiz Eduardo Soares, Professor and Social Activist, Universidade Cândido Mendes
- Oscar Vilhena Vieira, Lawyer and Social Activist, *Sou da Paz* and *Conectas*
- Edgardo Mosqueira, Senior Public Sector Specialist, Poverty Reduction and Economic Management, World Bank

Panel Four

Legal Empowerment in a Regional Context – An Enabling Environment for the Success of Future Reforms

- André Urani, Director, Instituto de Estudos de Trabalho e Sociedade; former Secretary of State for Labor, Rio de Janeiro
- Wanda Engel, Chief of Social Programs Division of Sustainable Development Department, Inter-American Development Bank
- Ivo Imparato, Latin America and Caribbean Regional Representative, Cities Alliance
- Liliana De Riz, Coordinator, Human Development Team, UNDP Argentina

Introduction

Over the last 30 years, Brazil has witnessed the rise of a burgeoning informal sector. Although there are particularities unique to informality in Brazil, many characteristics reflect trends found in other developing countries. In Brazil, informal property owners and workers encompass the same general group of poor urban squatters, young children, disenfranchised women, and residents of traditional rural societies as in other parts of the world. Moreover, the same core causes – which include rural-to-urban migration, the high cost of land, burdensome business regulations, and dysfunctional court systems – have spurred this population to live and work outside the law. As in many countries, the result has been detrimental. Informality has dampened economic growth and endangered security. In work environments, it has led to low productivity and high rates of turnover. For the poor, it has given rise to social segregation and a situation in which millions lack access to social benefits such as health care and education.

Brazilian policy-makers have responded to the expansion of the informal economy in diverse ways, and have faced unique local challenges. The following document attempts to reflect these issues as they emerged during the South America regional consultation. Its observations are not intended to be exhaustive or exact but rather to document some of the insightful reflections made throughout the day-long event.

The Brazilian Context: Informality

1) *Since 1950, Brazil has experienced the world's fastest rate of urban growth.* Currently, 80% of the population inhabits urban areas. The combination of high land prices and low salaries has contributed to the rapid expansion of slums in major cities, known as “favelas.” Of Brazil's population, 60% are thought to live in the informal economy.

2) *Informality is manifested in Brazil by the vast numbers of people who lack formal identification such as identity cards or birth certificates.* According to Wanda Engel, an estimated 15% of Brazil's population has lacked such identity devices from birth. Many Sao Paulo residents do not register for birth certificates because they cannot afford to pay the initial fee. Other children are born to parents who are not registered themselves, a requisite to obtain a formal identity document.

Without a birth certificate, individuals are not able to benefit from social services such as education, health plans, and pensions. These problems have detrimental effects in Brazil, where 9.5% of people are without a job, according to Jose Pastore. They cannot formally own property and have limited access to credit. In addition, they are hindered from participating in social processes such as working and voting.

Sporadically, the government of Brazil engages in programs to register people without birth certificates by lowering registration fees and engaging in advertising campaigns. But this occurs sporadically and in an *ad hoc* manner.

3) *Almost half of all women in Brazil are wage earners, but the easiest way for women to participate in the labor market has been through informal self employment.* Likewise, in rural areas, many Brazilian women still have not benefited from recent agrarian reforms and are prohibited from owning land.

Causes

4) *The problem of informal urban land holdings in Latin America is largely a result of the dramatic increase of the urban population over the last 50 years.* In Brazil, successive governments have sought to address this expansion with various reform initiatives (see below). However, the implementation of these reforms has been problematic, due to a lack of local political will; segregation in housing; a large gap between the poor population and official regulatory mechanisms; a lack of complex social development programs; and the lack of a framework for sustainable urban planning and development projects.

5) *Many laws in Brazil are inflexible and bureaucratic, adhering to a “one-size-fits-all” approach that does not differentiate by business size.* This is an important consideration in Brazil, as 95% of registered companies are micro-enterprises. According to Ms. Riva Rummel, there are 80 steps to registering a business in Sao Paulo. Registration processes also feature built-in fees that can require the owner to spend over 145% of a worker’s salary in additional costs. This bureaucracy is too burdensome for small, informal businesses struggling to survive, and informality is the inevitable outcome.

6) *Annually, more than 2.5 million lawsuits are filed by workers against Brazilian businesses, a significant incentive for company owners to remain in the informal economy.* Because registered business owners face the threat of lawsuits, many informal business owners find it advantageous to remain unregistered.

7) *Brazil’s generous social protections have intensified informality.* In the 1988 constitution, the Brazilian government created new policies to target the informal economy. However, the ensuing social benefits for poor, unemployed workers have led to increased levels of unemployment and informality. Generous retirement pensions have had similar effects, creating incentives for workers to remain unemployed or retired.

8) *Many Brazilians lack trust in their public institutions.* They perceive that officials in power do not uphold written laws and are not responsive to public demands. To many of the poor, this impunity threatens and erodes the benefit of operating in the formal sphere.

The police system of 550,000 officers embodies many of these problems. According to Luiz Eduardo Soares, the police system has been plagued by inefficiency and corruption for years and has been unsuccessful implementing reform policies. To the poor, the most tangible face of the state is the brutal police officer, violating their human rights in the *favelas*.

Effects

9) *In Brazil, informal communities are typically segregated geographically from formal communities that have access to public services.* These distinctions have an important impact on social dynamics within communities. For example, children from Rocinha, a slum of 1 million people in Rio de Janeiro, often perform at a lower level than those who attend schools outside the slum in more established communities. In turn, school teachers in informal slums have noted that they often feel their main purpose is to look after helpless children rather than to educate future citizens.

As a by-product, children and adults alike from Rocinha face social discrimination. Typically, the people of Rocinha do not venture to restaurants or bars or attend cultural activities outside of their slum.

10) *Without access to the formal legal system, informal city dwellers form their own sets of legal codes governing businesses and property rights.* In Sao Paulo, for example, the new urban population has been proactive in creating the governing conditions for informal urban settlements and has developed a “social contract” to organize and execute land occupation.

According to Joaquim Falcão’s research in Rocinha, five real estate offices exist inside the slum where the poor can buy and sell their informal property. The rules of these property offices, however, differ from those in formal areas: Mr. Falcão learned of one person who was allowed to continue occupying his home, even though he was unable to pay rent. Understanding that he had lost his job, the local property office made an exception for him.

Professor Falcão also reported that people in Rocinha, with little or no access to the formal court system, solve disputes through alternative dispute mechanisms organized by the *Associação de Moradores*, or residents’ association.

Reform Measures

Throughout the day, panelists referred to a number of reform initiatives from Brazil and other Latin American countries. Some general points of agreement emerged concerning the difference between those reforms that were successful and those that failed.

11) *The success of reforms depends critically on the inclusion of the poor in the reform process.* Unless they are organized and informed about their ability to participate in policy discussions, the poor remain uninvolved. To enable this process, civil society organizations must play a major role by educating the poor on their civic rights.

Fundamentally, informality is associated with a simple cost-benefit analysis. José Márcio Camargo suggests that reforms should seek to reduce the cost of formality and increase the cost of informality.

12) *Good reform initiatives must be designed so that all stakeholders, the poor as well as middle/upper classes, will benefit.* According to André Urani, many people within the middle and upper class are biased against reforms, believing they will deprive them of currently enjoyed rights and privileges.

13) *Those Brazilian property reforms which have failed share common elements. They did not leverage adequate urban planning policies and systems.* They suffered from a limited housing and credit supply, and were constricted by a rigid institutional and legal framework. Typically, they also entailed expensive, unclear, and unnecessary requirements. As a result, conditions stipulated by the reforms were impossible to fulfill.

14) *Case Studies of Reforms*

a.) Programa Nacional de Regularização Fundiária

- This program, based on the *Lei Nacional do Estatuto da Cidade*, and Articles 182 and 183 of the federal Constitution of 1988, has been innovative in recognizing that instigating urban transformation requires transforming the spaces inside and around homes.
- The program authorizes local governments to give financial and technical support to the regularization of tenure for both irregular and illegal properties. The scope of the regularization includes not only the issuing of property titles but also aims to be a part of the larger urban planning scheme for the city (urbanism).
- The program has suffered from the following political challenges: lack of local political will; corruption in the political system; and above all, a lack of desire to change the status quo.
- After regularization, property prices often rise to levels that are unaffordable to their previous inhabitants. The discrepancy between salaries and property values often results in the creation of new *favelas*.

b.) Estatuto das Cidades-Lei federal n. 10. 257 de 10 de julho de 2001 (City Statute)

- The federal City Statue law was established to simplify the regularization of informal

land occupations. For instance, there are 80 steps in the Sao Paulo regularization process, making approval of an informal land settlement virtually impossible; therefore, the expansion of settlements can only occur in an irregular way.

- To alleviate this problem, the City Statute law allows for the decentralization of urban planning, facilitating the work of municipal governments in developing local plans.
- The City Statute also guarantees access to public information and participatory governance, including public hearings. Municipal plans must include the following legal provisions:
 - regulations concerning legal appropriation (legalization) of occupied lands in low income areas
 - designation of land for public use, allowing for environmental, historical and cultural preservation
 - zoning, establishing norms and patterns of occupation and use of urban land in light of the social function of the land and the well being of the population.
- Despite the City Statute, the poor remain excluded from official entitlements such as identity cards and social services.
- In many cases, the police have not played a role in enforcing reforms.

c.) Programa Nacional de Fortalecimento da Agricultura Familiar (PRONAF)

- While Brazil's urban poor have limited access to finance, there have been some programs targeting rural areas that have effectively reached the poor.
- PRONAF, one of Brazil's national credit programs, provides small loans to the poor rural population. However, PRONAF has not been successful in reaching a large group of borrowers: the program has more available resources to lend than it can find borrowers.
- The banks that operate PRONAF do not target the urban poor. It has been proposed that this program should be expanded and applied in urban areas.
- CRESOL (a civil society organization) reaches the poor in a fast and decentralized manner, providing access to credit, training and technical assistance. It is suggested that their experience be expanded in order to reach more of the rural poor and to follow their example in the urban areas.

d.) Other specific reforms implemented in Brazil between 2001 and 2004

- The creation of *Zonas Especiais de Interesse Social (Special Zones of Social Interest)—ZEIS*, in various municipalities, affecting public (state) housing known as *Habitação de Interesse Público (Social Interest Housing)*, which exist within the scope of the *Lei Nacional do Estatuto da Cidade and Sistema Nacional de Habitação de Interesse Social*. In the ZEIS, special conditions are established to recognize land rights and avoid eviction of inhabitants of informal land settlements.
- Approval of a new law in the state of Sao Paulo, establishing the *Programa Estadual de Regularização de Núcleos Habitacionais de Interesse Social (Pró-lar Regularização)*, seeking to regularize/legalize land holdings of those who lack property titles, diminish the housing deficiency of the low income population by providing new housing (with formal titles), and engage in technical cooperation to protect populations living on hazardous terrain.

- *Medida Provisória n.2.220 de 2001 (Provisory Act n. 2.220 from 2001)*: “A person that, until June 30th, 2001, has held for five consecutive years, 250 m² of public property in the urban area, using it for his or his family house, has the right to a special use license for that place, when he or she doesn’t own any other rural or urban property.” This law was designed to fill an existing legal gap in relation to the occupation of public lands, not dealt with by the statute (Lei Nacional do Estatuto da Cidade) or the federal constitution.¹

15) *Regional Perspectives*

a.) *Extension of regional labor informality*

- As noted by Wanda Engel, in Latin America, seven of every ten jobs created over the last decade were informal, representing 30% of all jobs in 1980, 43% in 1990 and 48% in 2000. By the late 1990s, the percentage of workers not covered by social security was approximately 70% in some countries, with the lowest rates in Costa Rica (less than 20%) and Chile (around 20%). In many countries, including El Salvador and the Dominican Republic, about half of the nation’s workers fall into this category.

b.) *Peru*

- Ivo Imparato spoke to the experience in Peru, where in the early 1960’s, flexible laws were established to address the informal economy. Although these laws did not resolve the problem of informal land and property tenure when put in place, they made it easier to regularize land holdings over time.
- As noted by Edgardo Mosqueira, massive and rapid land titling was implemented in Peru beginning in 1996, with over 1,400,000 properties registered during 1996-2000 and over 1,000,000 titles issued.

c.) *Chile*

- Andre Urani cited the experience of Chile, where widespread reform contributed to a reduction in poverty and, today for example, the highest level of investment in education in Latin America. Panelists and participants debated whether Chile should be held up a model, given that many of the reforms were implemented during the Pinochet regime. The issue was left as a point for future debate: what forms of national political leadership will ultimately generate the political will for reform, and at what cost?

16) *Effective judicial reform must be a long term and comprehensive process characterized by strong political will and promoting access to justice, education on rights, and alternative dispute resolution mechanisms.*

Effective judicial reform is a long term process which politicians must incorporate into their political agenda. Judicial reform must be comprehensive: it should seek to simplify and reduce the cost of administrative procedures, improve legal education, ensure judicial independence, and improve the quality of laws and judicial procedures. It is also essential that programs are designed to increase access to legal processes, and promote pro bono advocacy. In addition, people must be educated about their legal rights, and civil society should be allowed to play a role in promoting transparency and accountability.

One goal within legal system reform is decentralization, achieved by withdrawing many nationalized policies from the federal constitution so that states can regulate and define their own policies. Another is the establishment and improvement of alternative dispute resolution (ADR) mechanisms, including those of conciliation centers, Talmudic judges and other community leaders.

17) *Economic reforms must wed good fiscal policy - promoting job creation - with a politically astute approach.* Working reforms should have a clear focus, reflect public opinion, have the support of government leaders, and achieve continuity.

18) *Good policies for urban property rights should seek to meet the following outcomes: improved processes for regularizing urban land and property rights; modernized property registries; and the creation of common physical information databases.* Policy-makers should create alternative mechanisms for land dispute resolution. In the long term, these reforms should improve urban land and housing planning systems, the processes for allocating land, and public services for housing construction. Policy-planners should also create mechanisms to promote investment in public services and housing for poor sectors.

Conclusions

19) *Informality is a social problem for everyone. The HLCLEP must contribute to an understanding that legal empowerment is a public good.* Lack of political will at the national, state and local level is a critical constraint to implementing reforms that will promote legal empowerment. And political will must be built on broad-based public support, with clear incentives for those living and working in the informal economy. Members of the HLCLEP will take on the task of influencing opinion makers around the world to build political will within nations and regions. At the same time, the HLCLEP will seek to foster civic debate, and to expand its networks in civil society to ensure broad participation in that debate. To that end, the HLCLEP will lead a future consultation in South America, and has invited civil society representatives to contribute to the design of the consultation process, specifically with the goal of expanding the participation of grass roots organizations. Through this process the HLCLEP will facilitate the sharing of lessons learned from past and current reforms, build support for future initiatives, and seek out incentives for change.

(Footnotes)

¹ In the Brazilian legal system the executive can issue a provisory act (*medida provisória*) which, by subsequent inaction of the Congress, becomes federal law. This *medida provisória* was issued by President Fernando Henrique Cardoso.