

**HONDURAS' EXPERIENCE WITH LAND REGULARIZATION IN URBAN AND PERI-  
URBAN AREAS**

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## **EXECUTIVE SUMMARY**

In Honduras, despite the existence of property registries, the country has faced increasing levels of informality and land conflicts. The increase in informal employment is mainly due to the lack of housing projects for low-income families, rural-urban migration and the incidence of natural disasters such as Hurricane Mitch. As a result, many Hondurans, particularly poor communities, have been unable to regularize their land tenure, which excludes them from the formal land market while restricting their access to the financial system.

It is estimated that about 60% of the parcels in the country lack a title of ownership or possessing a situation of irregularity. In this sense, it is very relevant to analyze the results that have been achieved so far, under the regularization process based on public need, "through which some 46,000 titles have been issued in informal settlements (colonias) of the country.

Despite all the challenges faced during 11 years of implementation, the results are satisfactory. In addition to having integrated these new owners in the formal land market, a very important result is that approximately 97,000 beneficiaries now enjoy social peace, since they cannot be evicted from their land, even though some of them are still in the process of obtaining their property title.

## **KEYWORDS**

<b>Acronym</b>	<b>Meaning</b>
<b>IP</b>	Property Institute
<b>RINP</b>	Property Regularization based on Public Need
<b>SURE</b>	Unified Registries System

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## **1. General Objective**

The **objective** of the paper is to analyze the experience of property regularization in Honduras, particularly the implementation of an innovative mechanism for addressing peri-urban and urban informal tenure. This mechanism, known as property regularization based on public need (RINP), was introduced in 2004 under a new property law that changed the legal and institutional framework for land administration in the country. Accordingly, the paper will look at the issue of informal land occupation and the response provided by the State through the RINP; and will analyze its implementation challenges, while identifying lessons learned that may be adapted to other regularization programs and in countries facing similar issues.

## **2. Design of an Innovative Mechanism - Property Regularization Based on Public Need**

Responding to the challenge of increasing land informality Honduras included in a new, comprehensive property law passed in 2004, a mechanism for land regularization, defined as Property Regularization Based on Public Need (RINP). The RINP was specifically designed to address cases of neighborhoods (colonias) on land of "Private" legal nature.

A critical issue for RINP was defining the eligibility criteria of the informal colonias. Currently, as per the amended article 77 of the Property Law (IP) establishes, the criteria include:

- Existence of a human settlement and that its establishment has been given before December 31 of the year 2010.
- That the ownership of the property cannot be clearly established or that disputes with respect to domain between third parties not in possession of the property exist.

Property Regularization based on Public Need can also be declared in those in which the following circumstances are jointly found:

- Certainty, by undisputed document, on the ownership of a property in which there are human settlements against the will of its owner since before December 31, 2010;
- Firm ruling that as the result of an action reclaiming ownership, condemns the person in possession to restore it; and,

- That after two (2) years of the ruling having been issued, it has not yet been executed.

All the activities that lead to the emission and registration of the property titles have no cost for the beneficiaries. The latter only pay for the value of the land (occupied area) and proportionally for the common/public areas such as social facilities, green areas and street areas, plus the administrative fees defined in the trust established for each colonia.

The fair valuation of the land is defined by an evaluating committee composed of three members, one representing the Directorate General for the Administration of National Assets, another for the inhabitants of the human settlement and the last one for the alleged owner(s) of the property. The defined fair valuation, has on average amounted to approximately USD 1.17/m<sup>2</sup>.

The process of RINP is led by the Property Institute (IP), but the following institutions also participate:

- Directorate General for the Administration of National Assets (Ministry of Finance), which leads the process of definition of "fair valuation".
- Institutions of the country's financial system, who are the trustees and administrators of the values of the fair valuation compensation, while the process of ascertaining who is the person entitled to payment of this compensation.
- Courts of the Republic, in the cases where the alleged owners are defined and the proportion of the fair valuation compensation to which each of them is entitled. In addition, the courts deal with cases of land claims between two or more people and/or legal entities.

### **3. Implementation Experience**

RINP implementation was started at the end of 2004. To date, 216 colonias, have benefited from the RINP, which represents around 97,000 properties, of which 47% already have a legally recognized property title.

The Property Law created a new institution – The Property Institute, which consolidated cadastral, registry and regularization responsibilities. RINP was started on a massive scale then under challenging factors: Critically, with an institution still in development, lacking in technical capacity, and without the Regulations of the Property Law approved, an ambitious regularization program was established. The program targeted 100 colonias located in the two largest and most important cities of the country, such as the capital city (Tegucigalpa) and the main industrial city (San Pedro Sula). Due to the importance of both cities, they had the largest concentration of land conflicts reflecting higher land values and demand than the rest of the country. Moreover, the mechanism for the definition of "fair valuation" for the land was not established from the start, which resulted in the establishment of very low values initially, which meant that the alleged owners of the occupied land would receive very low compensation.

Implementation was also difficult for the beneficiaries. The educational level of beneficiaries is generally low, a situation that required a process of very intensive and inclusive socialization. However, despite community assemblies and house-to-house visits, most beneficiaries had difficulty in understanding the process, which in some cases lasted 12 months.

According to a study made by the Land Administration Program of Honduras (PATH II) in the year 2013, despite the generally low fair valuation, beneficiaries have expressed the following reasons for not fulfilling the commitment of payment:

- Poverty → 28.44%
- Lack of employment → 28.21%
- Illness → 15.83%
- Other reasons → 13.07% (being the most important: disinterest, problems with the documentation and lack of knowledge of the process)
- Expectation that the Government will give a debt amnesty → 4.81%

It is estimated that 25.4% of the persons who acquired payment commitments, have eventually stopped their payments. If these beneficiaries resume the payments, they will face interest payments depending on the conditions agreed to in the Trust signed with one of the four financial institutions that have so far participated in the process.

Most of the regularized colonias are residential. Data shows that 89.0% of the properties are being used exclusively for housing. In this sense, in spite of the economic difficulties faced by some of these colonias' residents, the process of regularization has brought benefits in terms of an increased sense of security over the ownership of their homes.

One of the central points of the process is the cadastral survey, which defines the land area and the identification of its occupants, information that is entered into the system (SURE) and serves as a basis for the rest of the process. However, the cadastral survey has faced a number of difficulties, including:

- Lack of trained technical staff
- Lack of up-to-date photographic inputs
- Lack of precision surveying and GPS equipment
- Lack of logistics, vehicles and peripheral equipment

The RINP process has been carried out in six departments, concentrating the largest number of expropriated colonias in the Capital city and municipalities in the department of Cortés (where San Pedro Sula is located). Table 1 shows the details of titled land by department and the percentages of titling.



**Table 1:** Titles of Property by geographical area and gender, including legal entities.

No.	Department	Expropriated Colonias	Parcels	Titles of Ownership	% Titration	Man as owner	%	Woman as owner	%	Couple as owners	%	Legal Person as owner	%
1	Francisco Morazán	73	43,571	25,130	57.68	7,085	28.19	11,939	47.51	5,894	23.45	207	0.82
2	Cortés	126	49,563	20,082	40.52	9,121	45.42	9,903	49.31	815	4.06	272	1.35
3	Yoro	7	2,154	98	4.55	36	36.73	60	61.22	1	1.02	1	1.02
4	Atlántida	7	1,493	108	7.23	48	44.44	60	55.56	0	0.00	0	0.00
5	Santa Bárbara	2	275	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
6	El Paraíso	1	67	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
<b>Total</b>		<b>216</b>	<b>97,123</b>	<b>45,418</b>	<b>46.76</b>	<b>16,290</b>	<b>35.87</b>	<b>21,962</b>	<b>48.36</b>	<b>6,710</b>	<b>14.77</b>	<b>480</b>	<b>1.06</b>

As can be seen, in general, **63.13%** (48.36 + 14.77) of Titles of Ownership have favored women as sole proprietors or jointly (spouse).

Likewise, we can observe that in the capital city (Tegucigalpa and Comayagüela) the percentage of titling in favor of women as sole owner or jointly amounts to **70.96%**.

In the following Table 2, the titles of property issued since the implementation of this process to date can be observed.

**Table 2:** Titles of Property per year.

No.	Department	Expropriated Colonias	Parcels	Property Titles	% Titration	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1	Francisco Morazán	73	43,571	25,130	57.68	611	1,490	6,516	3,019	3,399	2,870	1,471	1,315	1,844	606	1,100	885	4
2	Cortés	126	49,563	20,082	40.52	104	2	3,614	4,573	2,222	1,269	1,120	1,687	1,041	1,163	1,632	1,335	320
3	Yoro	7	2,154	98	4.55	0	0	0	0	6	0	0	4	0	0	0	82	6
4	Atlántida	7	1,493	108	7.23	0	0	0	0	0	0	0	0	0	0	0	108	0
5	Santa Bárbara	2	275	0	0.00	0	0	0	0	0	0	0	0	0	0	0	0	0
6	El Paraíso	1	67	0	0.00	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>		<b>216</b>	<b>97,123</b>	<b>45,418</b>	<b>46.76</b>	<b>715</b>	<b>1,492</b>	<b>10,130</b>	<b>7,592</b>	<b>5,627</b>	<b>4,139</b>	<b>2,591</b>	<b>3,006</b>	<b>2,885</b>	<b>1,769</b>	<b>2,732</b>	<b>2,410</b>	<b>330</b>

As can be seen, the RINP process began in 2005, mainly in colonias located in the cities of Tegucigalpa (capital) and San Pedro Sula (industrial city), followed by the expropriation of other human settlements located in six departments of the country.

In 2007 10,130 Titles of Property were issued, which at the time meant that most of the colonias had been effectively expropriated and the processes of cadastral survey until their validation through the process of Administrative Public View had culminated. Thus, having developed the Regularization Tables process and the Mortgage Trust model, allowed for the issuing of the largest number of property titles in since the start of the RNIP program.

The years 2006, 2010 and 2014 highlighted in yellow represent the years of government transitions in the country.

In 2005, work began on defining the perimeters of colonias that were subject to expropriation, but most of these settlements were not registered by the municipalities, since many of these settlements had historically experienced serious conflicts, which had led occasionally to forced evictions.

This activity of the colonias perimeters, as well as the mediation meetings, were conducted in very short periods of time. This resulted in inaccuracies in the process, since many colonias were expropriated with incorrect areas resulting from the poor definition of the colonias' perimeters. Moreover, in some cases the area of some expropriated colonias was not detailed, which caused a technical problem for the institution, since in several colonias there was an attempt by Patronatos leaders to increase the perimeter of the human settlement to benefit other people who were located in adjacent areas that did not meet RINP's eligibility criteria.

Likewise, there were cases in which some patronatos (neighborhood councils) included unoccupied areas within the perimeter of the colonias, indicating that they would be green areas. This action would represent a problem in the future, since beneficiaries must pay for all the expropriated area, including these green areas. Consequently, the value these beneficiaries pay for their property with respect to the common areas, represented almost the same occupied area of the property.

The RINP process includes the following activities:

- Request for regularization by the population in the eligible settlement
- Registration-cadastral investigation to determine if the request is appropriate
- Determination of the perimeter of the human settlement
- Mediation hearing, if mediation completes the process
- Declaration of Expropriation in Council of Ministers, which must be published in the official newspaper La Gaceta
- Cadastral surveying, including quality control
- Administrative Public View (Public display of cadastral information)
- Declaration of area with completed cadaster (Area Cadastrada) by the Executive Board of the IP, which must be published in the official newspaper La Gaceta
- Determination of fair value (valuation)
- Singing of Trust
- Regularization Tables
- Issuance, quality control, registration and delivery Titles

The following are the most important steps in some of the activities of the RINP process.

#### Registration-Cadastral Investigation

This activity presented many weaknesses, since in many cases areas were selected for regularization where there was no human settlements or that were established after the cutoff eligibility date, which was initially June 1, 1999. The cutoff date was later on modified to December 31, 2006 and finally to December 31, 2010.

Article 132 of the Property Law provides that in order to determine the date on which the occupation of a property occurred by a person or a human settlement, in addition to the means of proof established in the Civil Code, aerial photographs may be used

#### Cadastral Survey

The process faced pressure from Government-set targets and community organizations, which often affected quality and results. The process was particularly affected by the fact that the institution did not have adequate equipment, software and supplies, and most of the cadastral surveys had to be conducted using tape measuring and photointerpretation, having as input ortho photos of low resolution and very large pixel size, (greater than 10 centimeters). These deficiencies were magnified due to the topography of the sites where most of the human settlements are located, as well as the size of the buildings, irregularity of the streets, the type of construction, lack of fences and the irregular shape of the parcels. Quality assurance, a critical part of the cadastral surveying process, also suffered or was often omitted.

#### Administrative Public View

The purpose of the Public Administrative View is to allow the beneficiaries to validate the information collected during the cadastral survey, before entering it into the Unified Registries System (SURE). During this step, the list of the properties and the names of the alleged owners or possessors are displayed. Correction of errors or omissions of the published information is possible for 30 continuous days, including the weekends, otherwise the information displayed will be considered correct and valid.

Despite all efforts, the average validation percentage done by beneficiaries does not exceed 50%. This situation is detrimental to the Regularization Tables, since, in addition to the creation of the file

reflecting the financial institution with which the Trusts have been signed by beneficiaries, it often includes requests for cadastral maintenance. To deal with these requests, it is necessary to have field and other staff.

#### Determination of fair value

Prior to the reforms of the Property Law of January 13, 2011, the activity of determining the fair value of expropriated colonias was the responsibility of the General Accounting Office of the Republic, an institution that did not have the technical staff, experience in the subject, or the budget required to develop this activity. This situation brought additional weakness in the process, causing delays in the definition of fair valuation and establishment of low values per square meter.

Subsequent to the 2011 reform, the responsibility lies with the Directorate-General for the Administration of National Assets, which, despite having experienced technical staff, also faces the problem of lack of budget to carry out this activity in a timely manner.

#### Trust Signature

The negotiation for the selection of the financial institution and the conditions of the trust corresponds to the expropriated human settlement, but the Property Law defines that the IP will establish the minimum conditions that must be met by the trusts.

Unfortunately the role of the IP in this activity has been almost nil, with the result that some clauses in the trusts are inconsistent with the responsibilities of the financial institution. In many of the trusts do not appear the figure of the State, which is ultimately responsible for paying compensation for the entire expropriated area. The financial institution only has a role of administrator of the funds, which must be delivered to the people who are determined to be the owner or owners by the competent court.

#### Regularization Tables

This instance is the penultimate activity carried out by the IP. In this step each beneficiary defines the form of payment of the value that corresponds to its land, based on the size of the property, fair value, and the area that proportionally corresponds to pay for the green areas, streets and social and community areas.

In cases where a beneficiaries has already obtained a public deed registered or not registered in the Property Registry, extended by any of the alleged owners, such beneficiary can exchange the title granted for a new title granted by the State through the Property Institute.

All the dossier filed in the Regularization Panel are sent to the corresponding financial institutions. Once the beneficiary fulfills its payment commitment, the financial institution extends authorization for the Property Institute to issue and deliver the property titles.

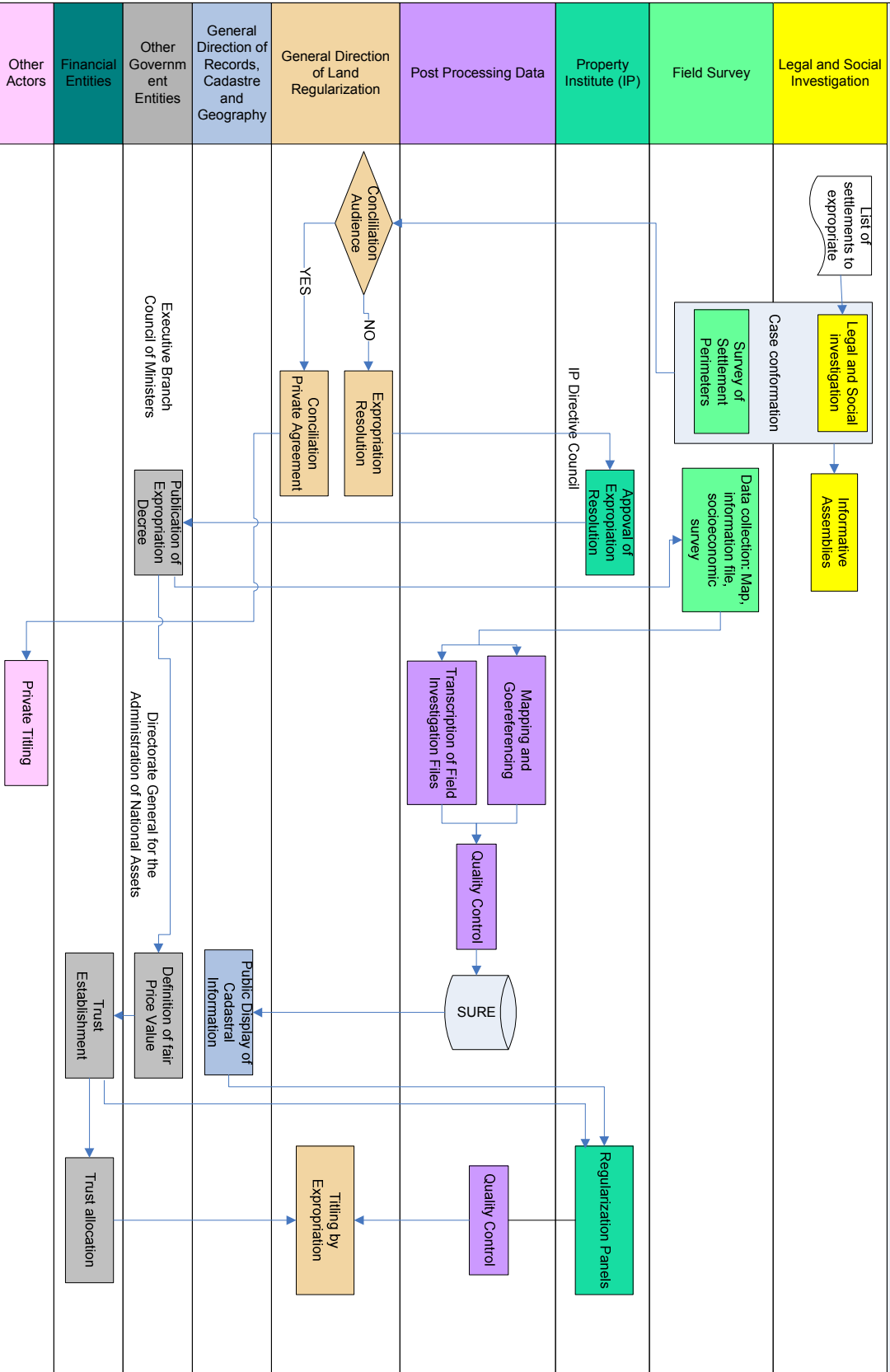
#### Issuance, quality control, registration and delivery of the Property Titles

This is the last activity of the regularization process, through which the Property Institute issues, conducts quality control, registers and delivers the property titles to beneficiaries. Ideally, each beneficiary that fulfills its payment commitment will be given its property title, but in actuality the handing out of titles are scheduled often depending on the agenda of the President of the Republic.

In this sense, beneficiaries should expect considerable time to obtain their Title of Property, with cases such as 2015, where no event was held and the beneficiaries had to wait until the middle of 2016. In addition, (50.13%) of the beneficiaries did not show up for the event, as it was a Friday on a working day.

In general, the RINP process is reflected in the following flowchart:

# Regularization Based on Public Need Process Flowchart



#### 4. Challenges and Lessons Learned

The process of RINP has benefited 47,000 families. However, after ten years of implementation, RNIP continues to face major challenges that must be addressed in a comprehensive manner by the government. These challenges, which are also useful for other countries that may be looking for options to regularize informal settlements, include:

1. **Weak institutional capacity.** Further strengthening of government institutions involved in the process, including budget allocation that allow the certification of the human resources, process reengineering, provision of equipment and materials, etc., since the cadastral and legal processes have been free of charge for the beneficiaries.
2. **Citizen engagement.** Since the vast majority of the beneficiaries face constraints for making payments of the property value, it is critical to maintain a process of socialization and monitoring on a permanent basis.
3. **Realistic planning based on technical analysis.** The RINP must be developed on the basis of an institutional planning, that ensures adequate use of resources. Political factors should not influence decisions and implementation; as the country's experience has shown, in some cases the due process was not followed resulting in colonias that were expropriated although they did not comply with all the law's requirements for RNIP eligibility.
4. **Clear definition of the Trust's requirements and conditions.** The IP must establish the minimum conditions for the trust, in compliance with Article 88-A of the Property Law and article 239 of its Regulations, to ensure that the conditions are not detrimental to the beneficiaries. Likewise, the Property Institute through the Directorate General of Property Regularization and the fiduciary institutions shall perform a control of assets and liabilities of each one of the properties and owners that make up the total of the expropriated areas, in attention to Article 240 of the Regulations of the Property Law.
5. **Cutoff date for eligibility should be maintained.** The established cutoff dates for a human settlement to be in possession in a property in which there is no certainty of who is the rightful owner, should not be modified. At first, the cutoff date was June 1, 1999, taking into account a people who were affected by Hurricane Mitch and had to settle in areas on the periphery of cities. This date was subsequently amended to December 31, 2006 and at the moment the date is set for December 31 of 2010. These changes have raised concerns among the municipalities and owners of private land, since the impression is that the State is encouraging land invasions, placing the country's legal security at risk.



6. **Housing deficit.** The processes of regularization of land tenure must be complemented with a National Housing Policy, successfully and integrally solving a key necessity of the population, such as the construction or improvement of housing, through for example, in Honduras, the Housing Bond for a Better Life.
7. **Participation of local governments.** Local governments (municipalities) should participate in the follow-up of all these processes since all these human settlements will pay taxes and with this new income the municipalities will be able to invest in more benefits for these communities.
8. **Participation of certified professionals for the provision of cadastral services.** Article 126 of the Property Law establishes that titles that are extended as a result of regularization processes shall be exempt from payment of all taxes, fees and formalities for registration.

Therefore, to allow agility to the processes, it is possible to have the participation of certified professionals, defined in the Cadastral Measure Regulation, to carry out cadastral surveying activities, including the entry of the information to SURE.

## 5. Recommendations

1. Modernization of processes, procedures and regulations, as well as the development of new modules in the Unified System Registries (SURE) that promote substantive changes in work systems and work flows towards complete processes that achieve objectives and goals.
2. Identification of national and ejido lands, to promote massive and orderly regularization processes, based on municipal planning and territorial planning rules, discouraging and sanctioning the model of "speculative land invasions" that has deprived in the country.
3. Implement a process of socialization to those beneficiaries who have not yet obtained their Title of Property, either because they have not culminated with their obligation to pay for their property or because they have not even approached the Regularization Committee to establish their commitment to pay.

To this end, Regularization Tables should be established permanently and in places accessible to the population in at least two geographic areas of the country, ideally Tegucigalpa and San Pedro Sula, where most human settlements are located.

4. Once the beneficiaries have fulfilled their land's payments commitment, their property titles should be issued and delivered expeditiously, minimizing waiting time.
5. Human settlements in the process of regularization must be attended by their local governments (municipalities), in order to develop municipal planning and community development that help to improve the quality of life of the inhabitants.
6. The development of the RINP process requires the active participation of the IP, the General Directorate of National Assets Administration and Local Governments (municipalities). In that sense there must be co-execution agreements for these agencies that allow for greater coordination and execution of activities.
7. It is necessary to establish a methodology and procedure for the definition of "fair valuation" with the objective of avoiding discretion, since according to the values defined by human settlement of the value to be paid per square meter, they have mostly been very low.

In order to determine the fair valuation, the following conditions must be taken into account:

- The fact that there are several claims of ownership over the property in the process of regularization.
- That the infrastructure improvements of the property have been run by the owners or inhabitants of the human settlement.

- Topography of the property.
- The total amount of the fair value must include as credits in favor of the human settlement the amounts owed by the alleged owners in municipal and national taxes.