

Housing Informality beyond The Urban Poor: Spatialities, Public Institutions, and Social Injustice in Rich Settlements of Bogotá

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Summary

Informality has been profoundly depicted and characterized in academic literature, nevertheless, it does not count with a single universally accepted definition. Decades after the formulation of this concept, and despite extensive research on diverse backgrounds and countries worldwide, informality is still strongly bonded to specific settings and locations: the urban poor in the Global South. This document challenges the persistent and often pervasive notion of poverty as a cause of informality and aims to understand the nature of informal housing of the rich. For this purpose, the spread of informal luxury villas in the eastern hills of Bogotá (Colombia) is explored as a case study through a wide range of qualitative methods. This study provides different perspectives on the phenomenology of housing informality of the rich by highlighting its underlying features such as the urban form, the role of public agents and the presence of informal institutions. Some of these features have been previously explored in other contexts worldwide, however, they remain scarcely investigated on informal housing of upper-income groups. Finally, this thesis offers a complete picture of the structural reasons that lie behind this type of informality and how they can influence the dynamics of planning law and processes.

This thesis is structured in four main sections, the first is an introductory text, followed by three chapters that correspond each to a research paper.

The first section introduces the research project by defining the main issue and showing several approaches that dominate academic studies on this concept. The main

conclusion of this debate is related to the existing gap on informality beyond poverty, specifically regarding the realm of housing informality for the rich. This field is highlighted as the common thread of this thesis and is analysed by illustrating the case study of the eastern hills of Bogotá. Finally, this chapter introduces the structure, aims and research questions of this thesis.

The first research paper deals with the geographical, physical, and morphological identification of the phenomenon of housing informality of the rich in the eastern hills. The main goal of this paper is to identify a few strategic features that summarize the main elements of the phenomenon and may represent larger aspects of housing informality of the rich in other contexts beyond the eastern hills.

The second research paper is focused on the role of formal institutions on the production of informal spaces of the rich. Key public agents were identified from three exemplary cases of informal villas in the eastern hills of Bogotá. The main goal of this paper is to identify the underlying features of public agents that trigger the production of housing informality of the rich in the eastern hills. Finally, the article provides further insights regarding how both public and private agents interact to engender informality.

The third research paper aims to investigate the differences between the legalisation processes of two informal settlements in the eastern hills: a wealthy gated community and an underprivileged neighbourhood. This article explores the differences in terms of procedural justice in both settlements and introduces the notion of informal institutions, which play a major role in the unequal distribution of legalised tenure in the eastern hills.

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Introduction

1. A Brief History of Informality Definitions

There is no single approach to informality in any given discipline. From economists to architects, there is a wide array of scholars who have proposed definitions and explanations for this phenomenon. One of the first academic mentions of informality dates to the British architect John FC Turner in 1963, who portrayed informal urbanisation as a self-made housing solution to the shortage of shelter for the urban poor in developing nations (Van Ballegooijen & Rocco, 2013). Although Turner described several features of informal urbanisation, the concept was still bounded to self-built settlements in precarious conditions. It was only until 1973 that Keith Hart proposed a definition that, although oriented towards economic activities, was applicable to urban studies and other sciences. This definition was often referred as dualistic: formality and informality were considered separated economic 'sectors' with completely opposed features. While formality was considered modern, standardized, and stable, informality was precarious, unregulated, and chaotic (Hart, 2008; Kucera & Roncolato, 2008; Mukhija & Loukaitou-Sideris, 2015). Several scholars reacted against this position and rejected the idea of informality as an isolated and subnormal sector. These proposals could be classified in four main approaches, mainly divided by their views on the causes of informality (Hart, 2008). Two initial branches were the so-called structuralists and the legalists, who outlined macroeconomic and legal causes of informality respectively (Larson, 2002; Rakowski, 1994; Roy, 2005; Van Ballegooijen

& Rocco, 2013). Most recently, other two streams of literature were identified as voluntarists (Chen, 2012; Recio, Mateo-Babiano, & Roitman, 2017) and the critical governance approach (Davis, 2017; Goodfellow, 2016; Mukhija & Loukaitou-Sideris, 2015). The former pointed out individual agency and the latter governance as main responsible for informality. In general, diverse, and often contradicting attitudes towards the informal sector have shaped the understanding of informality until now. The following sub-sections describe the main paradigmatic approaches found in the history of literature on informality and their principal visions regarding the causes, definitions, and features of this phenomenon.

1.1. The Dualistic Approach

The history of the informality definitions was inaugurated in 1973 with Keith Hart's contribution for the ILO commission in Ghana. He explained that 'the distinction between formal and informal income opportunities is based essentially on that between wage-earning and self-employment. The key variable is the degree of rationalization of work' (Hart, 1973, p. 68). Hart added that firms able to be surveyed represented the modern or 'formal' sector of the urban economy, while the remaining firms were considered the 'low productive', 'traditional' or simply the 'informal sector'. Hart's theory suggests that there is a sharp divide between two co-existing economic sectors: the formal one defined as rational, modern, and well-organized, while the informal regarded as precarious, pre-modern and inefficient (Peattie, 1987). The relation of formal and informal is based on dualism according to these postulates. This means the informal sector is considered a total opposite of the formal one,

however they coexist and make part of the global economy (Hart, 1973; ILO, 2002; Moser, 1978). Informality is considered as not precarious, composed by self-employed or small firms, generally unsophisticated and low productive (Rakowski, 1994). The informal sector is assumed to depend on the demand produced by the formal one. Therefore, while formal is reliable and stable, informal is risky and highly variable (Hart, 1973). Informality is caused by the nature of the industrialization process, in which population growth creates an oversupply of labour in cities. Therefore, informality serves as a safety net against unemployment and as a strategy of survival used by the urban poor (ILO, 2002). Hart concluded that the informal sector was meant to disappear if the developing world guaranteed a sustained economic growth and industrialization (Hart, 1973).

1.2. The Structuralist Approach

Hart and ILO theories could not explain the expansion of informality worldwide, not only evident in poor countries, but also in more affluent societies. Castells and Portes (1989) responded to this shortcoming by identifying informality as a crucial factor embedded in the economic system. For them, informality is ‘unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated’ (Castells & Portes, 1989, p. 12). These authors also drew a clear line between informality and illegality, as the latter is an economy specialized in the production of ‘illicit’ goods or services while the final product of the former is considered as ‘licit’. Thus, informal refers only to the production and exchange process but not to the outcome itself. However, these distinctions are

artificial as they emerge directly from regulation and are discretionary to the definitions of regulatory frameworks. This means that once the state defines the limits of a formal economy, it also establishes the boundaries of informality.

The differences between formality and informality are artificial for structuralists as institutions create and modify this division. There is only one single economy with formal and informal activities and both aspects depend on each other (Portes, Castells, & Benton, 1989). This means informality is not the same as poverty nor marginality, it is beyond social classes and it could emerge anywhere in the world. In fact, the formal sector is the product of an institutionalization of working conditions and non-wage benefits for industrial workers in the Global North (Recio et al., 2017). Therefore, the differences between formality and informality are related to institutions. Portes et al. (1989) considered informality not only as an isolated sector in lagging or poor regions, but as a structural feature of the capitalist system.

For structuralists, informality is also rooted in the economic system. The economic conditions of the post-Fordist era created a polarization between high and low social strata. This polarization had visible outcomes in the highly segregated spatial organization of modern cities (Castells, 1977). Sassen (2000) found that high income gentrification and low-income survival economic activities are now spatially shaping modern cities. These phenomena have opened the gates of urban informality in many shapes such as small businesses in low income residential neighbourhoods or land-use unauthorised changes in gentrifying inner-city areas. Urban informality for structuralists is visible in the high-end and low-end extremes of cities due to the economic polarization caused by the modern capitalist system.

1.3. The Legalists Approach

Hart's initial idea of informality equating poverty or precarity was also rejected by the so-called legalists, who refused to believe this phenomenon had structural causes. Legalists, led by Hernando de Soto, argued that the formal sector neglected the informal one. This policy approach claimed that even the poorest households have financial capital, but informal tenure arrangements prevent them to access formal economic opportunities (Heikkila & Lin, 2014). In contrast, 'Formal property representation such as a title is not a reproduction of the house, like a photograph, but a representation of our concepts about the house. Specifically, it represents the non-visible qualities that have potential for producing value' (De Soto, 2000, p. 49). Therefore, formality, for this stream has a utilitarian value which is derived from the ability to create and exchange wealth and capital in modern societies.

The legalist approach argued that informality was originated in excessive number of regulations and exclusionary practices, while compliance entailed complicated and expensive bureaucratic processes that excluded the urban poor (Cities Without Slums-Annual Report 2004; Durand-Lasserve & Selod, 2012; B. Payne, Durand-lasserve, & Payne, 2012; G. Payne, 2001). The state was responsible of creating discriminatory regulations that favoured privileged economic groups, hence, formal firms were benefited from regulations that hindered the growth of possible competitors (Rakowski, 1994). Meanwhile, informality is composed of micro-entrepreneurs that are forced to work informally to counteract the excessive costs and regulations required to work in the formal sector (De Soto, 2000). Therefore, formal

regulatory systems neglect informal businesses and force certain activities to be outside regulations.

The legalist approach has gained support by many international agencies and contributed to frame policies that aimed to liberalize markets and privatize public companies (AlSayyad, 2004). In terms of urban planning, land use regulations are deemed to be one of the most important causes of informality. Zoning and other regulations often increase the cost of formal housing access and encourage squatting (Heikkila & Lin, 2014). In consequence, more accessible property rights and simplified bureaucratic systems are some of the most frequent policy recommendations made by legalists. Overall, legalists regard the state and urban regulations as obstacles that force citizens and firms towards the path of informality.

1.4. The Voluntarists Approach

Against the position of the legalists, the so-called voluntarists stated that informality is a choice rather than a result of overregulation. Informality for them is the product of voluntary decisions aimed to increase competitiveness by avoiding regulations and taxes (Chen, 2012). In general, 'Formality can be thought of as the decision to participate in societal institutions' (W. Maloney & Levenson, 1998, p. 1). This means the degree of participation in institutions or 'formality' is not always complete. Hence, informality is not a mutually exclusive category, so citizens are involved in certain levels of formality and informality.

Voluntarists argued that 'no institutional or governmental distortions are required to generate an informal sector, so that firms should transition from informal

to formal as part of their natural evolution' (W. Maloney & Levenson, 1998, p. 1). Small and family firms at early stages remain informal as part of a conscious strategy to avoid costly regulations, thus they are expected to become more formal as they grow and get more experience. On the other hand, formality is equivalent to participation in institutions of civil society such as government programs, social security, legal and financial systems, trade, and civic organizations (W. F. Maloney, 2004). Households and workers prefer to use informality to increase their earnings without the burden of welfare systems, but formality is also useful for them to accumulate capital and skills in regulated enterprises (W. F. Maloney, 1998). Therefore, informal actors can voluntarily exit formal regulations after several cost-benefit analyses.

Voluntarists also extended the definition of informality to upper income groups as they assumed that all individuals could predict government policies and adjust to them (Recio et al., 2017). Elites and middle classes often employ informal means to build new housing. This means that citizens and firms are not powerless against the submissive authority of the state, so they have agency to decide whether informality is convenient or not after a conscious cost-benefit analysis (Goodfellow, 2016). For voluntarists, informality is mainly a choice or a manifestation of individuals agency, while it is moderately related to the level of regulations imposed by the market and the state.

1.5. The Critical Governance Approach

While all the mentioned approaches were rooted in economic studies, urban informality is less profoundly studied (Larson, 2005). The critical governance approach

identified the planning system as a cause of informality. Informality could be considered as a strategy of territorial and ethnic control created by the state, such as it happens in colonial systems (Tzfadia, 2014). As informality can be created by state repression to guarantee social and political stability, citizens under disadvantageous conditions can turn against the power. Hence, they can contest and challenge the power itself and legitimize previously informal practices (Yiftachel, 2009). Therefore, planning is not an activity exclusively employed by the state, but also citizens and informal firms are able to participate (Alsayyad & Roy, 2004). Citizens are not only submitted by the power of the state but are also able to create tactics, self-organizations, and mobilizations in order to transform power structures and define the realm of informality (Yiftachel, 2009). While it is important to recognize that regulations and planning practices are originators of informality, the critical governance approach puts a greater focus on citizens as creators and modifiers of the formality-informality division.

The critical governance approach pointed out several contradictory and paradoxical features of informality. It is considered productive and exploitative, inclusive, and discriminatory, chaotic, and organized (Mukhija & Loukaitou-Sideris, 2015). According to this, urban informality must not be understood as the lack of planning as it is one out of multiple ways to generate land and citizenship. Thus, it has its own organizing logic (Varley, 2013). Informality is a logic system as it is a process that generates rules. While formality operates by fixing value and mapping the city, informality works by negotiating value and un-mapping the space (Alsayyad & Roy, 2004). The state is not only the creator of informality, but it is also an informalized

entity that employs informality to exert power (Roy, 2012). Since the state ambiguously employs its power to modify the boundaries of formality, informality is ultimately defining the behaviour of the state (Davis, 2017). For the critical governance approach, informality is temporary and constantly changing, it defies the state power, but it also shapes institutions.

1.6. Informality beyond Poverty: The Missing Link

These five approaches demonstrate diverse and contrasting visions about informality. Although research in this field is extensive, a commonly accepted definition for informality is still unclear. The five approaches are helpful to represent the main debates centred on informality by explaining the causes, features, and dominant policy recommendations to deal with this phenomenon (see Table 1). However, it is critical to acknowledge that they do not embody the whole spectrum of discussions on this topic. Each of the five approaches on informality is centred on certain aspects. While legalists focus on regulatory systems, structuralists are mostly centred in underlying economic processes. Individual choices and agency are the main concern for voluntarists, while planning is the core of the critical governance approach. This classification does not imply the inexistence of more nuanced perspectives on informality, but rather condense the main approaches that historically guided discussions on this phenomenon.

Table 1*Informality approaches compared*

Approach	Dualists	Structuralists	Legalists	Voluntarists	Critical governance
Features of informality	instability, non-predictability, low-productivity, non-modern, risky	Low cost labour, highly competitive, exploitative	Creativity, constrained, reactionary	Convenient, strategic	Marginalized, discriminated, organized, contradictory
Causes of informality	Population growth without expansion of the industrial sector	Regulation of activities by the state and institutions. Global capitalism	Overregulation, bureaucracy	Inefficient welfare systems. Firms and citizens agency	The discretionary nature of the planning system
Policy recommendations	Growth oriented policies. Expansion of the modern working sector	labour protection policies, Support for entrepreneurship and innovation	Liberalization, privatization, deregulation	Reduce taxation and increase the quality of formal institutions. Enforcement when appropriate	Planning system reforms
Paradigmatic literature	(Hart, 1973)	(Castells & Portes, 1989)	(De Soto, 2000)	(W. Maloney & Levenson, 1998)	(Roy, 2005)

The field of housing informality has followed a similar trajectory to the discussion in economic studies. Hart’s dualistic approach on informality had analogous versions regarding self-help construction practices in weakly regulated land markets in the global south (Bromley, 1978; Gilbert & Ward, 1985). Similarly, so-called structuralists, neoliberalists (legalists) and reformists (critical governance) on housing studies had analogous visions to their counterparts in economic studies (Olmedo & Ward, 2016). This means some scholars found the causes of housing informality either on structural features of the housing system, excessive land-use regulations, or self-built housing solutions of low-income families (Olmedo & Ward, 2016). As there is a variety of approaches towards the causes of informal housing, it is not unexpected to find multiple definitions for this phenomenon in literature. Particularly, the concept of

informality may pose a problem as it often entails illegal practices. Castells and Portes (1989) argued that the differences between informality and illegality remain in the distinction between legal/illegal practices and outcomes. The outcomes of illegal practices (e.g., unauthorised construction) may generate licit outcomes such as dwelling units according to Castells and Portes' definition. However, this thesis recognizes that the process of housing delivery involves a series of practices and regulations that may produce many shades of grey regarding the borders of legality/illegality. In fact, the state plays a 'paradoxical role' (van Gelder, 2013) in which it may accept formerly informal practices and accommodate them to the existing legal framework through legalisations (for an in-depth analysis of the nature of legalisations see Article 3). Therefore, to address the complexity of housing informality and the theories regarding its definition, this thesis makes the distinction between housing practices (production and exchange) and outcomes. Hence, this document refers to informal dwellings as such that are built, traded, or exchanged outside legal institutions and regulations. These units are built breaching formal procedures involving building regulations or land-use requirements (Habitat, 2003; Jenkins, 2006; Zhao, 2017). This definition is inclusive of the most varied informal building outcomes but also is conscious of the illicit and unauthorised practices that engendered them.

2. Housing Informality of the Rich: Bridging the Gap

Despite the variety of discussions and theoretical approaches on informality, this concept is mostly confined to some settings or outcomes that often neglect the

urban spaces and activities of certain population groups (e.g., middle classes, the urban rich, etc.) (Banks, Lombard, & Mitlin, 2020). Likewise, the field of housing informality for the rich has been systematically overlooked by academia (Pow, 2017). Thus, practices, motivations and institutional factors that trigger informality in wealthy contexts are still blurry (Lai, 2015).

Although there are several approaches to the study of housing informality, literature has followed the tendency to associate it with certain aesthetic ideas (Inostroza, 2017; Van Ballegooijen & Rocco, 2013). These visual aspects of housing informality are usually equated to the features of squatter settlements of the urban poor in the global South (Mukhija & Loukaitou-Sideris, 2015). In consequence, informality has been framed as a built ‘outcome’ or as a ‘setting’ in which certain people live and obtain a basic income (Banks et al., 2020). Furthermore, as the construction of housing for the wealthy represents only a marginal percentage in relation to the total housing stock in global metropolises, this phenomenon has been often overlooked (Peralta & Hofer, 2006). This comparative proportion is even larger in cities of the global South in which informal settlements of the urban poor are often the main method of housing production (Ward, 2019). Consequently, empirical studies of housing informality beyond the urban poor are scarce and mostly focused on the descriptive side of the phenomenon.

Current studies of housing informality of the non-poor mainly address one segment within these groups, either the middle or the upper classes. Regarding the middle classes, squatting in Europe has been explored as a practice that requires certain levels of economic and political capital, so the urban poor may not always participate

in these practices (Novy & Colomb, 2013; Pruijt, 2013). Middle classes were also found to be involved in unauthorised constructions and extensions of houses in Portugal and Israel (Calor & Alterman, 2017), Southeast Europe (Potsiou, 2014; Tsenkova, 2012) and Italy (Curci, 2012). Informality in the middle classes was also observed in the Global South in the construction of informal gated communities in rural villages of China (Zhao, 2017) and unauthorised subdivisions in Turkey (Datta, 2014). Although this field is relatively small compared to research on the urban poor, some studies involved the identification and description of this phenomenon for the middle classes.

Regarding the upper classes, studies are even more uncommon. Luxury developments or ‘rich enclaves’ were considered as spaces of exception for the super-wealthy in Singapore (Pow, 2017). In the global South, there were few mentions of informal subdivisions for the wealthy in the Philippines (Thirkell, 1996) and Mexico (Varley, 2013), despite it was not the main concern of these authors. Overall, studies of housing informality beyond the urban poor are few and it is possible to distinguish an emerging division between the middle and upper classes in the global North and South (see Figure 1). Overall, the review of existing literature on this field leads to the conclusion that studies on upper-income households in the global South are certainly lagging their counterparts in the global North and middle classes worldwide.

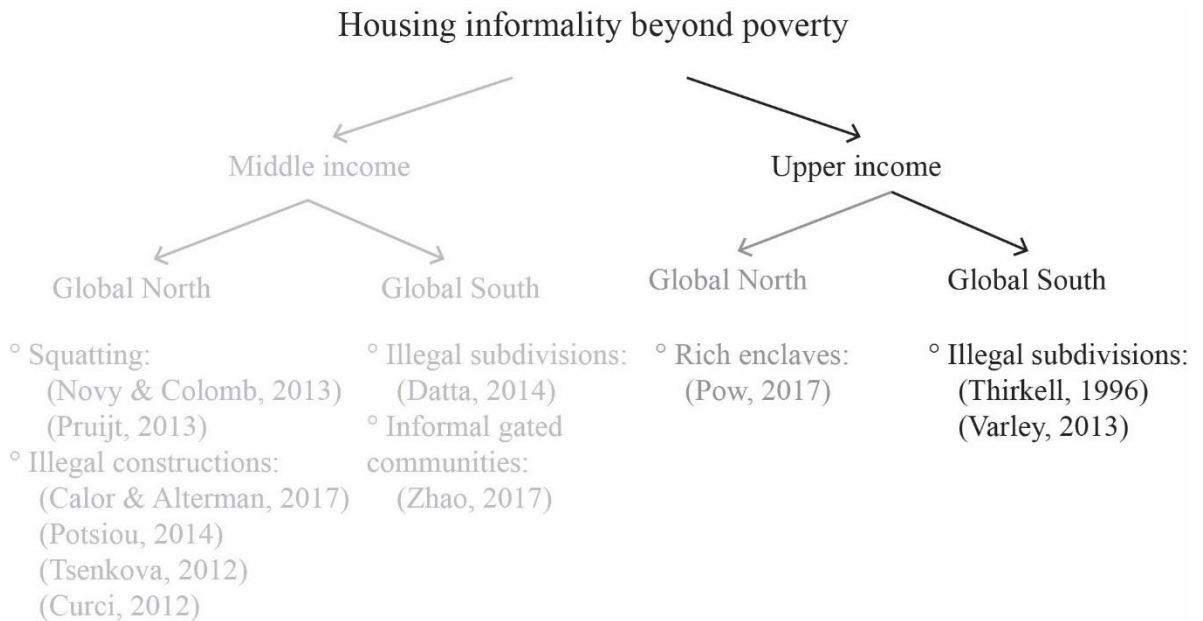


Figure 1

Branches of Studies on Housing Informality beyond Poverty. Source: Author

Housing informality by the well-off in the global South has been overlooked by academia compared to more urgent matters of informal urbanization occurring in this region. However, a closer look into this phenomenon is bound to provide a clearer picture of the phenomenology of housing informality. When analysing the wealthy, it is unavoidable to question how power and privilege influence the acceptance of informal practices. The privileges of wealthy groups could facilitate access to informal ways of producing the city but also hinder the entry of formality for some segments of the population (Varley, 2013). The informality of the rich is often accepted and regulated, while land invasions for the urban poor are evicted and condemned (Alsayyad & Roy, 2004). Although informality in wealthy contexts seems to occupy a

less prominent position in housing studies, this phenomenon could influence the access of less privileged groups to housing systems worldwide. The rich, as they are often close to the state, can modify the law and use exclusive practices to legitimize their informality while demonising urban practices of the poor (Pow, 2017). This an obstacle to creating a fairer society in countries of the global South, as informality is a method to access to affordable land and housing for the urban poor.

Elites may also use strategically informality as a signifier of desirable -or undesirable- urban development practices. Thus, informality could have a paradoxical purpose both as practice to fulfil the development purposes of the wealthy and as an indicator of the decay and lawlessness of underprivileged settlements. On the one hand, informality is employed to promote certain types of ‘first world developments’ but on the other, it could be used to demonize construction practices of the urban poor (Müller & Segura, 2017). Therefore, elite informality not only concerns the wealthy but also could be a motive to justify practices of dispossession and validate segregation against the urban poor. This may engender the so-called rich enclaves, such as gated communities, that employ the ambiguous status of informal settlements to develop vacant land for the wealthiest while displacing the urban poor. Segregation is certainly an intended consequence of practices of land accumulation and appropriation that are in place in wealthy enclaves worldwide. In Latin America, the wealthy use a wide range of elements to create their own isolated ‘green utopias’ while the urban poor are left marginalized and displaced from desirable locations in cities (Müller & Segura, 2017).

Although these dispossession practices are often promoted by private developers –as they are usually the main beneficiaries– the public sector may use the

eminent domain to suppress property rights of the poor in the name of the common good. For instance, as a promoter of infrastructure developments, to generate land redistributive policies or to regularize land ownership (Azuela et al., 2017). However, redevelopment and urban renewal agendas may also use eminent domain to expropriate the urban poor in informal settlements in favour of promoting more segregated cities and further enclaves of the wealthy. For instance, eminent domain has been employed in recent expropriation processes of low-income settlements in favour of wealthy developments in the eastern hills of Bogotá (Everett, 2001).

Despite the negative consequences these dispossession processes may entail to underprivileged settlements – through private or public actions-, wealthy enclaves are often viewed in a positive way by middle classes and the government as they pose a limit to the expansion of the ‘threat’ of urban poor informality (Anguelovski, Connolly, Garcia-Lamarca, Cole, & Pearsall, 2019). Thus, rich developments are often desirable for the city plans as a matter of bettering the city image and containment of unattractive growth, even if they involve a disruption on formal practices. While the practices of the poor are generally condemned and illegalized, the wealthy use a variety of practices of land grabbing, green gentrification, redevelopment, at the expense of marginal groups in what referred Safransky as ‘accumulation by green dispossession’ (Safransky, 2014). Land dispossession processes by private developers of so-called green wealthy enclaves have been explored in cities of the Global North but literature placed in the Global South offers little evidence of these processes (Anguelovski, Irazábal-Zurita, & Connolly, 2019).

All in all, informality of the rich concerns also the issue of justice and fairness in urban development. The existence of such a phenomenon may question whether the law and the regulatory systems in cities are aimed to create a fair society or, on the contrary, are reinforcing economic and social inequalities. This document is predominantly focused on the informality of the rich, their practices, built outcomes and informal institutions. However, it not only aims to fill an existing gap on studies of informality of wealthy groups in the global South but also to link this phenomenon with the issues of social injustice and inequality in the planning system of the city of Bogotá, Colombia.

3. A Case Study Analysis: Formal and Informal Urban Development in Bogotá

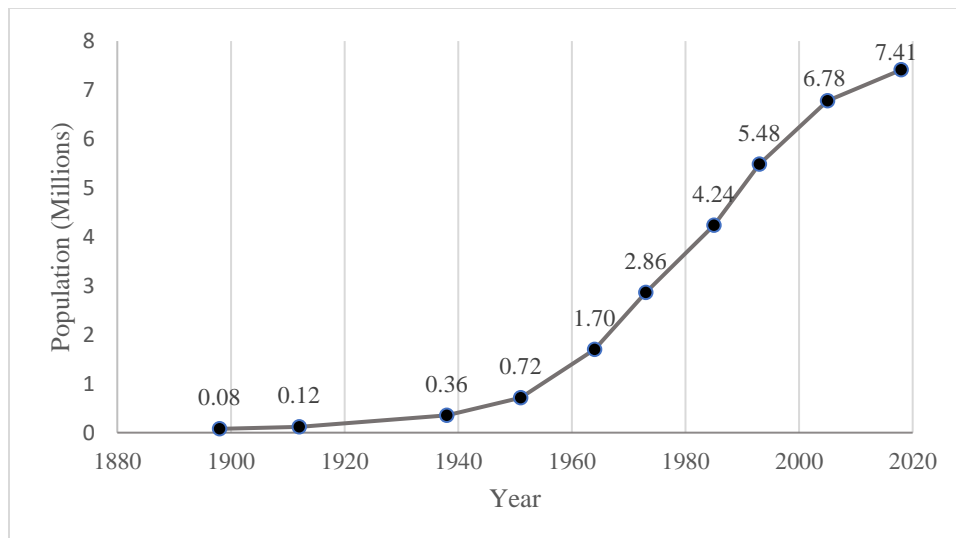
Although there are housing studies on upper-income groups in Colombia, only a few of them marginally described the existence of informal spaces. For instance, gentrification processes are undergoing in Bogotá due to informal occupations of the rich that displace vulnerable households from prime locations (Everett, 2001; Ruiz Solano, 2014). Furthermore, Londoño Carvajal (2016) described the gentrification of the Santa Fe de Antioquia historic centre due to the expansion of informal holiday houses. None of these studies described the characteristics of housing informality in Colombian wealthy groups, but rather exemplified gentrification processes fostered by

informal practices. Consequently, it is apparent that informality of the rich in Colombia exists, but there is little research describing this phenomenon.

Housing informality is often the norm and not the exception in Latin American cities and Bogotá is certainly not excluded to this rule. Approximately, 21% of land in Bogotá was informally developed (Camargo Sierra & Hurtado Tarazona, 2013). This was partly due to the outstanding population growth experienced in the last decades of the 20th Century. Bogotá, as the capital of Colombia, was the epicentre of a population boom in which thousands of Colombians migrated from the countryside to the city (Murad, 2003). The population of the city grew from nearly 100,000 inhabitants in 1900 to around 8 million in 2018 (see Table 2). This process was particularly dramatic during the 60s and 70s as the population living in the city almost doubled each decade and newcomers informally occupied the south-eastern peripheries.

Table 2

Bogotá's Historical Census Population. Source: Author's Elaboration based on Census Data



Most of this population growth was absorbed by informal settlements that were initially developed without services and with basic infrastructure. These new barrios or neighbourhoods were often developed in unsuitable land for constructions, in peripheral or risk-prone areas of cities and they were predominantly catered to some of the poorest households in cities. Most of these settlements in Colombia are initially subdivided by a pirate developer who also plays a predominant role in the financing process while households need to cover the costs of the housing construction and service connections (for an in-depth analysis of the role of pirate developers see article 3). Houses in these areas were incrementally developed, which allowed great flexibility and progressivity for the informal landowners as they could build their house in several stages according to the availability of resources (see Figure 2). Despite the advantages of informal constructions, these settlements are still underserved, they mostly lack transport infrastructure and basic amenities (Tovar, 2007).



Figure 2

Informally Built Neighbourhood in The Southern Periphery of Bogotá. Source: Author

While the population growth boosted the informal housing sector in Bogotá, it is also key to understand the role of the formal housing sector to deal with this phenomenon. The wealthiest households in Latin America most likely live in gated communities (for an in-depth analysis of this issue see article 1). In Bogotá, this housing model was developed intensively in the last decades where it took the name of *conjuntos cerrados* (Aliaga-Linares & Alvarez-Rivadulla, 2010). These developments are often connected to other private services as they offer exclusive lifestyles amidst nature. In Bogotá, these developments are situated in the north-eastern parts of the city near the eastern hills (Salas, 2008). This type of development is defined as a restricted access group of housing units that share a series of services only accessible for residents and a limited number of visitors (Atkinson & Blandy, 2005; Caldeira, 2020; Kostenwein, 2021).

This housing model is often associated with certain spatial features, but there are also some other characteristics that gated communities may share such as social homogeneity and land-use restrictions (Atkinson & Blandy, 2005). This is a popular housing model in many global South cities, and it was first applied in Bogotá in the 1970s in the form of *conjuntos cerrados* and after the 2000s it became the main model of housing production in the city. This process implied an adaptation of an exclusive housing model to a more accessible version for the middle classes, for instance, by increasing density or building height (see Figure 3). Nowadays, gated communities cover around 40% of households of the city, which represents the existence of around 3500 of them (De la Carrera, 2014). The trend has not ceased and most of new formal

developments in the last two decades have been developed in the form of gated communities, and, despite it is possible to find this type in all strata of society, it is the predominant housing type for middle and upper income households in Bogotá (De la Carrera, 2014). This is partially due to existing urban policies applied since the last Century that incentivised the creation of laws to increase housing density within large city blocks and to develop private green spaces and amenities such as Law 142 of 1948 and Municipal Act 82 of 1967 (Samper, 1989). Kostenwein (2021) organized the existing gated communities of Bogotá in five typologies according to the spatial characteristics of the existing developments. These typologies revealed that the image of detached single family houses with abundant greenery and large carparks is very scarce and limited to the upper classes (see Figure 4). The most common types of gated communities are denser and larger than this type and cater to the middle classes (see Figure 5)



Figure 3

Gated Communities in the North-eastern Part of Bogotá. Source: Author



Figure 4

Single Detached Condominiums in the Northern Areas of Bogotá. Source <https://constructorasantaana.com/constructora/>



Figure 5

Typical Single-block Gated Communities in Bogotá. Source Author

The formal city is marked by a preference of gated communities which are the most common type of housing for the middle and upper classes. This leaves a highly segregated urban development as the distribution of wealth is associated with the formal/informal divide but also with housing types. Figure 6 allows to evidence the unequal distribution of socioeconomic strata in the city. Strata is a proxy of the economic conditions of households in Colombia (1 for the lowest income and 6 for the highest). The highest strata (5-6) are only concentrated in the north while it is not found in the southern parts of the city (for a more detailed discussion of the strata concept see Yunda (2019)). Consequently, in Bogotá is possible to evidence clear spatial patterns that separate the gated communities of the north for the rich from the informal settlements in the south for the poor (Figure 7).

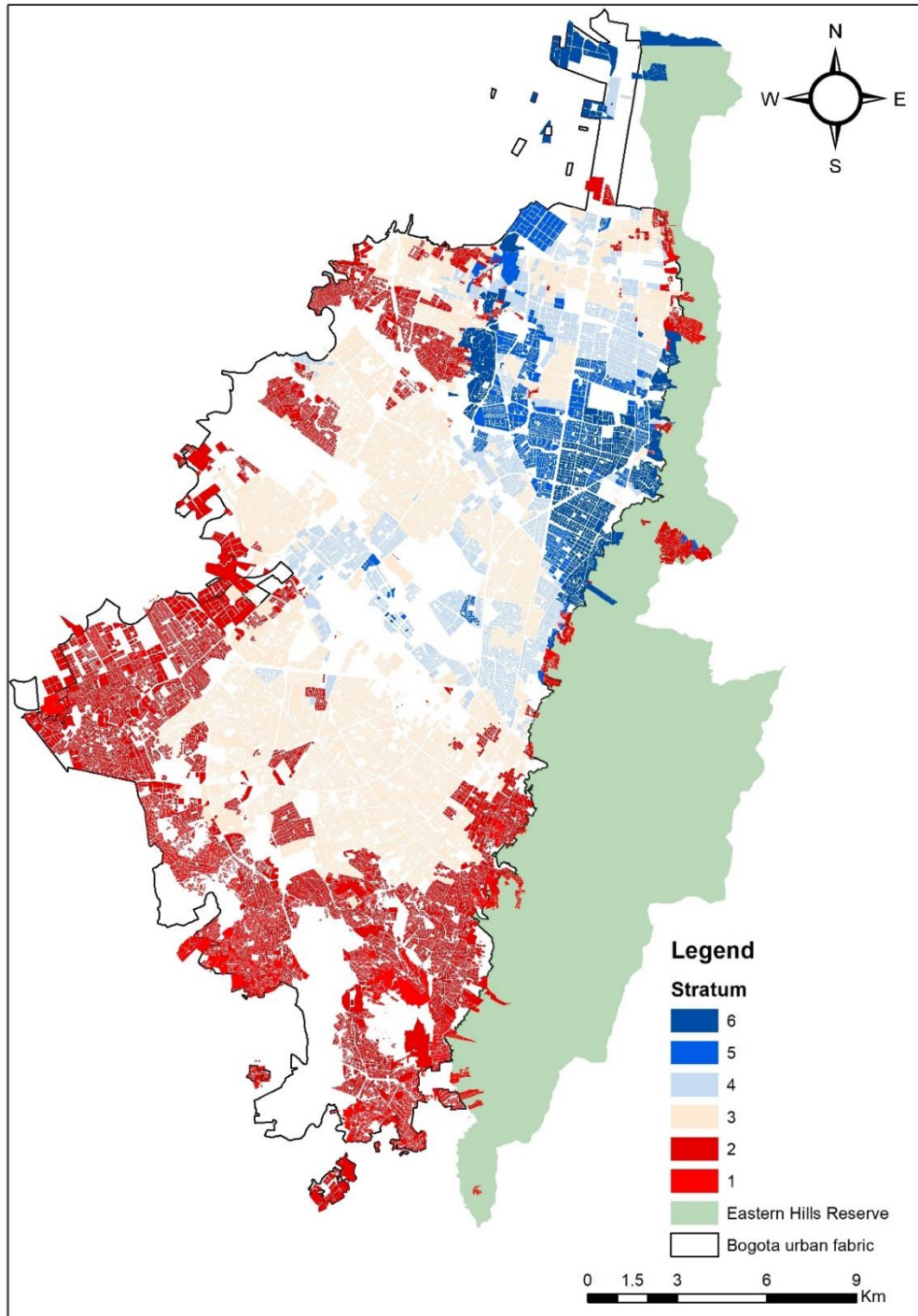


Figure 6

Spatial distribution of Strata in Bogotá. Source: Author's Elaboration based on Bogotá's Cadastral Database available at <https://datosabiertos.bogota.gov.co/>

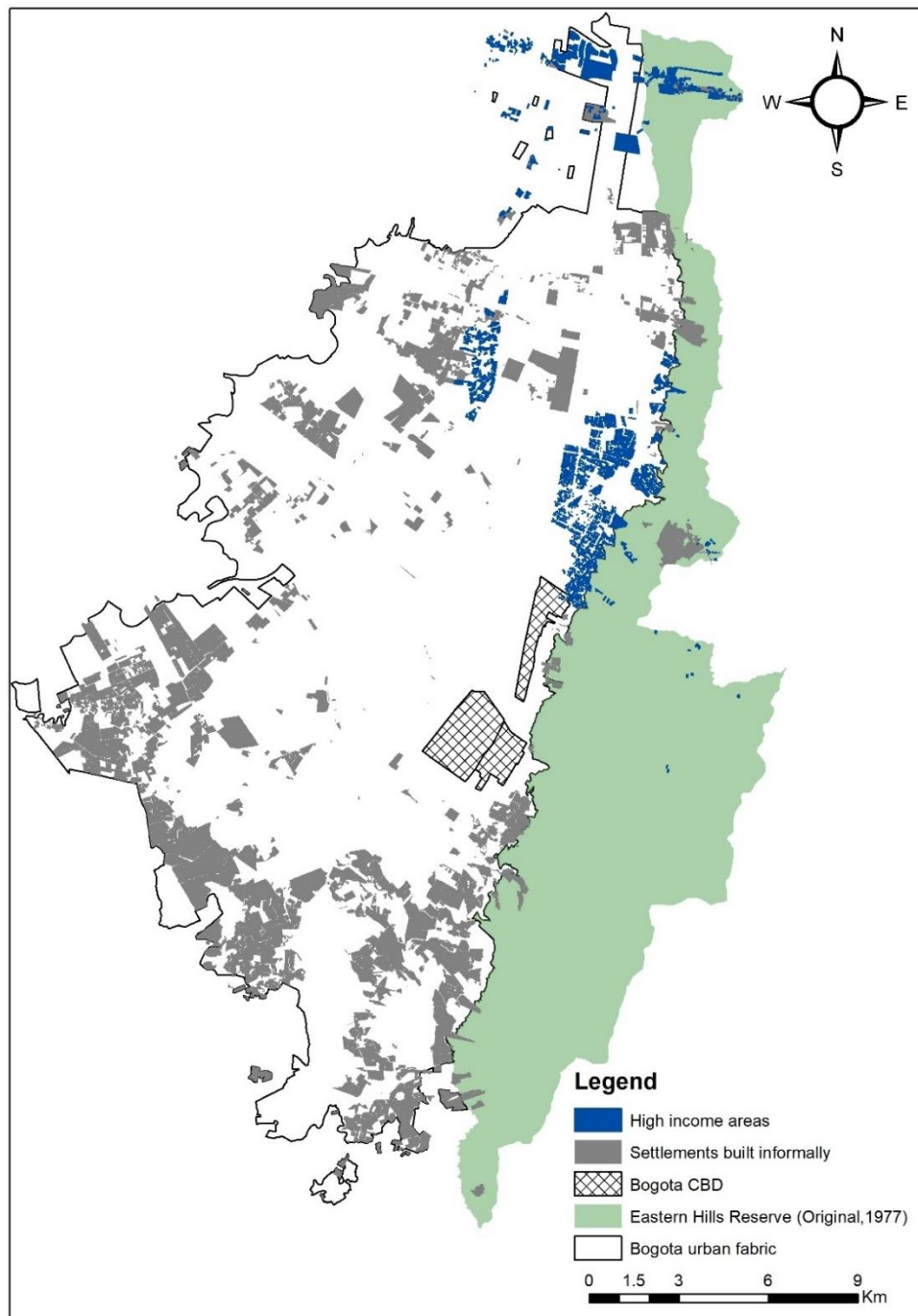


Figure 7

Informal Settlements in Bogotá. Source: Author's Elaboration based on Bogotá's Cadastral Database available at <https://datosabiertos.bogota.gov.co/>

3.1. *The Eastern Hills of Bogotá*

The overwhelming urban growth of Bogotá in the last Century prompted local authorities to protect the few remaining natural areas that survived from the expansion. Rivers, swamplands, and forests were considerably damaged due to the uncontrollable urban growth of Bogotá and there was a high risk of losing valuable ecosystems that provide the city with clean water and oxygen. The eastern hills are strategically located amid a natural corridor running through water reservoirs and watersheds in the highlands and rivers and grasslands in the lowlands (Figure 8). However, the eastern hills were vastly damaged by the creation of several quarries and extraction of construction materials (wood, sand, stones, etc) near the city borders. The presence of these economic activities in the hills also encouraged the surge of human settlements in the natural areas. For instance, in 2014, there were 62 quarries and at least 30 planning permits approved in the hills. The intensive materials extraction and the expansion of human settlements have deteriorated water bodies and caused a great biodiversity loss. This had led to several landslides and floods in the eastern hills that put in high risk several neighbourhoods located near and in the protected areas Garzón, 2014).

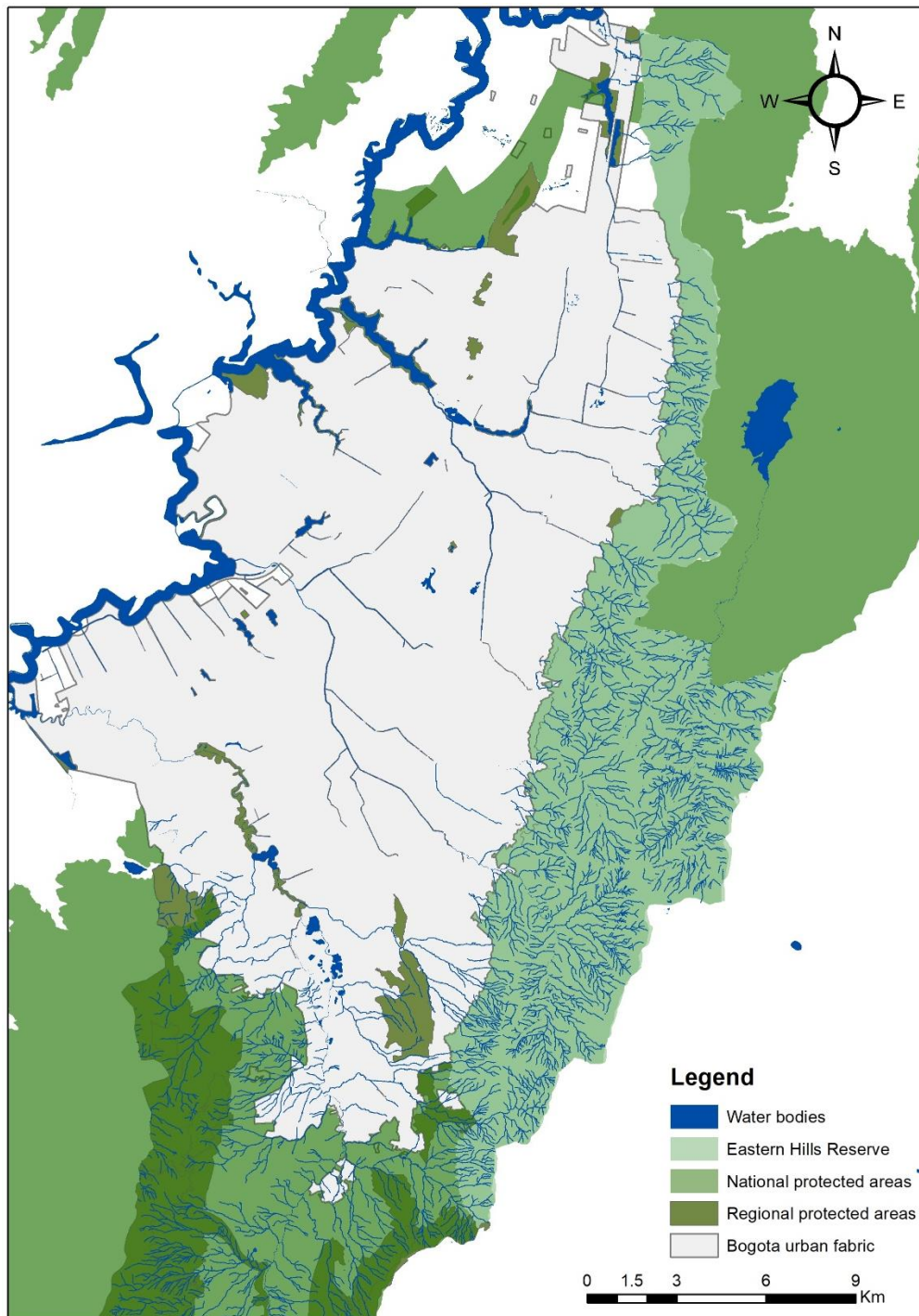


Figure 8

Protected Areas in Bogotá. Source: Author's Elaboration based on Bogotá's Cadastral

Database available at <https://datosabiertos.bogota.gov.co/>

An increased rate of deforestation and biodiversity loss along with a renewed interest in natural resources during the 1970s in Colombia, served to push the declaration of the eastern hills of Bogotá as a natural reserve by the Ministry of Environment (Manzano Bossio, 2015). However, the borders of the protected areas were often arbitrary and did not follow the pre-existing conditions of the hills. This means that several quarries, farms, facilities, and even complete urban settlements were located within the protected areas. Furthermore, the lack of notification of land-use changes to landowners in the eastern hills instigated chaos in local planning laws (Fallo Consejo de Estado 2013).

Furthermore, local, and national governments promoted legal changes that eased requirements to build new houses and even extracted certain properties from the original borders of the hills (see Figure 9). This led to frequent legalisations in the reserve supported by national, regional, and local levels of the government¹. The latest normative change was the product of a participatory process summoned by the State Council Ruling of 2013. The State Council attempted to renew the original environmental conservation character of the reserve but also recognized legalisations and the bureaucratic chaos caused by public institutions and private developers in the area. Although controversial, this ruling is still in place and serve as a base to understand which housing units are currently violating the existing land-use regime.

¹ For a more detailed explanation of normative changes in the eastern hills see Article 1

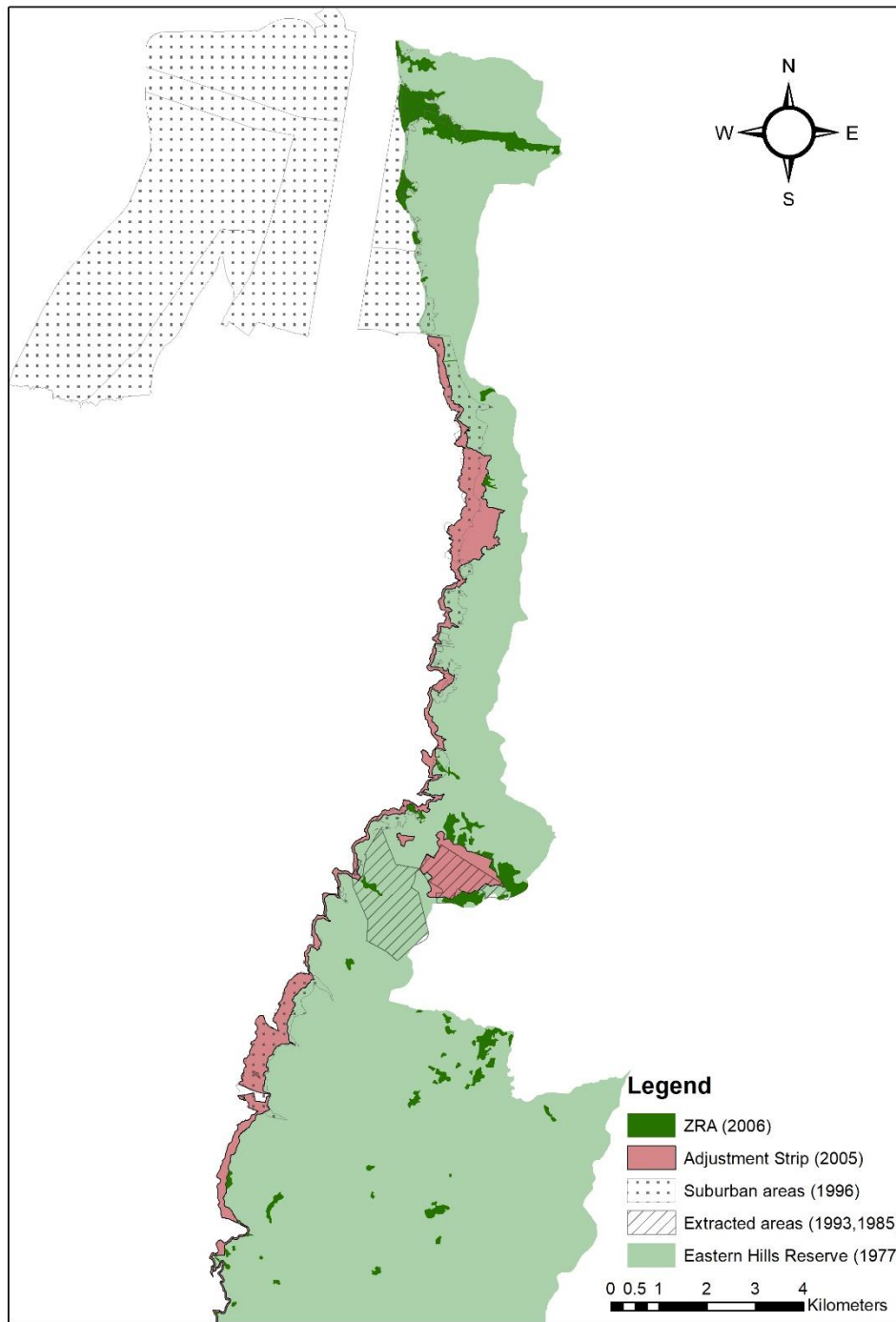


Figure 9

Normative Changes in The Eastern Hills. Source: Author's Elaboration based on Bogotá's Shapefile Database available at <https://datosabiertos.bogota.gov.co/>

Wealthy residents and developers have seized the normative chaos to develop new areas by either displacing existing population (see Anguelovski, Irazábal-Zurita, et al. (2019) as an example of green gentrification) or by developing new green enclaves (see Cabrera (2013) for a comparative study of enclaves in Latin America). The eastern hills protected areas play a significant role on the expansion of wealthy settlements as they can be viewed as large sparsely populated areas with weak planning regulations and abundance of greenery. This double condition of a historically marginalized place and an environmentally desirable area has attracted private property investment but also created land conflicts in which green dispossession has certainly occurred. The following sections explain which aspects of informality of the rich in the eastern hills are enquired in this thesis and the relevance and original contribution of this document to wider academic literature.

4. Thesis Structure and Contents

This thesis is based on a collection of three independent papers centred on different aspects of the phenomenon of housing informality of the wealthy in the eastern hills of Bogotá. This research is aimed to fill the literature gap on informality of the rich by exploring a Colombian case, with an emphasis on both the descriptive and the regulatory/policy dimensions. Ultimately, this thesis sought to answer the following question:

How housing informality of the rich in the eastern hills of Bogotá is characterised?

This characterisation involved the description and analysis of several key features of informality. For this purpose, this thesis was divided into three main articles that explore these features individually. Each paper was planned to work independently from the others, as they are intended to be published in different scientific journals. Although the articles are independent, the common thread is maintained as the three papers regard the same phenomenon from different perspectives by using a similar structure. This structure is composed of a spatial and geographical description of the case study followed using different qualitative research methods that explored the central aspect of each article. Although the regulatory framework and some contextual details were shared in all papers, each article was planned to reduce the duplication of information. For this purpose, this thesis used an incremental order to present data and evidence. This means that while the first paper introduced the context and described spatial, physical, and morphological features of informality of the rich in Bogotá, the following articles analysed further characteristics of this phenomenon such as the causes, agents, institutions, and legalisation processes. Thus, this scheme favoured a more comprehensive and detailed description of informality of the rich in Bogotá from different perspectives.

Table 3 is a comparative chart that summarizes the main features of the three papers and gives an insight into the different facets of informality that were analysed in each article. The following sub-sections provide a summary of each article and their main objectives and methods. Furthermore, they describe the relevance and originality of this study.

Table 3*Thesis Structure*

	Paper 1	Paper 2	Paper 3
Title	Informal Housing of the Rich: Clustering, Isolating and Concealing in Bogotá, Colombia	Formal Production of Informal Housing for the Rich in Bogotá: Pathways of Housing Informality	The Role of Informal Institutions on Legalisation Processes between Rich and Poor in The Eastern Hills of Bogotá
Main research question	Which are the informal housing typologies of the rich in the eastern hills of Bogotá?	What are the roles of public institutions on informal production of spaces for the rich in the eastern hills of Bogotá?	What are the differences between the legalisation processes of rich and the poor informal settlements in the protected area of the eastern hills of Bogotá?
Sub-research questions	<ol style="list-style-type: none"> 1. How is housing informality spatially distributed in the eastern hills of Bogotá? 2. What are the main morphologic characteristics of informal settlements of the rich in the eastern hills of Bogotá? 	<ol style="list-style-type: none"> 1. How were originated informal wealthy settlements in the eastern hills? 2. What are the main institutional factors that triggered the spread of informal settlements for the rich in the eastern hills? 	<ol style="list-style-type: none"> 1. What were the procedural conditions for the legalisation of each settlement? 2. How are the legalisation conditions related to the social and economic background of each settlement? 3. How do informal institutions affect the legalisation process in each community?
Methods	Spatial analysis Analysis of documentation Field visits	Analysis of documentation Interviews	Spatial Analysis Interviews Policy analysis Analysis of documentation
Main aspects of informality analysed	Housing typologies Spatial distribution	Formal production of informality	Formalization policies Spatial justice

Paper 1: Informal Housing of the Rich: Clustering, Isolating and Concealing in Bogotá, Colombia

The first paper was focused on the descriptive side of the phenomenon of informality of the rich in Bogotá. This paper is co-authored with Prof. Francesco Chiodelli and is currently under review for publication on Habitat International. The

article aimed to understand the morphological and urban structures of informal settlements for the rich in the eastern hills. For this purpose, the paper used multiple methods in which quantitative, geographical, morphological, and physical features of informal settlements of the rich were classified. It employed local cadastral databases along with policy documents that allowed to indicate which units were informal. This spatial information was supported by field visits and other sources of information such as satellite images. Overall, these methods allowed a complete identification of several urban features of the phenomenon and the typification of three key interrelated characteristics of informal settlements of the rich in the eastern hills: clustering, isolating, and concealing. This article concluded on the magnitude of informality of the rich in Bogotá and how these three main features might be related to informal housing in the Latin American region beyond the eastern hills.

Paper 2: Formal Production of Informal Housing for the Rich: Pathways of Housing Informality in the Eastern Hills of Bogotá

The second paper aimed to understand the role of public institutions on the causes of informality of the wealthy in the eastern hills. This paper used qualitative methods such as interviews and analysis of documentation applied to three archetypal case studies or ‘pathways of informality’. These three cases represented typically built outcomes of informality of the rich in the hills and their stories were analysed to comprehend the role of public agents in the production of informal spaces. The theoretical framework on spaces of exception and modes of production of informality was crucial to identify the relation between the three stories and larger literature on the

field of informality. This was essential to determine two interrelated structural features of public institutions that shaped the existence of such spaces: colliding agencies and multi-level fragmentation. These features allowed the creation of spaces of exception in the hills that were suitable for the expansion of informal housing for the rich.

Paper 3: The Role of Informal Institutions on Legalisation Processes between Rich and Poor in The Eastern Hills of Bogotá

The last paper used a comparative case study approach to understand the differences of legalisation processes according to the economic and social background of two communities in the eastern hills. These two cases correspond to a wealthy gated community and a vulnerable settlement located in the northernmost areas of the eastern hills. This article compared the two cases by using a combination of qualitative methods divided into two main sections. The first one included a spatial and policy analysis addressing a more factual vision on policies of the two selected case studies. The second part tackled the perceptions of justice and injustice of informal settlers by using interviews and media analysis. Through these methods, this article studied the perception of justice in each community in the hills and how informal institutions had a key role on the legalisation process of rich and poor informal settlements.

4.1. Relevance and Originality

The scarcity of literature worldwide regarding informal spaces of the rich is also evidenced in the Colombian local sphere. This thesis is relevant to start shifting the trend of overstudying the urban poor while contributing to a field of research

scarcely studied both locally and internationally. The eastern hills case must not be taken as specific or exceptional as there are reports of similar phenomena occurring in several settings. Literature shows that the rich can build in several locations of the global North and South, however the latter stream of literature has been lagging in comparison with its counterpart in the North. This thesis acknowledges the existing literature gap and thus establishes connections with larger literature and empirical studies in other settings that may be relevant to inform local practices or features. This is a two-way process that bases empirical research on existing literature but also aims to contribute to larger theories through the exploration of a case study. Several aspects of informality have been scarcely studied in the context of rich households in the global South. Therefore, each article of this thesis is dedicated towards one underlying aspect of the phenomenon that might have been studied in other contexts but still unknown in the eastern hills.

The first article is based on the literature on gated communities in Latin America, which is a common typology in the region for housing middle- and upper-income groups. Some of the morphological and physical characteristics of these developments were found in the eastern hills and, consequently, the case study could inform morphological and physical characteristics of informal wealthy areas in other Latin American and global South cities. While this is probably the most researched aspect of informality of the rich worldwide, studies on the global South are few. Therefore, one of the main contributions of this paper was the characterization of this phenomenon in the local sphere. This implied quantifying and measuring the magnitude of the phenomenon, aspects that were completely ignored in the past.

The second article explored literature relating the spaces of exception for the urban rich, also found in cities in both the global North and South. Furthermore, it applied existing theoretical models regarding modes of production of informal spaces. Regarding this aspect, most of the literature could be sourced from northern studies on informality (Esposito & Chiodelli, 2020). This paper used this framework as a guideline, so it provided a new vision from a global South context. The article concludes on several features that could expand the understanding of the role of public institutions on informality in other locations beyond the eastern hills.

Finally, the third paper explored the issue of spatial justice through the study of legalisation processes of the informal rich and poor in the eastern hills. Even though literature is extensive regarding unequal practices of formalization between the rich and poor, this article analysed possible causes of this trend related to the role of informal institutions. This paper contribution lied at the intersection between informal institutions and legalisation processes, which is a scarcely studied field worldwide. This article used literature on informal institutions to explore which of them could be found in the eastern hills. Furthermore, the article typified key institutions in the legalisation of informal settlements both for rich and poor communities that may apply in further locations.

5. Research Methodology

The main research question of this thesis entailed a case study approach. The choice of the eastern hills as a single case study obeyed to an information-oriented selection (Flyvbjerg, 2006). This implied that I previously counted with knowledge

about the case as local media started to raise awareness about the existence of this phenomenon in Bogotá before the beginning of the research. Moreover, the selection of this case followed the possibility to extend its applicability to other contexts beyond the eastern hills. This information-oriented selection aimed to obtain key data about the general phenomenon through the understanding of a single case study. Regarding the type of case study, the eastern hills could be labelled as a critical one as it provided information about the type (informality of the rich) instead of an unusual or extreme case. This was corroborated through literature that informed the existence of informal housing of the most privileged in several settings worldwide. Furthermore, literature on housing for the rich in Latin America is extensive about the existence of gated communities in the region and the informal rich in the eastern hills were certainly not an exception (see article 1). Therefore, the case study approach and the premeditated selection of the eastern hills as the area of study aimed to obtain key information of the phenomenology and structural features of informality of the rich that could be applied in further contexts.

The main research question of this thesis also inquired about several characteristics of informal housing applied to a particular setting, so it was required the use of different qualitative methods. Unstructured interviews were employed as the study aimed to unveil the perspectives of stakeholders from different sectors and interest groups, such as residents, NGOs, planning officers, community leaders, landowners, etc. In total, 44 interviews were conducted through a snowball sampling technique in a timespan from May 2018 to October 2020 (see Table 4). The objective was to reach stakeholders that had a direct connection with the phenomenon, so the

sampling technique created a network of participants. Hence, it was possible to reach several representatives of diverse interest groups departing from personal connections and interviews with local researchers. Six scholars in three local universities had previously explored the topic of housing or informality in Bogotá were inquired about their contacts within institutions and communities in the hills. Furthermore, some of my connections in planning offices were related to residents of the hills or institutions that were involved in the phenomenon. However, only those who had witnessed first-hand the construction or demolition process of the informal constructions were considered as participants. It is essential to consider that informality of the rich is deemed to be a sensitive topic in Colombia as wealthy and powerful families have interests in the construction of informal villas in the eastern hills and they could use their power to maintain 'pacts of silence' (see article 3). This is also related to issues of corruption and clientelism in the public sector so, as I could witness first-hand, several interviewees were afraid to participate in the study and comment on their own experiences. This was a hindrance to obtaining information since several stakeholders explicitly declined to be interviewed. Furthermore, the wealthy, as they are part of a very exclusive group of people in Colombia (1 to 2% of the population) are hard to reach and their living spaces are often segregated communities with very restricted access. These conditions were addressed by using a snowball sampling technique initiated with my connections. This enhanced the access to information that was not publicly available and allowed to interview stakeholders that would not reveal this kind of information to outsiders.

Other research methods aimed to corroborate the information collected through interviews and include further perspectives. For instance, they included multiple analysis of documentation of digital reports available in major Colombian newspapers (El Espectador, El Tiempo, Semana), personal communications with several institutions (CAR, Bogotá Planning Department, Fundación Amigos de la Montaña, Fundación Cerros de Bogotá) and judicial cases relating several informal villas. This method was key to include the viewpoints of actors of the public, private and third sector that might have a different vision of informal constructions in the eastern hills and were not directly interviewed.

Table 4

Interviews Overview

Interest group	Participants	Organization (if applicable)	Roles	Main topics addressed	Date and duration of interviews
Residents	9		Landowners self-promoters	Motivations to build Institutions participation Construction process Construction status Legal issues Services provision	7 Sep 2019, 1h (Resident Floresta) 7 Sep 2019, 30m (Resident Floresta) 7 Sep 2019, 30m (Resident Floresta) 18 Sep 2019, 30m (Resident Floresta) 1 Feb 2020, 1h (Resident El Codito) 1 Feb 2020, 1h (Resident El Codito) 1 Feb 2020, 1h (Resident El Codito) 14 Feb 2020, 30m (Resident El Codito) 14 Feb 2020, 30m (Resident El Codito)
NGOs	3	Amigos de la montaña Fundación Cerros de Bogotá	Report constructions Control regulations	Reporting process Inter-institutional coordination	23 Feb 2019, 30m (Fundación Cerros) 21 Jul 2019, 1 h (Fundación Cerros) 15 Nov 2019, 1h (Amigos de la Montaña)
Planning officers	7	Habitat Secretariat Planning secretariat	Enforcement process Report constructions Create regulations Approve permits	Planning laws Enforcement process Permits approval Loopholes	1 Feb 2019, 30m (Planning) 9 Apr 2019, 40m (Habitat) 23 Apr 2019, 20m (Planning) 29 Apr 2019, 30m (Habitat) 15 July 2019, 30m (Habitat) 2 Sep 2019, 20 m (Habitat) 10 Aug 2020, 20 m (Habitat, online)

CAR officers	6	CAR	Environmental control Create regulations	Enforcement process Demolitions Impact of informality on the natural environment	10 July 2019, 1h (Regional office) 10 July 2019, 1h (Regional office) 3 Jan 2020, 30 m (Regional office) 14 Jan 2020, 30m (National committee) 14 Jan 2020, 30m (National committee) 20 Jan 2019, 1h (Regional office)
Former planning officers	8	Bogotá Planning Department	Create regulations Approve permits Create housing plans	Planning laws Loopholes Corruption	16 Jan 2019, 1h 16 Jan 2019, 1h 2 Mar 2019, 30m 2 Mar 2019, 1h 4 May 2019, 30m 20 Jun 2019, 1h 20 Jun 2019, 30m 21 Jun 2019, 30m
Community leaders	5	JAL Capilla JAL Lomitas	Community representatives Communication with the government Lead participation processes	History of the community Main struggles Institutional interaction Sense of belonging Services provision Construction process	7 Sep 2019, 2h (Leader El Codito) 7 Sep 2019, 30m (Leader El Codito) 15 Oct 2019, 30m (Leader El Codito) 14 Feb 2020, 1h (Leader El Codito) 1 May 2020, 1h (Leader El Codito, online)
Researchers	6	Los Andes University Javeriana University National University	Document processes Housing studies	History of the eastern hills Informal housing in Bogotá Construction processes Legalisations	9 Jan 2019, 2h (Rafael Mendez) 16 Jan 2019, 30m (Maarten Goossens) 16 Jan 2019, 30m (Eduardo Mazuera) 17 Jan 2019, 30m (Olga Ceballos) 17 Jan 2019, 30m (Juan Yunda) 30 Jan 2019, 30m (Carlos Torres)

Each article also involved the analysis of subsections or communities within the eastern hills, so it was necessary to spatially delimitate every single case study. Although most of the geographical information was available through physical maps, shapefiles allowed a greater accuracy and offered the possibility to analyse multiple variables in one single map. Cadastral data, socioeconomic surveys and policy documents for the eastern hills were openly available as ArcMap shapefiles or other GIS resources. ArcMap was selected -along with numerous spatial analysis tools- for integrating several spatial variables to the existing qualitative analysis. The three papers defined some areas of analysis and then determined several characteristics on

ArcMap such as the dimensions, number of housing units, building floors, patterns of land ownership, etc. The databases were available online through the open data portal of the Bogotá government. Beyond this point, qualitative methods were applied to respond to each research question independently.

The first article mostly regarded spatial characteristics that were documented through field visits. This allowed the identification of morphological and physical characteristics of informal units throughout the eastern hills. The second article aimed to illustrate the construction, promotion, and demolition process of typical informal villas. Hence, it used a combination of analysis of documentation (public records, media, newspapers, etc) and unstructured interviews with stakeholders that were involved in the development of each housing unit. Finally, the third article followed a similar approach as it addressed issues related to documentation and policy changes, but also included a second component of stakeholders' perspectives that were unveiled through site visits and interviews. Ultimately, the use of a case study analysis allowed the intersection of information from different origins. This obeyed to the nature of the phenomenon analysed, which involved several types of data framed under different spatial conditions. The wide selection of methods promoted a more integral vision on informality which allowed to include diverse and often conflicting perspectives on the same issue.

Since this thesis approach is based on the application of several qualitative research methods, it is key to acknowledge the effects of the positionality of the researcher on the field of study. As a Colombian student, who has lived in Bogotá during a large part of my life, it was unavoidable to have direct contact with the eastern

hills. Although there are many settlements in the eastern hills, most of Bogotá's residents do not live near these areas, in which I include myself. Despite my condition of local, I must also acknowledge that I am a non-resident, which makes me an 'outsider' to the communities within the hills. However, this was not a hindrance to develop trust and gain access to internal information. Instead, my identity as an outsider showed to be flexible and 'liquid' as it progressively transformed with the increase of contact with members of communities of the hills (see (McNess, Arthur, & Crossley, 2015) for shifting identities in social research methods). After a few meetings, I was certainly welcomed in the local communities who made me part of social gatherings that were a privilege of insiders. This provided certain advantages since there were no cultural or language barriers to overcome. Socio-cultural proximity allowed me to approach several community leaders and residents in the local language and even be part of events within their social circle. This provided a relaxed environment that certainly was key to have a close look at sensitive topics such as corruption, informal practices, or clientelism. Further, it reduced the distress and suspiciousness that could bring an outsider researcher to a completely new community. This helped to reduce the boundaries between my position as an 'insider' and 'outsider'.

Not only local communities were interviewed but also planners, officers, and NGOs representatives. Regarding this group, my condition as a local urban planner was an asset to gather the participants of this study as some of my connections had direct or indirect contact with the field of study. This was the departing point of a snowball sampling technique that allowed me to get progressive access to people and information. For instance, interviews with officers of the planning department and

other institutions were not always publicly available, but only through specific contacts was possible to obtain this permission.

My positioning was not only affected by the condition as a local but also by the methods employed in this thesis. The use of a case study methodology contributed to shifting the outsider positioning to a more insider perspective (Milligan, 2016). This means that the degree of involvement with the communities and stakeholders was constantly growing to the point of offering certain viewpoints and information only available through an insider. This method enhanced a trustworthy relationship with some of the participants who were able to share with me more information than I was expecting at the beginning. This changing position is well documented in social research methods as it allows to go deeper into the field of knowledge and is one of the main advantages of case study research (Milligan, 2016). For instance, I was able to visit more residents once I got to know one person or household as they kindly introduced me to other members of the same community.

Finally, this case study fieldwork offered me the possibility to challenge my preconceptions on this topic. As a non-resident of the eastern hills, my initial thoughts about the reasons for the spread of wealthy informality were related to profit and speculation, unlike the poor who had no other choice. These two hypotheses demonstrated to be partly wrong. Even if underprivileged communities in the eastern hills had no choice but to occupy these areas to guarantee shelter for their families, it is also true that some residents looked for opportunistic chances to buy cheap land and develop informally to make profits – in rich and poor communities-. Moreover, I was confronted with the reality that several residents were often defrauded by informal

developers or were oblivious about the regulations. The case study methodology proved to be useful to give an in-depth knowledge of the situation and dismantle the prejudices and bias from my personal experience. Instead, it was a learning process from the experience in the field that allowed to prove some ideas I had before but also led space both for learning and verification. Overall, the process of knowledge construction and in-depth analysis from inside and outside perspectives are certain advantages that a case study research method provided to this thesis.

5.1. Limitations

This thesis was developed in a timeframe of three years, which was challenging for conducting several case-studies but sufficient to describe thoroughly informal constructions in one single location: the eastern hills. This is unlikely an isolated case in Latin America, but the tight schedule was not enough to cover other locations that might be relevant to analyse. The eastern hills might be pertinent to exemplify Latin American gated communities as they are the home of many of these communities in a sparsely populated territory (see article 1). However, informality may not only emerge from land-use regulations, as it happened in the eastern hills. Informal housing may be delimited by other actions such as unauthorised extensions, property transfers or subdivisions. This was not the focus of this thesis and further studies could analyse other aspects of the regulatory framework that may originate informality.

One of the most significant limitations of this study was related to the lack of available information. The rich in Colombia, as well as in many other countries, live in exclusive and isolated communities where access is mostly restricted. It was required

to have previous authorization to physically access most of their neighbourhoods and interview residents. Due to the limited timeframe of this study, it was not possible to access to all the informal settlements of the rich in the eastern hills, but there were chosen a few representative ones. The selection of critical cases instead of samples or extreme cases was key to identify underlying characteristics of the phenomenon and some patterns that may be applied even beyond the eastern hills. The opportunity to explore one single case study allowed to generate a more in-depth knowledge in which it was possible to describe thoughtfully the phenomenon, its causes, and actors. Furthermore, since the population objective (the urban rich in the hills) were hard to reach, this case study was strengthened by using multiple sources of information. Therefore, online information (blogs, media, newspapers) and public documents allowed to complement interviews and often uncover other issues that were not possible to witness first-hand.

5.2. Further Studies

Finally, this study addressed some gaps regarding informality of the rich but still there are missing important aspects of this phenomenon that may lead to further studies. The first article developed a method to identify informal villas, however, the lawfulness of each housing unit requires the analysis of construction permits and titles case by case. This was nearly impossible as there were identified more than 1000 villas in the eastern hills' original borders. Time was certainly a limitation, but further studies could contrast the existing data against planning permits and may also study the construction patterns of these villas. Informality has several shapes, which was

confirmed during the fieldwork as it was noticed that unauthorised construction was not the only existing unauthorised practice. New studies may focus on the existence of unauthorised housing extensions, alterations, and subdivisions. For instance, the study of housing extensions may address the characteristics of incrementality and progressivity, which are some of the most widely examined features of housing informality. These are advantages of informal housing in the case of the urban poor but are almost completely ignored in the case of rich citizens, although both communities are certainly benefited. This may also help to understand informality as a crosswise social practice instead of a strategy limited to the urban poor.

Article 2 was focused on the public production of informality, even though it also marginally described the role of the private and non-government sector. According to the findings, stakeholders belonging to these sectors played a major role in the configuration of the three pathways of informality. This included the active intervention of NGOs and community organizations such as neighbours associations, or in the case of Colombia, Community Action Boards. Further studies may address the role of these institutions and focus on the non-public production of informality.

Article 3 addressed the issue of justice of two communities within the eastern hills. The use of a case study methodology allowed the triangulation of interviews with documentation regarding institutions and practices that are common to several settlements in the hills. The use of qualitative interviews and site visits allowed to evidence other problematics such as gentrification processes through informal housing and the expansion of informal housing to smaller municipalities in peri-urban areas of

Bogotá. These issues could be explored in further studies in Bogotá and even considered for a cross-country comparative study in settings beyond the eastern hills.

Finally, this thesis evidenced that the state is not the only institution capable of the use of planning. This confirms the findings of Roy (2005) as citizens, the private sector, community organizations, and NGOs also have agency and constantly influence formal planning practices. This thesis went further and introduced the role of informal institutions, which are often overlooked. These institutions proved to be key to the development of legalisations in rich and poor communities. However, it is understudied their role in other processes such as housing financing, construction or even in the enforcement of the law. Therefore, as the state is not the only player in informal housing – for the rich and the urban poor-, the role of institutions, not only public but also private, formal, and informal in the production of urban spaces may open new fields of studies on informality.

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First Article

Informal Housing of the Rich: Clustering, Isolating, and Concealing in Bogotá, Colombia

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Abstract

While research has put the spotlight on analysing informality of the urban poor in the global South, informal housing practices of affluent urbanites have been almost completely overlooked. This article contributes to filling this research gap by investigating informal housing for upper-income residents in the protected forest area of the eastern hills of Bogotá. More precisely, it quantifies and localizes this phenomenon and, subsequently, it identifies its main geographical, physical, and morphological features. Three interrelated strategic features of such a phenomenon are then recognized – clustering, isolating, and concealing; these can serve as a conceptual guideline for analysing other cases of elite informality in Latin America. They simultaneously underline the existence of a connection between (upper-income) informality and enclave urbanism (gated communities, in particular).

Keywords: informality, housing, gated communities, upper-income residents, Latin America

1. Introduction: An Elephant in the Room

There is an elephant in the room of research on housing informality in the urban areas of the so-called ‘global South’: informality beyond poverty. Although informality is recognized as an ordinary, often mainstream, way of building and inhabiting many Southern cities, research and policy almost always connect informal practices to a specific portion of the urban population, that is to say the needy. Low-income informal settlements are clearly quantitatively predominant and represent one of the main challenges of urbanization (and urbanism) in the global South. However, informal practices are not unknown in middle- and upper-income areas and, despite being quantitatively less relevant than the housing informality of the poor, they have a fundamental epistemological value. In fact, their analysis allows us to step out of the tunnel of viewing informality as univocally and necessarily embedded in a specific social condition (i.e., deprivation) and, therefore, related to a specific social actor (i.e. the poor), thus unveiling the complex causes of informal practices beyond economic hardship and the varied set of actors which exploit informal domains to reach their aims.

The fact that informality in Southern cities does not characterise only poor neighbourhoods has been recognised by some authors (e.g. d’Alençon et al., 2018; Banks et al. 2020; Moatasim, 2019; Resnick, 2015; Turok, 2016). Despite this, housing informality beyond poverty remains scarcely theorized and empirical studies are extremely rare (Thirkell, 1996). Within this framework, this article aims to contribute to filling the research gap on elite housing informality by conducting a detailed empirical investigation centred on a section of Bogotá, Colombia, specifically the

protected area of the eastern hills of the city. The main goal of this research is to quantify and localize such a phenomenon and to identify its main geographical, morphological, and physical features, thus enriching primarily our understanding of the varied forms of housing informality in Latin America, but also pushing research on gated communities in the region to consider their potential informal nature.

This article is divided into seven sections. The next section introduces the question of housing informality beyond poverty (and elite informality, in particular), while the subsequent section is dedicated to an overview of both urbanization patterns in Bogotá (amidst informality and gated communities) and the regulatory framework of the eastern hills. The fourth section describes the research methods adopted, while the fifth one presents and analyses the results. Following this, a discussion on three constitutive, strategic features of elite housing informality in the eastern hills of Bogotá is developed, together with a reasoning on the relevance of such a case for a finer understanding of enclave urbanism (and gated communities in particular) in Latin America. The final section concludes this paper.

2. The Neglect of the Elite Informality in the Global South

By housing informality, we can identify dwellings that, among other features, are built, traded, or used in violation of some formal procedure or rule in force in a specific place and time, such as building regulations, land use planning requirements or property rights. Although such a definition of housing informality does not imply a necessary relationship with a specific social condition, in the public and scholarly debate informal housing is associated mainly with the urban poor (in the global South).

This is (partly) justifiable in the light of the spread of informal housing within this group. However, if a clear *factual correlation* between poverty and housing informality exists, such a correlation has often been implicitly understood as implying a *quasi-univocal causal relationship* between the two elements. The simplistic equation between informality and poverty has many negative consequences, including obscuring the fact that informal housing is a crosswise social practice which can be (and is currently) engaged in by people of any social condition to meet their goals – including wealthy people (Banks et al. 2020).

The scarcity of theoretical and empirical research on the informality of upper-income households (Thirkell, 1996) cannot be traced back only to the fact that housing construction for the wealthy represents a marginal percentage of the total housing stock in the cities of the global South and that a large proportion of these wealthy constructions complies with planning and building procedures and rules (Peralta and Hofer, 2006). This shortcoming may also result from ‘the dominance of particular epistemologies and methodologies within urban studies, [which] reveals the limits of knowledge about urban informality, based as it is on certain privileged circuits of knowledge production which frame urban informal settlements in particular ways’ (Lombard, 2015, p. 85). Such epistemologies are related both to the tenacious (albeit often subterranean) persistence of a sort of ‘myth of marginality’ and to the historical preference of the social sciences for investigating the poor instead of the rich. Not even the postcolonial turn in urban studies has managed to change this situation structurally, so a sort of dualistic urban Orientalism still dominates the debate (Angotti 2013) – most definitely the policy debate, but also the scholarly debate to the certain extent (Cortés

Morales, 2013). The result is that we really know very little (almost nothing) about the informal housing practices of the rich.

Recent research on urban informality in some Western countries has begun to reveal the existence of diverse illegal practices beyond the urban poor – including informal housing among upper-income urbanites (see Chiodelli 2019; Mukhija 2014). Such research has shown that this kind of informality is the result of a complex assemblage of economic and cultural factors (such as the desire for the self-representation of power and superiority as regards the law or the attempt to exploit regulative shortcomings and loopholes economically, to their own advantage) that interact with precise institutional features, such as the structural inability of public bodies to implement land use and building rules fully and homogeneously, both for operational and political reasons (Chiodelli et al., 2020).

The view of housing informality as being correlated necessarily to poverty has been challenged also with reference to cities in the global South. In general terms, two main strands of research can be identified in connection with the relationship between informality, dominant groups and people in Southern cities. The first strand, which gained momentum through the seminal work of Ananya Roy (2005) on ‘informality from above’, has shown that informality is often institutionally constructed, shaped and exploited by bureaucratic apparatuses, political actors and socioeconomic elites (Bhan, 2016; Watson, 2009; Yiftachel, 2006), which usually play with the regulatory and policy framework and exploit it at their own benefit (Chiodelli and Tzfadia 2016; Datta, 2016). In fact, in many cases, the politico-bureaucratic elites exploit the definitional power of their regulatory acts to ‘construct and reconstruct categories of legitimacy and

illegitimacy’ (Roy, 2005: 149; see Azuela et al., 2017 for several crystal-clear examples about the use of the eminent domain in Latin American countries to suppress property rights of the poor in favor of promoting segregated development projects for the wealthy). But public bodies and officials have been found also to employ directly informal or extralegal means and processes in developing cities in the global South – almost always to the benefit of dominant groups (see, for instance, Yiftachel 2006) – or to legitimize selectively real estate development projects produced illegally by powerful actors (Ghertner 2015; Moatasim, 2019).

The second strand of research on wealthy informality in Southern cities emphasizes the use of urban discourses on informality by elite actors to promote or justify certain types of urban development. In these discourses, informality become ‘a signifier that serves to demarcate a social distinction’ (Müller and Segura, 2017, p. 160). Informality turns into a synonym and a marker of disorder, decay, lawlessness, violence, and ‘third-Worldness’. As such, it becomes a weapon that socioeconomic elites – but also middle-class citizens (Fernandes 2004) – mobilize strategically for the justification of urban interventions that are presented as vectors of modernization, urban renewal, development, and prosperity for all. Such interventions take different forms – from the most blatantly regressive (such as gated communities) to the apparently more progressive (such as urban greening projects) – but all of them, inevitably, benefit almost exclusively upper- and middle-income groups, while aggravating the spatial and social marginalization of the poor (see, for instance, Anguelovsky et al. 2019a and 2019b and Wigle 2014 on the relation between urban greening interventions and gentrification).

What remains comparatively unexplored in this framework are the specific forms of elite housing informality (in terms of physical and morphological features, as well as reasons for their emergence and processes that make them possible), in particular when informal housing is the result of the individual actions of landowners for their own residential use and when it is not subject to any legitimization processes (for instance, through a building amnesty procedure), thus remaining in a state of informality.

Our research on Bogotá contributes to fill this gap from an empirical viewpoint, in the belief that where informality is an ordinary way of living and building the city for the poor, even some middle- and upper-income urban residents must resort to illegal building practices, encouraged not only by the atrophy of land and building laws, but also by the tendency of public authorities to focus repressive actions on marginalized and politically uninfluential subjects.

3. Contextualization: Bogotá and the Eastern Hills

3.1. Urban Development in Bogotá, amidst Gated Communities and Informal Settlements

Bogotá, the main economic and industrial centre of Colombia as well as its capital and largest city (it has around 10 million inhabitants), is profoundly spatially divided and segregated along social lines. The widespread urbanization that has characterized the city since the second half of the 20th century witnessed the development of upper-income groups being directed mainly towards the north, near the base of the mountains. Here, in line with several cities in Latin America, urban

development mainly took the form of *conjuntos cerrados* (Aliaga-Linares and Álvarez-Rivadulla, 2010), that is, closed condominiums where localization, physical conformation and security devices offered a sense of security, exclusivity and privacy. The western and southern areas of the city, on the contrary, were occupied by lower-income neighbourhoods, which were often informal in nature (Jiménez and Castillo, 2009).² Middle- and lower-middle-income people are located mainly in the central sectors of the city. Such a clearly divided urbanization pattern was destabilized by some planning and infrastructure decisions in the last two decades of the 20th century (Manzano, 2015). In particular, the construction of the *Avenida Circunvalar* [ring road] in the 1980s fostered the urbanization of the eastern hills of the city (Ruiz, 2014). The *Avenida* opened the gates to several luxury developments in this previously difficult-to-access area (Everett, 2001), the attractiveness of which rested on both its close proximity to the central financial district and its high environmental quality (the eastern hills have spectacular views over the city and enjoy high-quality air due to the large forest nearby). Simultaneously, the *Avenida* – together with the lack of controls on land use and building activities – paved the way for the informal settlement of low-income residents in this area (Rojas, 2015).

This kind of urban development, characterized not only by extreme polarization but also by deep and increasing fragmentation of the urban fabric, is not specific to

² Informal settlements in Bogotá – which currently occupy around 20% of the urban land in the city (Torres, 2007) – are mostly located on private land. On the contrary, land invasions and the consequent construction of squatted informal settlements have been historically infrequent (Camargo Sierra and Hurtado Tarazona, 2013).

Bogotá. It has fundamentally marked the development patterns of many cities in Latin America in recent decades (Jackiewicz and Bosco 2020). ‘Enclave urbanism’ (Angotti 2013), which produces the deliberate fragmentation of urban space into homogeneous and separated areas, is not only the result of the self-segregation and fortification action of the rich. It is the result of a more complex process that involves different social groups and refers to several urban functions: ‘Middle class neighbourhoods are walled off and even marginal quarters tend to construct fences. Walls and gates protect leisure clubs, shopping centers, office towers, business districts, industrial estates, and even some quite normal public streets’ (Borsdorf and Hidalgo 2016, p. 23). Despite this, the gated communities of privileged groups can be considered the most extreme materialization of enclave urbanism in Latin America. As such, they are the subject of a large amount of research, which has highlighted both their high typological diversification (Kostenwein, 2021; see also Grant and Mittelsteadt 2004) and variety of causal factors (although gated communities are always created to also guarantee protection from a ‘dangerous social environment’, they are deeply intertwined with social, economic, and cultural motives as well; Caldeira 2000).

In this vast landscape of research on gated communities (in Latin America and beyond)³, there is generally no mention of the fact that some of them may be informal and that their locational and morphological characteristics may also be the result of this specific condition of informality. This is exactly what happens in the eastern hills of

³ On Latin America, see for instance: Álvarez-Rivadulla (2007); Borsdorf et al. (2016); Salcedo and Torres, 2004). For a global perspective, see Atkinson and Blandy (2013).

Bogotá, a city in which gated communities have become the prevalent system of urbanization (Kostenwein, 2021), without the informal nature of some of them ever being investigated.

3.2. The Troubled Regulatory History of the Eastern Hills

The staggering urban growth of Bogotá during the second half of the 20th century was almost completely unplanned and ungoverned by public authorities, which proved to be incapable of promoting any effective action to control and guide it (Guzman, Oviedo and Bocarejo, 2017). This is epitomized by the troubled regulatory history of the eastern hills, a large mountainous area covered by forest, forming the natural, eastern boundary of the city. In 1950, the Bogotá Planning Administration approved the first master plan of the city, in which the eastern hills were identified for the creation of a natural reserve (Manzano, 2015). However, this decision was not technically managed and legally formalized for 20 years. Only in 1977 was the reserve created by the Ministry of Environment (INDERENA, 1977), although neither proper cartography nor precise physical delimitations followed this act (Rojas, 2013). In the 1980s and 1990s, several public decisions eroded the reserve area. For example, in 1990, the City Council approved Agreement 6 (Concejo de Bogotá, 1990), which amended the surface of the reserve by subtracting some portions for building low-density suburbs. Two similar decisions were promoted by the Regional Environmental Authority (CAR), which, in 1985 and 1993, decided to subtract some zones from the original delineation of the reserve, paving the way for new housing developments (Rojas, 2013). Only in 2005 did the Ministry of Environment create a complete,

detailed cartography of the original reserve and register its limits in public and private land titles. During this process, the Ministry realized that more than 519 hectares were already occupied by housing developments (MinAmbiente, 2005). The status of several of these housing units was ambiguous. Many of them were localized on the western border of the reserve, in continuity with the existing urban fabric, while others were adjacent to building areas within the original perimeter of the reserve (e.g. the zones extracted by the Regional Environmental Authority in 1985 and 1993). In a large number of cases, these housing units had obtained a regular building permit from the municipal planning office, which, for decades, had released new permits for building within the perimeter of the reserve – it is not clear whether this was conducted unwittingly, as a consequence of the ambiguity of the geographical limits of the reserve, or purposely, for instance after the payment of a bribe. Therefore, the Ministry established the so-called *Franja de Adecuación* [Adjustment Strip], matching the main occupied areas (mostly on the western border of the reserve), where urban development was legalized (see Figure 10). The rest of the original reserve was considered to be protected land, and new constructions were prohibited (MinAmbiente, 2005). However, in 2006, the Regional Environmental Authority amended the Ministry's plan to include a new zone, the *Zona de Recuperación Ambiental* [Environmental Rehabilitation Zone, ZRA], in which existing buildings had the potential to be legalized if they had formerly obtained legal building permits (CAR, 2016). Different from the Adjustment Strip, which is constituted by a contiguous surface, the ZRA is composed of several areas with a capricious shape, which makes its understanding and enforcement harder (see Figure 10). In 2013, the State Council tried to sort out the legal

mess about the reserve. It stated the possibility to legalize only the constructions that had obtained a building license prior to 2005 and were localized in the Adjustment Strip or the ZRA. At the same time, it prohibited any new construction inside the original area of the reserve (Rojas, 2013).

The legalisation of building according to the State Council decision was not an automatic and straightforward process since thousands of permits needed to be verified by planning offices in the light of the new rules. Currently, not all legalizable constructions have been legalized, and several controversial cases have yet to be solved, so the hills are nowadays a territory in which different shades of (il)legality appear within a few steps of each other.

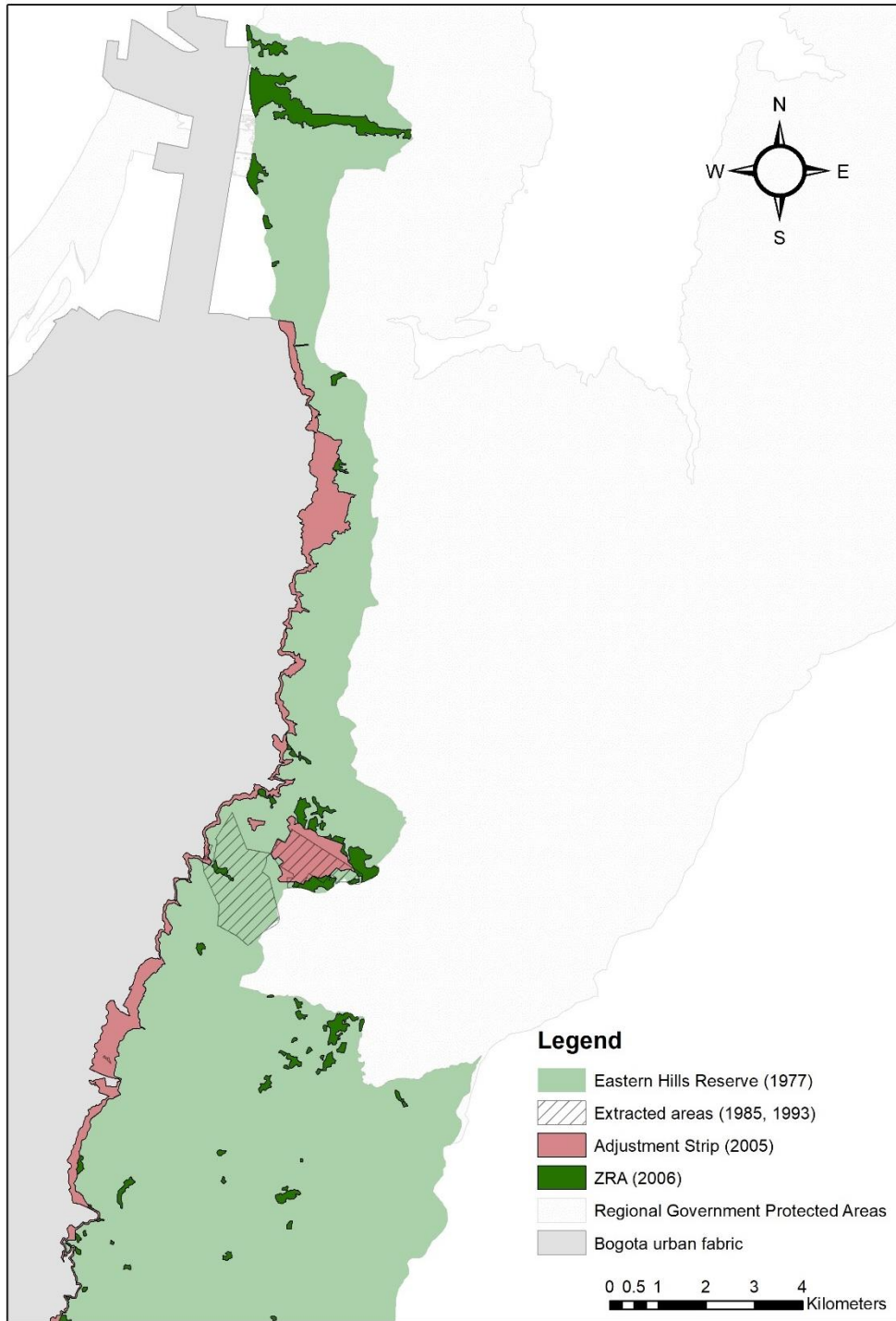


Figure 10

The Normative History and Layering of the Eastern Hills Reserve. Source: Authors

4. Research Methods

The first step of our research consisted in identifying upper-income housing units within the urban fabric. This operation was made possible by the existence of the *estratificación socioeconómica* [socio-economic stratification] system in Colombia. This is a proxy created by the national government in 1983 for classifying households according to their social status; since then, it has been used as a tool to assign subsidies (e.g., subsidies for utility bills) and to tax households (Hernández, 2016). The system infers the social status of a household from the features of its house, mostly the physical characteristics of the building (e.g., its size and facade materials) matched with its neighbourhood features (e.g. the road size, green areas, facilities, level of exclusivity). It identifies six strata. Stratum 6 represents upper-income households, that is the best-equipped houses within exclusive neighbourhoods (Hernández, 2016), which, in 2014, comprised around 1.4% of all the housing units in Bogotá (Sepúlveda, López and Gallego, 2014). Despite some shortcomings (Yunda, 2019), the socio-economic stratification system is an acceptable method for identifying upper-income households and houses. Against this backdrop, the 2020 Bogotá cadastral database was analysed with appropriate software to visualize all stratum 6 housing units on a georeferenced map of the city.

The resulting map was then juxtaposed with the planning overlays containing the legal limits of the reserve and all its ‘exception zones’ (i.e. the Adjustment Strip and the ZRA), as defined by the State Council’s decision in 2013. According to the latter, a housing unit located within the original perimeter of the reserve can be legal (or legalized) only if it sits within the Adjustment Strip or within the ZRA *and* obtained

a building permit before 2005. This is the reason why we identified, through historical satellite images, the buildings in the Adjustment Strip or in the ZRA that were built before 2005, so they *may* have obtained a building permit before that year.

Finally, aerial photos, georeferenced images and site visits were employed to collect information on the physical and morphological quality of the housing units and settlements under investigation.

5. Results: The Layering of Upper-Income Informality in the Eastern Hills

As shown by Table 5, a total of 1285 housing units were found within the original limits of the reserve, amounting to a total of 380,866 square metres of housing area. The average housing area is 296 square metres. Usually, one single plot of land (i.e., property) contains several housing units (four on average, with a peak of 14 units on average in the cases of premises within the Adjustment Strip) (see Table 5).

Table 5

Housing Units in the Different Areas of the Eastern Hills. Source: Authors

	Housing units (number)	Plots of land	Total property area (m ²)	Average property area (m ²)	Total housing surface (m ²)	Average housing area (m ²)	Average building height (no. of floors)
1. Within the Adjustment Strip*	875	61	765,982	12,557	261,592	299	7.18
2. Within the ZRA	233	160	1,346,386	8415	77,258	332	1.85
2.1. of which built before 2005	220	150	1,251,678	8345	71,907	327	1.84
2.2. of which built after 2005 (surely informal)	13	10	94,708	9471	5351	412	1.79

3. Excluding the ZRA and Adjustment Strip (surely informal)	177	82	17,627,858	214,974	42,016	237	1.79
Total within the original perimeter of the reserve, including the ZRA and Adjustment Strip	1285	303	19,740,227	65,149	380,866	296	2.90

* All the housing units localized in the Adjustment Strip were built before 2005; hence, they are legalizable (and have probably already been regularized).

The majority of upper-income dwellings built within the reserve are situated within the Adjustment Strip (875) and the ZRA (233). In the first case, all the housing units were built before 2005; hence, it is almost certain that they have been regularized (or are in the process of legalisation). This does not apply to all the dwelling units localized in the ZRA: 13 of them were constructed after 2005, so they are surely informal. In addition, 177 housing units located outside both the Adjustment Strip and the ZRA – which, as a consequence, must be informal – were found by our investigation (see Figure 11).

All the housing units built within the original perimeter of the reserve can be seen, from a certain point of view, as informal since they violate the prohibition to build inside a natural area. However, in some cases, this prohibition was probably not clear to the owners of these buildings and even the municipal offices, and regular building permits were released. For this reason, we will focus the rest of our analysis on the 190 upper-income housing units that are surely informal because they were constructed after 2005 or are outside the ZRA and the Adjustment Strip (we will refer to them as informal housing).

Typical informal housing units look like the villa shown in Figure 11: a building of one or two floors in height (there are some exceptions of higher-density constructions; see Figure 12), which occupies a large footprint surrounded by nature. The largest house in the reserve consists of 820 square metres within a 2.6-hectare property. This contrasts with predominantly high- and medium-rise buildings in the Adjustment Strip (7.18 floors average), which stand out from the buildings within the ZRA and the remaining reserve.⁴



Figure 11

Housing Unit in Zone 1. Source: Authors

⁴ The tallest structure in the eastern hills is in the Adjustment Strip and has 21 floors.



Figure 12

Housing Unit in Zone 6. Source: Authors

The overall spatial picture of upper-income informal housing units in the eastern hills shows that these units are mostly gathered in specific areas, so we can recognize seven main clustering zones: Torca (zone 1), Montepalos (zone 2), El Carmen (zone 3), La Calera (zone 4), El Bagazal (zone 5), Metropolitan Club (zone 6), and Teusacá (zone 7) (see Figure 13).

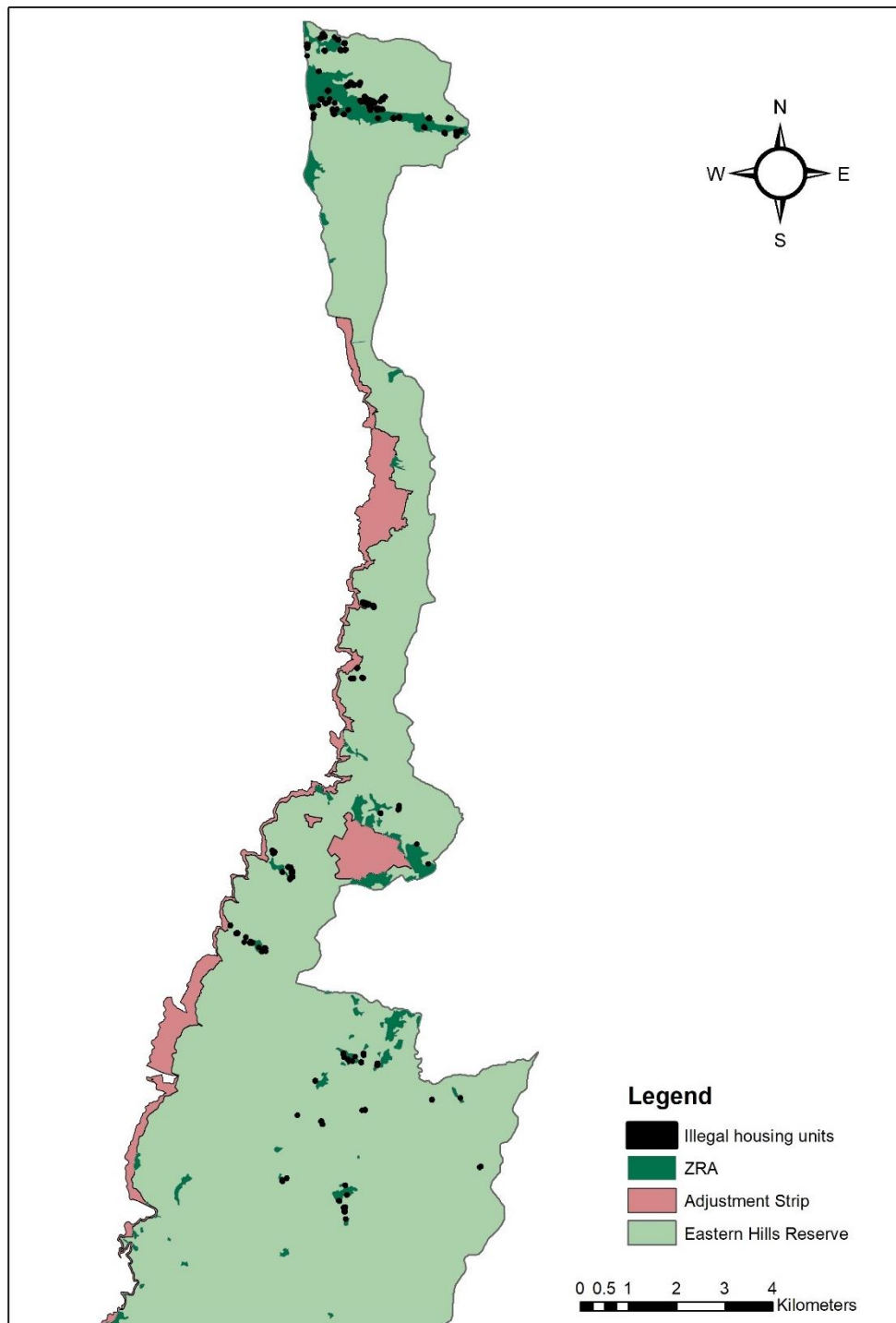


Figure 13

Upper-Income Informal Housing Units Located in the Eastern Hills Reserve, by Zones.

Source: Authors

Each zone has different characteristics both from a localization and a physical–spatial point of view (see Table 6). As regards localization, some zones are attached to (or encroach on) the existing urban fabric, so upper-income informal housing has grown out of the limits of the city in continuity to peripheral areas (in this case, the nearest settlement can be either formal or informal, upper income or low income). On the contrary, other zones are completely isolated (see Appendices A and B). Regarding physical–spatial features, all the zones, with the exception of Torca, are hidden, which is practically impossible to see from a distance, being completely covered by the forest or other settlements. It is also worth noting that the zone is accessible by public roads in only one case (La Calera), while a private road leads to the informal settlement or the house (which is usually located very far from the road access gate) in all the other cases.

Table 6

Localizational and physical–spatial features of the zones. Source: Authors

	Relationship to the urban fabric	Features of the nearest settlement	Visibility from outside	Covering element	Type of entrance
Torca (zone 1)	Attached	Formal, high income	Visible	-	Multiple private roads
Montepalos (zone 2)	Attached	Formal, high income	Hidden	Other settlement	Single private road
El Carmen (zone 3)	Attached	Informal, low income	Hidden	Other settlement	Single private road
La Calera (zone 4)	Attached	Informal, low income	Hidden	Other settlement	Multiple public roads
El Bagazal (zone 5)	Detached	-	Hidden	Forest	Single private road
Metropolitan Club (zone 6)	Detached	-	Hidden	Forest	Single private road
Teusacá (zone 7)	Detached	-	Hidden	Forest, topography	Multiple private roads

6. Discussion: The Strategic Features of Informal Gated Communities

6.1. Clustering, Isolating and Concealing

Our empirical analysis reveals the existence of some recurrent spatial and geographical patterns among upper-income informal housing units in the eastern hills of Bogotá. From an analytical viewpoint, such patterns identify three interrelated strategic features that seem to be intrinsic to the phenomenon under investigation – to its informal *and* upper-income character – and may represent a structural characteristic of this kind of informality beyond Bogotá: clustering, isolating and concealing.

Clustering. Upper-income informal housing units in the eastern hills are not located alone and sparsely distributed throughout the reserve, but tend to cluster in groups or settlements. This can be for several reasons, for instance a functional motive: clustering allows them to share the cost and use of infrastructure, such as roads and sewerage (in particular, when they have to be provided on a private basis) and expenses for services such as security and recreation. However, there is probably another reason for clustering, related to the informal character of the settlement: it increases the security of tenure in the light of the fact that an entire settlement is far more difficult to evict and demolish than a single, isolated housing unit – for both political and practical motives. The gathering in the same place of a number of affluent members of the local society – who are probably also powerful and well connected with influential public representatives – may guarantee protection from the sanctions of local authorities and, consequently, impunity for this type of transgression.

Isolating. Upper-income informal housing in the eastern hills of Bogotá assumes the form of isolated (i.e. self-segregated) settlements. This is often achieved

by remote location, within the forest, away from urbanized areas. However, there are also cases in which upper-income informal housing is contiguous to the existing urban fabric, such as in the case of Torca, Montepalos, El Carmen and La Calera. In this case, isolation is not obtained through localization, but by the physical features of the settlement, which create a private secluded enclave. Access is restricted to residents, internal workers and authorized guests, while the external borders of the property are heavily demarcated with fences, walls and CCTV cameras. As this is a shared feature of many gated settlements and condominiums across Latin America, the informal nature of the cases under investigation simultaneously takes advantage of and reinforces this characteristic. In fact, the separation from the rest of the city, which is asserted by both the restricted access to the settlements and the visual barriers from outside, becomes much more than a source of privacy and exclusivity: it is also the assurance of secrecy regarding what is taking place within the settlement in terms of construction works and poses a powerful constraint on public inspections (even public officials may need a special permit to access the settlement).

Concealing. One of the common features of all the analysed high-income informal zones is their hidden character.⁵ The concealment of these settlements is achieved in several ways. First, it can be guaranteed by their localization and morphology. Upper-income informal housing is typically low density and surrounded by large trees and green areas that disguise constructions and make their presence

⁵ If informal settlements are usually mostly exposed to the public gaze for a variety of reasons, wealthy informal settlements in the eastern hills of Bogotá are one exception to this rule of thumb. This offers an original entry point for the investigation of the relationship between invisibility and informality/marginalization (Kamalipour and Dovey, 2019).

hardly noticeable, particularly in the case of isolated settlements on the slopes of the hills, amid the forest. Something similar happens to settlements attached to the existing urban fabric: in this case, it is not the forest that conceals informal housing, but the presence of buildings in the neighbouring areas, which produce a barrier with reference to the rest of the city and make dwelling units invisible from the public road.

The building and organizational features of the settlements also contribute to their concealment. Arriving at the majority of the settlements is almost impossible without a car (public transport and walking infrastructure are inexistent in these areas) and, in many cases, the housing units can be reached only by a private road, access to which is filtered through gates and associated security controls. High fences and walls complete the ordinary picture of the external borders of these areas. Although these features are certainly common in upper-income housing – especially when it takes the form of gated communities – once again they can serve not only to ensure privacy and security, but also to prevent outsiders from detecting new unauthorized buildings and to discourage local authorities from reaching and investigating the construction works on these sites.

6.2 Bridging Informality and Enclave Urbanism

During the last decades, gated communities have become quite a popular residential option in Latin America – not only among the wealthiest households (Kriesten and Bähr, 2004; Portes and Hoffman, 2003) and not only for security reasons (Kostenwein, 2021) – so much that they are currently a main element of the urbanization processes in many cities of the region. In Bogotá, this housing model has

been promoted intensively since the 1980s, following developing trajectories similar to other Latin American cities (Aliaga-Linares and Álvarez-Rivadulla, 2010). The case of wealthy housing informality in the eastern hills of the city can be seen as a peculiar variant of such enclave urbanism, which is so widespread in the Colombian capital city. In fact, the morphological and physical features of informal wealthy settlements in the eastern hills are aligned to the characteristics of elite gated communities in Latin America (Cabrera, 2013), many of which are exclusive and inaccessible affluent green enclaves surrounded by walls and security devices, isolated from the rest of the urban fabric. What, then, is original about our case study? The answer is that it contributes to bridging two phenomena that are so central to the current development patterns of many Latin American cities: informality and enclavism. These two phenomena have almost always been studied discretely, without grasping the different possible points of connection (for an exception, see Salcedo and Torres 2004). Informality of the rich in Bogotá is an opportunity to move towards a more comprehensive and relational understanding of both informality and enclavism. For instance, the case of affluent informal housing in the eastern hills, read through the lens of research on enclave urbanism, pushes us to enrich the typology of gated communities in Latin America, also considering its informal variants. At the same time, it reinforces the idea that the proliferation of enclave urbanism may have *factual* connections with the apparently distant phenomenon of informality. These connections are not only discursive, that is, linked to the rhetoric use of informality as a signifier of disorder and backwardness in order to justify the development of gated, secluded and allegedly modern settlements for the middle- and upper-income groups (see Müller and Segura 2017). These

connections are also operational in nature: a certain settlement may take the form of a gated community also in order to camouflage its (partially or completely) informal nature – for instance, by discouraging public authorities or making inspections more difficult for them, by decreasing the public visibility of the works undertaken, and by generating a sense of self-legitimization.

7. Conclusions: Towards a More Comprehensive Epistemology of Housing

Informality

Housing informality of upper-income urbanites in cities of the global South is an overlooked research topic, the neglect of which may also be unintentionally related to the shocking magnitude of low-income informal settlements, which reclaim (and deserve) complete attention from researchers and policy makers. However, despite being neglected and comparatively less important than other forms of informality, the epistemological relevance of upper-income informality is blatant: its consideration allows a more comprehensive understanding of housing informality – of its forms, actors, causes and consequences – thus contributing to moving beyond the incorrect equating of informality in the global South to poverty. It is against this background that, in the current paper, we analysed the case of upper-income informal housing in the protected forest area of Bogotá, unveiling its magnitude together with its geographical, physical, and morphological features. This analysis enabled us to recognize three interrelated, strategic characteristics of such a phenomenon (clustering, isolating and concealing) that, beyond depicting upper-income informal housing in the eastern hills of the Colombian city, can serve as a theoretical guideline for the analysis

of similar cases in other Latin American cities. In fact, such strategic features seem to not be fortuitous, but structurally embedded in their informal and upper-income nature. At the same time, our research underlines the existence of a connection between two of the structural features of current urbanization patterns in Latin America: informality and enclavism. This connection, which materializes empirically in the informal gated settlements in the eastern hills of Bogotá, is worthy of further analysis, in light of its relevant epistemological implications for reaching a more accurate understanding of the constitutive features of contemporary Latin American urbanism.

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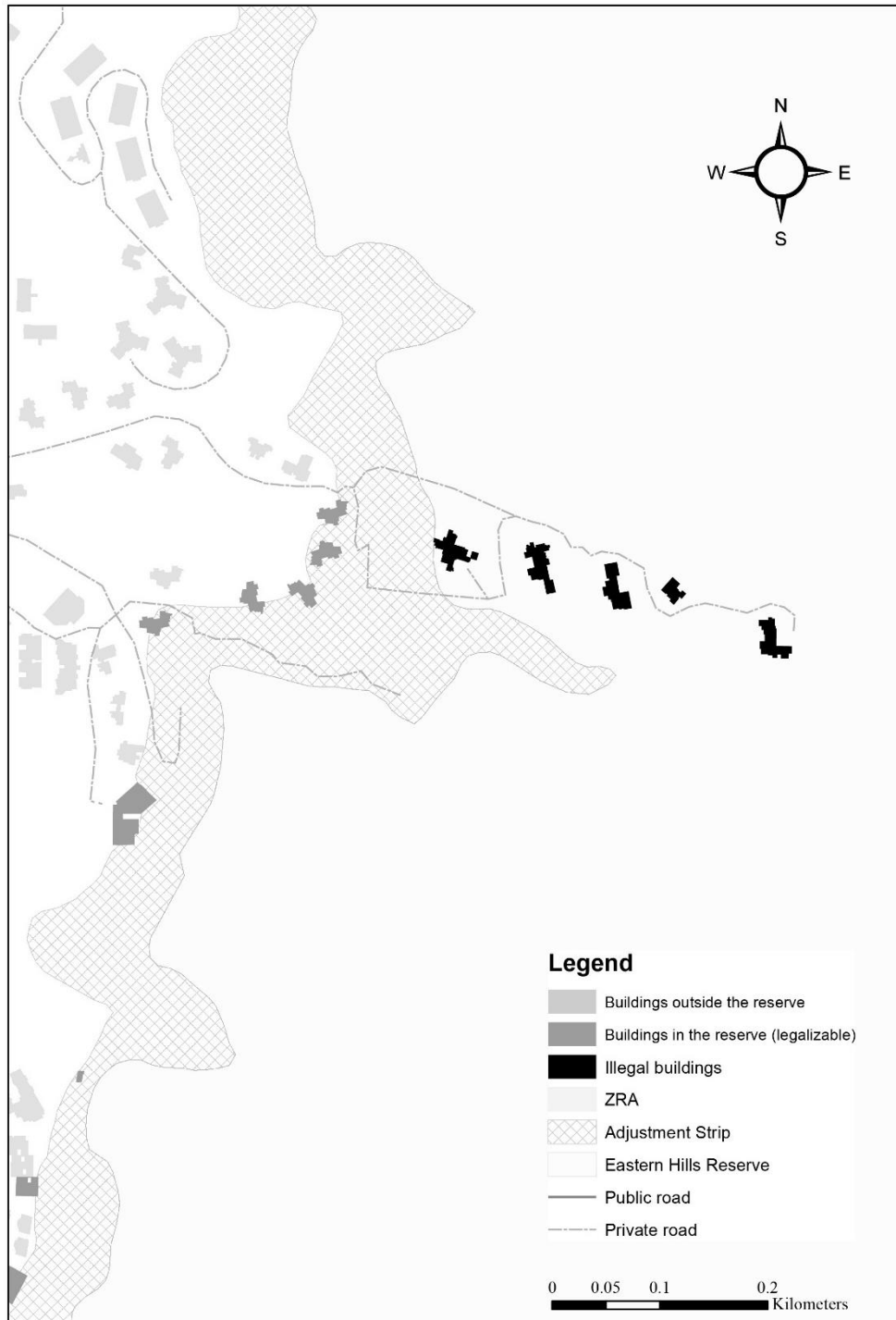
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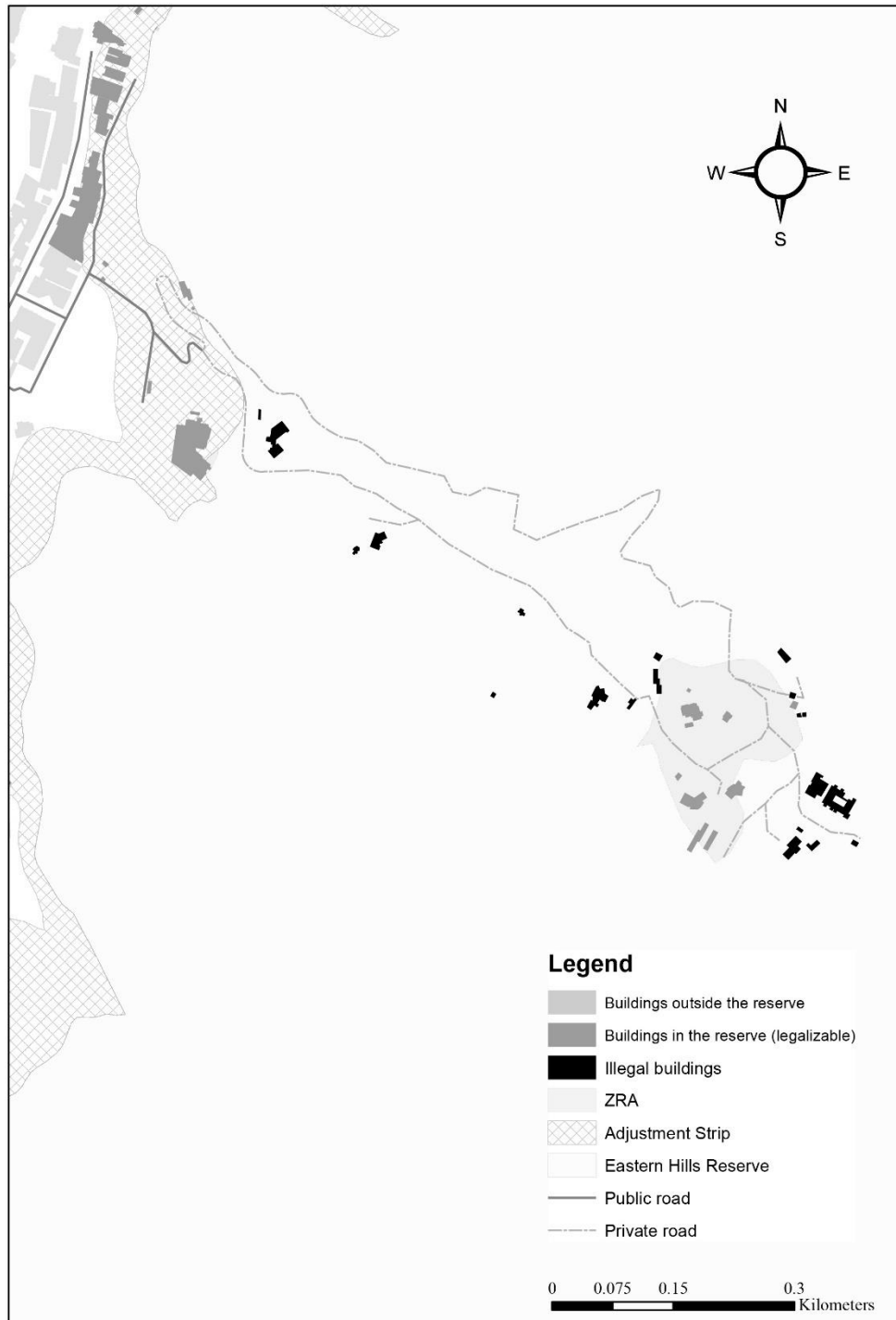
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Appendices



Appendix A. Zone 2 (Montepalos). *Source: Authors*



Appendix B. *Zone 6 (Metropolitan Club). Source: Authors*

Second Article

Formal Production of Informal Housing for the Rich: Pathways of Housing Informality in the Eastern Hills of Bogotá

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Abstract

Housing Informality in Bogotá is widespread, and the private occupation of the eastern hills protected areas is certainly not an exception. Despite the prevalent dissemination of luxurious houses in the hills, academia and local authorities have overlooked the phenomenon. This article addresses this knowledge gap by studying the role of public agents in the production of informality. Through interviews, maps, and policy documents, the stories of three informal villas –or pathways of informality–were reconstructed in this article as archetypes of the larger phenomenon. Public institutions demonstrated colliding internal agencies and multi-level fragmentation that produced flexible regulations adapted to the construction practices of the wealthy. These features were fundamental to create spaces of exception for the rich in the eastern hills and may be shared by other informal settlements in the global South.

Keywords: Informal housing, informality of the rich, agency, housing informality, formal institutions, Latin America

1. Introduction: The Ambiguous Position of the State towards Informality of the Rich

No matter how industrialized, wealthy, or prosperous a country is, urban informality is present in the most varied settings. Despite its ubiquity, academic studies have systematically confined urban informality to certain settings or outcomes, which are usually the living and working spaces of the underprivileged in the global South (Pow, 2017). Nevertheless, recent discussions on informality included previously ignored agents, such as privileged groups who are systematically breaking the law often unnoticed. The wealthy, although immensely less than the urban poor, tend to be hidden from public opinion (Banks, Lombard, & Mitlin, 2020). This poses a challenge to informality studies of the rich and, to some extent, explains why their practices have been far less studied than those of the informal urban poor (Lai, 2015). Housing informality has been explored in myriad contexts; however, few empirical studies are addressing the most privileged groups. Several expressions of this elusive phenomenon have been typified as rich squatting (Lai, 2015), unauthorized constructions (Thirkell, 1996; Varley, 2013), and elite enclaves (Pow, 2017). These cases illustrate several outcomes of housing informality in wealthy groups but also show substantial flexibility of the regulatory framework towards the informal practices of elites. Despite research advances on the built outcomes of this phenomenon, there are still significant gaps in the institutional causes of informal spaces of the rich.

The responsibility for engendering informal spaces has been often attributed to the state. Housing informality, in a general sense, is characterized by a lack of formality, or the unrecognition of legal processes and rights that are needed to deliver

housing (Datta, 2016)⁶. This definition puts a predominant focus on the state as it creates regulations but also establishes exceptions and suspend the formal order. In other words, the state is also able to define the boundaries of informality (Roy, 2005). ‘Elite forms of informality’ use of modern neoliberal regimes to make concessions and policy changes to accommodate the wealthy in global cities (Roy, 2009). This minority enjoys privileged regulatory regimes through ‘exceptions’ and ‘spatial fixes’ to protect and ensure private wealth growth (Pow, 2017). These strategies are aimed to capture capital in a physical space (i.e., in the form of real estate), but also secure and ground the highly mobile capital of the rich - for instance through foreign investment policies- (Harvey, 2001). Exceptions promoted by the public sector can deregulate otherwise inflexible regulatory regimes to create exclusive opportunities for the investment of wealthy groups (Ong, 2006). This way, the state is willing to launder the ‘grey’ spaces of the rich, even though this preferential treatment is not officially declared (Yiftachel, 2009). Thus, the state can create ambiguous regulatory regimes that produce informal spaces in cities to favour the accumulation of wealth for the rich.

Literature is scarce on the role of public institutions in informality beyond the realm of poverty. This is probably due to a minor quantitative significance of this phenomenon -especially in cities of the global South- but also to a marked preference of researching the practices of the urban poor (Haid & Hilbrandt, 2019; Recio, Mateo-

⁶ Even though some definitions of housing informality equate this concept to the lack of services, infrastructure, or formal regulations (UN-Habitat, 2004), informality does not imply the inexistence of planning processes. In fact, informal settlements do count with a logic of planning that comes both from citizens practices and the state action (Alsayyad & Roy, 2004).

Babiano, & Roitman, 2017). This article addresses this gap by studying three representative cases of informal wealthy housing in the eastern hills of Bogotá. They embody different expressions of the same phenomenon in the hills and aim to unveil how public institutions have produced informal spaces, often in complicity with private agents. Furthermore, the case of the eastern hills may embody structural features of informality of the rich that could be found in other contexts. For this purpose, this article is structured into five main sections. The following one reviews the causes of urban informality in privileged contexts, then it describes literature on formal institutions and their role on informality. The next section contextualizes the case study of informal housing in the eastern hills of Bogotá and how different agents have shaped the stories of three informal villas in the protected areas. Finally, the last two sections explore several modes of legitimation of informality and conclude on structural features of public institutions that may explain the formal production of informality of the rich beyond the context of the eastern hills.

2. Housing Informality of the Rich

The boundaries of formality/informality are crossing the dichotomy of poverty/wealth (Mukhija & Loukaitou-Sideris, 2015). This shift creates new settings for the study of informality and shows evidence of the powerful influence and participation of elites in this phenomenon. The increasing economic and political power of the wealthy has been considered one of the most important causes of the upsurge of informality. Policymakers and government officials have shown to be keen to follow the requirements of the rich, while the underprivileged are not only

marginalized from economic opportunities, but also from decisions concerning how the cities are planned (Hay, 2013). The urban poor have a limited agency to redefine or cross the boundaries imposed by regulatory frameworks. Lai (2015) on Hong Kong squatters concluded that both the rich and the poor were engaged in this activity. Squatting of the rich had a preferential treatment by the state as it created some innovative policies only to formalize wealthy residents that did not apply for the poor in Hong Kong. This predilection for informality of more privileged groups is not unique as it has been observed also in other contexts worldwide (Ghertner, 2011; Kapetanović & Katuriđ, 2015). Thus, formal institutions in some countries seem to be creative and flexible with informal practices of the rich but not that often with those of the urban poor.

Economic inequalities are also reflected in the power to negotiate and make decisions, which will determine who are the ‘winners’ and ‘losers’ of informality. Those winners are generally counting with close political ties with the government and benefit from the ‘accumulation, political support, appropriation, negotiation or avoidance around excessive or inconvenient legislation’ (Banks et al., 2020, p. 10). The so-called winners and losers of informality may have different goals with informality but, ultimately, they seek for some autonomy from regulations. However, there is a substantial difference of this desired autonomy for each group. While the urban poor autonomy challenges the authority, the rich seek to maintain their dominant position in the status quo, since they are usually close allies or part of the state (Bayat, 1997). Wealthier households have often more confidence in the informal housing market than the urban poor as the former have stronger connections with the political power, which

allow them to secure their land and avoid evictions (Thirkell, 1996). Since wealthy groups are often intricately connected with the state and formal institutions, they are likely involved in the definition of the boundaries of informality through planning laws.

Informality exists in elite spaces and the law certainly shapes their characteristics (Varley, 2013). Following this line of thought, instead of operating outside the law, informality acts in the light of norms (Chiodelli & Moroni, 2014). Informality, rather than an alternative to planning laws, can be considered as an intended or unintended effect of it (Rosa, 2016). This means the law has a causal effect on informality and private agents often operate by following discretionally some regulations, so they expect to be assimilated into the formal order in the future. This is not only valid for the urban poor, but also the elite, as the perception of the law shapes the definition of practices and strategies of different agents. For instance, informal subdivisions and constructions in Mexico City were promoted by prominent figures of the government on communal-use land known as 'ejidos' (Varley, 2013). This practice was institutionalized as more powerful and wealthy actors were involved in new land purchases. However, this institutionalization obeyed to the fact that constructions followed certain rules and formal procedures. Hence, the wealthy were also forced to incorporate parts (although not all) of the written law (de la Cueva, 1987). Wealthy groups may use multiple forms of legitimation of informality, including political, bureaucratic, or community-based. While the urban poor use precarious means that may substitute the formal law only within a community, the most privileged use powerful political or bureaucratic strategies that aim to convince national authorities that their planning practices are legal.

Rich households may have a variety of reasons to build unauthorized settlements, however, it is unlikely that they use informality as a survival strategy such as the urban poor. Camargo and Hurtado (2013) argued that an important percentage of informal settlers can cover the costs of a formal housing unit. This means there are other reasons to choose the informal market beyond economic reasons such as flexibility, progressivity, larger lot sizes, a central location, or fewer controls. Aligned with this vision, Lai (2015) stated that the choice to break a rule depends on a comparison between the advantages of complying and the probability of prosecution, penalties, or bad reputation. Then, informality must not be viewed only as a matter of preferences but rather as an alternative to the limitations imposed by the formal sector (Bayat, 2012). These restrictions could be also waived by formal institutions, for instance, through amnesties and legalisations that suspend the regulatory regime and persuade offenders to expect a relaxation of rules in the future (Chiodelli, 2019). Consequently, on the one hand, formal institutions could be considered a limit for informal practices, but on the other, they may generate incentives and favour the spread of this phenomenon.

Public institutions may incentivise informal buildings through exceptions of the law exclusively catered for privileged groups. Contemporary states ensure growth and competitiveness through the creation of exceptions of otherwise rigid and inflexible regulatory regimes. This means that rights are redistributed according to a certain economic potential that allows a state of exception for some privileged groups (Ong, 2006). This exceptionality is a feature of an informalized space, as the law is following informal practices that ambiguously redefine the boundaries of legality and illegality

to facilitate certain types of urban development (Roy, 2011). Thus, the state could apply its discretion in planning laws to perform a 'spatial fix' to attract certain forms of desired capital, that in several cases correspond to housing and spaces for the rich (Harvey, 2001). Pow (2017) described that, in Singapore, the government has lifted the restrictions on foreign land ownership exclusively on super-rich developments, in which standard regulations and processes may not apply. This kind of strategic discretion or 'differential treatment' by the state is not uncommon worldwide and it is often justified in the need for exceptionalism to facilitate certain desired types of development (Follmann, 2015).

Roy (2009) included this differential treatment into three strategies that generate regulatory flexibility: unmapping, deregulation and exceptionalism. Unmapping refers to the action of vaguely define land-uses and borders in planning systems to achieve territorial flexibility. Deregulation implies a state of ambiguity in which laws are open-ended and can be subject to multiple interpretations, while the state withdraws from its regulatory power on certain occasions. Exceptionalism exists as the state can create zones in which their planning practices do not apply, and ordinary laws can be bypassed. Through these three practices, Roy summarized the rationale of planning and how informality is a feature of this system instead of a failure. Moreover, in the case of the most privileged, informality is motivated by the need of creating spaces to attract wealth amidst a neoliberal and globalized economy. Despite the economic interests of the state on informality, its role is often ambiguous as it may formalize or condemn the same practices simultaneously (Alsayyad & Roy, 2004). The state may act unclearly as it has internal agencies that collide and produce disjointed

regulations and ambiguities. Hence, it should not be viewed as a monolithic entity, as it has tiers that could have fragmented and often contradictory approaches to deal with the same kind of regulation. As the state does not act as a single coherent institution, informal ties and networks with several groups of citizens may influence the production and enforcement of the law (Haid & Hilbrandt, 2019). Tensions between local and national governments are reflected in a gap between the written law and the actual practice. This phenomenon is also present in enforcement processes. While local authorities may prefer to change retrospectively regulations or provide ex-post building permits, national level laws and institutions usually deter informality through demolitions (Calor & Alterman, 2017). Thus, conflicts between strict and relaxed approaches towards planning law and enforcement create ambiguities within the state that offer indirect benefits to informal practices.

In brief, the state plays a predominant role on the definition of the law (van der Poorten & Miller, 2017), the intensity of enforcement (Calor & Alterman, 2017) and legalisations (Holston, 2009). These are mostly regulated processes that require multiple steps to produce an outcome (i.e., report, recognition, formalization, sanction, appeals, demolition). Thus, informality may result from a failure of any of these processes -intentionally or not-. Chiodelli et al. (2020) summarized three main channels in which public institutions produce informality regarding the mentioned regulated processes: structural features, action, or inaction. Structural features of public institutions such as excessive bureaucracy, inefficiency, long processes, or understaffing may thwart controls and give indirect incentives to informality. For instance, the complex nature of local planning offices and ambiguous decisions of

public officials may lead to informal results. ‘Much more than abstract rules and regulations, these local offices and officials define the boundaries between what is legal and illegal, allowed and not allowed, tolerated and not tolerated quite often enjoying a high degree of discretion’ (Esposito & Chiodelli, 2020, p. 52). The second mode refers to purposely actions of public institutions that may legalize certain informal practices, such as amnesties. Policies and laws are active actions in which formal institutions deploy intentional agency towards the direction of ‘legitimising or recognising – although not regularising – some cases of housing informality, thus producing an effect similar to that of building amnesties from the point of view of increased security of tenure’ (Chiodelli et al., 2020, p. 35). Finally, the third mode is related to a passive neglect of the law that could lead to the spread of housing informality. This inaction could be twofold, on one hand, it represents the lack of measures against informality outcomes (lack of enforcement or controls). On the other hand, it represents despair towards solving the structural causes of informality, such as a lack of affordable housing policies (Chiodelli et al., 2020). This means the role of formal institutions extends beyond the production of written law as they could be directly or passively encouraging informal housing through the selective application or neglect of policies. Considering this theoretical framework regarding the role of institutions on informality, it is pertinent to question which structural features of public institutions could have produced informal outcomes in the specific context of the eastern hills. For this purpose, the next section addresses the main regulatory and contextual factors that may produce an impact on informality in the eastern hills.

3. Contextualization

Bogotá could be considered as a dual city defined by a formal rich north and a self-constructed informal south (Aliaga-Linares & Alvarez-Rivadulla, 2010). Informal settlements in Bogotá are mostly located in private land. Hence, spontaneous occupations are infrequent and, instead, most of the land has been informally subdivided and self-constructed (Camargo & Hurtado, 2013). It is possible to argue that informal settlements are developed in peripheral areas without an evident order. Illegal promoters often buy land without concerns for the location, natural risks or availability of public services (Carlos Torres, 2007).

Approximately 21% of urban land in Bogotá was informally developed, which means landowners did not count with construction permits. Informal settlements commonly took the form of '*urbanizaciones piratas*' or pirate developments. These settlements were created by semi-legal sale transactions of large privately owned lots, subdivided without basic urban services such as water or sanitation (Aliaga-Linares & Alvarez-Rivadulla, 2010). Pirate developments in Colombia are characterized by mirroring the rules related to the minimum legal urbanization standards. They often follow an orthogonal grid and spare some areas for streets and few amenities resembling formal developments (Carlos Torres, Rincón, & Vargas, 2009). Usually, dwellings are self-constructed and there is an informal land purchase agreement before the land is occupied (López & Ochoa, 2016). Most of these settlements spread in peripheral areas of the city, which is the case of the eastern hills. This area has multiple land-use restrictions; however, developers of all kinds have informally developed new dwellings in the last decades.

The eastern hills of Bogotá nowadays are protected land where more than 28 settlements are still considered informal while 35 have been legalized in the last years. Most of these are low-income settlements often next to wealthy areas, which have received completely different conditions for legalisation (Ruiz, 2018). These wealthy areas mostly followed the closed condominium or *conjunto cerrado* model, that is common for housing upper-income groups in Latin American cities (Caldeira, 2000). Land in Colombian cities is scarce, so peripheral areas are more desirable for upper and middle classes. This has triggered the use of forced evictions to vacate land for urban development of the wealthy in Bogotá. This phenomenon has been evident in the north-eastern urban border, where competition for land has led to the displacement of the poor (Everett, 2001). Poverty, extreme wealth, displacement, environmental conflicts made the eastern hills a breeding ground for informality under the most varied contexts.

The protected areas of the eastern hills were created in 1977 by Resolution 76 (Resolución 76, 1977). This new zoning type prohibited the construction of new developments in the area, however, formal and informal housing progressively expanded in the hills. In the 1990s, there were created a few exceptions through the suburban areas zoning type, however this was only limited to low-density developments in the northern areas of the city (Acuerdo 6, 1990). As the protected areas were not registered and the geographical extension of the eastern hills was not entirely clear, in 2005, the Ministry of Environment delimited the protected areas and prohibited new constructions in the eastern hills. However, they also recognized ex-post formal developments in the Adjustment Strip (*Franja de Adecuación*) and the

ZRA (*Zona de Recuperación Ambiental*) (Resolución 463, 2005). In 2013, the State Council decided to legally recognize all constructions in the hills that counted with valid permits or legalisations before 2005 (Fallo Consejo de Estado 2013).

In recent years, new constructions were built in the eastern hills despite all controls and measures carried by the local and national administration. El Bagazal and Floresta de la Sabana have been in the spotlight of local media as they are two exclusive closed condominiums developed informally within the protected areas. Floresta de la Sabana was legally subdivided in 1957 and progressively expanded towards the upper parts of the hills (Decreto 981, 1957). El Bagazal was a piecemeal development located behind the Metropolitan Club, one of the most exclusive clubs in Colombia. In 2005, some villas were already existing in the area that now is part of the ZRA, however, in 2015, city authorities witnessed new constructions and started enforcement processes against the landowners (Cuevas, 2016). According to the 2020 cadastral data of the Bogotá Planning Office, while in Floresta de la Sabana there are more than 174 building units, El Bagazal is a small, gated community of 25 units (see Figure 14). However, as regulations have allowed legalisations through the ZRA and the Adjustment Strip, only handful structures are outside these zoning types: 40 in Floresta and 11 in El Bagazal.

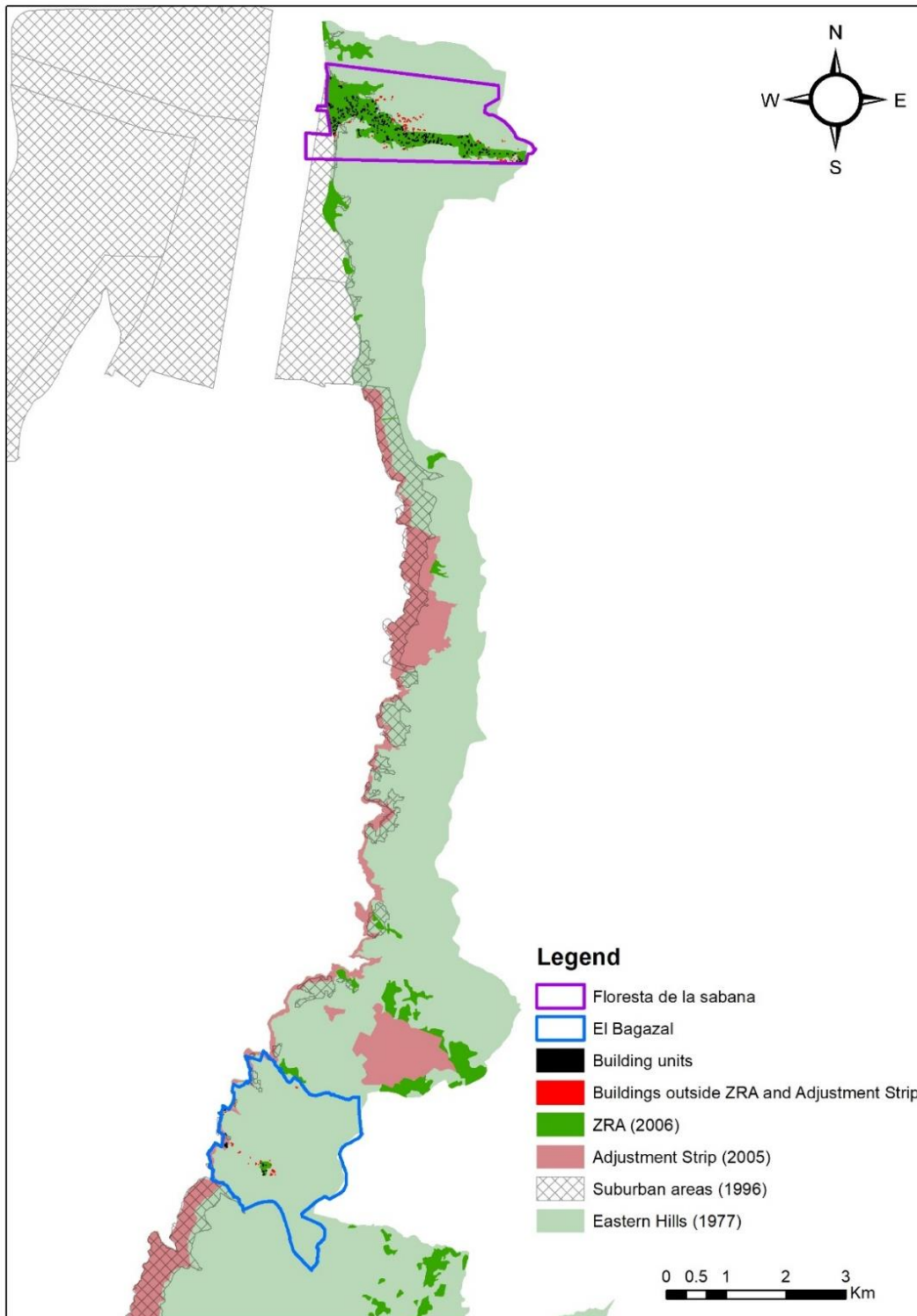


Figure 14

Building Units in El Bagazal and Floresta de la Sabana

All infractions related to the planning system such as unauthorised constructions must be sanctioned according to law 388 of 1997. The competing authority for controlling, monitoring, and enforcing planning infractions is the local government (Ley 388, 1997). This changed in 2016 as police officers must oversee, sanction, and monitor new unauthorised constructions. However, in the case of Bogotá, local Secretariat offices must report to police officers the infractions so they can take actions that could vary from fines to demolitions. Offenders may ask for revisions and they have 2 months for applying to a legal permit to validate their construction (Ley 1801, 2016). In the eastern hills, the enforcement of planning laws involves many actors as the responsibility for environmental conservation is shared among several institutions from different government levels (see Figure 15). Unauthorised constructions in the hills must be reported to police offices by local secretariats. Then, police officers must either shut down the constructions or apply fines to landowners. Meanwhile, CAR (Regional Environment Authority) must collect evidence of the infractions and start a lawsuit against the offenders while the local or national tribunals decide on the charges. Finally, CAR oversees the demolition process in which offenders are charged penalty fines.

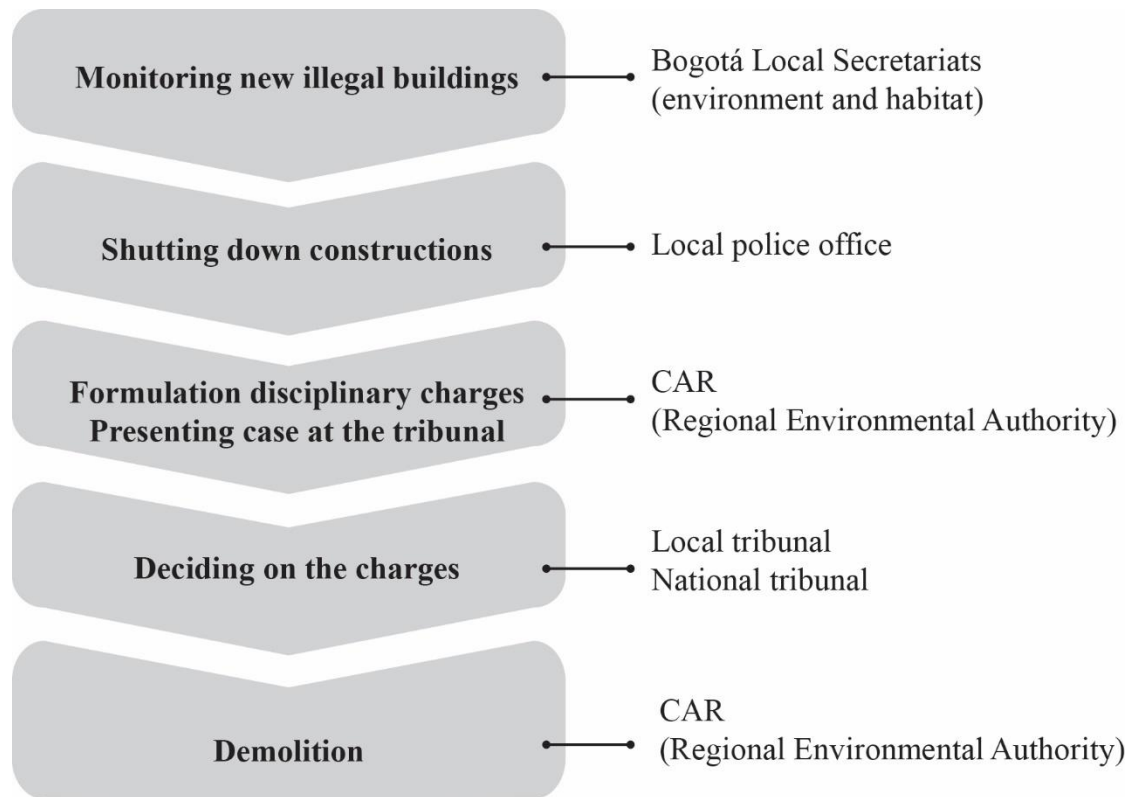


Figure 15

The Enforcement Process in the Eastern Hills

Overall, regulations and enforcement processes are strongly connected to the creation of informal spaces and the eastern hills may not be an exceptional case. Therefore, the next section illustrates the methodology to determine the influence of formal institutions in the production of informal spaces of the rich applied to the existing regulatory framework.

4. Informality of the Rich in the Natural Reserve of Bogotá

4.1. Research Methods

This research was the product of fieldwork performed in Bogotá from December 2018 to January 2020. This fieldwork comprised interviews, analysis of documentation and site visits that reconstructed the history of three exemplary cases of informal villas in the eastern hills. These three units are archetypes of the possible outcomes of housing informality of the wealthy in the eastern hills. I conducted semi-structured interviews to key stakeholders who witnessed the story of the villas. The recruiting technique was snowball sampling, however, only those who were directly involved in the promotion, construction or enforcement process of the villas participated. From 21 initial interviews, I selected 3 planning officers, 2 landowners, 2 CAR officers and 2 NGOs representatives to reconstruct these stories. Stakeholders had contrasting roles in the process (e.g., housing promoters vs enforcers of the law) and they were particularly inquired about their role in the planning, construction, or demolition process of each villa.

Furthermore, this information was confronted with personal written communications addressed to NGOs, CAR, and the Bogotá Planning Department. Other data sources comprised documents such as local newspapers (El Tiempo, El Espectador, Semana), planning reports, and legal records: property titles, planning permits, licenses, environmental reports, etc. The documentation was directly sourced by using the address of each villa (in case of the property titles) or according to their corresponding cadastral sector. I employed digital sources such as neighbours' associations (Asofloresta), real estate (Casas en la Sabana, Metrocuadrado) and NGOs

websites (Amigos de la Montaña, Fundación Cerros de Bogotá). This was crucial to address several perspectives on the same issue and to offer a more nuanced perspective on the story of each house.

4.2. Three Pathways of Informality

This section summarizes the findings of this article organized in three stories or -pathways of informality-. These stories epitomize three possible built outcomes of the informality of the rich in the eastern hills that may unveil key actors and institutions involved in the development of the phenomenon.

Figure 16 represents a timeline of the three pathways of informality contrasted to milestones regarding normative changes in the eastern hills. The reconstructed stories were: 1) The never built house (Las Margaritas), 2) the bulldozed villa (El Bambú) and 3) the surviving villa (El Pauche). The first case is in the north easternmost part of the reserve in a development named Floresta de la Sabana, the second and third cases are in the gated community commonly known as El Bagazal.

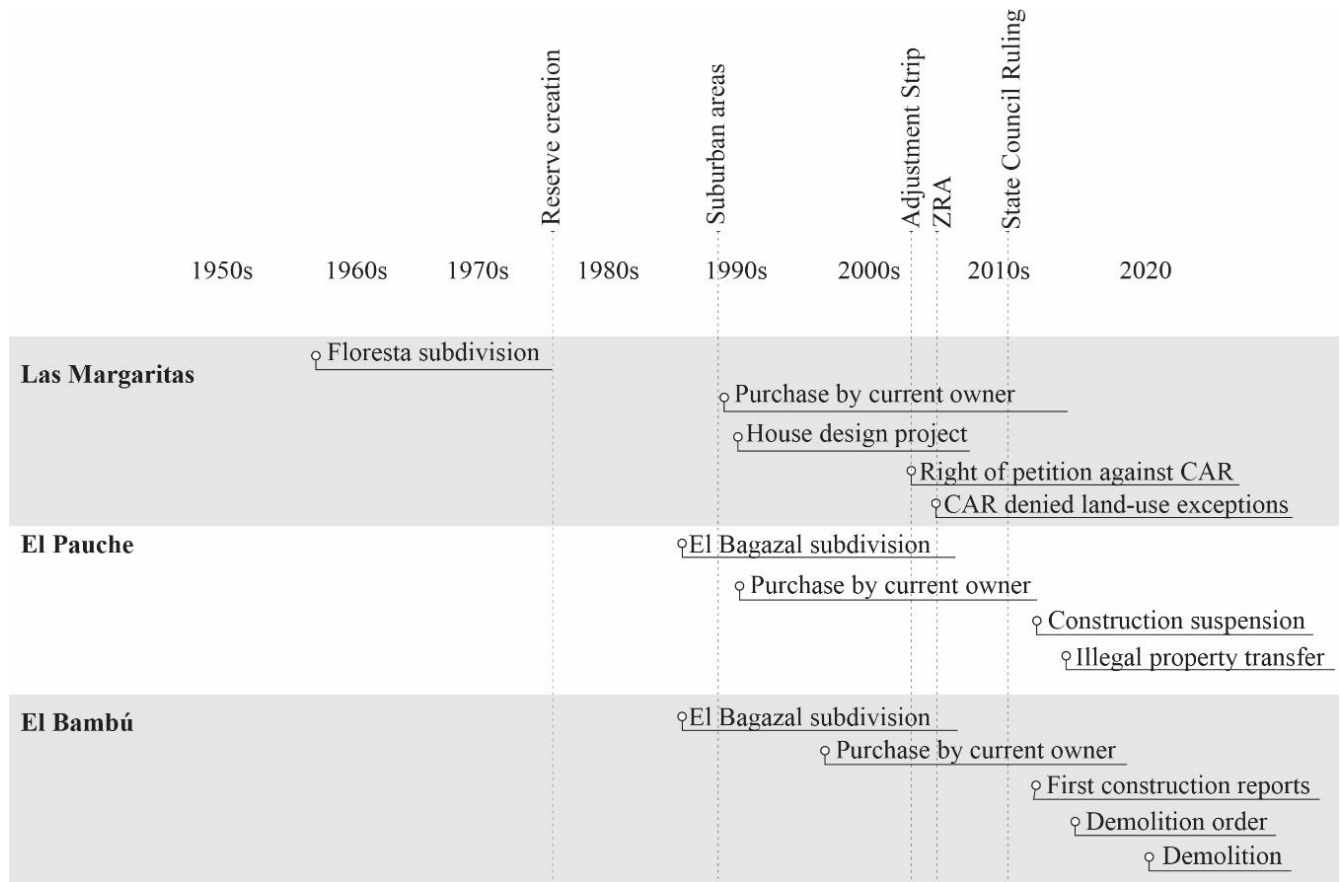


Figure 16

Comparative Timeline of the Eastern Hills' Regulatory Framework and The Three Pathways of Informality. Source: Author

Las Margaritas: The Never Built House

This property is part of a development known as Floresta de la Sabana, which was subdivided and sold in 1959 by a prestigious Colombian architect (Las Margaritas landowner, personal communication). The development only allowed single detached houses with large setbacks (Decreto 981, 1957). The new settlement started to spread

out towards the upper parts of the hills, where land started to be also subdivided. In 1977, the eastern hills protected areas were created by the Resolution 76 and included land located 2700 meters above the sea level, which comprised upper parts of Floresta de la Sabana (Resolución 76, 1977). However, the resolution of the protected areas was not extensively informed to the public and planning authorities took decades to create a proper geographical delimitation. This chaos allowed developers (formal and informal) to continue subdividing and selling land indiscriminately in the hills, even considering that they were well informed about the restrictions (planning officer, personal communication, September 8, 2019). Potential developers required to apply for building permits in the Bogotá Planning Office, however, they employed several strategies to get approvals. ‘Several of my neighbours avoided applying for permits in Bogotá and instead approached to planning offices in smaller municipalities. They often used a trial and error strategy to apply for permits in different offices until they got an approval’ (Las Margaritas landowner, personal communication, September 8, 2019). The eastern hills regulations mostly concerned Bogotá authorities and was part of widespread knowledge for planners in the city. Landowners knew this fact and benefited from fewer controls applying for permits in neighbouring municipalities as ‘they could easily influence decisions by using their power and connections in local administrations’ (Las Margaritas landowner, personal communication, September 8, 2019).

Las Margaritas landowner was not well-informed about planning regulations at the time he bought the property in 1990 from the mentioned architect. His initial purpose was to build a family house mirroring all their neighbours and about a year

later his family decided to start the process to build a house (see Figure 17). They hired a topographic study that determined the land was over 2700 meters above the sea level which meant the area was protected by law. The landlord decided to cancel all building projects in his property, even though he mentioned that his neighbours easily obtained (legal or illegal) building permits (Las Margaritas landowner, personal communication, September 22, 2019).

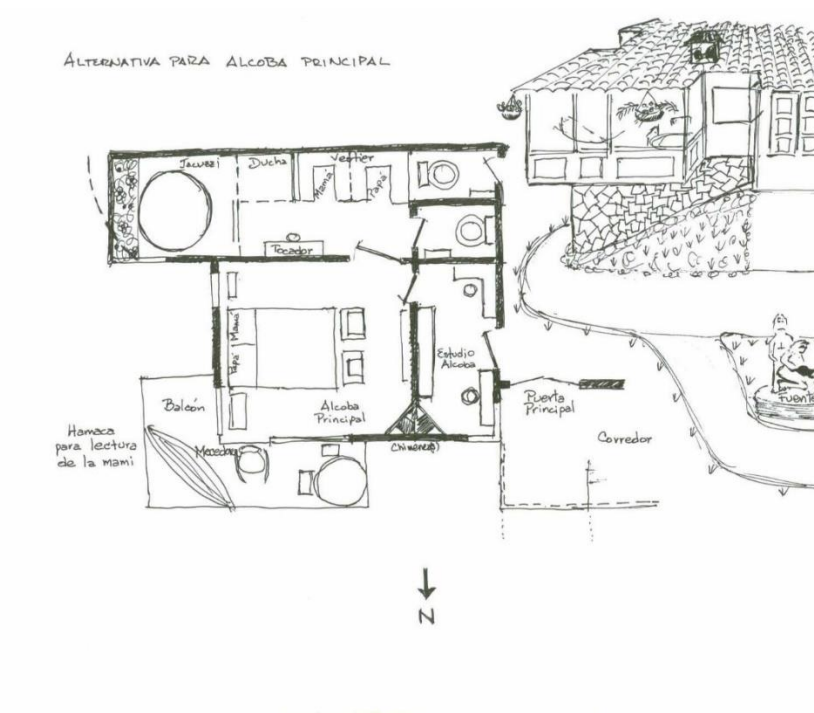


Figure 17

House Sketch made by The Landowner of Las Margaritas. Source: Author

According to the landlord, families who built without permits often bribed local authorities to avoid controls and demolitions. The owner did not want to get caught in any of these illegal activities, so he declined to build in his property (Las Margaritas

landowner, personal communication, September 22, 2019). Las Margaritas owner bought his property in 1990 and currently is worth less than 10% of the initial value. He assured it was an unfair process since most of his neighbours built their houses while he could not do the same due to the existing regulations (see Figure 18). He claimed that lawful landowners were punished by the government so their land lost value. Meanwhile, offenders were awarded the legalisation of their properties after a few years. This alleged unfair treatment and land price reduction motivated a right of petition against CAR in 2005 in which the owner claimed the need to redefine the borders of Resolution 463 and exclude Floresta de la Sabana as it was initially subdivided for housing (Las Margaritas landowner, letter, May 2, 2005). This petition and its appeal in 2006 were denied by CAR as the current building regulations were set by the State Council in 2013 and were not intended to have any exceptions (Las Margaritas landowner, letter, December 6, 2006).



Figure 18

Las Margaritas Neighbours are visible from the property. Source: Author

Currently, besides the reduction of the land prices for his property, all landowners must pay an environmental compensation tax and avoid any activity in this area. According to local real estate websites, existing houses in the hills are exceptionally valuable since new constructions are prohibited. Fewer neighbours mean exclusivity, and privacy is guaranteed by large green areas belonging to the natural reserve (CasasEnLaSabana). As a result, regulations have increased constructions prices, only for those who could build a house.

El Bagazal

El Bambú and El Pauche are part of El Bagazal, this development has attracted most of the media attention and public opinion in the last years. This development emerged just a few meters uphill from one of the wealthiest neighbourhoods in Bogotá: Los Rosales. El Bagazal has been recently visited by local authorities, who finally began to sanction constructions, although some of the villas were built more than 10 years ago (CAR, personal notification, January 22, 2020). Only one villa (El Bambú) has been demolished in the eastern hills and this event had a great media exposure. The CAR director claimed that this result must serve as an ‘example for rich citizens so they should attain to the consequences in case they build in the protected areas’ (ElTiempo, 2019). However, this is the only successful demolition process of more than 19 informal constructions found by the CAR in the area. The process lasted 3 years and concluded in 2019.

According to the property records of the two selected houses, it is possible to divide the history of these two properties in three stages (see Figure 19). Initially, both

were part of a larger plot of land in the hills owned by a famous Austrian immigrant in the 1950s who was the president of one of the largest Colombian companies. In the 1980s, El Pauche and El Bambú were created from the subdivision process of this estate. These properties were transferred to the descendants of Hasche and de la Hoz's families, who are part of prominent and influential families in Colombia. The second stage starts in the 1980s once the properties were subdivided. This stage was characterized by frequent property transfers between these two families under their companies' names. The third stage starts when both properties were sold to private investors. Only then, houses were built in each property. The history of El Bambú and El Pauche splits in two after this moment and is described in the following sections.

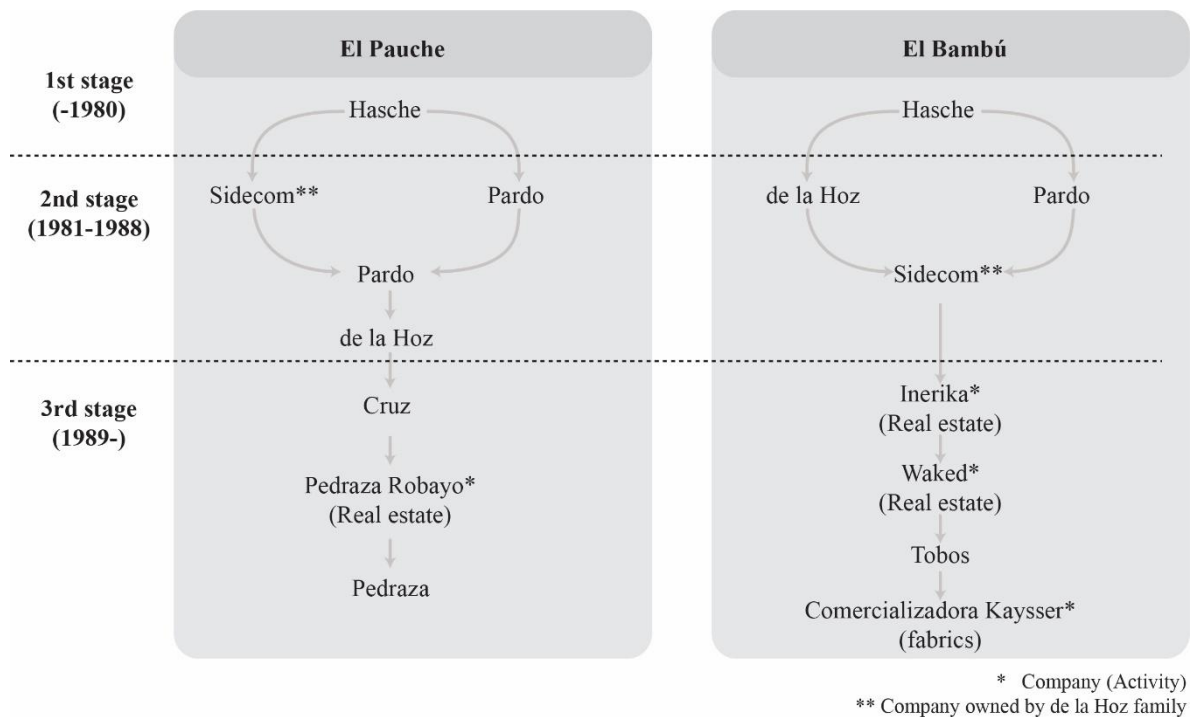


Figure 19

Three Stages of Property Ownership in El Pauche and El Bambú

El Bambú: The Bulldozed Villa

In 1989, El Bambú was sold to a real estate company and seven years later was purchased by Waked Inmobiliaria. The company owner was implied in the Panama Papers and was accused by the DEA for leading a money laundry business by using several companies and disguising from authorities using several fake identities (ElTiempo, 2016a). From 1998 onwards, the property is owned by Comercializadora Kaysser, a company dedicated to importing fabrics from Panama. The legal representative of this company is Jaime Gil, which is a relative of Rodrigo Gil, Waked's lawyer in Colombia and former magistrate of the Supreme Court. Although Waked seemed to be covered under different names in each country, in Colombia used the name Jean Kaiser, which seems corresponding to Kaysser (the misspelt company name) (ElTiempo, 2016a). This may lead to relate Waked with this story.

The first authority that noticed illegal activities carried out in El Bambú was the Bogotá local government office. They were pioneers to witness the construction of a large villa in 2015, so they warned the CAR that approximately 2000 trees were chopped down and months later the construction was sealed. The landowner did not apply for any building or planning permits, however, the construction workers had fake documents such as licenses and construction plans. Ms Barreneche -an alleged resident architect- was found to be supervising the construction process. However, this person was not registered as an architect according to the National Architecture Registry (CPNAA). Waked was also accused of building unauthorised constructions in another Colombian city and his company is also responsible for the development of another informal villa in El Bagazal (ElTiempo, 2016b).

In 2015, Amigos de la Montaña Foundation, a local NGO concerned by the environmental protection of the hills, denounced that the local government suspended the enforcement against another villa near El Bambú. This NGO claimed that this decision allowed the free entry of workers and construction materials to other buildings in El Bagazal without control. New villas continued to be built and after the NGO denounced the local government and police officers, they blamed on the environmental authority (CAR) as they were supposed to be responsible for controlling new constructions in the hills (AmigosdelaMontaña, 2019).



Figure 20

El Bambú Villa under Construction in 2016. Source: Semana, 2019

Thereafter, the CAR sued Comercializadora Kaysser and the responsible architect for the new building. In 2016, works continued and the CAR resolved to fine the responsible actors for unauthorised constructions within the reserve. The penalty is calculated in 471M COP (140,000 USD) in addition to 575M for the cost for demolitions (175,000 USD) (CAR, personal notification, January 3, 2020). ‘Construction works were carried out in El Bagazal even though many houses were sealed. Food trucks often got in the area using unpaved and informal roads. These trucks contained materials and workers to continue the construction of new buildings’ (Planning Officer 2, interview, April 19, 2019). In the meantime, Jaime Gil sued the CAR 10 times to invalidate the process against the construction. He argued that the eastern hills protected areas were not registered in his property document, hence the landowner could not have been knowledgeable about the planning restriction on this plot of land. Despite his claims, ‘at the time his construction was sealed, the landowner was notified several times about the infractions, nevertheless, the construction works never ceased’ (CAR officer, interview, July 2, 2019).



Figure 21

Sealed Villa in El Bagazal. Source: The Bogotá Post, 2019

In 2017, the CAR required Comercializadora Kaysser to demolish the villa in 5 months, however, the company did not follow this order. Two years later and after solving 10 appeals to court initiated by Jaime Gil, the CAR succeeded to start the demolition of the villa. For this purpose, the CAR needed to hire a demolition company by using their funds. The CAR started a 6-month public bidding process for selecting the company that was going to demolish the construction. Although the environmental authority initially funded the demolition, these costs and penalties were charged to Comercializadora Kaysser. However, the upfront cost must be bear by the CAR while

they wait for the payment from the sanctioned company (CAR, personal notification, December 19, 2019). At the time of the demolition, the construction had 3 levels, occupied a total area of 3,590m² and destroyed more than 11,000m² of natural protected areas. This is the first process of this type in Colombia that has succeeded and was completed by December 2019 (Semana, 2019).

El Pauche: The Surviving Villa

According to the property records, in 1989 El Pauche was sold to Mr Cruz Villamil, an engineer working at the Central Bank of Colombia. Two years later, the property was purchased by Pedraza Robayo's Company. Robayo is the last name of Cristobal Pedraza's wife. In 2005 El Pauche was transferred to Cristobal Pedraza and it is currently his property.

In March 2015, Bogotá local authorities sealed the construction works found in El Pauche. Nevertheless, the authorities noticed the seals were broken in August and construction works were being carried out (ElTiempo, 2015). As several properties were sealed around 2015, construction workers used another property to access the area while bringing new materials. In complicity with the gated community guards, construction workers from different properties shared the same truck to access the area (Rivera, 2019). 'El Bagazal security staff did not allow the entrance of planning authorities and police officers while construction workers accessed the area without many questions' (planning officer 3, interview, September 2, 2019). This practice was promoted by the condominium administration as they ordered the security staff to limit the access of outsiders and ask 'intruders' to hold valid permits and legal orders. The

administration was well informed of law infractions and constantly delayed enforcement processes using legal tricks and law ambiguities (planning officer 3, interview, September 2, 2019).

In February 2016, the CAR found the responsible person for the construction who was Mr Pedraza's 98-year-old mother (the current landowner). He had signed a free-use contract in which he designed his mother as responsible for the property. He knew that, according to Colombian environmental legislation, the elderly could not be sanctioned or incarcerated. This contract prevented Mr Pedraza to be sanctioned and his mother to be punished by the law due to her advanced age. This trick caused delays in the legal process against him as he used his mother as a scapegoat. Meanwhile, the delay was used as a pretext to postpone the legal process while the villa construction continued under covered. 'Both the owner and his mother reported fake addresses in property documents, so they were unreachable for a long time, which caused legal processes to be further delayed' (CAR officer 2, interview, June 23, 2019).



Figure 22

El Pauche under Construction. Source: Amigos de la Montaña, 2020

In 2017, CAR submitted the evidence to start sanctions against Mr Pedraza. In June 2018, CAR was ratified as the competent entity to sanction such unauthorised construction and in August, they ratified that construction works in El Pauche had stopped (CAR, personal notification, December 19, 2019). However, while El Bambú villa was demolished in 2019, authorities and media could witness that construction works did not cease in El Pauche.

5. Three Modes of Formal Production of Informality

The promotion and construction of the three investigated villas involved agents of the private and the public sector, including formal and informal organizations. Landowners, lawyers, and architects participated, but also informal private developers and construction companies. The public sector was actively involved as there were significant interventions of planning, police, and CAR officers. However, instead of showing a coherent response against unauthorised constructions, public authorities have promoted ambiguous tolerance. The three modes of public production of informality (action, inaction, and structural features) described by Chiodelli et al. (2020) are employed as a framework of this study as they offer an outline to understand the dynamics of public production of housing informality.

In the first place, it is necessary to describe how the three modes of formal production of informality were employed in the eastern hills to systemically create and legitimize informality of the rich. Regarding actions, the state was eager to promote frequent legalisations and amnesties in the eastern hills as three large amnesties were promoted since the creation of the protected areas, which means almost one per decade. This way, offenders had positive expectations on the future regularisation of their informal constructions while the state constantly materialized their aspirations. Furthermore, local, and regional institutions have promoted regulations that allowed new constructions in the protected areas (e.g., the ZRA and the suburban areas zoning type). Landowners were knowledgeable about the existence of the protected areas, but also that new developments were highly lucrative once the government legalized their constructions. Hence, several landowners bribed planning officers in small

neighbouring municipalities to get their permits approved. They knew the hills were in a diffuse urban border limiting other municipalities with less strict controls and often their planning offices were less knowledgeable about Bogotá's regulations. If necessary, they resorted to bribes or their connections to fulfil the process. These permits were not legal until the State Council decided to formalize all constructions that had a permit approved before 2005, partly because of pressure from neighbours' associations and private developers in the hills. This means the state was keen to legitimize informal practices via legalisations that were especially suited to the requirements of the rich.

The second mode, inaction, has indirectly fostered new informal constructions through witting inefficiency or negligent enforcement. The former is exhibited in how the government created full cartography of the protected areas and registered the caveat in public documents only in 2005, even though the reserve was created almost 30 years earlier. The latter is evidenced in extremely long enforcement times in the hills notwithstanding the efforts of several communities and NGOs to efficiently report new constructions. Only one house in the reserve (El Bambú) has been demolished, after 5 years of the first construction report. This is even more dramatic as there are currently more than 19 official reports against different villas in El Bagazal only. In general, there has been a systematic lack of cartographic precision and negligent cadastral registration that, purposely or not, favoured informal developments. This is, as Roy (2009) portrayed, an unmapping strategy to create the regulatory flexibility needed to allow the existence of informality.

Finally, the third mode, structural features of public institutions consolidate the expansion of informality of the rich in the eastern hills. The lack of active actions against informality of the rich is partly caused by lenient laws and long administrative processes against those who commit infractions. Landowners in the hills are usually well-connected with political leaders and they could influence decision-making processes in local and national institutions. In Colombia, the political system is often integrated into the executive body, so it is not uncommon that political leaders may suggest bureaucratic quotas in public institutions such as planning offices. This might be a reason for the lack of controls in some properties or delays in enforcement processes. Therefore, political influences and wealth provide owners with great power to influence planning decisions and enforcement processes. For instance, landowners have delayed demolitions through legal means (court appeals, administrative actions, etc). The institutional framework has also been used to deter demolitions as they require long processes characterized by the intervention of numerous government agencies in which offenders most likely have allies.

Among several structural features, multilevel fragmentation and colliding internal agencies were systematically employed in all the three pathways of informality in the eastern hills. Multi-level fragmentation is evidenced in the conflicting approaches towards environmental conservation. While some rules proposed by a sub-national tier institution were strict, other levels of the government decreed amnesties and relaxed rules. The initial environmental protection character of the eastern hills was given by the national government, although the introduction of the suburban areas (1990) by the Bogotá administration, the adjustment strip (2005) by the Ministry of

Environment, and the ZRA (2006) by the CAR, eased requirements and opened the gates for new developments. These legalisations often overlapped with preservation zoning types, which means that while one institution was increasing building restrictions, others decided to waiver requirements or even support new developments. This practice was reflected in the existence of copious amounts of regulations in relatively small areas within the eastern hills. El Bagazal and Floresta have at least three zoning types that contain often contradicting information. For instance, new buildings were allowed in the suburban areas zoning type yet prohibited in the adjustment strip, despite the overlapping of some of these areas. This approach is revealing that multiple government levels are not acting consistently for supporting the conservation of the eastern hills. Therefore, planning rules are often inconsistent as the state is constantly operating in a fragmented and incoherent way.

Not only multilevel conflicts were found within the state, but also same-level institutions had colliding agency. Planning officers and supervisors were often permissive with the strict regulations previously formulated by the Bogotá Planning Office. For instance, Las Margaritas' owner revealed that planning officers granted permits despite it was explicitly prohibited by the same office. Furthermore, the written law and its implementation often collided as authorities decided to arbitrarily enforce some laws or turn a blind eye on infractions. Despite several reports of new buildings in the hills by the environmental authority and the planning office, police officers only sealed the constructions years later. Citizens also complained that denounces were not promptly addressed by the police and planning authorities, which gave sufficient time for building new houses from scratch. Conflicting actions towards the law and selective

enforcement showed a permissive attitude towards informal villas in the hills. The state seemed to operate as ‘an institutional amalgamation of individual agencies’ (Haid & Hilbrandt, 2019, p. 4), which eroded the once-severe regulatory regime in the hills by increasing the number of exceptions in planning laws. The result was a mismatch between agencies within the government that was seized by private agents. These actors looked for blind spots or ambiguities in the legal system that allow them to develop new units in the eastern hills without authorisations.

6. Final Remarks: Public Production, Private Response

Academic studies on informal housing of the wealthy are scarce worldwide and this study sheds light on the possible causes of this phenomenon, particularly on how public institutions produce informality. The eastern hills case is aligned with studies worldwide that highlighted some underlying modes of public production of informal spaces of the rich such as exceptionalism, (Ong, 2006; Pow, 2017; Roy, 2009), wittingly action or inaction, and certain structural features Chiodelli et al., 2020). Particularly, two structural features of public institutions demonstrated to be substantial in the eastern hills: multilevel fragmentation and colliding internal agency. These features erode the coherence of public decisions and challenge the notion of the state as a single entity (Haid & Hilbrandt, 2019). Instead, the state seems to have abundant internal agencies that often respond to the objectives of several private agents, in which the wealthy are highly influential.

Although informality of wealthy groups is nowadays an evident phenomenon worldwide, academic studies are overlooking rich settlements in the global South. This

study aimed to bridge this gap by researching a case study in the eastern hills of Bogotá, however, as it is evident in literature, this is not an isolated situation. Rich informal spaces in southern cities are found in other continents and locations⁷, even though studies are scarce in Latin America. Overall, this article not only highlighted the importance of public institutions on informality of the rich but also opened the doors for comparative studies in other global South contexts relating the roles of agents from diverse spheres on informal spaces for the most privileged.

The analysis of the role of public actors in the production of the informality of the rich does not imply that private agents do not have a crucial role. Their participation was essential in loosening planning laws in the eastern hills in two main modes. On the one hand, wealthy groups used their privileged access to power and resources to modify rules in their favour. For instance, their neighbour's associations were key to put pressure on the government to legalize informal settlements. In fact, there was systematic complicity as public institutions constantly legitimized informal housing of the rich through amnesties. On the other hand, private actors have conveniently adopted some formal rules, so they increased the chances to be regularized in future amnesties while avoiding enforcement. Informal developers followed certain legal processes to transfer land or even to get permits. For instance, the construction works were found to have architectural plans, permits (even if false ones), and organizational structures (led by an architect or a project manager). Hence, informal constructions tended to

⁷ See for instance (Datta, 2014) in Turkey, (Thirkell, 1996) in the Philippines and (Varley, 2013) in Mexico.

mirror their legal counterparts even though building new units was against the law. Therefore, they could appear as legitimate constructions when interrogated by authorities. Such twofold behaviour needs to be further investigated to fully unveil the role of private agents on informal housing production.

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Third Article

The Role of Informal Institutions on Legalisation Processes between Rich and Poor in The Eastern Hills of Bogotá

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Abstract

The eastern hills of Bogotá are simultaneously the home of some of the wealthiest and the poorest communities of the city. Both groups have gradually settled in protected land for more than five decades through semi-formal and informal processes. Legalisations and other policies dealing with informal constructions in the area have not followed identical pathways, and they may be leading to the creation of a segregated city. These differences are largely related to unfair legal provisions benefitting privileged groups at the expense of others and the role of informal institutions. This article addressed the differences between legalisation processes in two areas of Bogotá's eastern hills: one in an underprivileged settlement (El Codito) and another in a well-off neighbourhood (Floresta). The main aim of this article was to unveil how informal institutions have affected legalisation processes of these two settlements in terms of procedural and distributive justice. This article found that, on the one hand, *tierreros* (or pirate developers) were key to land access of low-income communities. While on the other, informal connections were prominent in rich settlements as they guaranteed fast-track access to building permits and legalisations.

Pacts of silence were common in both communities as they were underlying factors to sustain the concealed existence of informal institutions and several unauthorised building practices. These institutions played an underlying role as substitutes or complement to formal ones and were key to explain the unequal outcomes of legalisations that favoured wealthy over underprivileged communities in the eastern hills.

Keywords: Housing informality, legalisations, informal settlements, informal institutions, Latin America

1. Introduction: The Paradoxical Role of Legalisations

Informality beyond the realm of urban poverty is an increasing concern for academia (Tanasescu, Wing-tak, & Smart, 2010; Thirkell, 1996; Varley, 2013). Nowadays, unauthorised land transactions and squatting by the rich are deemed to be frequent worldwide (Ward & Tiepolo, 1999). In contrast to their counterparts in low-income communities, informality in wealthy social groups seems to be prone to a privileged treatment by planning authorities. This is reflected in artificial divisions within informality that simultaneously allow or tolerate the existence of some ways of informality while others are discouraged (Roy & AlSayyad, 2004). This phenomenon is often associated with a systematic unfair and selective application of the law and enforcement. Legalisation processes are not the exception of this tendency to favour the privileged triggered by the excuse of adjusting to rigid laws or promoting certain 'desired' types of developments (Ghertner, 2011; Holston, 2009). Since the state is the

main responsible for the creation of laws and the promotion of enforcement, it is also liable for inequalities in the correction of the law through legalisation processes (Kanbur, 2009). Despite the law and legalisations are supposed to obey to principles of fairness, they could also be employed to reinforce inequality and grant the preservation of the status quo (Lai, 2015).

Although legalisations and their unfair outcomes have been subject of some research, the role of informal institutions in perpetuating unfair laws is still understudied. Informal arrangements and customs may surge in parallel with effective and ineffective formal institutions (Helmke & Levitsky, 2004). As legalisations may be unfair, informal institutions surge in substitution or competition of formal ones. This paper uses the case study of the eastern hills of Bogotá to exemplify how informal institutions influence the unfair outcomes of legalisation processes for low and high-income communities located in the hills: El Codito and Floresta. For this purpose, the next section of this paper reviews the literature on informality in high income groups worldwide and how these groups have a privileged access to legalisations. Then, it shows how the unfair application of planning law and enforcement has a strong relationship with the existence of different informal institutions. The following section describes the different land policies applied in El Codito and Floresta. Thereafter, the paper illustrates the participation of informal institutions and their role in both communities. Finally, the two ending chapters conclude on the role of informal institutions in legalisations of wealthy and underprivileged settlements in the eastern hills and how these institutions might not be exceptional but could also apply to further contexts.

2. The Inequalities of Informal Housing

Current discussions on urban informality not only include poor urban communities but also rural areas, middle-class suburbs, and elite complexes (Roy & AlSayyad, 2004). Aligned with this position, empirical studies worldwide in non-poor contexts have focused on describing the built outcomes of this phenomenon such as squatting, unauthorised housing extensions or subdivisions (Calor & Alterman, 2017; Datta, 2014; Lai, 2015; Potsiou, 2014; Varley, 2013). Despite the increasing research on this topic, only a few have ventured to contrast the differential treatment given to informal housing for upper-income groups. Calor and Alterman (2017) found luxury housing in protected coastal land in Portugal and Israel near modest houses. Policies to avoid squatting were not evenly applied and only criminalized housing for the most vulnerable communities, often leading to demolition. In contrast, secondary homes for wealthy and middle-income groups were not only successful in avoiding enforcement but also found enough public and political support to remain in place (Calor & Alterman, 2017). Potsiou (2014) explained that formalization policies in Greece consist of a penalty tax for protection against demolitions. Not by coincidence, only higher-income landowners could afford them thus, they were the only beneficiaries of building amnesties. Similar policies in Post-Yugoslavian countries had clear winners, who were often large developers who legalised their touristic complexes just by paying minimal fines (Kapetanović & Katurić, 2015). Hong Kong policies have demonstrated to be favourable to rich squatting. Laws were flexible to the needs of wealthy citizens while avoided enforcement at all costs. In other words, the law in this city demonstrated to

be conveniently innovative in legalizing property rights for certain groups while being strict for others (Lai, 2015). In Delhi, the state employed its power to arbitrarily enforce the law based on the vision of creating a world-city outlook. Formalization and enforcement were based on reducing slum-related nuisances and enhancing better aesthetic norms. This attitude was clearly in favour of the most privileged groups, who were able to afford a western city-image, while demolitions and fines were targeted exclusively to slum dwellers (Ghertner, 2011). According to these experiences, formalization policies in several countries rather than promoting impartial and transparent legalisation, upgrading or demolition of informal settlements of all sorts, have reinforced existing inequalities due to unfair and selective application of legislation.

Several authors have explained the unfair application of the law as a precondition for the discriminatory use of informality. In many countries, the planning law and enforcement are asymmetric and wealthy groups are privileged (Lai, 2015). Delhi's recent slum policies have demonstrated that even if most of the unauthorized land for developments belongs to the rich, the local administration is only concerned with enforcing the law upon the dwellings of the poor with the excuse that the city 'shouldn't look like a slum' (Ghertner, 2011, p. 517). This phenomenon has roots in under the table agreements that benefit some groups over others. Unlike the poor, the wealthy can benefit from such arrangements, since they are often closely allied with or are part of the government (Bayat, 1997). This proximity with the state is often related to social capital, lobbying, networks, or even institutions that may benefit the rich over the poor in getting concessions and extreme tolerance to unauthorised practices.

Literature offers some evidence about diverse motivations for informal upper-income housing. For instance, basements or ‘secondary suites’ in Canada showed how neighbourhood governance could encourage powerful communities to modify the boundaries of legality to maintain their privileges. A minority of well-organized wealthy landowners could manipulate the political and planning systems to prevent certain practices from being legalised while achieving the relaxation of rules in others (van der Poorten & Miller, 2017). Yiftachel (2009) mentioned that these practices may reveal the existence of an ‘urban Apartheid’ supported in an unequal access to property or political rights based on social categories such as ethnicity or class. This creates a self-reinforcing system in which planning regulations maintain the existing societal stratification. This division is also preserved through rules and strategies that nurture and ultimately preserve the status quo, creating a vicious circle (Yiftachel, 2009). Consequently, informality is not casual and depoliticized but is utilized as a structural and well-calculated strategy of the state. It is a logic of accumulation, a tool of planning, rather than a set of unintended, irrational or outside-the-law consequences (Roy, 2009). The unjust outcomes of planning seem to be embedded in its discretionary nature, which could ambiguously and purposely formalize or informalize certain practices to preserve the privileges of the powerful.

2.1. Formalizing the Wealthy

Privileged groups seem to benefit from a failed and selective application of the law, which could formalize their construction practices. However, the law can address this issue by setting the conditions by which the informal can be formalized. This could

be considered as a perversion of the law, but from the perspective of the marginalized, it is a way to legitimize their land claims and achieve more democratic planning processes (Holston, 2009). Formalisation processes respond to the need to adjusting or creating new laws according to the demands of people, even if initially they may appear as unjust. 'Not only law produces illegality and injustice but also illegality and injustice produce law' (Holston, 2009, p. 206). Laws under these principles are not entirely static and rigid, but more permeable and flexible, and can eventually be modified by informal practices. Informal and formal law systems can coexist in parallel (Gonzalez, 2009). The nature of planning is at the edge of the formal and informal realms, as it must be accountable both to the formal rules made by authorities and the constantly changing needs of the public (Innes, Connick, & Booher, 2007). These needs could eventually adjust rigid structures of the law and legitimise practices and strategies that otherwise were informal. Therefore, there is a constant feedback and learning process between formality and informality that is challenging and modifying the borders of these two realms.

This learning process does not work equally for all groups of society. Yiftachel (2009) mentioned that informality of the wealthy or 'grey spaces from above' are treated exceptionally differently from their counterparts in marginalised communities. The wealthy are often exempted from compliance of the law using all sorts of excuses. Mostly, wealthy citizens promote developments that are desirable in contemporary cities, while the poor are likely to produce 'eyesores'. Tolerance is achieved by using weak sanctioning systems and selective enforcement in favour of privileged groups. While planning systems allow grey spaces from above to be 'whitened' and

incorporated into the formal order of the city, marginal grey spaces are ‘blackened’ by discrimination, violence and eventually, eviction (Yiftachel, 2009). The state has played a key role in perpetuating differences already existing between social groups. State action is reinforcing current inequalities in cities by the use of a discriminatory spatial policy that aims to maintain the status quo and implement the economic agendas of the wealthy (Marcuse, 2002). Considering this, the state is a structural part of the creation of a regulatory framework purposely designed to increase the accumulation of wealth for certain groups (Lauria, 1997). Hence, the modus operandi of legalisations for the wealthy may reveal the strategic use of planning and the law as tools to conveniently use informality in favour of the most powerful.

2.2. The Role of Informal Institutions

The concept of informal institutions may hold the key to understand such inequalities and the ambiguous use of spatial informality. Informal institutions are, according to Helmke and Levitsky (2004, p. 727), ‘Socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels’. This definition includes not only organizations but also behaviours and customs internal to society and often invisible. They represent a central part of the operation of any society as institutions can apply and sanction their laws. North (1990) also claimed that informal structures could often emerge from the absence of formal rules. Informal institutions are sustained by stable rules that could help to revise, modify, or even trump formal regulations as they interact with each other.

Formal and informal institutions interact in four main ways typified by Helmke and Levitsky (2004): Informal institutions could ‘complement’ or ‘accommodate’ to formal rules if the latter are effective. In contrast, informal institutions can even ‘substitute’ or ‘compete’ with formal ones in case state enforcement is inefficient, absent or unfair. Voigt (2018) recognized the existence of internal and external institutions, as some of them do not belong to any state organization. He recognized there are conventions, ethical rules and norms that are expected to be followed by members of a given society, otherwise, they may be punished by their fellow citizens. These rules or institutions could actively oppose or support the achievement of a determined outcome established by the state. Ostrom (1990) mentioned that conflicting institutions induce people to find alternative strategies to obtain resources. Since the state often fails to efficiently deliver services, this leaves the door open to the existence of informal institutions that operate outside legal frameworks. These institutions do not always reinforce each other, and they may even operate without great efficacy. They could hinder the delivery of the service they were supposed to provide if they conflict with formal rules (Ostrom, 1990).

The state is not always willing to oppose informal institutions, but rather informality can serve as a support or a complement to the state activity. Despite the existence of formal rules, informal institutions are created due to three main reasons: (i) unforeseen behaviours when formal rules are applied, (ii) comparative advantages of informal strategies and (iii) ‘the pursuit of goals not considered publicly acceptable’ (Helmke & Levitsky, 2004, p. 730). In other words, the state may use informal institutions as a parallel force to carry out illegal actions that are impossible to publicly

admit or legally execute and must be hidden due to their ambiguous or often unethical consequences. Given these reasons, the state becomes key in deciding what policies are effectively applied and to what extent. This means the state and informal institutions are not always in opposition, but the latter could complement or even fulfil the roles of formal institutions.

Ultimately, the discretionary nature of planning allows the existence of a regulatory regime in which formal rules are modified and eventually legalised by everyday informal customs or strategies. This is also related to informal institutions and how they interact with formal structures, whether efficient or not. This phenomenon seems to have a wide array of motivations among which are maintaining social homogeneity, increasing wealth, or reinforcing the status quo. The implications of this system are stricter laws and common enforcement for the urban poor, while loose policies and lenient controls are the rules for the most privileged. These effects were evidenced in the eastern hills of Bogotá where wealthy households had privileged access to informality while evictions were common in informal settlements of the urban poor.

3. Land Policies in the Eastern Hills of Bogotá

Bogotá's planning laws for protected areas have not escaped from such contradictions. The planning system has relied on informality for decades to solve the increasing housing deficit. Bogotá recently turned to formalization programs to incorporate those areas into the formal city (Gonzalez, 2009). This strategy delegates the construction of new affordable dwellings to the informal sector while legalises the

existing informal housing stock through upgrading programs (Murray & Clapham, 2015). This practice has created an uneven spread of informality in the city. Most of the poorest households in Bogotá are located in informal or 'pirate' developments in the south of the city (Aliaga-Linares & Alvarez-Rivadulla, 2010). The strong spatial segregation patterns in Bogotá are evidenced in the existence of a poor informal south and a rich formal north (Camargo & Hurtado 2013). Besides, the shortage of land in Colombian cities made desirable peripheral and border areas for new middle and upper classes developments (Everett, 2001). The eastern hills of Bogotá have a dual condition, on the one hand they have a significant environmental and scenic value, but also they are an urban border often targeted for the development of new suburbs (Salamanca, 2011). Pressure for housing development has triggered unauthorised occupation for such land where currently more than 28 informal settlements are located while 35 have been legalised in the last years (Ruiz, 2014). Most of these areas are still precarious but have been developed incrementally by increasing the availability of services and infrastructure often at the expense of local residents' economic efforts. In the eastern hills it is possible to encounter different realities and degrees of development in just a few blocks of distance. Thus, precarious informal settlements are often localised near wealthy gated communities, which have vastly different regulations.

In Bogotá, such as in many Latin American cities, environmental protection has been selectively utilised to promote discrimination and evictions of the urban poor. However, these areas are only closed to the underprivileged, while the rich can build in ecological reserves (Everett, 2001). In Bogotá's eastern hills, upper-income settlements have been legalised several times, while the process for the urban poor is

complex and long-lasting (Ruiz, 2014). This is the product of regulations starting from the creation of the protected areas in 1977 to several legalisations in 1990 and 2005. The following sub-sections contain a summary of land policies applied in the eastern hills. Policies are divided into three stages as they represent several milestones in which regulations considerably changed, following the work of Bohórquez (2008).

3.1. The First Stage (1977 to 1989)

The National Resolution 76 of 1977 created the eastern hills protected areas. It roughly defined the borders of the preservation areas and assigned the CAR (Regional Environment Authority) as responsible for the administration and protection of the hills. Land in the eastern hills was mostly privately owned under the jurisdiction of local municipalities. The approval of new building permits in the hills was appointed to the CAR and only land preservation uses were allowed (Resolución 76, 1977). Bogotá's local government regulated land use in the hills through Agreement 7 of 1979. According to chapter 4 of this document, this zoning allowed a maximum housing density of 1 dwelling per 3 hectares and land was required to be subdivided and supplied with basic services by developers before obtaining a planning permit (Acuerdo 7, 1979).

3.2. The Second Stage (1990 to 2004)

The municipal Agreement 6 of 1990 established new land-use regulations in the eastern hills and created a special zoning type titled Suburban Areas. This new zoning partially overlapped the eastern hills' original preservation areas and allowed

planning authorities to authorize new constructions only in low densities. Suburban Areas were exclusively located in the north-eastern borders of Bogotá

Figure 23). Aside from the Suburban Areas zoning, the remaining areas of the eastern hills were placed in a preservation zoning in which the approval of new planning and building permits was forbidden. Land subdivisions were required to have a minimum of 1 hectare.

Articles 142 and 240 contained the basic requirements for legalisation. They included proof of the existence of the settlement before 1986 (i.e., pictures, utility receipts, documents proving the informal purchase of land, aerial photos, plans) (Acuerdo 6, 1990). The Agreement 31 of 1996 provided the exact delimitation of suburban areas and planning regulations. Article 23 of this agreement defines densities and maximum building footprints for each sector located in the hills. The two areas investigated in this article had different provisions as follows:

Table 7

Suburban Areas Regulations in El Codito and Floresta

	Building footprint (%)		Housing density (dwellings/ha)	
	Basic	Maximum	Basic	Maximum
El Codito	20	30	15	30
Floresta	10	20	4	16

Upon agreement with planning authorities, developments might benefit from a maximum floor area ratio defined by this article. The conditions to obtain this bonus were 1) to contribute to the city with basic infrastructure (roads, water, and sanitation connections) or 2) to cede area to be included in the protected areas or 3) to negotiate with precarious informal settlers their relocation to formal housing (Acuerdo 31, 1996).

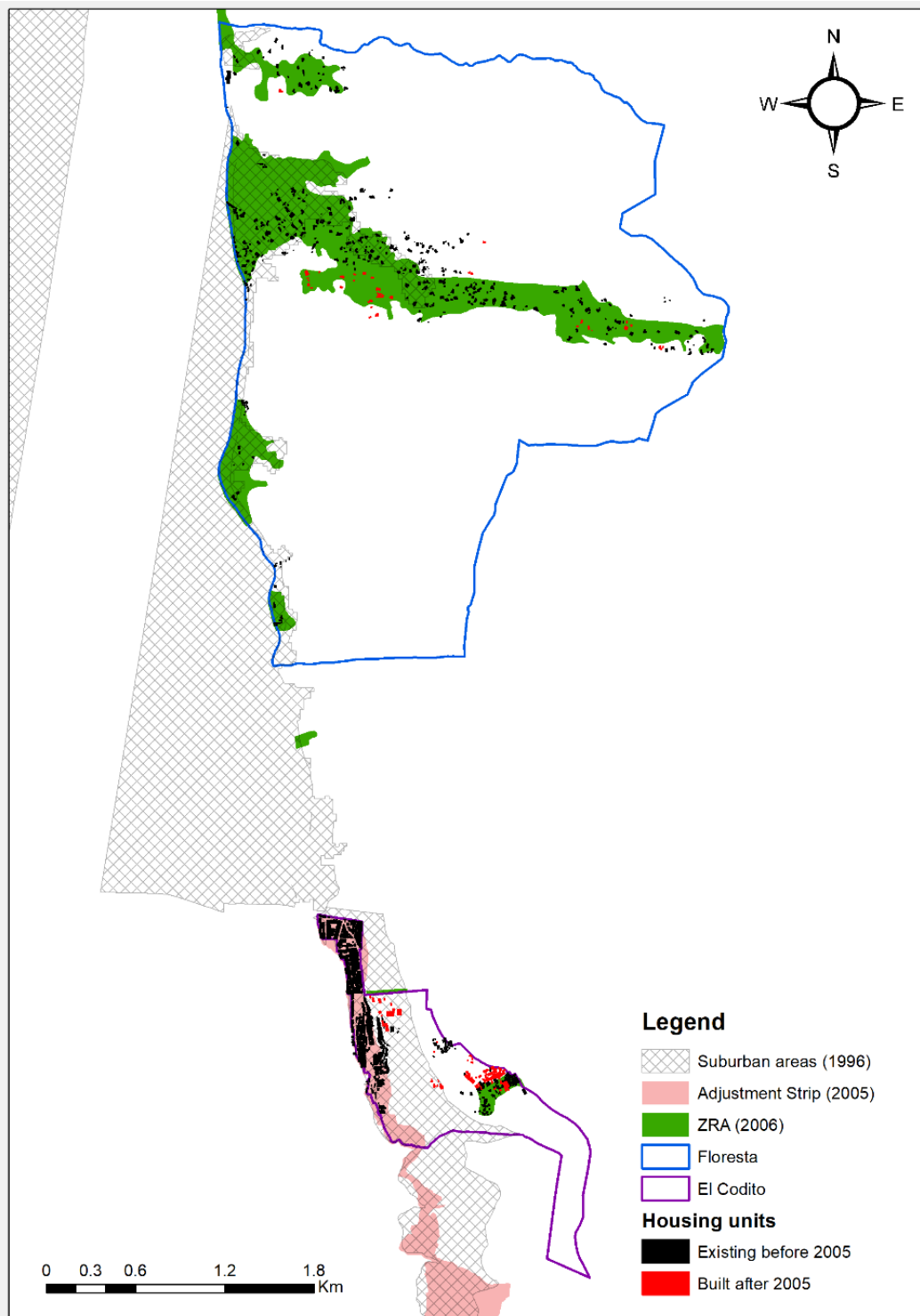


Figure 23

The Layering of Policies and Buildings in Floresta and El Codito

3.3. The Third Stage (2005 onwards)

In 2005, the Ministry of Environment established new zoning regulations in the eastern hills through Resolution 463. This resolution excluded 973 hectares of the original eastern hills named the Adjustment Strip (*Franja de Adecuación*). This exclusion followed the recognition of some existing informal settlements. In the Adjustment Strip, existing developments were going to be legalised while new constructions were banned. Article 3 created the ZRA (*Zona de Recuperación Ambiental* or Area of Environmental Recovery) which is a new zoning type dedicated to areas within the hills partially occupied by informal urban developments. The ZRA intended to serve as a border between the protected forest and urban areas and, therefore, new urban developments were prohibited (*Resolución 463, 2005*).

The Ministry of Environment, the CAR and other state agencies were sued by a group of citizens who opposed the zoning declared by Resolution 463. They declared that, since 1997, 31 construction permits had been authorized in the hills and informal developments were occupying the protected areas as the resolution was very permissive (*Ramírez Lamy, 2005*). Consequently, the State Council started a participatory process in which several stakeholders were summoned to discuss their visions on the normative changes. They included representatives from developers, state agencies, NGOs, residents, and community-based organizations (*Fallo Consejo de Estado 2013*). The outcome of this lawsuit was the State Council Ruling of 2013, which determined that planning and building permits obtained before 2005, as well as legalisation processes in the hills, were to be recognized. Construction and permits obtained after that date,

including the Adjustment Strip, were cancelled, and therefore considered invalid (Fallo Consejo de Estado 2013).

According to the State Council, the CAR must elaborate an Environmental Management Plan for the hills or PMA, which establishes the planning regulations in the hills. The most recent version of this document indicates that any settlement must possess certificates that prove land possession or titling and should be able to present plans, documents, or permits to prove the existence of the houses before 2005. After the CAR's approval, residents must go to the Bogotá planning office and apply for the recognition of their buildings, just like a regular construction permit (PMA, 2016).

Table 8

Three Stages of Regulations in the Eastern Hills

	Stage one		Stage two	Stage three	
Regulation	Resolution 76	Agreement 7	Agreement 6	Resolution 463	State Council Ruling
Year	1977	1979	1990	2005	2013
Institution	National Institute of Renewal Resources and Environment	Bogotá local government	Bogotá local government	Ministry of Environment	State Council
Main contribution	Created the eastern hills protected areas	Established land-use in the hills	Created the suburban areas zoning type	Created the Adjustment Strip and the ZRA	Legalised constructions built before 2005
Conditions for new constructions	Prohibited	1 dwelling per 3 ha. Developments must count with services provision	Only low densities in Suburban Areas (According to Suburban Areas Regulations in El Codito and Floresta Table 7). Subdivisions allowed in the hills (min 1 ha)	Banned from protected areas and the Adjustment Strip	Completely banned

Conditions for legalisations	Not described	Not described	Only for settlements existing before 1986. Proof of existence (documents, permits)	Bogotá is responsible for legalisations in the Adjustment Strip while CAR is in the ZRA	Only for constructions and settlements with legal permits valid before 2005
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4. Methodology

This paper analyses a specific area of the eastern hills of Bogotá. The protected areas were created on 14.116 hectares of land in the north-eastern border of Bogotá by the National Resolution 76 of 1977. This area was initially destined to serve as a green belt that would prevent the expansion of the city northwards. However, the city sprawl eventually reached the limits of the hills and progressively invaded part of the protected areas. Legislation has been enacted by local and national authorities to preserve the native forest and, paradoxically, often legalised new occupations in the hills. Figure 24 shows that the wealthiest areas of Bogotá are mostly located near the hills in the northern borders, while poorer neighbourhoods are mostly in the south of the city. However, El Codito is one of the few enclaves of poverty in the wealthy north.

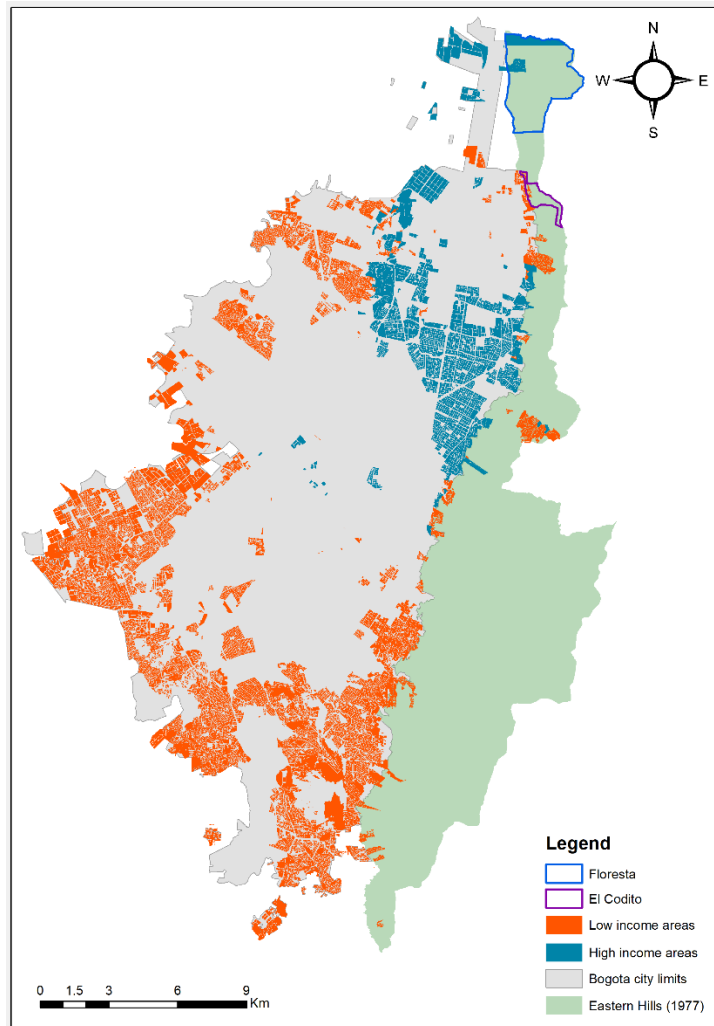


Figure 24

Spatial Distribution of Wealth in Bogotá

Floresta and El Codito have been selected as case studies as they illustrate the contrasting and often contradictory application of legalisation policies within the eastern hills. Both areas were already sparsely inhabited when the protected areas were established in 1977 and have benefited from several amnesties since. Floresta is made up of two exclusive gated communities in the northern part of the city, occupied by luxurious villas surrounded by large gardens. El Codito comprises 8 low-income

settlements with precarious infrastructure and substandard housing. Floresta and El Codito are the most common names of these areas, however, in cadastral and official documents, they are subdivided in smaller neighbourhoods as shown in Table 9.

Table 9

*Floresta and El Codito main Features. *Source: (PMA, 2016) **Only within the protected areas of the eastern hills*

	Floresta	El Codito
Cadastral sector or neighbourhood	Torca, Floresta de la Sabana (lower and upper part)	Capilla, Lomitas, La Estrellita, Mirador, Buenavista, El Codito, Vista hermosa, Horizontes,
Estimated population*	960	14.321
Buildings **	196	2680
Area (ha) **	156,3	48.8
Legalisations (expected date)	Dec. 981/57 (lower Floresta) Res. 619/94 (Torca)	Res. 261/85 (Horizontes) Res. 1126/96 (Buenavista, El codito) Res. 330/99 (Vista Hermosa) Res. 018/99 (La Estrellita)

Our methodology comprised the analysis of the two selected cases and overlapped the results with zoning and planning layers on ArcGIS, as well as historic maps to identify the areas altered by legalisations and regulations in detail. Since the two selected neighbourhoods have been partially legalised, we identified the requirements and conditions for these legalisations in public records as well as the hurdles for each process. Concurrently, we conducted several interviews with key stakeholders involved in legalisation processes, such as residents and planning authorities. This allowed describing perceived injustices and struggles by these

communities, from the point of view of their members. The interviews were significant because they addressed the perception of injustice, rather than objective procedural advantages or disadvantages, which could be identified with mapping, policy analysis and interviews with planning officers. Further, interviewees identified customs and conventions that represented the intervention of informal institutions in this process. This information was supported by the analysis of articles available from 1999 in the digital archive of the main local newspapers (El Tiempo and El Espectador) related to news about the two selected settlements. Ultimately, we aimed to include the visions of different stakeholders on legalisation processes and contrast them to the existing laws. This exposed the differences between the legalisations of the two case studies from several perspectives, allowing triangulation of results.

4.1. Floresta de la Sabana

In 1957, Bogotá's planning department approved a permit to subdivide the area known as Floresta. Only suburban single-detached houses in large plots were allowed (Decreto 981, 1957). This settlement grew as an exclusive gated community, particularly during the 1980s and 1990s. In 1990, Floresta was included in the Suburban Areas zoning type, which relaxed the existing building regulations. In 2005, the entire area was included in the ZRA (Area of Environmental Recovery) which opened the possibility for legalisation. In 2006, the CAR decided to legalise Floresta given that a planning permit was approved in the area decades before. Land and subdivisions were legal according to the original provisions; however, some conditions were added. No other new constructions could be added, and the existing ones need to

be recognized with the approval of building permits for each construction. This decision was suspended due to the State Council Ruling. The State Council initiated a participatory process in which Floresta neighbours' association was included. According to the lawsuit report, only three community-based organisations were summoned to participate among 34 stakeholders, including real estate developers, landowners, and several state agencies. These organisations represented three settlements: Floresta, El Verjón (a wealthy area) and a precarious informal settlement in the hills (Bosque Calderón) (Fallo Consejo de Estado 2013). Floresta neighbours' association presented arguments in favour of the recognition of existing constructions in the hills. They opposed demolitions and relocations of existing settlers arguing the complexity and high costs of these operations. They also demanded the 'prohibition of new building or planning permits in the protected areas since this would ignore and vulnerate the rights of those who purchased land legally' (Fallo Consejo de Estado 2013, p. 48). The final decision of this lawsuit was to legalise settlements within the ZRA (Floresta included) except houses that were built after 2005.

Several residents also assured that the neighbours' association was key to regularize their settlement. The association was able to pool their resources to hire professionals and several lawyers to defend their community from enforcement of the law. According to local newspapers, some of their members, including an ex-minister, used their influential networks to put pressure on planning authorities (ElTiempo, 2006). Residents interviewed recognised the existence of housing informality but were also aware of informal strategies to avoid demolitions: 'I have seen my neighbours building their own houses. From what I know, they have used their connections to get

planning and building permits approved, even if fake ones. It seems easy and nobody denounces you as we are supposed to be part of a community'. (Floresta resident 1)

'New structures are being built while others are expanded, although it is prohibited [..] We do not want to denounce our neighbours, that is not right. The neighbours' association is supposed to control this, but it remains silent' (Floresta resident 2).

There is a pact of silence among residents, which reinforces the secrecy within this community and hinders planning controls. Authorities who try to enforce the law are powerless against influential landowners. 'I witnessed an irregular construction and the owner of the land sued me for reporting that. He threatened me with having my work contract cancelled as he knew many people in the government who could do so. They are politicians, industrials...powerful people. They know it is hard to stand against them because of their influences' (planning officer 1). 'We, as authorities, are not able to monitor thousands of invasions. They rarely allow us to investigate what is going on inside the neighbourhood. [...] There are plenty of interests in developing land in the hills and opposing to interests of wealthy and powerful people is hard and even dangerous for any officer' (former planning officer).



Figure 25

Luxury Villa in Floresta. Source: Author

Local authorities revealed that, systematically, informal dwellers try to delay and hinder legal processes by using their power or connections: ‘Informal landowners may threaten officers or other authorities as they are influential people who believe they are above the law. They are (or they know) prominent figures who can easily bypass the law. Thus, officers should fear them and avoid controls in the area’ (planning officer 1).

4.2. *El Codito*

This area has been informally urbanized since the 1950s. The initial residents were workers of a neighbouring quarry located to the south-east of the current settlement. The quarry owners seem to have been the first to informally subdivide land for their workers, so they could build their own houses. Most of the initial settlers were

migrants who came from the countryside fleeing from poverty and violence (Dussan, 2012). The settlement consolidated in the following decades and spread out further up in the hills. Nevertheless, only few settlements were legalised in the 80s and 90s thanks to the regulations mentioned in Table 9. These legalisations allowed for the provision of basic infrastructure and legal tenure. Although land titling was granted, existing constructions were not automatically recognized as they still needed to apply for ex-post building permits (Resolución 330, 1999; Resolución 1126, 1996).



Figure 26

A View of Capilla Neighbourhood. Source: Author

Legalisations did not cover the upper parts of El Codito (Mirador, Capilla and Lomitas) as shown in Figure 27. This is due to Resolution 463 that prohibited legalisations in protected areas of the hills even if they were existing before 2005.

Therefore, in El Codito, borders among neighbourhoods also defined the possibility to access services and legal tenure.



Figure 27

Legalisations in El Codito

Representatives of Community Action Boards (JAC or Junta de Acción Comunal) of Capilla and Lomitas (smaller areas in el Codito) asserted that they have been struggling for tenure legalisation in their neighbourhoods for more than a decade⁸. Legalisation is the first step to get several public basic services such as water and sanitation.



Figure 28

Sewerage and Waste Collection System in Capilla. Source: Author

Regulations that defined the borders of the hills were perceived as unfair since most of the settlement was already in place before 2005. The lower part of El Codito was legalised and currently has services and public transportation, while Capilla and Lomitas are still informal and poorly serviced as shown in Figure 28. ‘It is very unfair

⁸ Community Action Boards JACs are democratic institutions formally registered with requirements of a minimum number of members and frequent assemblies (For a detailed overview of this institution see Londoño Botero, 1997). Not all of them are registered, as it happens in some areas of El Codito such as Capilla and Lomitas. Despite this, the communities are organized around community leaders that aim to formally create new JACs.

that one day, the government creates a natural reserve in our territory, and we cannot even say a word about it. Our community was divided by this and now our neighbours have water and other services, but we are still informal' (Capilla representative). Due to the application of inflexible regulations, settlers have turned to informal arrangements. 'Residents are aware they are in a protected area, so they try to fight against these legal provisions' (Planning officer 2). For this purpose, informal settlers organize themselves under the leadership of Community Action Boards or JACs. 'Residents try to legally register these organizations to obtain political participation and claim for basic rights' (Planning officer 2).

Although JACs have a longstanding tradition of representing the interests informal settlements upgrading in Bogotá (Tovar, 2007), interviewed officers perceive them as possible threats to the formal order. They claimed that informal developers ally themselves with JACs to seek opportunistic economic or political goals. 'Informal settlers use a system of tenure that is supported by so-called *tierreros*, or pirate developers⁹. They know how to create fake documents that resemble a legal land purchase. However, what residents mostly ignore is that to legally possess any land in Colombia, they must register the land purchase certificate. They [informal settlers] never do that and, years later, these communities self-organize using residents'

⁹ *Tierreros* are a widely known informal institution in Colombia. They are intermediaries between the legal landowners and the informal settlers, and they illegally sell land titles to the latter. They transfer the cost of developing land and services to the state and informal residents. They operate under covered as they generate land conflicts between the stakeholders. However, they are often related to political figures (Rojas-Pinilla, 2017; Sarmiento, 2018).

associations or JACs, often sponsored by *tierreros*, and start claiming tenure rights and services' (planning officer 1).

According to this, the system of informal occupations is fuelled by *tierreros* who illegally sell land. They also establish pacts with the population and leaders of the Community Action Board that will eventually allow the delivery of services, infrastructure, and subsequent legalisation of the settlement. This is ensured through a private investment of *tierreros* on provisional infrastructure (i.e., electricity connections, water tanks, etc) or informal arrangements with local politicians that could foster public investment in the area. The representative of Capilla described this as a symbiotic relationship: 'We protect empty land in our settlement even though people try to squat on it. Only Dr Cano (the pirate developer) can determine who occupy this land, so we make agreements with him and other landowners. They often grant benefits such as land or services in exchange for taking care of their land' (Capilla representative).

In exchange for controlling the spread of new settlements, residents receive some benefits by *tierreros*. Therefore, there is a certain loyalty and respect for them in the community. 'Dr Vanegas (the pirate developer) hides amongst people in this neighbourhood, so authorities cannot find him. He also rewards people with land and favours, we are incredibly grateful for what he does for our community' (Lomitas representative). This shows an elaborate system in which pirate developers control the land and the communities that live within it. *Tierreros* are protected by residents, who follow a system of loyalty and gratitude that allows informal developers to hide from authorities while selling new land. On the contrary, local communities mistrust

planning authorities as they see them as a threat: ‘Our neighbourhood is supposed to be in a protected area. While some communities were invited to decide about this, we were not part of this discussion [...] Some politicians and Dr Cano (the pirate developer) helped us bringing free water or obtaining electric supply. However, the Bogotá government does not want to provide public services to this area. They even have brought the police to evict residents of some areas’ (Capilla representative). This is certainly an example of how an informal institution is regulating the use of space.

5. Similar Processes, Unfair Outcomes

Despite some specific provisions, most of the planning regulations applied in the eastern hills were similar in Floresta and El Codito. This similarity did not ensure fair processes for both communities. In fact, it meant unreachable standards for lower-income households as building and subdivision standards were set high since the creation of the protected areas. For instance, minimum subdivisions had large areas (from 1 to 3 hectares) that made impossible for small landholders to subdivide their land for new developments. Only until 1990, new low-density developments were allowed in the Suburban Areas zoning. This provision was one of the few that considered a differential treatment for Floresta and El Codito, as in the former the maximum permitted density was 4 to 16 houses per hectare while in the latter 15 to 30. Although El Codito’s admissible density was higher, these standards were unrealistic for a low-income community. Nowadays, El Codito has an approximate density of 54.9 units per hectare compared to almost 1.2 units in Floresta. Hence, low-density standards in suburban areas were only achieved by wealthy communities. Meanwhile,

low-density requirements in vulnerable settlements set unrealistic standards and it is fair to assert that regulations only allowed the wealthy to build formally in the hills.

Suburban Areas zoning type had other features that were detrimental to the urban poor. This zoning type had some conditions that responded to the geography of inequality in Bogotá. The eastern hills extend from north to south of the urban perimeter of Bogotá while the Suburban Areas zoning was only situated in the north-eastern areas of the city. Conveniently, this zoning overlaps the wealthiest areas of Bogotá which were made to only allow low-density urban developments. This urban form was only feasible for the wealthiest households of Bogotá, which excluded the poor from these areas. The Suburban Areas zoning type was aligned with the existing inequalities in the hills and even deepened social gaps by granting favourable conditions for the wealthy in the north while excluding the poor from these areas.

Not only planning and construction regulations were unfair, but also legalisations processes. There was an evident disconnection with the needs of the vulnerable communities in decision-making processes in the hills. Although the State Council created a participatory process in which gathered numerous stakeholders, the interests of low-income communities were underrepresented. Most of the participants were real estate developers and state agencies. Even a couple of representatives of wealthy communities participated while only one low-income community did, despite the existence of more than 63 vulnerable settlements in the hills. Developers and wealthy landowners were favoured by the outcome of this process as they could build in the hills by using the Suburban Areas zoning and then legalize through the State Council regulations. Meanwhile, low-income households in the hills did not have

access to such advantages and therefore they had to self-build and then aim to legalise their properties one at one time. However, this implied a long process that was interrupted by the same State Council, which decided to suspend further legalisations. While most decision-makers were members of the wealthy classes, the people most affected by the decisions were the poor. A systematic shortfall in the participation of vulnerable communities has created the sense that rules are unjust, unachievable, and imposed by top-down processes negotiated mostly by the rich.

These unfair outcomes have to do with the intervention of informal institutions that respond to the needs of each community in the eastern hills. The following section analyses how informal institutions added to the regulatory framework and influenced legalisation processes in each community.

5.1. The Role of Informal Institutions on Legalisations

As there is a lack of several basic services and formal rules are perceived as unjust, residents of El Codito have turned to informal institutions. Since formal developments for the low-income population were practically prohibited in the hills, low-income households were forced to look for shelter through different informal means. Pirate developers or *tierreros* are a well-known institution in several countries of Latin America that facilitates the urbanization of new areas through informal occupations (Salazar, Ramos, & Pérez, 2017; Tovar, 2007). In the eastern hills, they guaranteed the supply of new land for housing while maintaining a symbiotic relationship with local communities. *Tierreros* exchange cheap land with the population for economic benefits and protection from authorities. They also filled the

gap that local authorities left in terms of delivering services and basic infrastructure. They interacted with politicians and other formal institutions to provide provisional solutions for the population. Instead of considering *tierreros* as scammers, local communities develop some loyalty based on gratitude. As land and services were scarce resources, the local population in El Codito have a positive attitude towards informal developers. This is opposite to perceptions towards the government and other formal authorities who are regarded as the perpetrators of unjust regulations and evictions. El Codito's residents have also created several Community Action Boards or JACs, despite not all them are formally registered. They responded to the need for a political structure that served as an intermediary between the local population and formal political structures. This could be eventually used to encourage the government to deliver infrastructure and services. They might also serve as the starting point to demand legalisations to the local government through collective actions and lawsuits. Both institutions, JACs and *tierreros* deliver several services that the government has systematically denied to low-income communities, including the access to legalisation processes.

The wealthy in Floresta also make recourse to several informal institutions for different reasons. Residents assured informal networks were widely employed to get planning and building permits approved. They had actively engaged lawyers and planning officials to bypass formal procedures. As these networks did not use formal, or even legal procedures to have permits approved, they might need pacts of silence within the community to cover their operations. Neighbours were knowledgeable about new unauthorised constructions and informal extensions; however, they did not

denounce them as they were also the main beneficiaries. Wealthy households in Floresta have other advantages related to their power and connections. Authorities were fearful to enforce planning law as it was known that residents could threaten them easily. They were able to defy planning authorities who tried to control or investigate the area, as they could make recourse to informal networks tied with local governments. These networks also used an array of professionals and institutions such as neighbours' associations that helped them to lobby the government to encourage legalisations fitted to their requirements. In Floresta, informal networks and pacts of silence were entangled and complement each other with formal and external institutions to pursue the goal of legalisation.

According to the informal institutions' typologies proposed by Helmke and Levitsky (2004), this is a typical case of ineffective formal institutions that trigger the surge of informal arrangements and customs. However, Helmke and Levitsky's typologies require analysing whether expected outcomes of formal and informal institutions differ or converge. In the case of El Codito, *tierreros* act against formal rules as they promote new developments in protected areas. However, they are also responsible for providing affordable land for the urban poor as the government is absent. Further, they may help to deliver basic services to these neighbourhoods. Therefore, *tierreros* are initially a competing informal institution, since formal rules do not aim urban expansion over the hills, however, they also substitute formal institutions in the provision of affordable land for the poorest. This function is particularly relevant in areas, such as the north of Bogotá, where land available to the poor is scarce. Community Action Boards or JACs, are intermediaries between the government and

residents in the absence of neighbours' associations, particularly in low-income settlements. In El Codito, JACs negotiated their needs for legalisation with the government. However, Floresta did not need them as it was supported by informal networks and neighbours' associations that have been successful in avoiding enforcement and obtaining lax conditions for legalisations.

Finally, there was a common institution acting in the two studied communities, which is the pact of silence. While in Floresta, the wealthy did not dare to denounce their neighbours, in El Codito, there was a similar arrangement to protect informal developers. Both were inspired in the need to protect their communities from planning authorities, as they knew that were acting unlawfully. However, both also emerged in a symbiotic environment supported by loyalty. The wealthy needed the complicity of all the community to protect new houses and renovate/extend existing ones against the actions of planning and environmental authorities. This pact is key for the existence of this community, otherwise, informality will unlikely remain in this area. Likewise, the pact of silence in El Codito involved the pirate developer and the community. The informal developer provided many benefits to the local population in exchange for protection. This means the whole institution of *tierreros* was supported by the condition of not denouncing their acts to the police or other authorities. The settlement expansion and even other benefits that the informal developer might grant -such as the delivery of basic services- could be conditioned to the existence of this combination of informal institutions. As the pact of silence avoids enforcement from authorities, it is possible to typify this as a competing institution that is shared in both communities. Hence, the

pact of silence is key to sustain other informal institutions in Floresta and El Codito, so it is fundamental to guarantee legalisations in these two settlements.

6. Final Remarks

The eastern hills protected areas have a dual condition of an urban border and a forest area shaped by planning laws according to conflicting interests. While some regulations allowed new developments, others prohibited constructions and aimed for the environmental preservation of the hills. Although regulations in the hills were supposed to be based on principles of equality, some rules wittingly favoured privileged groups. Zoning in the hills only allowed low-density developments and large land subdivisions in the northern areas of Bogotá, where traditionally the rich inhabit. Meanwhile, affordable housing in the hills was not even considered and low-income communities were relegated mostly to informal developments in the southern areas of Bogotá. The struggle for formal access to land has not ended as legalisations have also followed a formula based on the principle of granting construction rights to those who obtained legal permits in the area. This deliberately ignores several informal neighbourhoods, mostly low-income ones, that do not have the resources to obtain such permits. The wealthy use this advantage to maintain their privileges while the poor have been systematically barred from legal access to land in the hills as regulations and legalisations were set with unrealistic standards that prevented them from obtaining legal tenure. Therefore, planning laws and legalisations in the eastern hills had a differential treatment of rich and poor settlements that intensified spatial segregation patterns.

Informal institutions had a significant role in enhancing legalisations processes in the hills as they were responsible for creating convenient arrangements for wealthy and underprivileged communities. In El Codito, informal institutions compensated for the lack of access to affordable land by the presence of *tierreros*. In Floresta, the rich used institutions such as informal networks to obtain permits and avoid demolitions. Pacts of silence were common in both communities as they were key to the survival of other institutions and the unity of the community. They granted the protection against enforcement of the law and eventual demolitions and evictions. These institutions proved to be adaptable to the regulatory framework while they filled the gaps regulations and legalisations left in terms of access to land or services. Informal institutions supported, in the words of Helmke and Levitsky (2004), ‘not openly admissible objectives of the state’ while they mitigated the unavailability of certain services. This is certainly relevant in the case of *tierreros*, as they hold a dual position in which they provided affordable urban land for the less privileged (a public service) through illicit means (informal developments in protected areas). This conflict could be extended to all informal institutions analysed as they directly or indirectly enhance the delivery of services for communities in the hills that the state has systematically denied. Hence, they are a necessary part of the housing system as they could accommodate concealed interests of the state by enhancing legalisations and deterring enforcement.

Despite the importance that informal institutions hold in legalisation processes, there is scarce literature on this topic, except for the case of *tierreros*. They have been considered as intermediaries or even facilitators of informal urbanizations and play a

predominant role in informal development of the poor in Colombia. However, the case of El Codito shows that this institution may have further endeavours as it supported the Community Action Boards to provide other services to the community. This is quite exceptional and further studies may address this finding.

Finally, while most of the attention of research lies in the legal and normative aspects of legalisations and informality, Informal institutions demonstrated to be a key aspect that may explain the existence of informal rich and poor settlements in the eastern hills. Furthermore, as the presence of gated communities and informal settlements in the shape of pirate urbanizations is quite common in Latin American cities, the eastern hills are unlikely an isolated case. Hence, this study opens the gates to comparative studies in other Latin American and global South contexts.

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