



Is legalized land tenure necessary in slum upgrading? Learning from Rio's land tenure policies in the Favela Bairro Program

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This paper explores the housing challenges that Rio de Janeiro faces, which is specifically manifested in the form of *favelas* or squatter settlements, and that municipality's strategies to overcome these challenges. The Favela Bairro slum upgrading program (FBP), which seeks to transform *favelas* into formal neighbourhoods, is seen as a complex and appropriate solution to Rio's housing woes. The paper specifically focuses on land tenure challenges in Rio and the way the FBP dealt with this issue. The FBP is noteworthy as an example of slum upgrading without full land tenure legalization and for its use of *state of exception*, primarily the concession of right to use but not full ownership of land in order to allow this program to take place. This placed greater emphasis on infrastructural and living condition improvement rather than legalization of land tenure. As a result, the implementation of FBP has had the effect of increasing the security of tenure of *favela* residents.

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Introduction

With the predominance in illegal occupation of private and public land by squatters, the issue of land tenure has sometimes become a stumbling block in the improvement of informal areas. Authorities and the state, including the security apparatus, often neglect to service and protect informal areas, including squatter settlements. Worse, the state can outright ignore or take aggressive actions against them, which can take the form of slum removal or *arbitrary* police invasions. Regularization or legalization of land tenure is a very controversial issue in the context of developing countries, particularly in informal residential areas that include squatter settlements, illegal subdivisions and other such zones. In the developed world, tenure through land titling is the basis for private property rights and obligations. It is also a central element in the western capitalistic societies.

The issue of land tenure was a particularly important aspect of Rio de Janeiro's Favela Bairro Program from the start to the finish of projects. The FBP illustrates a unique method of dealing with land tenure in informal areas. As the name of the FBP suggests, the goal is to transform squatter settlements into formal neighbourhoods. An assumption is often made that this type of formalization requires full land tenure via distribution of land titles and building permits,¹ so that the *favelados* or squatter settlers can achieve full

participation in the society. The argument goes that only then can informal areas become part of the formal city. This paper puts forth that the full regularization of land tenure through land titling is not essential in the slum upgrading process, even though in the long-term, the end result might be land titling. However, difficulties can arise when powerful private owners of land inhibit the upgrading process based on legal grounds.

Methodology

This paper relies on a case study evaluation of the Favela Bairro Program in order to determine the importance of land tenure in slum upgrading. In order to construct a frame of reference for the research, a critical overview is carried out of various theoretical sources in support of the main argument in the paper. The research also consulted other sources, such as articles, newspaper stories and legal documents, on the land tenure situation in Rio de Janeiro, before, during and after the implementation of the FBP. The research was conducted both in the field, in Brazil, and back in Canada. Part of the field research included key informant interviews with the architect/urban planner, Jorge Jauregui. This was mainly done towards the preparation of the author's thesis (Handzic, 2008), *Failed Formalization in the Face of Successful Slum Upgrading: An Analysis of the Favela Bairro Program in Rio de Janeiro, Brazil*. The thesis presented an evaluation of the FBP based on a number of thematic areas, one of which was land tenure. The methods used for the thesis, however, also shaped the information obtained in this paper.

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¹ This is the legalization of already existing lots and structures.

Regulatory framework and land tenure

A full legal and regulatory analysis of issues concerning slum upgrading, housing and land tenure include “the legal status of community-based organizations, building codes,...local physical planning bylaws and regulations, land rights and land registration systems, and regulations for financial institutions” (Imparato & Ruster, 2003: 196). However, the focus of this paper will be on issues related to (and including lack of) building codes, planning regulations and land rights, as these elements are crucial in issues dealing with land tenure in Rio’s *favelas*. This is not to downplay other aspects such as the role of financial institutions in restricting the full benefits of the achievement of regularization of land tenure through discrimination against lower-income groups. The intent of the paper is to show how the regularization of land tenure is not necessary for slum upgrading to be carried out, which precludes a discussion of the many aspects stated above in a regulated capitalistic society. For example, grassroots community organizations are accepted according to their ability to deliver political or practical results and not necessarily formal recognition by the government.

Frameworks on informality

It is important to highlight frameworks on informality as they influence what land tenure option is proposed as a solution. Turner (1976) advanced the self-help model because of his anarchist beliefs, mainly in the context that the state is not in the best position to determine the local housing needs of the poor through the building of massive, “one-model fits all” housing. de Soto’s (2005) arguments for self-help housing and its legalization are based on a presumption that the state cannot hope to provide adequate housing, rather than the less common argument that it is unwilling to do so. Thus, de Soto’s argument overlooks the role of the state and even undermines it (Roy, 2005).² It also accords with the “dominant neoliberal, anti-state ideology” being implemented by many developing countries, as it increases stability, and provides votes and taxes for the government in power (Davis, 2006). As Harvey noted, “extended individualized homeownership is...seen as advantageous to the capitalist class because it promotes the allegiance of at least a segment of the working class to the principle of private property, [and] promotes an ethic of ‘possessive individualism’ and brings about a fragmentation of the working class into ‘housing classes’ of homeowners and tenants” (Harvey, 1985: 42).³ To further counter this argument, Roy advances the notion that informality is not a sector but a mode with “a series of transactions that connect different economies and spaces to one another” (Roy, 2005: 14). As a result, the informal market has connections to the formal market already.

² The presumption of self-help is that “people should do more for themselves,” which Burgess identified as a thread in reactionary 19th century England (Burgess, 1978: 1106). The problem stems from the capitalist system’s finding in the self-help systems “the economic and ideological means necessary for the maintenance of the status quo and the general conditions for capitalist development” (Burgess, 1978: 1107).

³ Burgess (1978: 1121) also shows how Turner spoke in favor of legalization of land tenure as a way to produce “social safety-belts” and countering the revolutions in slums waiting for a spark. Instead of turning into ghettos, Turner argues in favor of seeing slums as “vehicles of social change”. It is the same idea that leaders can use “small property owners in order to build an army for themselves against the proletariat.” This completely ignores low-income tenants, whose issues have been rarely taken into account in these self-help initiatives. What results from land regularization before slum upgrading is social inequality and lack of collective consciousness necessary for demanding of further improvements in infrastructure and services. Thus, the poor are at the behest of a *benevolent* government to implement such services.

Besides the costly and complex land titling process in most slum upgrading programs (Acioly, 2007), there are also associated costs to the legalization. Most importantly, legalization and regulation increase costs of transaction. This might seem counterintuitive. Usually a more secure investment involves less risk. The result should be a cheaper good or service. However, the informal mode of operation assures that the state’s grasp through taxation and service collection fees (before used illegally at no cost) significantly increases the price of housing beyond the reach of many very poor residents. As a result, some of these residents have to resettle to more distant squatter settlements without the legalization mechanisms, and thus the additional costs, in place.

Security of tenure

In its assessment of the criteria for sustainable slum upgrading, UN-Habitat (2003) sets out security of tenure as an essential component. More overarching than land titling, which can prove to be very burdensome for lower-income groups due to taxes and other service fees, security of tenure allows a squatter to remain on and use the land (Roy, 2005). In Rio’s case, even without mentioning any other security of tenure mechanisms, the fact that the state invested so much money into the FBP was a commitment towards the right of these inhabitants to remain on *their* land in the *favelas*.

However, central to many World Bank slum upgrading projects is the tendency to link the slum upgrading process to the provision of land titles. This is a result of Turner’s influence in promoting full legalization of land tenure (Burgess, 1978; Varley, 2002). As Abbott (2002: 309) states though, this process “has no firm theoretical grounding” and “simply reflects a specific worldview of land that derives from the western capitalist model of individual ownership of land.” This is thus more ingrained in ideology as a principle, as land regularization is just one of the many options available (Abbott, 2002).

Current legal context of Rio’s squatters

Like many Latin American countries, Brazil still has not implemented a genuine agrarian reform. As a result, strong squatters’ rights exist to allow people to occupy land in an environment where they would otherwise never gain adequate housing. According to the new Civil Code from year 2002, the expropriation of land (*usucapião*⁴ or acquisition of property as opposed to usurping the property) became incorporated more firmly than the previous constitution. This law is rooted in the Roman civil tradition. The law’s intent is to create a more just situation, as it benefits the person that makes good use of a *good*, as opposed to protecting the one that did not use the *good* or that did not oppose its utilization by another person (Gonçalves, 2007). Although the process to prove the squatters’ continuous use of land is often complicated by other factors in reality, in theory, Brazil has very strong squatters’ rights.

According to Article 1242 of the 2002 Civil Code, the time of expropriation for a property over 250 m² was reduced from 20 uninterrupted years of use to 10 years if the occupant had established her primary residence or had productive work and services on the land (Cidades do Brazil, 2003). More applicable to most housing in *favelas* though is Article 1240 of the 2002 Civil Code. It states that “the one that possesses an urban area of up to 250m², for 5 years uninterrupted and without opposition, utilizing it for her or her family’s dwelling, acquires it at command, if she is not an owner of another urban or rural property”.⁵ Thus, satisfying one’s basic

⁴ Acioly (2007: 6) labels it as “the instrument of adverse possession.”

⁵ This author’s translation.

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