

THE CANTAGALO PROJECT: JUDICIAL AND ADMINISTRATIVE LAND TITLING IN THE FAVELAS OF RIO DE JANEIRO

Adam Smith*

ABSTRACT: The following examines the Cantagalo Project, an ongoing land titling effort in Rio de Janeiro that seeks to provide formal title to residents of an informal urban settlement, the *favela*, or shanty town, of Cantagalo, through judicial and administrative mechanisms. Background information on the current economic and social development of Brazil and the persistent problems of informality and informal housing is presented. A history of informal settlements in the city of Rio de Janeiro and government policy toward them is offered, specifically highlighting the traditionally limited role of land titling in such efforts. The Cantagalo Project is detailed including a discussion of the legal instruments of *usucapião* (a device roughly equivalent to adverse possession in the Anglo-American tradition) and recent changes to state law which seek to regularize favelas through the donation of public land. The project is evaluated as a workable model for other favelas. Observations are offered on likely trends of public policy towards favelas in Rio de Janeiro over the next ten years.

KEYWORDS:

* PhD candidate, Law School, Tulane University.

PART 1: INTRODUCTION

Over the past 10 years, Brazil has experienced significant economic growth, demonstrated marked improvement in traditional social development indicators, and increased in global influence and prestige. Economically, it has maintained high rates of GDP growth for much of the decade while decreasing its foreign debt, increasing both internal consumption and exports and amassing significant foreign reserves (CIA World Factbook Brazil 2011). Many observers note that Brazil emerged from the global recession of 2009 in a better global economic position than before the crisis (Wheatley 2009). This extended economic growth, as well as the implementation of social programs under the administration of President Luis Ignácio Lula da Silva, has led to decreased poverty levels and rates of income inequality, increased school attendance, and expanded access to medical care in both rural and urban areas (Mittal 2010). Brazil has sought to increase its geopolitical influence by strengthening relationships with countries in the region through instruments such as the Mercosul trading bloc and organizing with similarly positioned countries like India and South Africa to petition reforms to global institutions (The Economist 2006). The selection of Brazil as the site for the 2014 World Cup and Rio de Janeiro as the site of the 2016 Summer Olympic Games underscore Brazil's emergence on the world scene as an important global power.

Beneath this success, however, remain persistent problems of poverty and inequality. The country currently has a poverty rate of 26% which is significantly higher than rates in North America, Japan and the European Union (CIA World Factbook Brazil 2011). Brazil's level of income inequality (Gini coefficient of 56.7 in 2005) is also substantially higher than economies of similar size and far more consistent with developing economies of South America and sub-Saharan Africa (CIA World Factbook Brazil 2011). Although recent improvements in both areas is significant, Brazil's long term prospects will likely turn on its ability to resolve these fundamental challenges (Beghin 2006, 6).

One contributing factor to both poverty and income inequality is the high level of informality present in Brazilian society. Informal employment exceeds formal employment by two to one in Brazil despite increases in formalization over the past 10

years (Brasil.gov.br 2010). Indeed, in 2008, the share of workers in economically active urban areas reached only 44% (Catão, Pagés & Rosales 2009, 30). It is widely recognized that such informality decreases state tax revenue, weakens worker protection and restrains overall economic development (Catão, Pagés & Rosales 2009, 30).

Also significant is the country's high rate of informal housing settlements, which in the urban areas of São Paulo and Rio de Janeiro may contain up to 50% of the population (Saores Gonçalves 2009, 237). While a variety of forms of informal urban settlements exist in Brazil, the most prominent among them are the favelas, the neighborhoods of poorly constructed housing that occupy land held either privately or by the state. The favelas of Rio de Janeiro are visible from nearly every point in the city, rising up on the various hills around which the city is built. Present since the late 19th century, the favelas of Rio de Janeiro have presented continuous challenges to city, state and federal governments attempting to resolve questions of how to incorporate informal settlements into the formal city (Pamuk & Cavallieri 1998, 449, 455). Efforts have ranged from eradication to urbanization through infrastructure improvements to limited attempts at regularizing the informal occupations by granting legal title to the residents (Pamuk & Cavallieri 1998, 449, 455).

This paper examines the Cantagalo Project, a recent effort by residents of the favela of Cantagalo to gain legal title to the land they possess through legal and administrative means. Part 2 outlines a brief history of public policy towards the favelas in Rio de Janeiro and examines the role of land titling programs within these efforts. Part 3 looks at the Cantagalo Project itself and the legal foundations for the two methods of acquiring title the project utilizes. Part 4 evaluates whether the Cantagalo Project represents a model that might be utilized in regularizing land tenure in other favelas of the city. Part 5 concludes by offering predictions regarding public policy towards the favelas of Rio de Janeiro over the next ten years.

PART 2: FAVELAS OF RIO DE JANEIRO, CHALLENGES AND REPONSES

The favelas of Rio de Janeiro are some of the best known examples of informal urban settlements. Initially emerging at the end of the 19th century, they grew dramatically during the 20th century in response to periods of industrialization and rural

to urban migration (Soares & Soares 2005, i). Characterized by low-quality of housing, limited access to public goods and the general poverty of their residents, they are currently a highly visible expression of the problems of informality currently facing cities throughout the developing world. They highlight gross inequalities of income and social mobility and present challenges for both the state and the residents of the favelas themselves (Soares & Soares 2005, i).

For the formal sector, the presence of the favelas represents an inefficient allocation of resources in terms of urban planning, tax revenue and the development of human capital. Favela construction is unplanned and unregulated and may extend into areas specifically zoned for non-residential development or protected for their environmental value (O Globo 2007). As such, favelas limit the formal sector's ability to regulate the urban commons and can lead to the over consumption of resources (Soares & Soares 2005, i). As favela property is not held formally, the state derives no tax revenue from the property or from the myriad economic transactions that occur inside the favelas (Soares & Soares 2005, i). Utility services—whether provided by the state or private companies—are also likely to lose money in provisioning services to the favelas as many favelas residents informally tap into water, sanitation or electrical systems and do not pay for these services (Urbanismo 2009). In terms of human capital the informality and poverty experienced by favela residents limits their ability to gain education, stay healthy and participate either economically or politically in the formal sector which deprives the formal sector the benefits their contributions (Rambla 2009).

Moreover, the favelas represent a challenge to state authority by existing outside the controls of the state, revealing the limitations of state power. Inside the favelas, despite the presence of informal organizations like residents' associations (*associações de moradores*), residents usually lack access to social services such as schools, hospitals, sanitation services and police protection (Soares & Soares 2005, i). Lack of construction codes also leaves residents vulnerable to accidents and disasters (Soares & Soares 2005, i). In April, 2010 heavy rains in Rio de Janeiro led to the collapse of many structures in various favelas in the state of Rio de Janeiro causing the deaths of at least 80 individuals (UOL Noticias 2010). In recognizing the human tragedy, the governor of the state of Rio

de Janeiro stated that the deaths were a result in part of the expansion of informal settlements into precarious areas (UOL Noticias 2010).

As such, resolution of the problems associated with favelas has been a persistent challenge of the state. In the early 20th century, as planners sought to modernize the center and southern areas of Rio de Janeiro, favelas were either ignored in city plans or, when recognized, marked for eradication. Attempts to remove favela residents displaced thousands of individuals during this period but did not effectively stop the growth of favelas either in the targeted zones or in other parts of the city. Beginning in the 1940s, public opinion began to shift in recognition of the extreme poverty and poor access to social to social services experienced by the residents of the favelas. The Catholic Church began projects to provide urbanization projects and increase social services to the favelas and by 1960, agencies existed at the city, state and federal level to specifically increase access to services for favela residents. The church and government agencies during this period also worked to foster the development of residents' associations in the favelas which could work as an intermediary between the formal state and the residents, coordinating democratic organization and distribution of services (Soares & Soares 2005, 1).

The period of military rule which began in 1964 marked a period of renewed efforts towards eradication of informal settlements and removal of favela residents. Programs during this period attempted to resettle residents to public housing and to rural areas from which they had presumably come, but often resulted in residents moving to other favelas many of which were located further from the core of the city. The intense urbanization of Rio de Janeiro during the 1970s fueled this process of favela growth and led to the combined population of the various favelas of the city reaching nearly 600,000 (Soares & Soares 2005, 2). During this period, governments sought to limit the power and influence of the residents' associations as well, first by formally recognizing them and then by heavily regulating their activities (Soares & Soares 2005, 2).

The end of military rule in Brazil, which began with democratic openings in the 1970s, marked a return to the earlier perspective of viewing the favelas as undeniable parts of the city which demanded coordinated attention. During the 1980s, programs were directed mainly by state and national governments and sought to urbanize favelas by

widening and paving road, and by providing access to water, electricity and sewage systems. Certain programs at the state level, to be discussed in greater detail later, also sought to grant favela residents title to the land that they had occupied (Soares & Soares 2005, 2).

In the city of Rio de Janeiro, this renewed attention to the favelas as communities to be integrated into the city led to the *Favela-Bairro* program, designed in 1992 as part of the general plan for the city and launched in 1994. Financed in part by the Inter-American Development Bank, this program sought to urbanize favelas through infrastructure improvements and bring favelas into greater contact with the formal city through the provision of social services such as water and sanitation, the opening and improving of roads, and installation of parks and public spaces (Rio Estudos 2003). *Favela-Bairro* (1994-2000) and *Favela-Bairro 2* (2000-2008) together resulted in the expenditure of \$ 1.1 billion reals and are have been considered positive models for favela incorporation (Barrieros 2010). Similarly framed but far more ambitious is the *Morar Carioca* program, announced in 2010, which plans to urbanize all the favelas in Rio de Janeiro by 2020 at a total cost of \$ 8 billion reals. The favelas with to be urbanized first are those located closest to the sites that the city is preparing for the 2016 Summer Games, but city officials insist that all favelas will be improved by the end of the decade (O Globo January 27, 2011).

Parallel to attempts to provide infrastructure and social services to the favelas, which have been directed primarily by the city, are attempts to increase the presence of formal police protection, which is Brazil is generally provided at the state level (Governo do Rio de Janeiro 2011). Given the power vacuum left by the absence of general state presence, security has often been provided by drug traffickers or informal militias (Soares & Soares 2005, i). For many years these groups have been in violent conflict with police forces which made specific attempts to pursue drug trafficking networks but did not provide consistent formal police protection within the favelas. In 2008, the state of Rio de Janeiro began the *Unidade Policial Pacificadora* program in which the state installed permanent police stations, UPPs, within the favelas and has attempted to aggressively displace drug trafficking and other illegal regimes (Freire 2010). Officers serving in UPPs are generally recruited directly from the police academy to minimize possible corruption

and also engage the community as coaches and teachers as part of a broader model of community policing (Barrionuevo 2010). Generally, the UPPs have been considered to be successful in increasing state presence in the favelas and have resulted in increased land values in favelas and positive responses from residents and community leaders (O Globo May 10, 2010).

LAND TITLING

What has been generally absent from the government programs designed at resolving the challenges presented by the favelas is any large-scale attempt to provide formal title to residents (Handzic 2010, 11). This is noteworthy because land titling has emerged in recent years as a popular strategy for addressing the problems associated with the growth of informal urban settlements (Lanjouw & Levy 2004, 898). Most prominent among the supporters of land titling is the Peruvian economist Hernando de Soto, whose work argues that providing formal title to residents of informal occupations can be a highly effective means of addressing urban poverty (Atuahene 2004, 1110). For de Soto and his followers, providing title provides many possible benefits for residents including: efficiency gains derived from being able to buy and sell property; ability to amass family wealth through the inheritance of property; ability to work more hours since less time is required to maintain a claim; greater access to public services such as utilities, health, education and security; and increased access to credit by being able to mortgage property (Lanjouw & Levy 2004, 899-903). Kenan Handzic points out that land titling programs are popular both among traditional leftists as well as neoliberal economists in that such programs seek to help the poor acquire democratic and economic power while also reaffirming traditional market principles (Handzic 2010, 14).

Land titling programs are increasingly popular globally with programs in Africa, Asia, and most prominently in Latin America, the continent with the highest degree of urbanization, but they are not without their critics (Atuahene 2004, 1111). Those skeptical of land-titling programs criticize them based on their possible impact on both the formal sector and the residents themselves (Lanjouw & Levy 2004, 904-08). For the formal sector and the state, one concern is that regulating informal land occupation may encourage additional informal occupations thereby merely relocating, and perhaps

increasing, the efficiency losses caused by informal occupation discussed above (Clínica de Regularização Fundiária Urbana da Fundação Getúlio Vargas 2010, 6). As previously noted, in the Brazilian context, the eradication of favelas near the city center in the 1940s lead to the expansion of favelas in other parts of the city. In recent large scale titling efforts in Lima, Peru where informal expansion has occurred mainly on the outskirts of the city, planners were particularly concerned that individuals would gain title, sell their land and then find new land to claim (Lanjouw & Levy 2004, 904). Critics argue that creating mechanisms to formalize ongoing informal occupations will in fact erode rule of law and the meaningfulness of the formal system a titling program seeks to expand (Atuahene 2004, 1130).

In considering the effect of titling on the residents of favelas, a second critique of land titling programs mains that while a land title is inclusive to the individual named on the title it is exclusive to anyone living on the property that is not named (Lanjouw & Levy 2004, 904). Land titling, furthermore, may be a rapid and chaotic process and not necessarily democratic (Lanjouw & Levy 2004, 904). If titling unfairly favors one group it can aggravate cycles of poverty especially for residents of the land whose relationship to the newly titled landowner may not be recognized legally (Atuahene 2004, 1130). Illegitimate children and unmarried consensual partners are two groups in particular for whom formalization of land tenure might actually create tenure insecurity (Hendrix 1995, 13).

A third critique of land titling is that the formalization of property rights will cause an increase in property values which could ultimately lead to the displacement of the individuals to whom title was initially granted. Most observers of informal urban settlement agree that informal settlement is generally the last resort of individuals who would otherwise prefer to access the formal real estate market (Atuahene 2004, 1130). As one critic has pointed out then, the legalization of informally possessed land automatically makes the land unaffordable to the individuals who possess it (de Souza 2001, 491). Once land has appeared on the formal market it may be purchased for investment or speculation by more affluent sectors of the formal economy, a phenomenon referred to as “downward raiding” (de Souza 2001, 491). This phenomenon is well observed in land privatization efforts in agrarian lands. In Honduras, jointly held

cooperatives that were granted alienability rights were observed to have sold their land to multinationals (Hendrix 1995, 13). After a titling program in Kenya, newly-titled landowners were observed to subdivide their land and used different parcels for different purposes rather than maintaining land for owner-occupied use (Hendrix 1995, 13). The World Bank also recognizes this as a possible consequence of urban titling programs (Durrand-Lesserve & Payne 2006). This critique is particularly relevant in the context of Rio de Janeiro where many favelas are located near or within neighborhoods with particularly high property values. Cantagalo, for instance, abuts the affluent neighborhoods of Copacabana and Ipanema and commands spectacular views of the city and the Atlantic Ocean. The high level of income disparity in the city and the high levels of wealth concentration nearby also make this concern significant.

As outlined above, Brazil has generally not pursued broad land titling programs, but has instead directed its reform efforts at urbanization of informal settlements. The notable exception to this is the *Cada Familia, Um Lote* (roughly “A Plot for Every Family”) program introduced in 1984 by the state of Rio de Janeiro that had the goal of first legalizing land tenure in the favelas and then urbanizing them (de Araújo 1989, 85). Launched under the governorship of Leonel Brizola, the first governor of the state elected during the period of the military dictatorship, the plan sought to formalize land tenure of 400,000 lots in the state of Rio de Janeiro, improve the infrastructure of 400,000 others, and create 200,000 lots for new arrivals to the city (de Araújo 1989, 85). To achieve the titling goal the state would transfer publically held land to the semi-public *Companhia Estadual de Habitação* (CEHAB) which would then transfer the properties to individual land owners (de Araújo 1989, 85).

Over the course of the three years that *Cada Familia, Um Lote* operated, approximately 23,000 lots were transferred to informal occupants, far short of the 400,000 originally intended (Handzic 2010, 14). Maria Silvia Muyaert de Araújo suggests that this was a result of both lack of governmental resources and a lack of appreciation of the dimensions and complications involved in a project so complicated (1989, 87). Although the project did not achieve its full titling goal, de Araújo also points out that significant infrastructure improvements were made to various favelas in the city of Rio de Janeiro, specifically Cantagalo and the adjacent favelas of Pavão and

Pavãozinho in which streets were widened, water and sewage systems were installed, and major improvements were made to housing and access points to the communities (1989, 86).

PART 3: THE CANTAGALO PROJECT

The Cantagalo Project represents an effort to facilitate the land titling of properties within a favela through legal mechanisms (Junqueira February 22, 2011). The project can be conceived of in two components. The initial component consisted of an action of collective adverse possession (*usucapião*) brought by a group of residents of Cantagalo against the semi-public company of CEHAB, which was identified as the title holder to a portion of the land occupied by the those members of the community. This process began in 2008 and, while still awaiting a final judgment, appears likely to be successful based on initial decisions offered by the trial judge. In 2009, an amendment to the state constitution of Rio de Janeiro and subsequent legislation offered an administrative pathway to legal regularization through the direct donation of land occupied by favelas which are owned by the state. In the second component of the project, subsequent to these changes in legislation, the lawyers and community leaders associated with the endeavor have sought to expand their efforts at pursuing legal title for other residents of the community by providing information about this administrative mechanism (Clínica de Regularização Fundiária Urbana da Fundação Getúlio Vargas 2010, 12). This section examines both aspects of the Cantagalo Project, the initial judicial claim of adverse possession and the administrative efforts made subsequent to the legislative changes of 2009. In the context of land regularization in Brazil the case is interesting for a number of reasons. The first component of the project may represent the first successful action for adverse possession in the state of Rio de Janeiro against a semi-public entity such as CEHAB strengthening the legal instrument of *usucapião* as a tool for judicial titling. Additionally, the changes made to state law in 2009 which have made possible the administrative actions of the second component of the project represent an increased willingness on the part of the state to facilitate land titling.

THE COMMUNITY OF CANTAGALO AND THE ORIGINS OF THE CANTAGALO PROJECT

The favela of Cantagalo is located in the southern zone of Rio de Janeiro on a hill that borders the affluent neighborhoods of Copacabana and Ipanema. The community dates to at least the 1930s when the development of the neighborhoods of Copacabana and Ipanema prompted a surge of migration to the southern part of the city (Souza et al. 2009, 4). The community's residents association has operated continuously since the 1960s (Associação de Moradores do Cantagalo, 2011). The community has been a recipient of numerous urbanization projects including water systems provided in the 1960s; road widening and formal road access in the 1980s; numerous parks and public spaces in the 1990s; and most recently the construction of an elevator linking the community to the subway station in Ipanema. A UPP was installed in the community in 2009 (*O Globo* December 23, 2009).

The Cantagalo Project emerged as the result of meetings between the residents' association of Cantagalo (*Associação de Moradores do Morro do Cantagalo*), the Security Project of Ipanema (*Projeto de Segurança Ipanema*) and the Instituto Atlântico, a non-profit public policy firm based in Rio de Janeiro (*Cities and Solutions* June 2, 2010). The meeting was prompted by the long-held desires by the community of Cantagalo to regularize their possession, the growing belief among the residents of Ipanema that the security of the neighborhood could not be assured with an informal community located so close to it, and the position of the Instituto Atlântico that land regularization was fundamental to addressing the challenges presented by the favelas of Rio de Janeiro (*Cities and Solutions* June 2, 2010). With the support of the Instituto Atlântico, the residents' association secured *pro bono* counsel which in turn conducted a topographical analysis of the community, a formal census of all community members, and an investigation to identify the actual title holders of the lands occupied by the community (*Cities and Solutions* June 2, 2010).

The census and topographical analysis revealed that the favelas of Cantagalo covers 62,000 m² and contains 1485 families and more than 9000 individual residents (*Journal Nacional* November 10, 2009). The title investigation revealed that while much of the land was held by the state, 18,505m² was held by CEHAB, a semi-public company

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created as part of the *Cada Familia, Um Lote* discussed above to administer the transfer of land occupied by favelas to the residents of the communities themselves. Further investigation revealed that the land had been transferred to CEHAB in 1985, presumably so that it could be later transferred to the residents, but that that subsequent transfer had not occurred (Souza et al. 2009, 6).

The judicial action brought by lawyers for the community was for *usucapião especial coletiva*, a claim similar to adverse possession in U.S. law and which will be discussed in greater detail below. Court proceedings began in the 7th Chamber of the Court of Public Property (*7^a Vara de Fazenda Pública*) on June 1st, 2009 and on July 17th Judge Nathália Calil Miguel Magluta offered a preliminary decision. This decision announced that the residents had satisfied the requirements of *usucapião*, joined the city of Rio de Janeiro as a co-defendant in the action, and converted the action from a summary proceeding to an ordinary proceeding due to the complexity of issues involved. These decisions were upheld by a Civil Chamber (*14^a Câmara Cível do Tribunal de Justiça do Estado*, the court of second instance) following an interlocutory appeal brought by the residents in which they contested the joining of the city and the conversion of the process from a summary to ordinary proceeding. While a final sentence has not yet been issued pending the individual registration of all residents, some residents have obtained the documents necessary to register their lots with the city and ultimately obtain title (Azavedo April 14, 2011).

USUCAPIÃO AND THE SOCIAL FUNCTION OF PROPERTY IN BRAZILIAN LAW

Like adverse possession in U.S. law, *usucapião* seeks to reconcile the right of property ownership with the social benefit of efficient land use by recognizing the property rights of individuals, given certain requirements, who have mixed their labor with the property they have occupied (de Moraes Salles 2006, 49). *Usucapião* entered Brazilian law through the country's partial adoption of the Napoleonic Code and was reaffirmed in the Civil Code of 1916 and in all subsequent civil codes and constitutions (Ribeiro 2007, 960). Generally, *usucapião* permits a possessor who can demonstrate uninterrupted, uncontested possession of land for a period of time to gain title to that land (de Moraes Salles 2006, 48). The period of possession varies based on whether the

possessor believes himself to the possessor of the land and whether or not she has used the land as a place of residence or has made productive improvements to it (Ribeiro 2007, 960).

For much of the 20th century, *usucapião* was not utilized as tool for regularization of informal land possession (Ribeiro 2007, 961). Jurist Benedito Silveiro Ribeiro, in his treatise on *usucapião* asserts that the *usucapião* articulated in 1916 Civil Code was particularly protective of the rights of property owners and developed under an individualist conception of private property (Ribeiro 2007, 961). Over the course of the 20th century, he explains, Brazilian law began to recognize the concept of the social function of property which imposed greater limitations on the property rights of land holders (Ribeiro 2007, 961). The Constitution of 1934, for instance, states that property rights can be exercised against social or collective interests (Ribeiro 2007, 961). Similarly, the Constitution of 1946 mandates that the use of property be conditioned to the social welfare (Ribeiro 2007, 961). This growing importance of the social function of property culminated, he argues, in 1969 when the Constitution of 1967 was amended to place the principle of the social function of property as central to the development of social and economic order in the country (Ribeiro 2007, 961).

Article 183 of the Brazilian Constitution of 1988, which greatly increases the role of the municipality in the development of urban policy, formally introduces *usucapião* as a mechanism for achieving the social function of property in the urban sphere by introducing the mechanism of *usucapião especial urbana* (special urban adverse possession) (Ribeiro 2007, 937). While traditional forms of *usucapião* of real estate may require periods of possession of 10 or fifteen years, *usucapião especial urbana* reduces the possessory period to 5 years in all cases and imposes no requirement that the possessor demonstrate that he believed himself to be the rightful owner of the land or that he had any form of title to it (Constitution of the Federal Republic of Brazil, Art. 183). Clearly designed to be applied in cases of land claims by residents of informal urban communities, *usucapião especial urbana* is limited 1) to claims by individuals who have no other urban or rural property 2) to land in urban areas of no greater than 250m² 3) which is used as a residence 4) and the process can be used only once by an individual (Constitution of the Federal Republic of Brazil, Art. 183).

Moreover, the federal *Estatuto da Cidade* (city statute), passed in 2001, recodified the requirements for *usucapião especial urbana* articulated in the Constitution and extended the applicability of the mechanism to the favelas by creating a collective form of *usucapião* (Lei N° 10.257, July 10, 2001). *Usucapião coletiva* (collective adverse possession) permits the acquisition of 1) land greater than 250m² by 2) a group of individuals who petition collectively and 3) can be used in cases where it is not possible to identify the specific territory occupied by each resident 4) if the residents are considered to be of limited economic resources (Lei N° 10.257, July 10, 2001). Land gained through *usucapião coletiva* is held collectively by the group of residents as a whole, each of whom is given a partial property interest (Lei N° 10.257, July 10, 2001). This collective possession can later be individualized through a vote of two thirds of the property owners (Lei N° 10.257, July 10, 2001).

Both individual and collective *usucapião* are limited, however, by article 183 of the Brazilian Constitution that specifically prohibits the acquisition of public land or other land owned by the government through *usucapião* (Constitution of the Federal Republic of Brazil, Art 183). This inapplicability of *usucapião* has been established since the Civil Code of 1916, and has been defended in part by the policy argument that in a country as large as Brazil it would be unworkable for the government to fully monitor possession of all publically held land (de Moraes Salles 2006, 86). What is possible in cases of occupation of public lands is the acquisition of a government concession that grants the possessor limited rights of use and occupation (Ribeiro 2007, 1018). While various concessions exist, the one most directly adapted to the situation of those living in the favela is the *concessão especial de uso para fins de moradia* (concession of use for the purpose of residence or CUEM in its Portuguese acronym) (Soares Gonçalves 2009, 237). The concession imposes the same requirements those of *usucapião coletiva*: 1) five-year uninterrupted and uncontested possession of urban land; 2) individual or individuals of low income; 3) use of land for residential purposes; 4) possession of no other rural or urban properties (Ribeiro 2007, 1026). Such a concessionary title is alienable through gift or sale and can be mortgaged or used as collateral in a contract (Instituto Atlântico 2009). Since the CUEM exists in both individual and collective

forms, it is seen by some observers as a comprehensive corollary to the instruments of individual and collective *usucapião* (Carvalho Filho 2008, 139).

Proponents of land titling criticize the CUEM, and concessions of use generally, on the grounds that although they may provide informal residents with some form of government recognition of possession, the limited property right they offer leaves residents in a precarious position and limits their ability for economic advancement (Instituto Atlântico 2009, 15). They point out that such concessions limit future use of the property to residence and thereby prohibit formal commercial activity and encourage informal businesses (Instituto Atlântico 2009, 15). They argue that by imposing a requirement that residents have only one piece of property such concessions preclude the possibility of economic advancement of the residents since the acquisition of an additional piece of property theoretically makes the resident ineligible for the original concession (Instituto Atlântico 2009, 15). They argue further that such a limited property right limits the ability of possessors to fully engage in real estate markets through the renting of their property (Instituto Atlântico 2009, 16).

It is noteworthy, then, that the judicial action brought in the first component of the Cantagalo Project was for *usucapião* rather than for a concession of use, even though title to the land was held by a semi-public company. While CEHAB and other semi-public companies have long been subject to suit in Brazilian law, this is the first time that an action of *usucapião* had been successfully brought against such an entity (Junqueira February 22, 2011). In their action submitted to the court, the lawyers representing the residents of Cantagalo specifically locate their argument in the context of the perceived benefits of full title to residents arguing that denying residents full title would limit their ability to build wealth (Souza et al. 2009, 21-22). Denying full title, they argued, would perpetuate cycles of poverty in the community and would be inconsistent with constitutional guarantees of access to property, housing and land regularization, and be inconsistent with the principle of the social function of property (Souza et al. 2009, 21-22).

While it is impossible to determine the full extent of the jurisprudential value of the case given that the final sentence is still pending, the judge's initial decision to permit CEHAB to be identified as a defendant and to state that the residents had successfully

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satisfied the statutory requirements for *usucapião coletiva* suggests the strength of the residents' arguments. Indeed, the speed with which the initial decision was offered—less than two months after arguments were submitted—also indicates judicial receptiveness to the arguments offered.

GOVERNMENT DONATION UNDER LC 131/09

Legislative developments in 2009 also suggest a growing receptiveness of lawmakers in the state of Rio de Janeiro to the policy arguments supporting land titling. Amendment 42 to the Constitution of the State of Rio de Janeiro, approved in September 2009, specifically authorizes the donation or sale of state lands to low income individuals for the purposes of land regularization (Clínica de Regularização Fundiária Urbana da Fundação Getúlio Vargas, July 31 2010, 6). Subsequent to the amendment the state passed complementary law LC 131/09: *Regularização dos Imóveis de Titularidade da Administração Pública Direta e Indireta do Estado do Rio de Janeiro e Ocupados por Comunidades Carentes*, which specifically outlines the mechanisms by which low-income individuals who can prove occupation of state-owned lands can petition the state for full title to those lands (Clínica de Regularização Fundiária Urbana da Fundação Getúlio Vargas, July 31 2010, 6). Unlike *usucapião* or the various concessions of use outlined above, the law imposes no size limitation on the land claimed and no minimal period of possession (LC 131/09 Art. 18.). Instead, the property must be possessed by a low-income individual for primarily residential purposes, the resident must not possess any other property title or concession, and the land claimed must not be in an area subject to risk of flood, earthquake, rockslide or any other dangers (LC 131/09 Art. 18.). The claim may be brought individually or collectively, and the law prescribes a process of regularization in which the claimant provides a detailed registration of the property to state authorities for administrative processing and judicial regularization (Clínica de Regularização Fundiária Urbana da Fundação Getúlio Vargas, July 31 2010, 12). In order to limit the expansion of informal settlements, the law also requires that a claimant prove occupation of the land before 30 June, 2009 (Clínica de Regularização Fundiária Urbana da Fundação Getúlio Vargas, July 31 2010, 6).

Amendment 68 to the state constitution of Rio de Janeiro and LC 131/09 represent an endorsement on the part of state lawmakers of land titling as a mechanism for land regularization. By permitting the donation of publicly owned lands to low-income individuals, the state has recognized the broad social benefits that land titling can provide both to individuals and to society as a whole. This alternative regularization process marks a second component of the Cantagalo project as it is applicable in situations in which the land possessed by residents was not transferred to CEHAB but rather remains in the hands of the state.

PART 4: CANTAGALO PROJECT AS A MODEL

Although still awaiting final decision and the recording of residents' property, the Cantagalo Project has been lauded as an enormous success in providing a means for achieving title for residents (Junqueira 2011). Alluding to the name of the community, which in Portuguese means "the rooster sings", president of the Instituto Atlântico, Paulo Rabello de Castro, has said that the Cantagalo Project can be considered a song out to the rest of Brazil to limit informality and regularize title in favelas throughout the country (Cities and Solution June 2, 2010). Indeed it appears to establish two clear paths by which informal residents can secure title to their land depending on whether title is held by the state (in which case they could pursue donation of the land under LC 131/09) or a private or semi-public entity (in which case they could pursue title via *usucapião*).

Whether the model will be adopted as one to copy for the regularization of the favelas of Rio de Janeiro in the near future, however, is more questionable. As explained above, the cost of implementing the project, the presence of informal regimes within the favelas that may oppose titling, and the general policy towards the favelas of the municipal, state and federal governments all represent obstacles to the adoption of legal land titling as a large-scale mechanism for land regularization. While these obstacles are not insurmountable, they do underscore some of the more exceptional aspects of the Cantagalo Project and suggest that it may be a difficult model to reproduce.

RESOURCES NEEDED FOR TITLING

The first significant obstacle to the adoption of administrative land titling is the cost of the project. In either a judicial proceeding pursuing title through *usucapião* or the administrative proceeding seeking the donation of occupied land, the first step is a detailed census of residents seeking title and a topographical study of the area to be regularized. This is necessary to determine the identities of the current occupants of claimed land, the exact perimeters of the land in question and, in the case of a proceeding under LC 131/09, whether the settlements exist in areas of significant risk (Junqueira, 2011). In the case of Cantagalo, this process was performed at no charge by the Instituto Atlântico and lasted for a period of more than a year (Souza et al. 2009, 6).

After completing a census and topographical analysis it is necessary to identify the title holder of the occupied land so as to determine which legal instrument is best suited to secure title for the residents. In the case of privately held land, *usucapião* (individual or collective) remains the most efficient means of obtaining title. This may also be the case where the land is held by a semi-public entity such as CEHAB. In the case of publically held land however, the administrative procedure introduced by LC 131/09 is the only available means of securing full title. This necessary research may be complicated by limited information or by bureaucratic difficulties in securing what information exists from the state records offices (*cartórios*). In his examination of legal land titling in Brazil, Rafael Soares Gonçalves points to the corrupt and inefficient system of maintaining property records in the state Rio de Janeiro, and the lawyers involved in the Cantagalo Project affirmed that determining the official title of land occupied by favela residents can be a labor intensive undertaking (Soares Gonçalves 2009, 240). Again, in the Cantagalo Project this work was coordinated and performed by the Instituto Atlantico and the *pro bono* legal counsel at no cost to the residents (Souza et al. 2009, 6).

The legal costs associated with pursuing the project may be high as well. Legal counsel was involved nearly throughout the Cantagalo Project coordinating an overall strategy and attending to the logistics of various steps of the process. While many law firms may be interested in assisting with similar projects with other communities, it seems likely lack of available legal counsel may be limiting factor in a community's ability to complete the process.

One striking aspect of the Cantagalo Project is the degree to which the process was nurtured and supported by private entities in the formal sector. As mentioned above, the initial impetus of the project was a collaboration between the residents' association of Cantagalo with the Instituto Atlântico and representatives from the wealthy neighborhood of Ipanema. The influence of the latter two groups and their ability to marshal resources cannot be underestimated nor assumed as a given in future projects.

EXISTING INTERNAL REGIMES

Existing internal regimes within the favelas may also represent an obstacle to attempts at broad land titling either because they are incompatible with the legal mechanisms available for titling or because the individuals privileged within those regimes may fear a loss of power or income. The first concern is illustrated clearly by the problem of renting. Currently there exist within the favelas of Rio de Janeiro vibrant real estate markets both for the informal sale and rental of properties (Handzic 2010, 15). In some instances an individual will acquire informal title to a number of properties within a favela and will rent out the properties as an informal, off-site "landlord" (Soares Gonçalves 2009, 244). More frequent is the case in which an occupying family rents out part of their house or sells the right for another family to occupy and build on their roof (Soares Gonçalves 2009, 244).

In all of these situations it becomes very difficult to effectively apply either *usucapião* or administrative donation. Both the city statute and LC 131/09 require that the possessor occupy the land as his own, that is, both possess it and demonstrate *animus domini*. In the situation of an off-site "landlord" renting property, neither the "landlord" nor the renter would be eligible to claim the land as the first lacks occupancy and the second lacks *animus domini* (Soares Gonçalves 2009, 244). In the case in which a possessor rents out part of their house, the question still remains as to what property interest exists for the individual who occupies the land as an informal renter. The language in LC131/09 that merely requires that the occupant of the land use the land *primarily* for residential purposes may open the door for the efficient titling in the case of a claimant-occupied property that is partially rented. But as Soares Gonçalves points

out, the fundamental question that remains is how and to what degree will the formal system incorporate and reconcile this informal transaction (2009, 244).

There may also be elements within the favelas which oppose formal titling (Soares Gonçalves 2009, 244). Besides the informal landowners discussed above whose entire business model is undone by regularization, there are other individuals who profit from the informal real estate market. Residents associations may receive a percentage of informal property sales which they certify in their internal records and private militias may also receive a percentage of property sales (Soares Gonçalves 2009, 244).

Again, the Cantagalo Project is distinct in that it did not have to directly face this obstacle. The census conducted by agencies involved in the titling process revealed a highly established community where primary home ownership was the dominant residential form (Junqueira 2011). Over 90% of residents claimed to be the “owner” of the land they occupied, and more than two thirds of the properties claimed had five or fewer people and a single family residing on the premises (Junqueira 2011). As such, renters or other non-possessory occupants did not complicate the community’s claim. Furthermore, the residents’ association was also highly supportive of the claim as were members of organized crime which controlled security prior to the installation of a UPP in 2009 (Cities and Solutions June 2, 2010). While few records exist of concerning occupancy patterns in other favelas, anecdotal evidence suggests that those observed in Cantagalo may not be representative (Handzic 2010, 13).

POLITICAL WILL

Given the obstacles outlined above the question arises whether the government might direct a broad-based attempt to regularize informal urban land occupation through titling. While there appears to be significant political will at the municipal, state and federal levels towards addressing the challenges posed by informal settlements, efforts at all three levels appear to be directed at the urbanization of the favelas through the provision of infrastructure and services rather than the regularization of informal possession. At the municipal level, the city of Rio de Janeiro’s most significant effort towards addressing the concerns raised by the favelas is the *Morar Carioca* program, announced in August of 2010, which has the ambitious goal of urbanizing all the favelas

of Rio de Janeiro by 2020 (*O Globo* July 24, 2010). The plan seeks to clearly demarcate existing favelas, remove favelas located in areas of risk, and regularize the provision of services in the favelas so that such services are provided to the same degree and with the same quality as in other parts of the city (Castro 2010). Residents of favelas that are removed for questions of excessive risk will be given temporary housing and ultimately housing through the federal program launched in 2010, *Minha Casa, Minha Vida* (Castro 2010). *Morar Carioca* is supported by the Inter-American Development Bank, which was a partner in both phases of the *Favela-Bairro* program and has been budgeted to cost \$ 8 billion reais over the course of the decade (Castro 2010). Absent from the program, however, is any reference to land titling or regularization of informal possession.

The primary state program directed at the informality of the favelas is the *Unidade de Polícia Pacificadora* (UPP) program, which seeks to provide formal security services inside favelas thereby displacing informal militias and drug traffickers and facilitating the provision of other formal social services. The program consists of installing police stations—UPPs—within favelas and implementing a community policing model in which police officers directly engage community as part-time coaches and teachers as well as through regular foot patrols (Barrionuevo 2010). Since the first UPP was established in November 2008, the program has been lauded by the public and private sectors in Brazil and abroad (*The Economist* June 10, 2010). Besides state and federal funds, private business has also pledged significant contributions for the project. Most notably the Brazilian business tycoon Eike Batista has promised to donate a total of \$ 100 million reais to support the program's expansion throughout the city (*Estadão.com.br* August 24, 2010).

As at the state and municipal levels, the federal response to the challenges presented by informal favelas appears to concentrate on urbanization rather than land regularization. Besides limited federal involvement in the *Morar Carioca* program through *Minha Casa, Minha Vida* and financial and logistical support for the UPPs, the biggest federal program affecting the question of informal housing have been PAC and PAC 2 (*Programa de Aceleração do Crescimento*), the programs for accelerated growth begun during the second term of the Lula administration. The first PAC program budgeted over \$ 500 billion reais in three primary areas: transportation and logistics;

energy; and social and urban development (Ministério das Cidades). One hundred seventy billion was budgeted for the areas of the social and urban development, with housing receiving approximately \$ 100 billion reals and the rest going to urban development throughout the country, concentrating on facilitating interaction between informal communities and the formal sector by reworking traffic patterns and facilitating access to major nodes of transportation (Ministério das Cidades). One of the most prominent projects of the PAC in the favelas is the elevator to Cantagalo, a two-leveled structure opened in June, 2010 which rises nearly 100 meters and connects the primary subway station of Ipanema to the community of Cantagalo (*O Globo* June 30, 2010). PAC 2 assigns funds more directly to urban development within the favelas, also entirely for urbanization projects. In Rio de Janeiro, over 11 favelas are destined for significant improvement projects including elevators similar to the one in Cantagalo, trams connecting the favelas to the formal city, road improvements, and the installation of community centers and housing projects within the favelas (Focando, 2010).

The intense concerted efforts at all levels of government to urbanize the favelas through the improvement of infrastructure and increased provision of social and security services underscores the absence of any large-scale attempt to facilitate the regularization of land title in the favelas. While this does not present an obstacle in itself, it does mean that there will likely be little assistance from the government to communities seeking to regularize title.

PART 5: CONCLUSION

In the context of the structural obstacles to judicial or administrative land titling discussed above, it appears unlikely that the Cantagalo Project will serve as a workable model for land titling in the favelas of Rio de Janeiro in the short term. The resources needed to mount such projects, the possible internal regimes that may oppose land titling, and the absence of governmental support for such efforts highlight the fact that in many ways Cantagalo may rightly be seen as a unique case. Given the community's long history, its high rate of single-family occupancy, its active and supportive residents' association, the significant structural improvements that have been made to the favela (including the \$ 50 million reals elevator that dramatically links it to the formal city), and

the community's access to private resources in the formal city, Cantagalo occupies a place on the spectrum between *favela* and *bairro* far closer to the formal city than many other informal communities. While the land titling efforts achieved there are significant, they do not appear to be a model which other communities are likely to follow (or are likely to be able to follow) in the short term.

What does seem likely is that all levels of government will continue their intense efforts to urbanize the favelas of Rio de Janeiro which have been ongoing in various capacities since the 1990s. Brazil's dramatic economic growth over the past ten years, the perceived success of urbanization efforts like the *Favela-Bairro* program, the popularity of the UPPs and national goals of poverty reduction and social inclusion mean that these efforts will likely continue in earnest. Indeed, with Brazil to host the World Cup in 2014 and Rio de Janeiro to host the Summer Olympics in 2016, the country has every reason to continue these efforts and there is every reason to believe that it will.

Moreover, despite the undisputed popularity of broad-scale land titling efforts as advocated by de Soto and his followers, this model of land regularization through urbanization is also well-regarded as a means for addressing the challenges of poverty and informality that exist in informal urban settlements. Urbanization projects in informal settlements represent an implicit recognition of the possessory rights of the occupants and increase the security of their tenure even without granting formal title. In its report on Security of Tenure best practices, UN-Habitat reports that formal land titling should not be seen as the only means for improving land tenure and emphasizes that dependence on conventional instruments of property recognition may serve to further limit informal occupants' ability to advance socially or economically (UN Habitat 2003). Increases in tenure security without title can also serve many of the goals that are offered for promoting titling programs such as the efficiency gains achieved when an individual does not need to protect a claim through continuous physical presence on the property. Urbanization projects that improve access to the formal sector and increase the provision of public services in informal urban settlements, sometimes referred to as slum-upgrading, also can achieve many of the purported goals of land titling.

Even if the project itself is not a recipe to be followed in the future, the legal developments associated with the Cantagalo Project—the likely success of the action for

usucapião against the semi-public CEHAB and the passage and utilization of LC 131/09—suggest a willingness on the part of Brazilian jurists and lawmakers to adapt the legal system to address the actual conditions within the favelas. The current models of collective possession that are available through *usucapião*, the concessions of use and the new mechanism of administrative donation all suggest the possibility of incorporating existing regimes gradually into the formal sector. Such models of collective possession have been utilized with great success in land titling efforts in other parts of the world and can address some of the critiques of land titling programs by recognizing existing informal power structures and minimizing displacement of residents as a result of market incorporation (Atuahene 2004, 1145, 1154). Should political will in Brazil shift towards a broader promotion of land titling, it appears that the legal system is prepared to facilitate such efforts.

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