

**Regularising informal settlements in Brazil:
legalisation, security of tenure and city management**

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Regularising informal settlements in Brazil: legalisation, security of tenure and city management¹

Edesio Fernandes²

This paper discusses the innovative tenure policies implemented in Brazil to support local regularisation programmes. Following a general presentation of the main context in which tenure policies have been formulated in urban areas in the country, I shall analyse the main developments in Porto Alegre and Recife, highlighting the way tenure policies have been combined with urban planning regulations and participatory city management mechanisms.

I Tenure policies in urban areas in Brazil

This section presents the general context in which tenure policies have been formulated in urban areas in Brazil. Following a discussion of the main legal-political conditions for their implementation, I shall introduce the innovative tenure policies adopted in Porto Alegre and Recife.

1 Introduction

It has been widely recognised that the process of intensive urbanisation in Brazil has been a process of social exclusion and spatial segregation. While about 80% of the population lives in urban areas, especially in metropolitan areas, the vast majority of the urban population are living in very precarious material, social and environmental conditions - if not also illegally. Indeed, the lack of affordable and adequate housing options has brought about a proliferation of irregular and illegal forms of land use and development. This results from the combination of three main factors, namely: the absence of a comprehensive official housing policy at all governmental levels, within the broader context of restricted legal-political conditions of state action to control urban development; the concentrated and privatised land structure formed throughout five centuries; and the unfavourable dynamics of the highly speculative urban land market, which has produced an average of 40% vacant serviced areas in the main cities.³

Over the decades of intensive urbanisation, economic concentration and political centralisation, the two main processes through which the majority of people have had access to urban land have been the acquisition of plots in the widespread “irregular” and “clandestine” *loteamentos* and the formation of thousands of *favelas*. While the former are illegal land subdivisions developed mostly by informal by private companies in peripheral areas, the latter result from the invasion of both public and private land, originally in more central areas. Housing for low-income groups has largely been the result of precarious self-construction in such *loteamentos* and *favelas*. Whereas the production of affordable, technically adequate and serviced housing for the lower-income groups by state agencies has been greatly insufficient at all governmental levels, in some large cities such as Sao Paulo and Rio de Janeiro unregulated and informal rental practices have provided housing opportunities to a significant number of urban poor. This has happened especially in *corticós*, the dilapidated private houses, usually in central areas, where thousands of families live in precarious and hazardous conditions.⁴

Full formal security of tenure is virtually non-existent to all such people who live irregularly/illegally settlements, although the legal, political, social and economic consequences of this fact have varied according to the different situations. On the whole, the people living in peripheral *loteamentos* have long had restricted access to public services and to official credit and finance, as well as several other sociolegal limitations resulting from their illegal situation. However, as a rule, *favela* dwellers have been the most vulnerable groups. Having the same legal and socioeconomic difficulties, they also have been more directly exposed to

forced eviction. This powerful combination between legal discrimination, political vulnerability, economic incapacitation, social exclusion and spatial segregation have turned these tens of millions of Brazilian urban poor into second-class citizens in socioeconomic as well as in legal-political terms. Although this process has affected all sorts of low-income social groups, the impact it has had on women and children has been particularly stressed by researchers in recent years.

2 The context of land tenure policies

Having started in the 1930s, the urbanisation process in Brazil had its peak in the 1960s and 1970s. Political re-democratisation and economic restructuring since the 1980s have gradually brought some changes in the pattern of urban management, including the increasing recognition by some municipalities - given the absence of a national policy - of the need to confront the process of social exclusion and spatial segregation. This has been done especially by providing affordable and secure access to land and housing for the urban population. As a result, important tenure policies have been formulated in some cities within the context of regularisation programmes aimed at upgrading and legalising *favelas* and irregular or clandestine *loteamentos*.

Breaking to some extent with the historical tradition of political centralisation, municipal government was significantly strengthened in legal, political, administrative and financial terms by the 1988 federal Constitution. In particular, the overall conditions for the promotion of socially-orientated, democratic urban management by the local state were improved by the Constitution, which explicitly recognised the principle of the “social function of property and of the city”. Among other important developments, the 1988 Constitution also recognised a special right of urban *usucapiao*, a form of adverse possession for those occupying private areas up to 250m², thus encouraging the formulation of municipal policies aimed at legalising and improving tenure conditions in informal settlements.⁵

In this context, a fundamental change in the orientation of tenure policies has become evident in many cities. After decades evicting the communities living in illegal settlements, or denying them services, credit and rights, the local state has increasingly come to tolerate them in different manners and to different degrees, eventually - albeit in a reluctant and incipient way - proposing the improvement of tenure conditions and the legal and technical regularisation of such areas and communities.

Since the late 1980s/early 1990s, important experiences of land regularisation based on new tenure policies have been attempted in several cities, especially in those municipalities explicitly committed to promoting democratic urban management as well as democratising the access to urban land and housing. Municipal government has become the main agent in this process. The action of the federal government on that matter, which had long been restricted and ineffective, has been reduced even further to providing occasional financial transfers to federated-state and municipal agencies and programmes, as well as creating some specific legal-financial mechanisms.⁶

Generally speaking, the implementation of tenure policies within the context of the programmes of *favela* regularisation have been more consistent, systematic and successful than those proposing the regularisation of irregular/illegal *loteamentos*. This is probably due to the fact that there has been a greater degree of sociopolitical mobilisation in *favelas* over the decades - which can be explained by the fact that *favela* dwellers have always had a more precarious legal status. Therefore, they have been more likely to be evicted or removed from the occupied areas than the residents of illegal *loteamentos*, who had originally bought the land titles to the plot from whoever presented themselves as the area’s legitimate owners.

Nevertheless, regardless of the increase in urban poverty resulting from the changes provoked by economic globalisation, the country’s highly concentrated (urban and rural) land

structure and its elitist capital and income distribution system remain largely unchallenged. More and more people have had to have recourse to informal means of access to urban land and housing over the last two decades. In the main cities, even the acquisition of plots in irregular *loteamentos* has not been an affordable option to an increasingly larger number of people. *Favelas* have been daily formed in urban areas, now including peripheral areas.

The fact is that even the action of the most progressive local administrations - such as those of in the hands of the Workers' Party (*Partido dos Trabalhadores-PT*), in which the ground-breaking legal-political process of participatory budgeting has been increasingly consolidated - has been hindered by the extent of the accumulated housing deficit and other urban, social and environmental problems. Local state action has also been affected by the problems resulting from Brazil's long-standing financial and monetary crisis. Another significant problem has been the lack of a proper legal-institutional sphere in the country's constitutional order to address the metropolitan dimension of most urban, social and environmental problems. The scope for municipal action is clearly restricted.

3 Legal-political conditions for the formulation of tenure policies

Historically, the Brazilian legal system has always recognised the co-existence of different land tenure systems. During the colonial period (1500-1822), the Portuguese legislation - based to some extent on the notion of the social function of property - included several forms of leasehold rights. Many of these rights have survived the political changes in the country, being eventually incorporated in the 1916 Civil Code and subsequent land-related legislation. In theory, there are several forms of real rights in Brazil, of which freehold rights is just one. Others would include *enfiteuse*, *servidoes*, *uso*, *habitacao* and, more recently, *concessao de direito real de uso*. Freehold rights can be recognised as individual or collective, condominium rights. Nominally, all such rights provide security of tenure and protection against eviction. However, the fact is that, since the colonial period, the notion of full individual freehold rights has always been the dominant one, and the other forms of real rights have been much less significant. Indeed, most of the few existing tenure systems based on real rights other than freehold rights are obsolete remnants of Brazil's colonial past, often corresponding to land belonging to the Church or the state.⁷

In this context, one of the most significant problems affecting urban management concerns the fact that, despite the rhetorical provisions in the country's constitution, socially-orientated tenure policies in Brazil - implying as they do a broad scope for state action - still lack full legal support in the basic provisions of the overall legal system. In fact, the assumptions of progressive tenure policies, such as those supporting tenure regularisation programmes, have long been at odds with the prevailing individualistic legal definition of property rights, typical of liberal legalism, such as materialised in the 1916 Civil Code which is still in force.⁸

In particular, there has been in Brazil a general confusion between housing rights and property rights, and an ill-thought, immediate association between security of tenure and the recognition of - individual - property rights. In other words, most people and (governmental and non-governmental) organisations and agencies advocating the promotion of security of tenure through regularisation policies seem to think that only through the recognition of full freehold individual titles would security of tenure be achieved, enabling the beneficiaries to remain on the land as well as to obtain credit and invest in their houses and businesses.

In some cases, this unfounded association between individual ownership and security of tenure has had a (not always explicit) political motivation, especially when the adoption of tenure policies has been defended by groups - such as some of those linked to the progressive branch of the Catholic Church - which view the recognition of individual property titles as a means of promoting the long overdue land reform. Besides which, the powerful ideological and cultural implications of the notion of full individual ownership should not be underestimated,

especially given the central role land ownership has historically had in Brazil, among other factors because of the country's unstable economic production and lack of a social security system. To most people in *favelas* and elsewhere, security of tenure equals individual ownership, and therefore the perception of security often tends to be associated with individual rights. It is interesting to remark that a recent survey among the members of the *Movimento dos Sem-Terra - MST* (Landless Movement) in the countryside of Brazil - deemed by many to be subversive, dangerous agents who have violently questioned the country's land structure - indicated that 75% of them wanted to be given full freehold individual titles.

Invasions, irregular land subdivisions and all other forms of precarious occupation, as well as the widespread practice of illegal construction, are certainly a reflection of the powerful combination between the (formal and informal) land markets and the Brazilian political system. But it has to be said that they are also the result of the nature of the legal system prevailing in the country, especially the land laws, property rights laws and registration laws in force, which are deeply elitist and exclusionary. Both the adoption of legal instruments which do not reflect the socio-economic realities determining the conditions of access to urban land and housing, and the lack of proper regulation, have had a perverse role in aggravating, if not in determining, the process of social exclusion and spatial segregation.

Since the pioneering tenure policy of Belo Horizonte was formulated in the early 1980s, most tenure regularisation programmes in Brazil have followed the same formula, that is to say, regularisation by local government based on the recognition of individual freehold rights to the occupiers - which has proved to be one of the main factors determining their failure. (**See Box 1**) On the whole, many such tenure regularisation policies have been relatively successful regarding the undertaking of upgrading works and service provision, but they have largely failed to promote land legalisation, especially in those *favelas* occupying private land, given the high financial costs and legal and technical difficulties involved.

It is true that the claim for titles seems to be less strong in consolidated settlements today as it was in the 1980s, meaning basically that the local residents feel protected against the possibility of eviction by the government. However, I would argue that this perception of security of tenure can be false, in that the permanence of the original occupiers in the settlements has actually been increasingly threatened by the combination of several factors, namely: the sociospatial impact of drug trafficking; the increasing opposition to their rights on environmental grounds; changing political realities and corresponding changes in local policies; and the intensification of the pressure from the (internal and external) land market.

Moreover, tenure regularisation policies have only been applied in areas where the occupation has long been consolidated and where the residents' rights to remain have somehow been recognised or tolerated. More recent informal settlements usually do not qualify, and the growing communities living in such precarious areas lack security of tenure and have frequently been evicted or removed by both the government and private landowners.

4 Innovative experiences of tenure regularisation

The legal-political formula supporting the tenure policies adopted in Belo Horizonte has been reproduced in several cities, as for instance Salvador, where the same problems have been identified. This situation has become even more difficult given the conservative, still dominant legal provisions which have long favoured economic exchange values and the interests of landowners and economic groups to the detriment of the principle of the social function of property. In many municipalities, the action of judicial power has also significantly reduced the scope for state intervention in the domain of individual property rights, even in situations where the land occupation has been consolidated for a long time.

It is in this context that, as an expression of their peculiar sociopolitical and historical circumstances, other municipalities - such as Recife, Porto Alegre, Diadema, and Santo Andre

- have attempted to formulate innovative tenure policies to support regularisation programmes based on different legal-political notions and instruments. In this chapter, I will be examining the experiences of Porto Alegre and Recife in some detail.

Learning from the accumulated experience over the last 15 years or so in Belo Horizonte and elsewhere, Porto Alegre and Recife have formulated innovative tenure policies taking into account the problems and difficulties involved in promoting the legalisation of invaded public and private land through the transfer of individual property titles. They have also taken into consideration the known situations in which legalised plots had been immediately sold by the original occupiers - who then moved on to invade other peripheral areas, thus starting the whole process all over again.

As a result, the tenure policies being currently implemented in Porto Alegre and Recife have been based on the assumption that, even if it may create individual security of tenure in more immediate terms, the mere attribution of individual property rights does not necessarily achieve the main goal of most tenure regularisation programmes, that is to say, the full integration of illegal areas and communities into the broader urban structure and society. Moreover, they have been based on the principle that tenure regularisation policies have to be reconciled with the need to improve conditions of sociopolitical citizenship.

In another interesting development, policymakers and public administrators in those cities have tended to look at the phenomenon of urban illegality from a different sociopolitical viewpoint, and therefore they have viewed the state's social obligations in terms of providing adequate and affordable housing rights - and not exactly providing property rights. Among other factors, this political attitude has entailed a different treatment of invaded public and private land. In particular, it has implied in the refusal of the traditional legal-political choice based on the transfer of freehold individual titles in public areas. On the whole, the new tenure policies formulated in Porto Alegre and Recife have supported the notion that the recognition of social housing rights does not entail the privatisation of public land, especially in the Brazilian urban context in which the amount of existing public land is negligible.

In both Porto Alegre and Recife, tenure policies have favoured the recourse to the legal institute of *usucapiao* as the principal means of promoting the improvement of tenure conditions and the legalisation of settlements in private areas. Such policies are based on the political notion that, whenever possible, the original landowners should not benefit - through the payment of compensation by means of public money - from the fact that, having failed to fulfil its social function, their vacant/under-utilised land has been occupied by people whose housing needs had not been met by either the state or the market. They have also supported the legal notion that time creates rights as much as it abolishes rights, and that the occupiers of private land should be recognised as subjects of property rights of their own - and not as the beneficiaries of property rights forged by the state through expropriation followed by sale or donation. In other words, whenever possible the role of the local state in private areas should be restricted to facilitate, and possibly help mediate, the confrontation between the occupiers and the original landowner for the judicial recognition of the occupiers' freehold rights acquired through *usucapiao*.

To a lesser extent, the new tenure policies employed in Porto Alegre and Recife have also considered the economic implications of tenure regularisation programmes on the land market and on the financial capacity of the residents in informal settlements. The tenure rights recognised are expected to promote legal security of tenure as well as minimising distortions on the land market, besides making the sociospatial integration of the areas and communities possible and guaranteeing the permanence of the original occupiers on the land once it has been upgraded and regularised.

Such policies - as for that matter that of Belo Horizonte - also have a basic gender dimension, in that they support the general notion that, regardless of their legal marital status,

women should be given a priority treatment once the recognition of titles is promoted. As a rule, tenure titles have been issued on the names of both partners.

As mentioned above, there is in the Brazilian legal system a gamut of alternative legal-political options to be considered apart from the transfer of individual freehold ownership, ranging from diverse forms of leasehold to still largely unexplored forms of collective ownership, allowing for varying degrees of state control. The most “innovative” approach to tenure rights in urban areas in Brazil, as applied in both Porto Alegre and Recife, concerns the utilisation of the legal-political instrument entitled “Concession of the Real Right to Use - CRRU” as the means of recognising security of tenure. This has been done within the context of broader municipal programmes aimed at the legalisation and upgrading of *favelas*. (See Box 2)

II Case studies: Porto Alegre and Recife

This section provides a general analysis of the tenure policies employed in the two case studies, Porto Alegre and Recife, cities where the Concession of the Real Right to Use-CRRU has been used for some years now within the context of municipal regularisation programmes. It intends to describe in brief terms what the utilisation of the CRRU provides in practical situations, when and why it was introduced, and how it has been applied. Moreover, drawing from existing data and literature, but especially from several interviews with local residents, community leaders, academics and other important stakeholders in governmental agencies and NGOs, I shall discuss some of the strengths and weaknesses of both experiences of tenure regularisation. To provide some basic comparison grounds, in each city another case was studied in which the tenure policy was not based on the CRRU.

This following analysis is based on five main, intertwined research criteria, namely: to what extent the tenure policies have promoted effective or perceived security of tenure; to what extent they have achieved the intended promotion of sociospatial integration; to what extent they have entailed better access to credit and services to residents as well as improving their willingness to invest in their houses; to what extent they have incorporated a gender dimension; and to what extent they have been effective as instruments of poverty eradication.

1 The experience of Porto Alegre

The municipal administration of Porto Alegre, one of Brazil’s largest cities, has been in the hands of the Workers’ Party-PT for three consecutive terms, with the fourth term having started in January 2001. Under the motto “Courage to Change”, the PT government has decided to confront the long-standing problems faced by the low-income population. Amongst other measures, the government has adopted a policy of “priorities inversion”, in which the issue of security of tenure is a fundamental one. The city’s “Popular Administration” has been systematically committed to promoting urban reform and “the right to the city”, especially by democratising the access to urban land and housing. Together with one of the most progressive urban planning apparatus in force in Brazil, Porto Alegre has long pioneered the ground-breaking political experience of participatory budgeting, with the local associations effectively participating in the definition and distribution of an increasingly larger part of the city’s investment budget.⁹

Since 1990 Porto Alegre has adopted innovative tenure policies within the scope of the programmes aiming to regularise the local *favelas*. However, from the start such tenure regularisation programmes have been combined with urban planning regulations. Indeed, following in the same path opened by Belo Horizonte’s PRO-FAVELA programme, since 1995 the areas to be regularised in Porto Alegre have been classified as AEIS (Special Areas of Social Interest) by the municipal zoning scheme, as well as subjected to specific regulations

by the prevailing urban planning laws. Such provisions include, for example, restrictions to the size of plots and constructions as well as specifications on the forms of land use allowed in the area. These specific planning regulations basically aim to keep the residential and social character of the AEIS, and therefore to keep the affected communities on the land as much as possible, thus preventing land subdividers from buying the upgraded and legalised plots in order to - among other ways, by merging them to erect larger and taller buildings - integrate them into the official land market aimed at the middle- and upper-classes.

Having created a specific institutional apparatus to manage the tenure regularisation programme, Porto Alegre has also opened an important institutional avenue to guarantee the participation of the AEIS residents in the participatory budgeting process in different forms in area- and theme-based forums.

According to several people working for technical tenure regularisation agencies and NGOs involved in the original formulation of the tenure regularisation programme in the late 1980s-early 1990s, a choice was then made - and approved by law in 1991 - to favour the utilisation of the CRRU in settlements in public land instead of the transfer of full freehold titles. Their intention was mainly to provide social housing rights without giving up the public land, as well as providing effective security of tenure, but within certain legal and urban planning conditions which would minimise the likelihood of the beneficiaries being “forced” to leave them under pressure from the land market. Although more studies are still necessary to assess to what extent this policy has interfered in the land market, on the whole land prices in AEIS with CRRU seem to be lower than what is the case in less restricted areas with full titles.¹⁰

Porto Alegre is one of the few municipalities where there has been a systematic, and increasingly successful, municipal programme aiming to promote the upgrading and legalisation of irregular and clandestine *loteamentos*. Several measures have been taken to legalise the occupation in such areas through the full recognition of the freehold titles the residents had bought in good faith - albeit in legally flawed transactions.¹¹ It is in the regularisation of the occupation in *favelas* that innovative tenure policies have been employed.

Although the *favelas* in private land have been increasingly upgraded regardless of their legal status, thus creating effective conditions of perception of tenure, as mentioned above the official policy concerning their legalisation is to support the affected communities in their claim for the judicial recognition of *usucapiao* rights whenever possible. However, they have not been fully successful as there is still a resistance on the part of the local judicial system to the notion that the legal - and indeed constitutional - institute of special urban *usucapiao* is self-applicable without previous regulation by federal legislation. It should be stressed that, although this is the dominant view held by the conservative legal sectors nation-wide, the special urban *usucapiao* has already been successfully applied in other municipalities such as Jaboatao dos Guararapes, in Recife’s metropolitan area, where it has been indeed supported by judicial decisions and subsequently registered by the local registry office.¹²

Two areas were studied in Porto Alegre, namely Vila Planetario - where the CRRU has been employed - and Vila Vargas - where the older, pre-PT tenure policy is based on the recognition of individual freehold rights.

1.1 Vila Planetario

Vila Planetario is a *favela* formed in the 1950s in public land located in the city centre, where the CRRU has been implemented since the early 1990s. It has become emblematic of Porto Alegre’s land regularisation programme, as well as of the possibilities of ensuring security of tenure through the CRRU. Given the continuous, strong mobilisation of the original occupiers, who are mostly informal rubbish collectors, despite the area’s potential attractiveness (because of its central location) in market terms and the undertaking of several upgrading works and

increasing services provision by the municipal authorities over the years, the ongoing legalisation of the occupation has had next to no impact on the land market. The contracts of the CRRU were signed in 1993, with 90 families being granted individual titles.

Most people who are currently living in the area have been there for a long time, and they have not felt the need nor have been under any pressure to sell; in fact, between 1993 and 2000 only one family left the area. Although the restrictive local legislation only allows for the CRRU titles - valid for 30 years - to be transferred *causa mortis* by the beneficiaries to their heirs, there is currently a proposal supporting the possibility of *inter vivos* transfer. This is to be subject to both respect to the planning legislation and previous approval by the public authorities, in which process there should be room for significant community participation to guarantee that the new occupiers fit within the same socio-economic profile of the area as a whole. Local women have been especially active in the mobilisation and regularisation process, and basic gender aspects have been considered by law and in practice, with most titles have been issue on the names of both partners regardless of their official marital status.

Vila Planetario is an exceptional case only in that the tenure regularisation programme has been supported by significant public investment in housing. Since the initial housing programme was implemented, local residents have continuously maintained and improved their houses with their own means and resources. According to the residents interviewed, access to informal and, in some cases, formal credit has been increasingly recognised, especially for the acquisition of building materials. There seems to exist a good record of payment of the taxes due to the local administration.

The Jardim Planetario (“Planetario Garden”), as the area was renamed by some people following regularisation, is provided with postal services, electricity, residential water provision, rain and sewage drainage, street paving, organic rubbish collection, and selected rubbish collection. The area is close to schools, health centres, hospitals, squares, parks and all sorts of commercial activities. On the whole, the regularised residential estate has gradually integrated itself with the neighbouring areas, and its road system has been increasingly used by the residents in the neighbourhood who now feel safe to do so. As a result of the upgrading works, the area already has the appearance of an ordinary working-class neighbourhood. The local community’s effective participation in the participatory budgeting process has already resulted in several achievements such as the recent building of the local crèche, which is run by the community, and the opening of a small public square with trees and benches. If the signs of sociospatial integration are clear, the interviews with the politically aware residents and community leaders have clearly pointed to the existence of improved conditions of sociopolitical citizenship.

However, there are still some legal obstacles to the full legal recognition of the tenure policy. In fact, there has been in Porto Alegre legal resistance to the registration of the CRRU on the part of registry offices, preventing the recognition of full security of tenure - as, according to the Brazilian legal system, only the registration of the title constitutes ownership. Such resistance is based on a conservative legal interpretation supporting the idea that the CRRU - created by federal legislation in 1967 - cannot be applied by municipal laws and policies before that legal instrument is further regulated by federal legislation. However, in other municipalities, such as Recife, the CRRU has been used for a long time without a major legal resistance. In any case, this legal controversy should be resolved in the near future, with the imminent approval of the national urban development law by Brazil’s National Congress, making it possible for municipal legislation to regulate the matter.

Another significant problem concerns the fact that granting tenure rights to individual occupiers depends on the legalisation of the *favela* as a whole, which in legal terms is viewed as a specific form of *loteamento* and has therefore to obey the provisions of the existing federal legislation. Among other provisions, until the law was changed in 1999 the legalisation of the subdivision required that at least 35% of the area should remain as public land for the

installation of public equipment, collective facilities and green and open spaces. However, this has proved to be a difficult task in regularisation programmes as the informal areas have been densely occupied for a long time, and therefore special, expensive arrangements (for example, expropriation of neighbouring areas) have been necessary to comply with that legal requirement. As a result, the municipal planning department in charge of approving land use and subdivision projects has opposed the legalisation of the individual plots in Vila Planetario - proposed by another municipal department, in charge of the tenure regularisation programme - before the whole area is approved. This institutional conflict has been harmful; indeed, when interviewed a local judge clearly sympathetic to the recognition of tenure rights to the residents expressed the view that his job re-interpreting the legislation in a more progressive manner would be made much easier - especially given the still hostile overall legal culture - if the municipal agencies involved could find a proper way of working in unison.¹³

In any case, there has been a recent change in the federal legislation governing the approval of *loteamentos*, which, by allowing the municipalities to dispense with the requirement of 35% of public areas by municipal legislation, should facilitate the approval of the legalisation of the informal settlements - and therefore of the existing individual plots. This legal change will certainly facilitate the land legalisation programme in Porto Alegre in the near future.

The interviews with local residents, community leaders, public officials and other involved parties have indicated that, despite the wealth of educational materials distributed by governmental agencies and NGOs, while the residents may not have a full understanding of the nature, technicalities and implications of the CRRU, there is nonetheless a widely held, strong perception of security of tenure. This perceived security of tenure has ignored the fact that, with the still prevailing legal obstacles to the registration of the titles, technically the CRRU beneficiaries still do not have full legal security of tenure nor can they legally offer their properties as collateral.

1.2 Vila Vargas

Another AEIS, Vila Vargas is a *favela* formed in a private area located relatively more distant from the city centre. In keeping with the dominant approach at the time, in the mid-1980s the local authorities proposed to promote the area's legalisation by transferring full individual freehold titles to the occupiers - which has not happened to this date. The original proposal was to expropriate the area to subsequently sell the plots to 310 families, some of whom have long finished paying the monthly instalments determined by the municipal agency then in charge of the tenure regularisation programme. Following several problems, the area was eventually acquired by the local administration.

However, the community leaders interviewed resent the fact that the PT administration has not made any special efforts to give continuity to the previous administration's tenure policies, and would not be prepared to commit itself to coping with the legal, political, financial and technical costs of the original tenure policy. According to the technical staff interviewed, it seems that part of the problem concerns the legal difficulty, explained above, of approving the overall *loteamento*, and as a result neither the area nor the individual occupation have been legalised. In legal terms, having no titles, the local residents still have no real rights and no proper security of tenure. This situation should be resolved in the near future.

The occupation of the area has been consolidated for a long time, and, as is the rule in Brazil, no public investment in housing has been made; housing has been the result of self-construction and informal collective endeavour (*mutirao*), and housing improvement has followed the same pattern. Access to (in)formal credit has reportedly been increasingly recognised. Despite their less consistent internal mobilisation, if compared to Vila Planetario, the local community has increasingly taken part in the participatory budgeting process, and

there has been a continuous undertaking of several upgrading works and service provision by the local administration. The gender dimension in the mobilisation and in the tenure regularisation process is less evident than in Vila Planetario, and the record of local tax payment seems to be poorer. On the whole, however, signs of sociospatial integration and improved conditions of sociopolitical citizenship are visible, albeit in a less consistent way than in Vila Planetario.

Nevertheless, as has happened in Vila Planetario, over the years there has not been a major change in the original group of occupiers of Vila Vargas either. Moreover, regardless of the remaining legal obstacles to the recognition of security of tenure, also in Vila Vargas there seems to exist a widespread perception of security of tenure. Although neighbouring areas have recently been invaded, it seems that Vila Vargas is of little interest to the official land market, while informal prices do not seem to have raised in any exceptional way either.

1.3 Main lessons from Porto Alegre

It seems that in both cases, central Vila Planetario and more distant Vila Vargas, regardless of the restricted legal tenure situation (although for different reasons), the actual permanence of much of the original population on the areas and the little impact of the tenure programme in the land market cannot be explained only in terms of location. These factors have to be primarily attributed to the fact that both areas have been incorporated as Special Areas of Social Interest (AEIS) within the scope of Porto Alegre's broader zoning scheme and corresponding urban planning legislation. This legal recognition has played a fundamental role in minimising the pressure from land subdevelopers and other interested parties, in that, by affecting the possibilities for land use and development, it impacts on land and property prices. Another fundamental factor has been the continuous commitment of Porto Alegre's municipal administration to the tenure regularisation programmes since the late 1980s, by creating a specific institutional apparatus to manage them and by incorporating them into the city's important experience of participatory budgeting.

This seems indeed to be a potentially winning combination: a technically adequate tenure regularisation programme based on consistent legal-political framework; the combination between the tenure regularisation programme and the broader urban planning legislation; and the combination of both with progressive politico-institutional mechanisms enabling the effective participation of the affected communities in the city's urban management process. Once the remaining legal obstacles are removed, Porto Alegre's experience of land tenure regularisation by means of the utilisation of the CRRU should become even more successful, in that it will provide housing rights, recognise security of tenure and help promote sociospatial integration in a combined manner.

A question which remains to be discussed and studied further concerns whether or not tenure regularisation programmes have a major impact on urban poverty. Even given due respect to the fact that the upgrading of the areas, the introduction of services and the recognition of some forms of rights have certainly improved the residents' basic daily living conditions in many ways, it seems that tenure regularisation programmes can only promote poverty eradication to a larger extent if, as well as combining the three dimensions discussed above, public policies are also formulated to promote job opportunities and income creation. However, although Porto Alegre has recently launched some socioeconomic policies towards this goal, this is a task largely beyond the scope for the action of the local state, requiring instead more systematic intergovernmental relations and exchange as well as the formation of public-private partnerships.

2 The experience of Recife

One of Brazil's oldest cities, Recife is one of the most complex cities from the viewpoint of this discussion on tenure policies, as it combines several difficult factors, namely: a volatile, traditionally populist context of local politics, which has an intense and contradictory relationship with a history of strong social mobilisation; a wide variety of processes of land occupation supported by, and generating, diverse, complicated and obscure legal regimes; and an enormous extent of urban poverty and illegality, which has been aggravated by the faltering local investment in urban infrastructure. Recife has some of the most consolidated and professional NGOs and social movements in action in Brazil.

Unlike Porto Alegre, until 2000 Recife had no significant programme aimed to regularise irregular or clandestine *loteamentos*. The programme of tenure regularisation in Recife's *favelas* - also combining upgrading and legalisation measures - was formulated in the early 1980s, soon after that of Belo Horizonte, and it was also largely due to the significant action of the Catholic Church. However, very different decisions were then made in Recife as to the legal-political instruments which should be adopted to promote the tenure legalisation of the local *favelas*.¹⁴

Regarding the public areas, according to the people interviewed who were involved in the programme's original formulation, the CRRU was chosen by the local administration - in what was a pioneering decision for the political reasons described above. It should be stressed that a large number, if not most, of the informal settlements are in public land. Regarding the *favelas* in private areas, the decision was made to support the communities in their claim for the recognition of *usucapiao* rights, again mainly for political reasons.

Following Belo Horizonte's paradigmatic model, also in Recife all the areas to be regularised have been classified as ZEIS (Special Zones of Social Interest) in the local zoning scheme, and specific urban planning regulations apply.

However, the local political context over the last two decades has been much more contradictory than that of Porto Alegre. While most of the tenure policies, regularisation programmes and the broader set of urban laws were approved in a more progressive and participatory political climate in late 1980s-early 1990s, later political changes have implied in less governmental commitment to enforcing those policies, laws and programmes. However, the fact that a very significant political-institutional apparatus was created in the late 1980s to promote the enforcement of the ZEIS legislation - the PREZEIS, involving the participation of several community leaders as well as several representatives of public, religious and non-governmental agencies - has made it impossible for the government to change the basic rules of the game, as certain conservative sectors would certainly desire.¹⁵ Ironically, also as a consequence of the city's contradictory political context, in Recife some of the most significant, socially-orientated and ground-breaking judicial decisions on the matter of tenure legalisation have been passed.

Nevertheless, significant changes are expected soon, as the Workers' Party won the 2000 municipal elections, assuming the local administration in January 2001. Recife has not adopted the participatory budgeting process yet, but this is likely to happen soon, as is the renovation of the overall politico-institutional process supporting tenure regularisation programmes. Judging from the experience of Porto Alegre, this should affect the outcomes of tenure policy in that, by widening the scope for popular participation, it is likely to determine a more consistent commitment to public investment in informal settlements.

Two areas were studied in Recife, namely Coronel Fabriciano - where the CRRU has been employed - and Brasília Teimosa - where the tenure policy is based on the recognition of individual freehold rights.

2.1 Coronel Fabriciano

Coronel Fabriciano is a former favela in public land close to the city centre, recognised as a ZEIS as a result of the strong political mobilisation of the original occupiers. The CRRU has been successfully used and, in a pioneering way, indeed registered at the local registry office. The case of Coronel Fabriciano is even more innovative, because, in a ground-breaking legal-political formulation, the CRRU has been applied in a collective manner, that is, the title applies to the whole area and the occupiers have condominium shares.

Given the fact that the tenure legalisation programme has been successfully registered, unlike Vila Planetario in Porto Alegre, in Coronel Fabriciano the legal tenure is secure. The local legislation allows for the CRRU titles - valid for 50 years - to be transferred *causa mortis* by the beneficiaries to their heirs as well as recognising the possibility of *inter vivos* transfer, subject to both respect to the planning legislation and previous approval by the public authorities. There is a significant scope for community participation in this process to guarantee that the new occupiers fit within the same socio-economic profile of the area as a whole. Basic gender aspects have been especially considered in practice, and most titles have been issued on the names of both partners regardless of their official marital status.

As has happened in Vila Planetario, there has been some initial public investment in housing, and since the programme was initially implemented local residents have continuously improved their houses with their own means and resources. Interviews also revealed that access to informal and, in some cases, formal credit has been increasingly recognised, especially for the acquisition of building materials.

Recife's ZEIS have been upgraded and legalised to different extents: for example, 52% have had at least partial draining and street paving implemented, 35% have had sewage system implemented, and 35% have been partly legalised. Only Coronel Fabriciano can be considered as fully legalised. Most public services have been provided for some time now and some collective equipment has been implemented, although the area would certainly benefit from more systematic public investment. In any case, as a result of the upgrading works, the area has gradually gained the appearance of an ordinary working-class neighbourhood, being physically integrated with the neighbouring areas and official road system. Some other significant signs of sociospatial integration exist, although less visibly than in Porto Alegre, but, regardless of the participation of community leaders in the PREZEIS participatory management, the conditions for the tenure regularisation programme to promote sociopolitical citizenship need to be improved. There seems to exist a poor record of payment of the local taxes due, which seems to have happened largely because of the inefficiency on the part of the local administration to impose and collect them.

Many of the residents have lived there for a long time, but, unlike Vila Planetario in Porto Alegre, in Coronel Fabriciano there has been some internal mobility since the area was firstly regularised, which seems to have been brought about mostly by personal reasons or by problems related to widespread urban violence. However, the overall socioeconomic profile of the area has been maintained, as internal land and property prices have been kept at low rates. Some of the transfers of rights have been promoted informally, that is, without the previous approval by both the residents' association and the public agency, which has been due to the regularisation agency's lack of institutional capacity.

Also in Coronel Fabriciano, despite the area's central location, potential attractiveness in market terms, undertaking of several upgrading works and increasing services provision by the municipal authorities over the years, the tenure policy seems to have had next to no impact on the external land market.

The interviews with local residents, community leaders, public officials and other involved parties have indicated that there is not a full understanding of the nature, technicalities and implications of the CRRU, especially among the local residents less involved with the activities of the residents' association.¹⁶ However, this does not seem to worry them, even because they have successfully reacted when they felt threatened: when the original CRRU contracts were

proposed with only a five-year validity, the community leaders managed to force the local authorities to turn them into the current 50-year contracts.

Ironically, although there is a generalised perception of security of tenure, and despite the area's unique legal status and corresponding legal security of tenure, a combination of problems seems to have affected the perception of security of tenure held by some of the more worldly-wise community leaders. Their fears have resulted from the decreasing internal social mobilisation; less commitment of the public authorities over the years; unstable broader local political context at the time of the research; and especially the anticipated pressure resulting from major public investment in neighbouring areas to expand the underground system. Afraid that the new developments will threaten their permanence on the land, community leaders are now trying to mobilise the local residents to pay the local tax. Perhaps because they still remember the time when they were totally vulnerable to all sorts of external pressure, they believe that, if on top of having registered titles they also pay their taxes, they would be totally guaranteed against the economic pressure from land developers which is likely to result from the betterment of the area.

2.2 *Brasilia Teimosa*

Brasilia Teimosa ("Stubborn Brasilia") is a ZEIS corresponding to a *favela* in a public area owned by the federal government, where in the late 1980s the local community resisted the proposed legalisation through CRRU and demanded the attribution of full individual freehold titles instead. This conflict resulted in the state government taking over the tenure regularisation programme following political negotiations with the federal government, but the promised titles have not been granted. In the absence of titles and registration, residents have no legal security of tenure.

It is a very symbolic settlement because, as its name suggests, it was built in the late 1950s at the same time as Brazil's new modernist capital. Its "stubbornness" has to do with the fact that the local community has survived countless attempts at forced removal over the years, which have been especially due to the fact that the settlement is in a most attractive central location, overlooking both Recife's harbour and its beautiful central beach, Boa Viagem. The area has had an important history of social mobilisation, although it seems to be currently more divided than in the past. Although the area is formally recognised as a ZEIS, the participation of its leaders in the management of PREZEIS seems to be more complicated and less active than is the case in Coronel Fabriciano.

Housing has been the result of self-construction, as there has been no housing programme implemented in the area, and housing improvements have been regularly made. Access to (in)formal credit has been increasingly recognised. In fact, having already a densely consolidated occupation, there are widespread commercial and building activities in the whole area, which has increasingly gained the appearance of a middle-class neighbourhood. Brasilia Teimosa has been gradually upgraded by both official and informal processes, and, although it would benefit from more systematic public investment, for an informal settlement it is very well-serviced and largely physically integrated with the neighbouring areas and with the official road system.

However, if there are clear signs of spatial integration, there are also indications that the conditions of social integration have been less consistent. Although the interviewed residents seem to share a basic perception of security of tenure, meaning basically that they do not believe that they might be directly expelled by the government, the fact is that there seems to exist a high social mobility in Brasilia Teimosa. According to all accounts, more people have increasingly had to leave the area under pressure from the internal and external land markets. Given the lack of legal security of tenure and the more precarious protection of the area by the

PREZEIS apparatus, land speculation seems to be very intense, so much so that, despite the illegality of the occupation, a booming construction industry and an escalating gentrification process are clearly taking place. Internal land, property and rental prices are on the increase. There is no clear gender dimension in the political process, and the conditions of social citizenship are not evident.

2.3 Main lessons from Recife

The case of Recife also highlights the importance of combining tenure policies and regularisation programmes with the urban legislation as the condition not only to guarantee security of tenure, but also the actual permanence of the population on the regularised areas - which is the ultimate objective of tenure and regularisation policies. However, Recife's experience shows that the creation of ZEIS per se is not sufficient to provide protection to the areas against the land market. There is a fundamental relation - though not always positive - between tenure, regularisation and urban planning policies and the broader politico-institutional context of urban management. The volatile political context in Recife has implied in both less systematic commitment of the local administration to the tenure regularisation programmes and a more fragmented participation of the residents in the programme's management apparatus.

In this context, location seems to be a fundamental factor in determining the level and nature of the process of social mobility in the areas. Both Coronel Fabriciano and Brasília Teimosa are centrally located and integrated into the city's urban structure; although coastal Brasília Teimosa certainly appeals more to the land market aimed at the middle-classes, Coronel Fabriciano has its attractions too. In Coronel Fabriciano, given the combination of ZEIS/planning regulations/CRRU and the residents' political participation in the PREZEIS management process, the relative internal mobility has respected the socioeconomic profile of the original group of occupiers. In Brasília Teimosa, the combination of a nominal ZEIS classification/lack of planning regulations/lack of titles and the residents' fragmented political participation has not provided an efficient protection against the dynamics of the internal and external land markets. High social mobility and gentrification have been brought about by increasing land, property and rental prices. Finally, the same comments made for the Porto Alegre case concerning the impact regularisation policies and security of tenure may have on poverty eradication policies applies to the case of Recife.

3 Main findings

The case studies of Porto Alegre and Recife indicate that it is fundamental that the recognition of urban and tenure rights takes place within the broader, integrated and multi-sectoral scope of city and land use planning, and not as an isolated policy, to prevent distortions in the land market and thus minimise the risk of eviction of the traditional occupiers. There must be a proper integration between the tenure policies and laws supporting regulation programmes and the overall urban legislation in force.

Moreover, such experiences show that it is important to reconcile the objectives of providing housing options, recognising security of tenure and promoting sociospatial integration. The fact is that housing rights are not, and should not, be restricted to individual property rights. The legal institute of the CRRU, when employed within the broader context mentioned above, is an efficient instrument to help achieve this goal.

The main findings of the cases studies can be summarised as follows:

3.1 Regarding upgrading works and service provision, housing conditions, access to credit and sociospatial integration

Upgrading works and service provision have not directly depended on the completion of the tenure policies and land legalisation process. Tenure policies and regularisation programmes have been implemented in areas already consolidated, in social, political and urban terms, where it has been increasingly accepted that the residents are entitled to service provision, public equipment and collective facilities. Housing has been largely the result of self-construction, improvements have been regularly made; however, there are better conditions where there has been public investment in housing (e.g. Vila Planetario and, to a lesser extent, Coronel Fabriciano). Access to (in)formal credit, particularly to obtain building materials, has also been possible regardless of the areas' legal status. On the whole, the conditions of sociospatial integration have improved as a result of regularisation policies, even in the absence of tenure titles.

3.2 Regarding the impact of tenure policies and regularisation programmes on the (informal and formal) land market

The incorporation of the informal areas to be regularised into the broader municipal zoning scheme and existing land use legislation has been instrumental in keeping the population living on those areas. In general, even despite the lack of full legal security of tenure the official land market has kept distance from the regularised areas and the original population has remained in them. Even in those areas where there has been significant internal mobility, the community's original socioeconomic profile has been largely kept. Such developments seem to be directly related to the articulation of the regularisation programmes with urban planning strategies and laws. Indeed, the creation of special zones for the informal settlements in the local zoning scheme seems to give the areas and their residents a form of social and legal identity vis-à-vis the broader urban society and the land market. Moreover, the legal-political mechanisms supporting socially-orientated urban management strategies have had a fundamental role in giving the residents a political arena to defend their rights and put their claims forward. In particular, the incorporation of the special zones into Porto Alegre's experience of participatory budgeting has been of utmost importance in creating a socially-orientated political culture of urban management. Brasília Teimosa is exception that confirms the rule.

3.3 Regarding the gender dimension of the process

Although in an incipient way, the tenure policies discussed have supported the notion that, regardless of their legal marital status, women should be given a priority treatment once the recognition of titles is promoted. In practice, titles have been granted to both partners.

3.4 Regarding (the perception of) security of tenure

On the whole, even where the tenure legalisation process has not been completed, there is a generalised perception of security of tenure, meaning basically that residents feel safe against the threat of eviction by the government and have some access to credit and services. In fact, in those areas where there has been a consistent social mobilisation and relatively consolidated regularisation programmes, there seems to exist less interest in obtaining land titles than was the case in the 1980s. However, many of the people interviewed mentioned that having titles would be good to protect the rights of their families and especially their heirs.

As indicated by the cases of Recife and especially Porto Alegre, a set of other political, social and institutional circumstances may, even without the context of full formal legalisation, result in creating a solid perception of security of tenure. This perception has been strengthened by the fact that the residents' rights to remain in upgraded settlements have been

increasingly recognised by other socioeconomic actors and by the general public opinion, effectively encouraging the residents to invest in their dwellings and in the overall urban economy.

This poses the question as to whether titling is necessary. I would argue that, however generalised it may be, the perception of security can be - and often is - false. Having a title becomes important when a conflict arises, be it a legal confrontation between the occupiers and the original private landowner; be it a domestic or a family problem; or be it because of other external economic factors, such as major public works, which may turn the occupied areas more attractive to the official land market - as is the case in Brasilia Teimosa. Given the constant changes in the local political contexts, in many cities where the tenure policies and regularisation programmes are not consolidated, such as Sao Paulo, several cases of removals by the public authorities have been reported. In other cities, such as Belo Horizonte, land legalisation programmes - and the recognition of security of tenure - has been increasingly opposed on environmental grounds, especially given the fact that many informal settlements are located in environmentally-sensitive areas; in other cities, such as Rio de Janeiro, tenure legalisation programmes have been directly affected by the sociospatial impact of drug trafficking. In many cities, there has been an intensification of pressure from the (informal and formal) land market owing to several external factors.

This seems to indicate that the terms of the sociopolitical pact supported by the combination of urban legislation and political-institutional mechanisms - generating the perception of security of tenure - are essentially precarious, and can be changed to the detriment of the residents' interests. Moreover, it should be stressed that, being restricted to consolidated situations, tenure policies have not been applied to the vast majority of informal settlements in Brazilian cities. Invasions have taken place on a daily basis, and most people living in such areas have no security of tenure at all.

It is in this context that the utilisation of the CRRU can promote more effective conditions of security of tenure for the urban poor. Besides providing legal security of tenure, the CRRU can also provide both the local state better conditions to handle its legal-political responsibilities and the affected communities better chances to remain in the regularised areas. It has a direct impact on land prices, it allows for some degree of state control on the transfer of the titles and it ensures that the state's obligation to promote social housing policies and recognise housing rights is materialised. The CRRU also ensures that the public investment is not immediately capitalised upon by the economic interests of land subdividers and developers. Once the remaining legal obstacles are removed, tenure policies utilising the CRRU should become even more successful, in that they will provide housing rights, recognise security of tenure and promote sociospatial integration in a combined manner.

3.5 Regarding poverty eradication

Although it should be stressed that this dimension has been little studied, the undertaking of upgrading works and the improved conditions of service provision regardless of the problems with the legalisation programmes have unquestionably improved the basic daily living conditions of the affected communities. Women have particularly benefited from better service provision, and as a result in some cases have been able to spend more time in money earning activities. However, if they are to have a more significant impact on the growing conditions of urban and social poverty, tenure regularisation policies have to be both part of a broader set of public policies aimed at promoting urban reform and supported by socioeconomic policies specifically aimed at generating job opportunities and income.

III Conclusions

Tenure policies supporting regularisation programmes have a remedial nature and, at the risk of bringing about unintended and even perverse results otherwise, should be formulated within a broader set of public policies based on direct state intervention and significant public investment in urban areas, particularly in housing and infrastructure. This include large scale rehabilitation projects, social housing and urban renewal programmes, and the residential occupation of vacant/under-utilised serviced land and buildings in central areas. Tenure policies and regularisation programmes should also be reconciled with comprehensive and preventive policies aimed to transform the nature and dynamics of urban development, so that it can revert to the benefit of the whole community. In particular, it has become increasingly evident that a proper response to the growing housing problem in Brazil - and the only way to promote urban reform in the country - fundamentally depends on the following factors: a wider democratisation of the overall political decision-making process, especially to address the fundamental question of land/wealth reform; the systematic, technical and financial co-operation between all governmental levels; and the formation of public-private partnerships within a clearly defined legal-institutional, socially-orientated framework.

That said, it is imperative to recognise that the upgrading of informal settlements is fundamental to redress the unequal spatial distribution of public services and equipment and collective facilities, as well as to address the grave urban, social and environmental problems resulting from the process of informal land development, thus helping to promote the spatial integration of those areas and communities within the broader urban structure. Moreover, the recognition of some form of tenure rights to the enormous population already living in illegal and precarious conditions is of utmost importance. Legalisation of the informal settlements is fundamental so that the urban poor can become proper citizens, in socioeconomic as well as in legal-political terms.

Although urban illegality in Brazil is not at all restricted to the less privileged social groups, given the serious consequences the lack of security of tenure brings to the urban poor several arguments have been used to justify the need for public policies to implement tenure policies for those groups, ranging from ethical, humanitarian and religious to sociopolitical and, more recently, economic reasons. However, the consideration of legal arguments has been less clearly articulated, and as a result there have frequently been mismatches between policies goals and strategies, on the one hand, and, on the other hand, the legal-political instruments adopted, resulting in all sorts of distortions and even in the failure of most tenure legalisation programmes. In particular, the nature of the right to be recognised to the occupiers of informal settlements - or, in other words, the nature of the role of the state in the process of land development, which implies the definition of the social and financial obligations for the tenure regularisation policies - has rarely been made explicit.

Again, tenure legalisation is not an isolated measure and needs to be conceived within the broader scope of urban and legal management and reform. Besides which, within the context of Brazil's legal system tenure legalisation can take fundamentally differing forms, and the choice of the legal-political formula to be adopted deserves careful examination. Moreover, the legal solution adopted in a particular case will only work properly if it is the result of a democratic and transparent decision-making process that effectively incorporates the affected communities.

On the evidence of the existing literature, data and the case studies discussed above, formal tenure legalisation does not per se guarantee sociospatial integration, especially when it is promoted through the attribution of individual freehold titles. Much as one can understand the appeal of the notion that illegal settlements and activities constitute valuable "dead capital", the evidence of this review suggests that, in the Brazilian experience, formal legalisation, especially through the recognition of full freehold rights such as proposed by the paradigmatic experience of Belo Horizonte, does not necessarily entail security of tenure. It is fundamental to guarantee that the promotion of individual security of tenure is compatible with the state's

responsibility for the provision of housing rights to the urban poor and the sociospatial integration of the affected communities.

Box 1

PRO-FAVELA: the experience of Belo Horizonte

Belo Horizonte has long been a paradigmatic case in Brazil. Following decades of intensive social conflict and popular mobilisation, the original municipal programme of tenure improvement and regularisation in *favelas* was approved in 1983 - the legally and technically ground-breaking "PRO-FAVELA", which includes the internationally-known, UNCHS award-winning "Alvorada Project".¹⁷ The programme's tenure policy is based on the notion that *favela* dwellers, regardless of the private or public property regime of the occupied area, should be given individual property titles. In other words, while the invaded public areas should be privatised through individual donations by the local state, the invaded private areas (which constitute the majority of them) should be expropriated by the local state, with the individual ownership of the occupied plots being subsequently transferred, again through donation, to the occupiers.

The fact that the legalisation of the individual plots was technically and legally considered to be inherently dependent on the promotion of both upgrading works and the legalisation of the area as a whole - since it is legally viewed as a form of *loteamento*, albeit a rather specific one - has made the process even more complicated, bureaucratic and costly. Despite the fact that for the last ten years Belo Horizonte's municipal administration has been in the hands of a coalition of left-wing parties committed to promoting urban reform and democratic urban management, while the city's *favelas* been increasingly upgraded (to the extent that they are better off than many existing peripheral *loteamentos*), only about 6.000 property titles have been distributed. Around 23% of Belo Horizonte's total population (2,300,000 inhabitants) is currently living in *favelas*.

The expropriation of invaded private areas has been made virtually impossible by the high costs involved, due to the need to compensate the original owners at full market prices. The technical and legal difficulties resulting from the design of the tenure policy have proved to be largely irremovable. The city's tenure policy has been constricted by the "technical" decisions made and corresponding apparatus built in 1983, which have in fact become a true legal-political strait-jacket undermining the best intended of municipal policies and actions.

Box 2

The Concession of the Real Right to Use-CRRU

The Concession of the Real Right to Use-CRRU is one of the real rights recognised by Brazil's legal system, that is, it is a material right over the land which can be opposed *erga omnis* against claims from other parties, and not a mere civil obligation to be resolved through the payment of compensation. Therefore, it is not a simple administrative permit or a precarious certificate of authorisation, and as such it cannot be easily revoked.¹⁸

Although it is indeed a form of property rights, it is more specifically a form of leasehold (that is, a real right over someone else's property) and as such its recognition does not entail the full transfer of freehold rights. As there is no such thing as "a continuum" or "degrees" of rights in the Brazilian legal system, the CRRU is a real right in itself, with its own peculiar characteristics, and it does not lead to full ownership. However, in essence, the CRRU provides legal security of tenure to the beneficiaries and can be registered at the public registry office, thus pre-empting eviction measures.

The CRRU has been used so far to legalise settlements in public land, which means that the public, usually municipal, authorities have conceded the right to use the land through a specific leasing contract, but have kept the ultimate ownership of the land - which makes it possible for them to legally control, to some extent at least, its occupation, use and transfer.

In principle, the CRRU admits the transfer of the right to the beneficiaries' legal heirs, as well as allowing the original beneficiaries to sell and rent out to third parties and use the property as collateral. In that respect, the instrument has been applied in different ways in the different municipalities; whereas some have not allowed the *inter vivos* transfer of the titles by the original beneficiaries, others have allowed it subject to previous authorisation by the tenure regularisation agency, by the local residents' association, or by both.

Also the question regarding the time limit set for the allocation of the CRRU has been treated differently in the different municipalities, and most known contracts have varied from five to 50 years. Different treatments have also occurred regarding the questions of whether the beneficiaries should pay for the rights, how much they should pay and how the payment should be made. In principle, the registration of the CRRU title renders the beneficiaries liable to local property tax, but the local legislation can exempt them temporarily or permanently, and the experiences have varied.

Another important characteristic of the CRRU is that it can be, and has been, used to generate individual rights or in a collective manner, creating a form of condominium.

Notes

- 1 The original version of this paper was written for the research project “Innovative approaches to tenure for the urban poor”, co-ordinated by Geoffrey Payne and sponsored by the Department for International Development-DfID. The case study of Porto Alegre was conducted together with Betania de Moraes Alfonsin.
- 2 Brazilian jurist and urban planner; lecturer at Development Planning Unit-DPU of University College London-UCL; co-ordinator of IRGLUS-International Research Group on Law and Urban Space.
- 3 For an account of the process of urban development in Brazil, see Fernandes (2000a) and Fernandes & Rolnik (1998).
- 4 For a more detailed discussion on the process of formation of *favelas* and *loteamentos*, see Fernandes (1997).
- 5 For an analysis of the constitutional chapter on urban policy, see Fernandes (1995).
- 6 For a general critique of the regularisation programmes in Brazil, see Fernandes (2000b).
- 7 For a more detailed discussion of this topic, see Fernandes (2000b).
- 8 For a discussion on the implications of the Civil Code, see Fernandes (1995).
- 9 For a general account of Porto Alegre’s “popular administration” agenda see Allegretti (2001); for a discussion of the city’s participatory budgeting process, see Abers (2000); see also Santos (1998) and Goldsmith & Vainer (2001).
- 10 Although no specific research has been done in either Porto Alegre or Recife to assess the impact of the AEIS legislation on the land market, an original and detailed study with this objective was conducted between 1992 and 1996 in Diadema - where the AEIS legislation has been combined with the CRRU in public land; the study’s main finding confirms the hypothesis that the creation of AEIS has a decisive impact on the dynamics of the land market, thus enabling the municipality to undertake its social housing programme; see Hereda et al (1996).
- 11 Both Porto Alegre’s municipal administration and the state government’s Special Housing Secretariat have formulated comprehensive programmes aimed legalising tenure conditions in *loteamentos*.
- 12 The *usucapiao* sentence in Jaboatao dos Guararapes is even more original given the fact that the case was brought to court collectively by a group of residents; the city’s ground-breaking tenure policies have been discussed in several master’s dissertations presented at the Federal University of Pernambuco’s Urban Development Department.
- 13 An important legal development in Porto Alegre consists of the “Projeto More Legal” (Live Legally Project) which has been conducted since 1996 by the judicial agency in charge of supervising the local land registry offices, aiming to facilitate the legalisation of *loteamentos* and *favelas*.
- 14 For an analysis of the regularisation programmes in Recife, see Assies (1994), Rabaroux (1997) and Maia (1995).
- 15 For a detailed evaluation of the first ten years of PREZEIS, see the comprehensive report jointly published by the local NGOs FASE, ETAPAS and Centro Josue de Castro (1999); the survey focused on PREZEIS’s political and organisational aspects, and concluded that, despite all the programme’s significant achievements, there is still a broad room for improvement of its managing capacity and widening of its reach, which would require further and more systematic financial resources. It stressed that a fundamental problem is the need to provide faster responses to the communities’ needs through more effective upgrading works and legalisation strategies. The survey’s main conclusion is that a more productive system would enable the replacement of councils existing in areas properly regularised with a monitoring system, liberating the scarce technical and financial

resources for other, still neglected, areas. It is interesting to note that such an in-depth survey failed to give any special treatment to the nature and implications of the legal-political fundamentals of the tenure legalisation programme, despite the fact that many different variables were taken into account. It could be said that the technical staff in governmental and non-governmental agencies alike, as for that matter the academics who have analysed the process of land regularisation, have still not realised that the choice of legal-political instruments adopted - that is, the CRRU and the *usucapiao* - have a direct, and important, bearing on the programme's direction, problems and successful development. The interviews conducted with many such people confirmed this perception; several have mentioned that they have never considered this to be a problem - even in academic, conceptual terms - and many have showed interest in discussing the findings of this particular research project.

- 16 For a discussion of this issue in Coronel Fabriciano and other settlements in Recife, see Souza (2001); it should be mentioned that a wealth of educational materials has been distributed over the years by governmental agencies and NGOS. The particular issue of the nature of the CRRU was dealt with, for example, in a special leaflet prepared for Coronel Fabriciano's residents back in 1983; the legal-political history of the area is told in fascinating verse, including several remarks on the superior importance of possession rights over individual property rights. For a comprehensive analysis of the "residents' view" of PREZEIS, see FASE et al (2000).
- 17 For a more detailed analysis of Belo Horizonte's PRO-FAVELA, see Fernandes (1995).
- 18 For a general discussion on the CRRU, see Weigand (2001); for more information on the utilisation of the CRRU in Diadema, see Afonso & Liso (1998).

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