



## Leases, concessions, and authorizations. Searching for an alternative to the privatization of federal domain in Brazil<sup>☆</sup>

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### ABSTRACT

It has been nearly 10 years since the federal government of Brazil decided to make land tenure regularization a true priority. In theory, millions of families who informally occupy the federal domain should receive freeholds, emphyteutic leases, concessions of real or special rights, or occupancy authorizations. However, this paper questions the capacity of the Federal Land Agency to issue and manage these leases, concessions, and authorizations. It also argues that the future and sustainability of this land regularization policy are challenged by a controversial federal land tax and inaccessible land registration services.

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“Look, this *companheira* Alexandra is the young lady who, within the federal government, cares for the federal immovable assets. All the lands in Brazil that belong to the Union, . . . all of the federal government buildings, are cared for by this friendly person. And she knows of my distress, throughout these six years in office, that we may resolve, for God’s sake, this business of guaranteeing land titles in the poor neighborhoods of this country, in the favelas of São Paulo, of Rio de Janeiro, because the Union cannot keep lands on which people have already settled, we have to deliver these lands.”

- Former President of Brazil, Luiz Inácio Lula da Silva, March 12th 2009

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### An alternative to the privatization of federal domain

Land tenure informality is so common in Brazil that it is not unusual for someone who buys a real property to ask the seller if he or she has the *escritura*: the notarized act that certifies that his or her rights are recorded in the public registry. Those who do not have this document are commonly called *posseiros*, and there are millions all over the country. The fact that *posseiros* do not have their real property rights certified by a notary public does not mean that they are outright squatters. Over the past few decades, millions of Brazilians have acquired plots on which to build their own houses because they couldn’t afford to buy or rent a legal residence. Even *posseiros* who purchased their plots have often acquired them, constructed or not, from other *posseiros* or illegal developers, including those who sold land that was not theirs, commercialized land with cloudy title, or disregarded land use restrictions and subdivision norms imposed by law. Often, these families settled in the periphery; in risky areas, places with low economic value, vacant land, and notably on public land (Holston, 1991; Reschke, 2011).

The illegal developer may even be the State himself. All over the country, countless housing projects and supposedly temporary settlements were informally constructed on public land. For instance, in Rio de Janeiro, during the 1950s, many favelas located in the center of the city were destroyed and their inhabitants informally resettled in *Parque Proletários* that were hastily constructed on the periphery. These housing projects “had then a temporary



Fig. 1. Informal settlement Vale do Sol, Paranaguá, PR.

nature – receive the evicted population until the local government identifies an appropriate place for them to live. The problem is that, once installed temporarily, families were often forgotten and the temporary solution would become definitive, permanent” (Araujo and Salles, 2008, pp. 63–64). Progressively, other families took possession of the surrounded areas, at times guided by public authorities, and these settlements later grew into favelas. This is how the inhabitants of the favelas *Morro Azul*, *Morro de Santo Antônio* and *Morro da Glória* were resettled in *Vigário Geral*; once a temporary settlement built in a federal area covered by mangrove forest and has since become one of Rio’s favelas.

*Posseiros* may not have notarized titles, but legislation generally recognizes that they have rights over land improvements. They may have other documentation to testify that they are occupants in good faith. In 2006, we surveyed 130 families of three informal settlements of Paranaguá, a city of 130,000 inhabitants located in the coastal area of the state of Paraná. The families we met were peacefully living on federal domain and more than 90 percent possessed both the plot and house they occupied. Some had been relocated by the local government after having been evicted from other favelas, but most had either seized, inherited, or more often, bought their plot; generally with a shack or a small house already built on it. On average, these families earned US\$171 per month. They were mostly underprivileged families, but we also observed important variations with the half poorest earning less than US\$107 per month while the 10 percent richest had US\$496 or more. Families had occupied their house for 12 years on average. Initial housing conditions were often very precarious but had considerably improved over time. The average size of homes had increased from 44 to 67 m<sup>2</sup>; the share of those equipped with indoor toilets growing from 62 to 65 percent, those with a separate kitchen from 41 to 71 percent, and those made of bricks and mortar from 25 to 47 percent (Bourguignon, 2012).

Although these people did not have their real property rights registered by the notary public of Paranaguá, 8 percent had an authorization of occupancy from the Federal Land Agency. Legally, their rights were precarious, as these authorizations do not confer real rights – rights that can and normally should be registered by the notary publics. However, their rights were formal. A third had a contract of sale, sometimes notarized. Seven percent had a receipt signed by the former *posseiros* and a vast majority had an electricity bill with their name on it. Lastly, almost a third had urban property tax payment receipts and a few even had a certificate of possession issued by the municipal government and signed by the mayor. These occupants were generally those living in the

oldest areas where streets had been paved, public lights had been installed and trash was now regularly collected. In contrast, the local government did not collect urban property taxes in the most recently occupied areas, notably those situated on the outskirts of these informal settlements, where some families lived in extremely precarious conditions (Bourguignon, 2012) (Fig. 1).

All over Brazil, *posseiros* occupy different types of public and private land under a variety of conditions. However, many are peaceful occupants of federal domain. In Paranaguá, for instance, approximately 12,000 families, nearly the two-thirds of the city’s *posseiros*, settled informally on the Valadares Island and along the nearby bodies of water, almost all of them on the Coastal Federal Domain.<sup>1</sup> Along the Brazilian Atlantic coast, hundreds of thousands of families informally occupy the Coastal Federal Domain and federal islands. *Posseiros* of federal land can also be found further west; in the hinterland, along federal rivers, on wetlands or on Marginal Federal Lands – a 15-m strip of federal land located along these rivers. In the Amazon, at least 250,000 families would informally occupy federal floodplains and Marginal Federal Lands. Finally, throughout the country, hundreds of thousands of families informally occupy lands that belong to federal entities such as the National Institute for Agrarian Reform, the National Indian Foundation, the National Institute for Social Security, the former National Railway Company, and the National Department of Roads (Brazil, 2011).

The fact that so many Brazilians lack formal recognition of their real property rights has been a subject of great attention over the last decade. According to former president Luiz Inácio Lula da Silva, there would be nothing more important for a homeowner than “gaining the definitive property of his or her land on which nobody will anymore be able to put a hand on” (Brazil, 2006, p. 1). Land titles would bring security, encourage investment, and ease access to credit. Even though they do not reflect a consensus among the development community, the views of Lula are shared by many policy makers and researchers. For instance, Lula’s predecessor, Fernando Henrique Cardoso, also believes in the power of land titles. In 2005, Cardoso was appointed a member of the Commission for the Legal Empowerment of the Poor; a UN commission created to explore the link between law and poverty. Co-chaired by the Peruvian economist Hernando de Soto and former United States

<sup>1</sup> The Coastal Federal Domain comprises the *Terrenos de Marinha* – a strip of land comprised between the average level of the high tides in 1831 and its parallel at 33 m – and the *Terrenos Acrescidos de Marinha* – areas humanly or naturally filled towards the sea after 1831.

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