

Undertaking a regulatory audit for improving access to legal shelter for the urban poor

What is a regulatory audit?

A regulatory audit is a comprehensive review of regulations, standards and administrative procedures relating to urban land development. It provides a record of all the laws, byelaws, decrees and other official norms that seek to determine what developers, land-owners, communities and residents are entitled to do with and on urban land. In their entirety, these various norms constitute the regulatory framework for urban planning and building. Unless specified, they should apply equally to all those groups, organisations or individuals seeking to acquire, develop or transfer urban land.

A regulatory audit should assess the scope and nature of the regulatory framework and its impact on enabling land and housing markets to operate in ways which enable all sections of the population, especially the poor and vulnerable groups, such as women, to obtain legal land, shelter, services and credit.

Why do a regulatory audit?

Laws, regulations and other official requirements relating to urban land development are usually extremely complicated. In many cases, this is because they have been in place for many years and may even have been inherited from colonial administrations. Subsequent changes may have imposed different requirements without necessarily removing the earlier ones from the statute book. At the same time, requirements may have different levels of official status, in that some may be mandatory and others discretionary. Some may be imposed nationally by central government, and others by provincial or local authorities, many of which may not be applicable consistently.

As if these complications were not enough, the language used may be in English or another language not widely understood locally and the style of writing may be full of terms and phrases only comprehensible to professionals.

For all of these reasons, a regulatory audit can help to clarify what people are expected to do in order to meet official requirements. However, an audit serves a more useful policy objective. It enables those responsible for formulating and implementing the myriad requirements to assess the extent to which changes may be necessary in order to ensure that the regulatory framework is consistent with urban planning and management policy objectives. Requirements based on outdated assumptions or objectives, (such as protecting the earlier interests of colonial elites), or inappropriate conditions (such as high levels of economic development), can be removed or revised to reflect current realities and expectations of the population. An audit can highlight those aspects of planning regulations, standards and administrative procedures which can ensure that the regulatory framework facilitates planned development and meets the needs of all sections of the population, not just an affluent minority.

What benefits can a regulatory audit offer?

Regulatory audits provide urban managers with an objective basis for identifying and monitoring individual components of the regulatory framework. This can help measure their impact on facilitating planned development and reducing the need for squatting and other forms of unauthorised development. They can therefore form a key tool in the development of pro-poor urban development strategies.

What are the limitations of a regulatory audit?

As with any audit, the value of a regulatory audit depends largely on the accuracy and level of information available. Collecting information on the relevant legislation, planning and building codes is a time consuming, though not difficult task. However, assessing the extent to which a specific component represents a constraint to accessing legal shelter for the poor will depend on obtaining the views of those directly involved and this requires time, sensitivity and a degree of independence. This suggests that it is preferable for a local NGO or university to be commissioned to undertake the audit.

How to undertake a regulatory audit – general considerations

The first issue to resolve is how to collect information on regulatory frameworks and the possible need for changes. Practical considerations will be important here. For example, quantitative research methods, such as household surveys have the benefit of providing statistical significance, but are generally time consuming and expensive. To be accurate, they require a statistically significant sample and a control group against which to compare samples. They also require professional data analysis to extract the significance of the findings and prepare correlations or more sophisticated outputs such as multiple regression analysis. Inevitably, such skills or the financial resources to access them are not always available.

These considerations mean that qualitative research methods, such as focus groups discussions and participatory appraisal, may be more suitable to certain contexts¹. Qualitative methods are usually used to gain an in-depth understanding of people's experiences and attitudes using less rigid forms of analysis and focusing more on identifying the themes and meanings which emerge from what respondent say or do. These techniques can often produce complex and varied in-depth data in cost and time-effective ways. For instance, focus group discussions enable the researcher to assemble a number of people together and gather information from them at one time. They can be used to gain a quick impression of the pertinent issues or themes without arduous or expensive analysis and do not have to involve extensive prior preparation. However as with all methods, the extent of the costs involved depend on the aims and design of the audit. If optimum results are to be achieved focus group discussions need a clear purpose and agenda, as well as a skilled facilitator who is able to steer discussions in the right direction and within the given time.

Although quantitative surveys are costly in time and training at the formulation and analysis stages, whether based on questionnaires or highly structured interviews, they are an efficient way of collecting information on a large and/or scattered population or area. The principal of creating short questions with categorised answers results in ease of use in the field, meaning that those with little training and briefing may carry out the process of data collection. In this case, mechanisms such as using students from the local area to collect data can be used to both cut the costs of the survey as well as develop local capabilities. However, this may not be possible where surveys rely on informed observation eg. a survey of household conditions in a neighbourhood, and therefore need to be completed by trained, experienced and fully briefed personnel. The decision of which methods should be used is therefore strongly influenced by the resources that are available in terms of time, personnel, capacity to analyse and the ability to train.²

Another important selection criteria depends on the type and quality of information which must be gathered. Quantitative methods are very good at revealing regularities of action or general patterns in large data sets, which is often essential for understanding the extent and character of a phenomenon. However they cannot *explain* the structures and processes that

¹ The following notes on research methodology were prepared by Evelyn Mari.

² See Annex A1 for the benefits, negatives and resource implications of a range of methods

influence strategies or the complexity of motivations which lie behind those actions (Mullings 1999). The strength of qualitative methods lies in their ability to uncover the complex and often contradictory meanings and processes which underlie these wider trends or patterns, for instance identifying causes and effects (Dwyer & Limb 2001). In policy and development focused research the aim is not only to show how things are but also how things *should* be which requires rich contextualised and explanatory data, which can only be provided by qualitative methods. As such qualitative approaches are often better at 'describing' and 'explaining' while quantitative approaches are better at 'measuring'³. Both of these dimensions are pertinent when attempting to map the regulatory constraints people face when trying to access legal housing and the strategies they develop to overcome these difficulties. Qualitative and quantitative methods can therefore be approached as highly complementary and the use of both is often ideal to gain a holistic understanding of an issue.

Quantitative methods, such as surveys and questionnaires, and the associated methods of analysis such as coding and statistical analysis, are often considered less 'messy' than qualitative approaches. An hypothesis, set of questions and even possible answers are pre-defined and universally applied to allow for quantification. This, as well as the emphasis on statistically significant samples and results as a means for verification, means that it is easier to tabulate, generalise and compare quantitative data. This often lends quantitative data an air of authority, and it continues to command more respect in policy arenas. This often means that quantitative data has a higher potential for determining policy and is therefore useful to include in any audit.

However, this highly structured approach also means that the complexity of experience must be forced into the categories and codes that have been pre-defined by the researcher (we have all, unfortunately, had the frustrating experience of filling in questionnaires which do not allow space for our alternative answer or particular situation)⁴. Therefore, as a vast range of feminist and post-modern literature has been at pains to point out, though quantitative research is often considered to be more objective and reliable, it is in fact strongly shaped by power relations and often constructs the world which it purports to measure (Banister *et al* 1994; Dwyer & Limb 2001; Mullings 1999; Oakley 1981).

Qualitative methods are based on a more free-flowing 'iterative' research process, for instance semi-structured interviews, in which the respondents have more control over how they answer, and the questions and analysis are constantly revised by the researcher in response to what the informants say. Therefore the perceptions, ideas and motivations of those being studied become more central. This can help to avoid the top-down imposition of results and can uncover new issues or dimensions that the researcher was not previously aware of. However, it must be remembered that bias is still just as possible in qualitative approaches such as selection biases which may result from small, homogenous samples (Oakley 1998). Quantitative approaches have the advantage of being statistically representative, which is difficult to achieve with the small samples covered by qualitative methods, and they can just as often open up new areas for investigation.

Participatory methods are now increasingly seen as essential for building successful development programmes (Chambers 1983, 1994a, Nelson & Wright 1995, UNDP 1993). This emerges from the recognition that power relationships shape the research process and often result in the exclusion of experiences, understandings and needs of certain groups, who are often the most vulnerable. This not only results in a distorted understanding of the context, misleading results and the disempowerment of already vulnerable groups, but also limits the ability of policy to respond to their needs. It is therefore important to clearly define

³ Further information on qualitative methods can be found in Bryman & Burgess 1994, Burton 2000, Denzin & Lincoln 1998, Sayer 1984, Silverman 1993

⁴ Mechanisms can be included in survey and questionnaire based research to try to minimise the 'leading' of informants to specific answers or to ensure respondents are not simply filling in boxes they do not understand.

which specific groups are the focus of research and, through sampling and the inclusion of participatory methods which allow maximum input by informants, ensure that all different stakeholders are represented.

Participatory approaches emphasise increased involvement, control and leverage by target groups in the design and implementation of development projects, beginning at the research stage of a project. Participatory research methods aim to limit the influence of researcher biases and categories, as well as the dominance of other elites, on the research process. They also attempt to build up local capabilities and empower vulnerable groups not only by actually listening to what informants feel is important, but also by enabling people to develop skills and capabilities. Therefore, though many participatory methods may be more labour intensive and take more time, the initial extra costs are far outweighed by the long-term benefits of responsive policy formulation and increased local capability. It is important to remember that while qualitative methods tend to have a stronger affinity with participatory principles, all methods can be designed to be more participatory. This can be done using techniques such as piloting and asking informants for their views of methods, constantly adjusting the focus and design of research in response to informant feedback, and encouraging participation of target group members in the design, implementation, and outcomes of the research.

An example of the participatory approach is 'Participatory Appraisal', a community-based method which prioritises the views of local people and their active involvement in deciding what happens in their communities. Participatory Appraisal is increasingly used in policy formulation and practical development due to its reputation as a quick, cheap, simple and socially inclusive method of uncovering pertinent issues and needs within communities. Groups of people from a community are gathered together and discuss issues they feel are pertinent in the community. This is combined with the drawing up of visual maps, mind maps, charts and diagrams by the participants, which visually represent such issues as community needs, services, interactions between institutions, livelihood strategies and resources. This produces a range of data which can be analysed both quantitatively and qualitatively, or can be used directly.

This visual dimension is good for representing many complex issues that would be difficult to verbalise or write-down coherently, as well as overcoming language and literacy barriers. The tools used are varied and highly flexible so they can be shaped to every context and everyone can participate regardless of their background. As a technique it does not require expensive technologies or programmes, and even pens and paper can be replaced with a dirt road and stone or chalk, whatever is available. With this approach it is the members of the community themselves who carry out and define the research, while the facilitator simply ensures everyone is able to participate and explains the tools available. This is a cheap, quick and effective method, however it must be remembered that, as with all participatory methods, much of the costs in time and effort are transferred to the participants themselves. If participants' contributions are not acknowledged during policy formulation, not only will it not be 'participatory', the exercise will have wasted vulnerable people's valuable resources and they are unlikely to contribute to future projects.⁵

In conclusion, there is no single research method or approach that can be considered a panacea to the problems of carrying out a regulatory audit. The choice of methods for any particular project should be based on its appropriateness to the available time, money, labour, training and other inputs, as well as the particular issue which is being researched, the context in which research is being carried out and, of course, the quality and scope of the data which is gathered. Each method has different strengths and limitations therefore a

⁵ More information on participatory methods can be found in Chambers 1994a, 1994b, 1994c, Davis & Whittington 1998, Mosse 1994, Moser & McIlwaine 1999, Nelson & Wright 1995

multi-method technique is often ideal. Social researchers from both qualitative and quantitative traditions have stressed the need to incorporate aspects of both approaches in measuring overlapping and different facets of social phenomena. The use of multiple methods can allow the researcher to capture different aspects of a phenomenon, widen an understanding of the issues involved and increase confidence in the results obtained (Fielding & Fielding 1980; Findlay & Li 1999). For instance, the use of both quantitative techniques, such as surveys, and qualitative techniques, such as focus group discussions, can uncover both micro and macro structures and processes. Equally the use of qualitative case studies may help reconcile apparent anomalies that may emerge in quantitative survey data or provide more detail to the broad brushstrokes emerging from the survey. Different qualitative and quantitative methods are therefore very often complementary and mutually reinforcing⁶. A combination of the two might therefore be seen as ideal, though this can often be highly demanding in terms of time, money and staff inputs.

How to undertake a regulatory audit – step 1

The first step in reviewing the regulatory framework involves listing all existing legislation, byelaws, statutes and other regulations, standards and administrative procedures relating to urban land development and housing. This involves a desk-top review, but may be supplemented by interviews with key stakeholders, including government officials, NGO staff, community organisations, professionals active in the sector, academics and especially low-income residents themselves.

The list of relevant authorities will be important later when discussing possible changes to specific aspects of the regulatory framework.

How to undertake a regulatory audit – step 2

The second step involves obtaining information on the existing regulations, standards and administrative procedures followed in typical examples of formal and non-formal urban developments. When selecting examples, bear in mind that to be comparable, they should be as physically close to each other as possible in order to present similar locational characteristics and access opportunities to livelihoods, facilities, etc. They should also have been developed at a similar time and that the time of development should be long enough for trends to be identified, but not so long that the present regulatory framework may not be relevant.

Meetings with residents and developers in both formal and non-formal or customary settlements will be needed in order to compare the differences in standards, regulations and procedures followed and the reasons for the differences. Attention should focus on identifying the extent to which people are aware of official requirements. In recent research⁷, interviews were held with residents and cards presented which contained some actual and some non-existent official regulations or standards in order to identify their level of awareness.

When completing the administrative procedures section, it is important to note the number of steps involved in each stage of the land registration and development process and the time taken on average for each. In a landmark study of regulatory frameworks in Peru, the Institute for Liberty and Democracy instructed researchers to follow the procedures required by official agencies as if they were typical applicants. Such an approach may take a considerable time, so asking developers and others involved in submitting proposals through official channels might be easier and quicker. Since international research suggests that administrative procedures are invariably the largest single constraint in accessing legal

⁶ More information on multi methods can be found at Bryman 2001, Creswell 1994, Pratt & Loizos 1992.

⁷ For example, 'Regulatory guidelines for affordable shelter' being carried out by Geoffrey Payne and Associates and local researchers in six countries with funding from DFID

shelter, especially when inflation and interest rates are high, it is important to be accurate on this point.

It will also be important to distinguish between regulations and standards. For example, should an official requirement that densities be within a specific range be considered a regulation or a standard? This is open to local interpretation and the surveys included factors according to where they seemed most relevant on the understanding that they can be moved if necessary.

How to undertake a regulatory audit – step 3

When completing the matrix, it is important to balance the factors considered most critical in constraining access to legal shelter. However, in each case, the responses by low-income households themselves should be given priority, since these are the groups most directly affected.

It is then recommended that the degree to which each component of the regulatory framework represents a constraint to accessing legal shelter should be assessed. This is not a simple matter of comparing like with like. For example, on what basis can a time delay in processing applications be considered equal to the cost of meeting a specific standard? In obtaining information on the steps involved – and the time required – to legally start a business in Lima, Peru, de Soto's team listed the number of days taken by applicants who went through the procedures themselves. This enabled them to make precise assessments of the delays involved. However, the *significance* of the delays would vary to some extent from one person or group to another. Responses from a wide range of households on the extent to which a particular factor represents a constraint are therefore to some extent subjective and open to interpretation. This perceptual problem increases when respondents are drawn from a wide range of stakeholders, not just low-income households. For example, professionals may see themselves as responsible for maintaining 'decent' standards of development, whilst developers may see the same standard as an impediment to affordable legal shelter.

Experience suggests that the best solution to this problem is to obtain the views of residents in both formal and non-formal developments, since they will be more aware of the differences. However, it will be important to note the extent of any direct or indirect subsidies provided, since this will significantly affect the costs to residents and therefore to governments and society at large.

Assessing the information collected

Once the views of residents have been obtained, the degree to which each regulatory component can be considered a constraint can be indicated provisionally, and modified in the light of further assessments by other stakeholders, such as professionals, developers, NGOs and government officials.

If funds permit, it is useful to hold local workshops to which a wide range of stakeholders can be invited. This enables cross-checks to be made of the factors considered to represent constraints and will help to validate the findings of the audit. They can also provide a forum in which key stakeholders can consider revisions to the existing regulatory framework.

Presenting the findings of the regulatory audit

The next consideration is how to present the information obtained. This is particularly important if it is intended to provide a conceptual and methodological framework for making policy and management decisions. Mayors or other elected representatives responsible for formulating or implementing policies on urban planning need information presented in ways that highlight the policy options rather than dwell in detail on technical aspects for which they employ professionals. For this reason, it is desirable to present a summary of the information

obtained in the form of a matrix listing all the factors under the three headings of planning regulations, planning standards and administrative procedures. These can then be ranked in terms of the degree to which they are considered to represent a constraint to accessing legal shelter by the urban poor.

The matrix proposed presents information on a number of factors under each heading (planning regulations, planning standards and administrative procedures); the way in which each of these applies in typical formal/statutory and informal/customary settlements; the degree to which a particular factor is considered a constraint on access to legal shelter; the authority or agency responsible for such factors (in some cases, such as byelaws, these may be under local control, whilst legal aspects are more likely to be determined by central government); and a column for comments. The matrix allows for the addition of factors applicable to local conditions, whilst some listed may be deleted if not applicable.