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Parallel State

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PARALLEL STATE

Gregory Dolin[†] & Irina D. Manta[†]

Alternatively glamorized and reviled, Rio de Janeiro's shantytowns, known as "favelas," have become a fixture of the city's architecture and life. It is estimated that about 1.5 million people reside in these informal settlements that are scattered in the center and outskirts of Brazil's second-largest metropolitan area. Operating in the shadow of the law and lacking formal ownership title, favela residents have constructed an intricate set of informal rules to buy, sell, rent, and bequeath property that is often administered by the residents' associations of individual neighborhoods, which also assist in mediating related conflicts. While largely untested legal mechanisms may now exist in some favelas to obtain title, obstacles such as the cost to do so as well as ignorance of the legal system—combined with a relative reliance on the current informal scheme of acquisition and dispute resolution—stand in the way of residents' achieving formal ownership. This Article argues that while the informal framework has proved fairly efficient at managing everyday life in the favelas, the large-scale removals that the government has implemented in Rio de Janeiro in preparation for the 2014 FIFA World Cup and 2016 Olympic Games have upset the balance. Due in part to individuals' lack of legal title, the government has been able to apply a high degree of discretion over the conditions under which it has exercised its eminent domain power, including when it came to deciding which abodes would be taken, what level of compensation people should receive, and how favela residents would be relocated. This Article shows how even robust extralegal frameworks can lull people into a false sense of security about their rights, which

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governments may exploit to dispossess the poor and vulnerable when it is politically desirable to do so. This should serve as a renewed call to simplify the titling process for individuals and interrogate the forces that oppose it.

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INTRODUCTION

The 2016 Olympic Games (Games) in Rio de Janeiro were mired in controversy. With less than two months to go until the Games, the State government declared a “state of public calamity” over the financial crisis that plagued the region.¹ The event was under potential threat by militant Islamists.² The outbreak of the Zika virus, whose devastating effects include potential microcephaly in babies, motivated numerous

¹ Donna Bowater, *Rio Declares ‘State of Calamity’ amid Cash Crisis that Could Threaten Olympics as City Hospital Forced to Close Doors*, TELEGRAPH (June 17, 2016, 11:41 PM), <http://www.telegraph.co.uk/news/2016/06/17/rio-declares-state-of-calamity-amid-cash-crisis-ahead-of-olympic>.

² *Brazil Sees Rising Threat from Isil Ahead of Rio Olympics, Intelligence Agency Says*, TELEGRAPH (Apr. 16, 2016, 1:49 AM), <http://www.telegraph.co.uk/news/2016/04/16/brazil-sees-rising-threat-from-isil-ahead-of-rio-olympics-intell>.

experts to call for moving or delaying the Rio Olympics.³ It is telling that the problem is considered minor in comparison with some much higher-frequency events—a woman is ten times more likely to be raped than catch Zika in Rio de Janeiro, while men are more likely to be shot to death.⁴ Even the construction of the facilities themselves appeared to be in a state of disarray only shortly before the planned start of the festivities.⁵

While the long-term effects of holding the Olympics in Rio de Janeiro will remain unknown for some time, a significant number of individuals have already had their lives uprooted by them. This is especially true of the thousands of people who were forcibly removed from their homes to make place for construction for both the Olympics and the 2014 FIFA World Cup. The exact number of persons affected remains in contention. One report claims that at least 4120 families had lost their homes due to the Olympics by 2015, which may have engendered the effect that “thousands of children have been displaced and left—at least temporarily—unable to access education, healthcare and other social services.”⁶ According to government figures, a total of 22,059 families were removed in Rio between 2009 and 2015, for a total of about 77,206 individuals.⁷ The City government claims, however, that only a few hundred of these families were relocated due to the Olympics, namely in the favela, or shantytown, of Vila Autódromo that borders the main Olympic Park.⁸ The removals in that area led to violent clashes between inhabitants who refused to leave and law enforcement, even

³ Agence France-Presse, *Olympics in Rio Should Move Due to Zika Concerns, Say 150 Experts*, TELEGRAPH (May 27, 2016, 9:49 PM), <http://www.telegraph.co.uk/news/2016/05/27/olympics-in-rio-should-move-due-to-zika-concerns-say-150-experts>.

⁴ Vanessa Barbara, *Brazil's Olympic Catastrophe*, N.Y. TIMES (July 1, 2016), <http://www.nytimes.com/2016/07/03/opinion/sunday/brazils-olympic-catastrophe.html>.

⁵ See *id.* At one point, officials even lost the keys to the Olympic Stadium. See Daniel Tran, *Rio Officials Lose Keys to Olympic Stadium*, YAHOO! SPORTS (Aug. 4, 2016, 4:09 AM), <http://sports.yahoo.com/news/rio-officials-lose-keys-to-olympic-stadium-080908840.html>.

⁶ Jonathan Watts, *Rio Olympics Linked to Widespread Human Rights Violations, Report Reveals*, GUARDIAN (Dec. 8, 2015, 11:43 AM), <https://www.theguardian.com/world/2015/dec/08/rio-olympics-2016-human-rights-violations-report>.

⁷ COMITÊ POPULAR DA COPA E OLIMPÍADAS DO RIO DE JANEIRO, MEGAEVENTOS E VIOLAÇÕES DOS DIREITOS HUMANOS NO RIO DE JANEIRO 20 (2015), http://www.childrenwin.org/wp-content/uploads/2015/12/Dossie-Comit%C3%AA-Rio2015_low.pdf.

⁸ Bruce Douglas, *Brazil Officials Evict Families from Homes Ahead of 2016 Olympic Games*, GUARDIAN (Oct. 28, 2015, 7:00 AM), <https://www.theguardian.com/world/2015/oct/28/brazil-officials-evicting-families-2016-olympic-games>; see also RIO PREFEITURA, EXPLAINING RIO DE JANEIRO HABITATIONAL POLICY 3–4 (2015), https://drive.google.com/file/d/0B1x0_cNhKxbDb094M1hraGVNekU/view?pref=2&pli=1 (arguing that the sports events-related removal figures are inflated).

though Rio's mayor had initially promised that there would be no forced relocations.⁹

As this Article discusses, the removals of politically powerless individuals to make way for construction projects for the Olympics and World Cup are only the latest in a long series of removals that favela residents have suffered. Theirs is a story that—while infused with the travails of South American politics—also contains the elements of adverse possession and eminent domain that resonate with those familiar with the American legal system. While favela residents have built a rich informal property system around their way of life to buy, sell, and facilitate the inheritance of their homes and businesses, this Article argues that their lack of individual title stands in the way of full legal recognition of ownership by the government. When events such as the Olympics or World Cup motivate the state to engage in large-scale architectural planning that includes the exercise of eminent domain, the absence of title allows the government to seize land and disburse compensation at its discretion. Favela residents technically now have legal access to adverse possession and other means to obtain title after having lived in the same homes for a long time, but the arcane and complex mechanisms to which they are forced to resort effectively prevent them from accomplishing this and keep them at the government's mercy. Rather than helping individuals to change their legal situation, a number of entities such as favela residents' associations refuse to provide support in this battle because they believe that this would reduce their own power, and a number of other individuals and groups fear that individual title would lead to gentrification and a breakdown of existing communities. This Article argues that title is likely a necessary tool for favela residents to obtain autonomy and for Brazil to fulfill its potential in the area of economic development.

Part I traces the historical development of Rio de Janeiro's favelas from early settlements to large-scale neighborhoods that house millions of people. Then, Part II describes the property laws that govern Rio, including zoning regulations and relevant administrative procedures. Part III explains how favela residents currently transfer their homes and businesses in the informal economy and what obstacles stand in the way of a titling system. In Part IV, the Article analyzes how the lack of title has contributed to the government's ability to engage in takings for

⁹ Jonathan Watts, *Forced Evictions in Rio Favela for 2016 Olympics Trigger Violent Clashes*, GUARDIAN (June 3, 2015, 5:36 PM), <https://www.theguardian.com/world/2015/jun/03/forced-evictions-vila-autodromo-rio-olympics-protests>; see also Michael Powell, *Officials Spent Big on Olympics, but Rio Natives Are Paying the Price*, N.Y. TIMES (Aug. 14, 2016), https://www.nytimes.com/2016/08/15/sports/olympics/rio-favelas-brazil-poor-price-too-high.html?_r=0 (discussing removals in several neighborhoods of Rio).

sports events arbitrarily and without having to provide specific levels of compensation. This Part also suggests improvements to the current framework that would facilitate the creation of a robust titling system. The conclusion follows.

I. THE HISTORY OF RIO DE JANEIRO'S FAVELAS

During Portugal's occupation of Brazil, the country had a *sesmaria* system that distributed property to promote agriculture and colonization.¹⁰ The land was subject to a series of conditions such as limits on the land's occupation and restrictions on its use to certain economic activities.¹¹ The *sesmaria* could be transferred by contract or through inheritance, but the conditions regarding right of use could not be altered.¹² In 1534, Portugal promoted the occupation of Brazilian territory through *sesmarias*.¹³

The *sesmaria* system dissolved once Brazil gained independence, and in 1850, the Brazilian Parliament approved Imperial Law No. 601, *Lei de Terras* (Land Statute), along with other attempts at economic reform.¹⁴ The Land Statute created private property in Brazil for the first time and treated it as an individual and absolute right.¹⁵ "It converted *sesmaria* rights holders into landowners of the estates they already held, and extended the same ownership rights to anyone who possessed public land for at least 100 years before the statute's passage."¹⁶ By 1916, Brazil had adopted a Civil Code that introduced the country to the recording of deeds and stated that this "law ensures the owner the right to use, enjoy and dispose of his property and to recover it from whoever unjustly possesses it."¹⁷ As described below, this first Civil Code encountered controversy regarding the favelas.

Favelas are "squatter communities [that result] from invasions of public or private land."¹⁸ Rio de Janeiro's first favelas date back to a

¹⁰ LAURA BECK VARELA, *DAS SESMARIAS À PROPRIEDADE MODERNA: UM ESTUDO DE HISTÓRIA DO DIREITO BRASILEIRO* 22–23 (2005).

¹¹ *Id.* at 24.

¹² *Id.* at 26–27.

¹³ Ronaldo Vainfas, *Colonists and Settlers II—Brazil*, in 1 *IBERIA AND THE AMERICAS: CULTURE, POLITICS, AND HISTORY* 270, 273 (J. Michael Francis ed., 2006).

¹⁴ Lei No. 601, de 18 de Setembro de 1850, COL. LEIS IMPERIO BRASIL, 307: Setembro 1850 (Braz.).

¹⁵ *Id.*

¹⁶ Alexandre dos Santos Cunha, *The Social Function of Property in Brazilian Law*, 80 *FORDHAM L. REV.* 1171, 1173 (2011).

¹⁷ CÓDIGO CIVIL [C.C.] [Civil Code] (1916) art. 524 (Braz.).

¹⁸ Ngai Pindell, *Finding a Right to the City: Exploring Property and Community in Brazil and in the United States*, 39 *VAND. J. TRANSNAT'L L.* 435, 445–46 (2006). For a discussion of the

settlement on a hill called Morro da Providência.¹⁹ Soldiers returning to Rio de Janeiro from a civil war, *Guerra de Canudos*, who were unable to afford shelter since they had not yet been paid, founded the favelas in 1898.²⁰ The civil war was against the settlers of Canudos, located in the Eastern province of Bahia.²¹ When Princess Isabel, the daughter of the last Brazilian emperor, signed a decree abolishing slavery in 1888, thousands of former slaves and indentured servants were left with no land or possessions.²² As such, the settlement at Canudos attracted former slaves, as well as other landless farmers, indigenous people, and destitute individuals.²³ When they were in Bahia, the soldiers had become familiar with a hill called Canudos, a place that had bushes named favelas, which “provide[d] food for flocks of small, green-feathered Illinger’s macaws.”²⁴ When the soldiers settled on their hill in Rio de Janeiro, the place received the nickname “favela.”²⁵ Urban squatting settlements that followed earned the name favela, in imitation of the soldiers’ community, both for the practice of squatting and for the low quality of land and housing.²⁶

Starting in the 1920s, the rate of growth of favelas increased because many individuals were leaving rural areas to move to cities.²⁷ These poor and new migrants sought work in the city, but with little to no money, they could not afford urban housing.²⁸ Unable to find places to live, many of these individuals ended up in favelas.²⁹ In 1937, the *Código de Obras* (Building Code) was the first official document to recognize the existence of favelas, “mark[ing] the beginning of explicit

term “favela,” see Corinne Cath, *On the Origin of ‘Favela’*, RIOONWATCH (Feb. 14, 2012), <http://www.rioonwatch.org/?p=2920>.

¹⁹ Greg O’Hare & Michael Barke, *The Favelas of Rio de Janeiro: A Temporal and Spatial Analysis*, 56 GEOJOURNAL 225, 232 (2002).

²⁰ *Id.*; see also Abraham Bell & Gideon Parchomovsky, *Property Lost in Translation*, 80 U. CHI. L. REV. 515, 535–36 (2013).

²¹ Lori Madden, *The Canudos War in History*, 30 LUSO-BRAZ. REV. 5, 5 (1993).

²² *Id.* at 6; *Brazil: Five Centuries of Change, Abolition*, BROWN U. LIBR., <https://library.brown.edu/create/fivecenturiesofchange/chapters/chapter-4/abolition> (last visited Apr. 25, 2017).

²³ See Madden, *supra* note 21, at 7.

²⁴ JANICE A. PERLMAN, FAVELA: FOUR DECADES OF LIVING ON THE EDGE IN RIO DE JANEIRO 24 (2010) [hereinafter PERLMAN, FAVELA]; Cath, *supra* note 18.

²⁵ PERLMAN, FAVELA, *supra* note 24, at 24.

²⁶ See I BRAZIL TODAY: AN ENCYCLOPEDIA OF LIFE IN THE REPUBLIC 253 (John J. Crocitti & Monique M. Vallance eds., 2012); *Why We Should Call Them Favelas*, CATCOMM.ORG, <http://catcomm.org/call-them-favelas> (last visited Apr. 25, 2017).

²⁷ JANICE E. PERLMAN, THE MYTH OF MARGINALITY: URBAN POVERTY AND POLITICS IN RIO DE JANEIRO 13–14 (1976).

²⁸ *Id.* at 14.

²⁹ *Id.*

favela policies.”³⁰ The Building Code categorized favelas as “an aberration” and prohibited them.³¹ It was expressly forbidden to build new favelas, and the Building Code banned the expansion of existing ones, as well as the “use of permanent building materials in favela construction.”³² City planners essentially “wanted them destroyed but failed to provide any alternative.”³³ Then, in the 1940s, there was a housing crisis in Rio de Janeiro that forced the urban poor to erect hundreds of favelas in the suburbs, and they replaced residences as the main type of dwelling for destitute *Cariocas* (inhabitants of Rio).³⁴

Urbanization in the 1950s also triggered another mass migration from rural areas to the city by those hoping to take advantage of the economic opportunities that urban life provided.³⁵ Nonetheless, when the capital moved from Rio de Janeiro to Brasília in 1960, there was a decline in employment opportunities.³⁶ Therefore, many individuals who had moved to Rio de Janeiro were “[u]nable to find work” and “afford housing within the city limits,” so they remained in the favelas.³⁷ Even though the favelas were located relatively close to urban Rio de Janeiro, “the city did not extend sanitation, electricity, or other services to the favelas.”³⁸ Under Governor Carlos Lacerda’s administration, many people were relocated to public housing projects such as *Cidade de Deus* (City of God), an area that became known later on due to a movie of the same name.³⁹ Later, Brazil’s military dictatorship in the 1970s decided to eradicate the favelas and return the land to its private and public owners, which displaced hundreds of thousands of inhabitants.⁴⁰ These efforts, however, have been widely viewed as failures.⁴¹ For example, in some cases, “expelled” favela residents would

³⁰ Thomas Frisch, *Glimpses of Another World: The Favela as a Tourist Attraction*, 14 *TOURISM GEOGRAPHIES* 320, 324 (2012).

³¹ PERLMAN, *FAVELA*, *supra* note 24, at 27.

³² *Id.*

³³ *Id.*

³⁴ Cath, *supra* note 18; *Carioca*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/carioca> (last visited May 13, 2017).

³⁵ WORLD BANK, *RURAL POVERTY ALLEVIATION IN BRAZIL: TOWARD AN INTEGRATED STRATEGY* 89 (2003), <http://documents.worldbank.org/curated/en/673641468769760448/pdf/267600PAPER0Rulation0See0also021790.pdf>.

³⁶ HELIA NACIF XAVIER & FERNANDA MAGALHAES, *URBAN SLUM REPORTS: THE CASE OF RIO DE JANEIRO, BRAZIL* 3 (2003), http://www.ucl.ac.uk/dpu-projects/Global_Report/pdfs/Rio.pdf; *Shanty Life in Brazil: Onward and Upward*, *ECONOMIST* (July 22, 2010), <http://www.economist.com/node/16636391>.

³⁷ Victoria Baena, *Favelas in the Spotlight: Transforming the Slums of Rio de Janeiro*, 33 *HARV. INT’L REV.* 34, 34–37 (2011).

³⁸ *Id.* at 34.

³⁹ *Id.* at 35.

⁴⁰ *Id.* at 34–35; Bell & Parchomovsky, *supra* note 20, at 537.

⁴¹ Greg O’Hare, *Urban Renaissance: New Horizons for Rio’s Favelas*, 86 *GEOGRAPHY* 61, 63 (2001).

find themselves simply just living in a different favela.⁴² Since the demand for favela housing remained high while the supply in the formal market remained low, residents turned to the low-cost alternative of squatting in a new location.⁴³ By the 1980s, the problem of violence accompanying drug trade in the favelas began overshadowing the previous concerns about eviction or eradication.⁴⁴

Residents of favelas are traditionally squatters, because they have no legal rights to the land.⁴⁵ In other cases, residents who have occupied land with permission of the owner can also fail to obtain formal property rights.⁴⁶ In many instances, residents purchase irregular lots of land that developers sold to them without observing “municipal subdivision and infrastructure regulations.”⁴⁷ These illegal real estate subdivisions are known as *loteamentos*.⁴⁸ The law does not recognize sales of lots in illegal *loteamentos* because the lots have not been formally subdivided, and thus they cannot be registered and neither can titles be issued.⁴⁹ *Loteamentos* tend to pop up on the outskirts of the city where legal urban residential use is not an option.⁵⁰

Despite their unorthodox beginnings, favelas have become respected through social norms “notwithstanding the lack of formal property rights.”⁵¹ Although favelas often become communities that have regular features such as grocery stores and other local businesses, in the early days homes lacked basic utilities including electricity or plumbing.⁵² The Brazilian census in 1950 defined favelas not only by the absence of legal title, but also by low-quality housing, the absence of paved streets, and lack of public utilities such as plumbing.⁵³ By 2001, however, residents in favelas generally had access to electricity and water.⁵⁴ The majority of the favelas are located on steep hills that are

⁴² Cf. ORDE MORTON, *RIO: THE STORY OF THE MARVELOUS CITY* 303 (2015).

⁴³ O'Hare & Barke, *supra* note 19, at 237.

⁴⁴ Baena, *supra* note 37, at 35.

⁴⁵ Bell & Parchomovsky, *supra* note 20, at 535.

⁴⁶ *Id.*

⁴⁷ Pindell, *supra* note 18, at 447.

⁴⁸ *Informações Sobre Favelas e Loteamentos—SABREN*, PREFEITURA DO RIO DE JANEIRO (June 20, 2014), <http://www.rio.rj.gov.br/web/ipp/exibeconteudo?id=4782931>.

⁴⁹ GEORGE MARTINE & GORDON MCGRANAHAN, INT'L INST. FOR ENV'T & DEV., UNITED NATIONS POPULATION FUND, *BRAZIL'S EARLY URBAN TRANSITION: WHAT CAN IT TEACH URBANIZING COUNTRIES?* 32 (2010).

⁵⁰ Pindell, *supra* note 18, at 448.

⁵¹ Bell & Parchomovsky, *supra* note 20, at 535.

⁵² *See id.* at 536.

⁵³ Fred B. Morris & Gerald F. Pyle, *The Social Environment of Rio de Janeiro in 1960*, 47 *ECON. GEOGRAPHY* 286, 288 (1971).

⁵⁴ Alan M. White, *Market Price, Social Price, and the Right to the City: Land Taxes and Rates for City Services in Brazil and the United States*, 44 *U. MIAMI INTER-AM. L. REV.* 313, 322 (2013).

difficult to access; in fact, before it is settled by squatters, the invaded land is often considered unsuitable for human habitation.⁵⁵

In the West Zone of the city, favela residents live in *barracos* (shacks) that are not fully constructed, and many of the favelas and *loteamentos* do not have much access to urban services.⁵⁶ In the South Zone, favelas are located on the hillsides of the Tijuca forest.⁵⁷ The North Zone begins at Grande Tijuca, which is a middle-class area, and also where many of the favelas are located.⁵⁸ Close to forty favelas have armed guards and gatekeepers that stand at the entrance to the favelas.⁵⁹

According to the latest census conducted by the *Instituto Brasileiro de Geografia e Estatística* (IBGE), there are 1,393,314 people in 763 favelas in Rio de Janeiro.⁶⁰ Additionally, approximately fifteen percent of Rio de Janeiro residents live in favelas or other “subnormal agglomerates.”⁶¹ Favelas are continuing “to grow at a faster pace than the population of the city as a whole.”⁶² The reason for favelas’ continued popularity remains a matter of controversy. Even though favela homes are made out of lower-quality materials, they offer migrants to cities inexpensive housing in convenient locations—something not available in the formal housing market.⁶³ Favela scholar Janice Perlman also found that home owners were less likely than renters to exit favelas because the owners “had invested their life savings in their houses, . . . expanded their dwellings to include space for their grown children and their families, and . . . stood to lose their investment if they left [the areas where] violence had devalued their property.”⁶⁴ Homeowners sometimes face a dilemma when it comes to moving because leaving the favela can mean giving up living space, moving farther away from the city, and/or giving up existing employment.⁶⁵ While there has been investment in government housing, said housing

⁵⁵ Pindell, *supra* note 18, at 446–47.

⁵⁶ PERLMAN, FAVELA, *supra* note 24, at 31.

⁵⁷ *Id.* at 32.

⁵⁸ *Rio de Janeiro*, DAVIS HUNTER, <http://www.davishunter.com/home/place/Rio%20de%20Janeiro> (last visited Apr. 28, 2017).

⁵⁹ *Pacifying Police Units (UPP)*, CATCOMM.ORG, <http://catcomm.org/upp> (last visited July 5, 2015).

⁶⁰ Fiona Hurrell, *Rio Favela Population Largest in Brazil: Daily*, RIO TIMES (Dec. 23, 2011), <http://riotimesonline.com/brazil-news/rio-politics/rios-favela-population-largest-in-brazil>.

⁶¹ *2010 Census: 11.4 Million Brazilians (6.0%) Live in Subnormal Agglomerates*, INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA (Dec. 21, 2011), <http://saladeimprensa.ibge.gov.br/en/noticias?view=noticia&idnoticia=2057&t=censo-2010-11-4-milhoes-brasileiros-6-0-vivem-aglomerados-subnormais>.

⁶² Bell & Parchomovsky, *supra* note 20, at 536.

⁶³ *Id.* at 537–38.

⁶⁴ PERLMAN, FAVELA, *supra* note 24, at 234.

⁶⁵ *See id.*

at times does not meet the needs of favela residents.⁶⁶ These needs include affordability, closeness to work and school, ability to access urban services, and “security against eviction.”⁶⁷ Meanwhile, politicians have sought “the photo-op—at a ribbon-cutting ceremony in front of rows of colorfully painted little houses. They wanted rapid completion of the finished houses and rapid cost recuperation. Distance from the city or availability of public transportation were of no concern—they wanted the cheapest land possible. Thus the mismatch.”⁶⁸

II. THE LEGAL ORGANIZATION OF PROPERTY RIGHTS

In favelas, the primary goal of the occupier is possession of the land on which she is living for as long as possible.⁶⁹ In favelas and *loteamentos*, “residents generally live without formal property protections.”⁷⁰ Created due to poor city planning, rapid growth, and a necessity for poor people to live somewhere, favelas and *loteamentos* arise outside of the legal, formal land market.⁷¹ Local governments have employed various reform efforts over the years with mixed results.⁷² Although some of these initial efforts focused on hindering the growth of informal settlements, there have been measures for many years that have addressed the legalization of ownership of land in existing settlements and the improvement of infrastructure like roads and sewer services.⁷³

⁶⁶ See Constance G. Anthony, *Urban Forced Removals in Rio De Janeiro and Los Angeles: North-South Similarities in Race and City*, 44 U. MIAMI INTER-AM. L. REV. 337, 348 (2013); Clarisse Cunha Linke, *In Brazil, Connecting Social Housing with the City*, INST. TRANSP. & DEV. POL’Y, Winter 2016, at 27, 27, <https://www.itdp.org/wp-content/uploads/2016/01/Brazil-Social-Housing.pdf>; Ruban Selvanayagam, *No Better than the Slums? What Went Wrong with Brazil’s Social Housing*, GUARDIAN (Mar. 26, 2014, 6:08 AM), <https://www.theguardian.com/housing-network/2014/mar/26/brazil-social-housing-favelas-slums>.

⁶⁷ PERLMAN, FAVELA, *supra* note 24, at 268.

⁶⁸ *Id.*

⁶⁹ Pindell, *supra* note 18, at 448.

⁷⁰ *Id.* at 445.

⁷¹ ROBERT NEUWIRTH, SHADOW CITIES: A BILLION SQUATTERS, A NEW URBAN WORLD 9 (2005); *Informações Sobre Favelas e Loteamentos—SABREN*, *supra* note 48.

⁷² See generally WORLD BANK, BRAZIL: IMPACT EVALUATION REPORT: LEARNING FROM BEST PRACTICE IN FIVE URBAN PROJECTS, NO. 16736 (1997).

⁷³ See *id.* at ix; see also Catherine Osborn, *A History of Favela Upgrades Part II: Introducing Favela-Bairro (1988–2008)*, RIOONWATCH (Nov. 26, 2012), <http://www.rioonwatch.org/?p=5931>.

A. *The Legal Framework of Property Rights in Rio de Janeiro*

French philosopher Henri Lefebvre popularized a “right to the city” concept, which merged two notions: “[T]he social function of property and the social function of the city.”⁷⁴ Additionally, the author of the Brazilian Civil Code of 1916, Clovis Bevilacqua, also implied that there is a concept that property rights serve a social function.⁷⁵ Its principles have since been adopted in the 1988 Brazilian Constitution and the 2001 City Statute.⁷⁶ The National Movement for Urban Reform insisted that inequalities in Brazilian land ownership had to be redressed as the country’s dictatorial government was crumbling and the 1988 Constitution was in the process of being written. When Brazil was coming out of a dictatorial political model, and the 1988 Constitution was being drafted, the National Movement for Urban Reform was very adamant about advocating for legal measures that would combat centuries of unequal concentration of land ownership in Brazil.⁷⁷ “Academics, activists and neighborhood associations worked together, and as a result, the social use of land and the right for small-scale urban land ownership was included in the [1988] constitution.”⁷⁸ Specifically, Article 170 in Chapter One’s “The General Principles of Economic Activity” speaks about the “social function of property.”⁷⁹ Additionally, Article 183 of Chapter Two’s Urban Policy explicitly states that:

An individual who possesses as theirs an urban area up to two hundred and fifty square meters, for five years, without interruption or opposition, using it as his or as his family’s home, shall acquire domain of it, provided that he does not own any other urban or rural property.

The deed of possession and concession of use shall be granted to the man or woman, or both, regardless of their marital status.⁸⁰

⁷⁴ Pindell, *supra* note 18, at 436.

⁷⁵ Cunha, *supra* note 16, at 1174.

⁷⁶ *Id.* at 1176; Evaniza Rodrigues & Benedito Roberto Barbosa, *Popular Movements and the City Statute*, in *THE CITY STATUTE OF BRAZIL: A COMMENTARY* 23, 25 (2010), http://www.citiesalliance.org/sites/citiesalliance.org/files/CA_Images/CityStatuteofBrazil_English_fulltext.pdf.

⁷⁷ *Adverse Possession/Squatter’s Rights*, CATCOMM.ORG, <http://catcomm.org/adverse-possession> (last visited June 23, 2015).

⁷⁸ *Id.*

⁷⁹ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 170 (Braz.).

⁸⁰ *Id.* art. 183.

As such, the federal guarantee of the right to adverse possession for the purpose of housing stemmed from the 1988 Constitution, and was based on the “social function of property.”⁸¹

The 2001 City Statute builds on the 1988 Constitution to create a new legal system that provides land access and equity in large urban cities.⁸² The Statute has two main functions: (1) to ensure that the “social function” of urban land and buildings is put before their commercial value, and (2) to guarantee “democratic city management . . . [and] a path to plan, produce, operate and govern cities subject to social control and participation of civil society.”⁸³ Moreover, the 2001 City Statute has sixteen guidelines to advance the social function of the city, including “the ‘right to sustainable cities,’ the promotion of community participation in the creation and monitoring of development projects, an emphasis on effective planning of urban areas, and the ‘regularization of land ownership and urbanization of areas occupied by low income populations’” (i.e., favelas).⁸⁴ The Statute also creates a “Concession of Law for public lands in which squatters [i.e., residents of favelas] can obtain use rights (as opposed to ownership rights) for public lands that they occupy.”⁸⁵ It states that:

Whomever [sic], until June 30, 2001, possesses as his or her own, for a period five years, without interruption and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for his own residence or that of his family, has the right to concession of special use for housing purposes in relation to the property that is the object of said possession, as long as he is not the owner or concessionaire, in any form, of any other urban or rural real estate.⁸⁶

While the residents of many favelas could apply for title under Article 183 of the 1988 Constitution and the 2001 City Statute, they would have to show the government documentary evidence of their history.⁸⁷ With Brazil hosting mega sports events, such as the 2014 World Cup and the 2016 Olympics, several favelas came under greater threats of removal, which increased residents’ interest in accessing title.⁸⁸

⁸¹ *Adverse Possession/Squatter’s Rights*, *supra* note 77.

⁸² See Rodrigues & Barbosa, *supra* note 76, at 25.

⁸³ @thepolisblog, *Implementing the Right to the City in Brazil?*, SMARTCITIESDIVE (Oct. 14, 2011), <http://www.smartcitiesdive.com/ex/sustainablecitiescollective/implementing-right-city-brazil/30417>.

⁸⁴ Pindell, *supra* note 18, at 454.

⁸⁵ *Id.*

⁸⁶ Lei No. 10.257, de 10 de Julho de 2001, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 11.7.2001 (Braz.).

⁸⁷ *Adverse Possession/Squatter’s Rights*, *supra* note 77.

⁸⁸ *Id.*

According to Bevilaqua, property rights must be subjected to “restrictions determined by considerations of social order. And modern Codes are leaning toward finding a balance between the individual’s interest and that of society.”⁸⁹ This concept was further solidified through the adoption of the 2002 Civil Code.⁹⁰ The first paragraph of the 2002 Civil Code states:

The right of property must be exercised in accordance with its economic, social and environmental ends, so that the flora, fauna and natural beauties are preserved, as well as the ecological equilibrium and the historical and artistic patrimonies, and so that air and water pollution are averted, in obedience of the rules established by specific legislation.⁹¹

Thus, the Code connects the exercise of property rights to “economic, social, and environmental ends.”⁹² The 2002 Civil Code also identifies three types of adverse possession: (1) ordinary adverse possession, (2) extraordinary adverse possession, and (3) special adverse possession.⁹³ First, ordinary adverse possession transfers ownership of property to the individual who, intending to become its owner, remains in possession of said property, undisputedly and without opposition, for a continuous period of between five and fifteen years.⁹⁴ Second, extraordinary adverse possession transfers ownership of the property to the individual who remains in possession of said property for a continuous period of fifteen years, regardless of the existence of any proof.⁹⁵ Additionally, if the property has been the owner’s residence, or if the individual has improved the land in some way, the statutory period is reduced to ten years.⁹⁶ Third, special urban adverse possession occurs when an individual who is not a title-owner of an urban or rural property and remains in possession of that property—as her place of residence for a continuous period without any opposition—is granted title to said

⁸⁹ I CLOVIS BEVILAQUA, *DIREITO DAS COISAS* 134 (1941); Cunha, *supra* note 16, at 1174.

⁹⁰ Cunha, *supra* note 16, at 1180.

⁹¹ C.C. (2002) art. 1228, § 1 (Braz.); *see also* Cunha, *supra* note 16, 1180.

⁹² Cunha, *supra* note 16, at 1180.

⁹³ C.C. (2002) art. 1242 (Braz.); *see also* Ellade Imparato, *Security of Tenure in São Paulo, in HOLDING THEIR GROUND: SECURE LAND TENURE FOR THE URBAN POOR IN DEVELOPING COUNTRIES* 127, 129 (Alain Durand-Lasserve & Lauren Royston eds., 2002).

⁹⁴ C.C. (2002) art. 1242 (Braz.); *see also* José Isaac Pilati, *Property Law, in INTRODUCTION TO BRAZILIAN LAW* 71, 74 (Fabiano Deffenti & Welber Barral eds., 2011); JC Moraes, *Resumo: Usucapião—Espécies e Requisitos*, JCMORAES.COM (Apr. 14, 2011), <https://jcmoraes.com/2011/04/14/resumo-usucapiao-%E2%80%93-especies-e-requisitos>.

⁹⁵ C.C. (2002) art. 1238 (Braz.); *see also* PINHEIRO NETO—ADVOGADOS, *DOING BUSINESS IN BRAZIL* 12-5 (2013); Pilati, *supra* note 94, at 74.

⁹⁶ C.C. (2002) art. 1238 (Braz.); *see also* PINHEIRO NETO—ADVOGADOS, *supra* note 95, at 12-5; Pilati, *supra* note 94, at 74.

property.⁹⁷ The property may not exceed 250 square meters and must be the place of residence of the owner or her family.⁹⁸ Further, special adverse possession happens when an individual who is not a title-owner of an urban or rural property, and remains in possession of that property for a continuous period of five years, having improved it through her or her family's efforts, and with it being her place of residence without any opposition, receives the right to acquire title to said property.⁹⁹ The total area of the rural property must not exceed fifty hectares.¹⁰⁰

These recent attempts to advocate for a "right to the city" show how complex it is to address individualized understandings of property.¹⁰¹ Furthermore, these measures suggest that national policies can encourage implementation at the local level.¹⁰² For example, at the local level, residents whose formal property rights conflict can have a meaningful exchange thanks to programs that evaluate the property distribution scheme that is in place.¹⁰³

B. Zoning Regulations

To fully understand the obstacles that future reforms face, it is important to grasp the structure of zoning regulations in Rio de Janeiro. The Law of Land Use and Occupation (LUOS), established in 2013, sets forth principles and guidelines for the use and occupation of urban space, and the ultimate goal of the law is to ensure the development of the city in a balanced and sustainable way.¹⁰⁴ Most of the rules that govern the use of land and space involve calculations.

When a new building is being constructed, homebuilders must apply the formula $ATE = IAT \times S$.¹⁰⁵ As such, the total buildable area (ATE) is the maximum buildable area that results from multiplying the Land Utilization Index (IAT), which is the number of days when crops

⁹⁷ C.C. (2002) art. 1240 (Braz.); *see also* PINHEIRO NETO-ADVOGADOS, *supra* note 95, at 12-5; Pilati, *supra* note 94, at 74.

⁹⁸ C.C. (2002) art. 1240 (Braz.); *see also* PINHEIRO NETO-ADVOGADOS, *supra* note 95, at 12-5; Pilati, *supra* note 94, at 74.

⁹⁹ C.C. (2002) art. 1239 (Braz.); *see also* PINHEIRO NETO-ADVOGADOS, *supra* note 95, at 12-5; Pilati, *supra* note 94, at 74-75.

¹⁰⁰ C.C. (2002) art. 1239 (Braz.); *see also* PINHEIRO NETO-ADVOGADOS, *supra* note 95, at 12-5; Pilati, *supra* note 94, at 74-75.

¹⁰¹ Pindell, *supra* note 18, at 458.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Lei Complementar No. 33, de 25 de Novembro de 2013, art. 1 (Braz.); *see also* SECRETARIA MUNICIPAL DE URBANISMO, RIO PREFEITURA, LEI DE USO E OCUPAÇÃO DO SOLO LUOS, <http://www.rio.rj.gov.br/documents/91237/d4bd40f5-fa89-40ff-b7e3-c2a9339f578d>.

¹⁰⁵ Lei Complementar No. 33, de 25 de Novembro de 2013, art. 140 (Braz.).

occupy the land during a year divided by 365, by the land area (S).¹⁰⁶ LUOS may establish differentiated Land Utilization Indices within the same district according to the land's characteristics, but they are subject to the maximum values set out in Annex VII of Rio de Janeiro's Master Plan, which lists all of the barrios in Rio de Janeiro and their corresponding IATs.¹⁰⁷ Locations that are being built that cannot use the ATE calculation include: (1) parking garages; (2) concierge and access buildings; (3) custodian's apartment and common areas; (4) water tanks, engine rooms, and other technical compartments located at any level of the building; (5) verandas and balconies; (6) uncovered terraces; (7) covered terraces for common use; and (8) watchtowers and aedicule.¹⁰⁸

The maximum occupancy rate allowed (TO) represents the ratio between the maximum horizontal projection allowed for the building and the total area of land.¹⁰⁹ It is expressed in the following formula:

$$TO = \frac{\text{Area Horizontal Projection of Maximum Building} \times 100}{\text{Total Area of Land}}^{110}$$

The maximum horizontal projection of buildings includes all the covered areas of the building, excluding the areas designed for porches, balconies, and overhangs.¹¹¹ Additionally, in single-family and two-family buildings, the balconies resting on the ground will also not be included in the maximum area of projection.¹¹²

The maximum building height is measured between the ground-floor level and the highest point of the building, including all elements except: (1) mechanical equipment, water tanks, engine rooms, stairway enclosures common to the roof level; (2) ventilation ducts of enclosed stairs; (3) underground floors buried and semi-buried, in accordance with article 169 of the LUOS; and (4) vertical access on land uphill in accordance with Articles 166 and 173 of the LUOS.¹¹³ Furthermore, the maximum height and the maximum number of floors in a building are established by considering the relevant interests of the surrounding landscape and the urban environment where they are located, including: (1) the street width; (2) aeration of the city blocks; (3) the altitude and natural topography of the land; (4) waterfront, protected bodies of

¹⁰⁶ *Id.*

¹⁰⁷ Lei Complementar No. 111, de 1 de Fevereiro de 2011, Anexo VII (Braz.).

¹⁰⁸ Lei Complementar No. 33, de 25 de Novembro de 2013, art. 142 (Braz.).

¹⁰⁹ *Id.* art. 149.

¹¹⁰ *Id.*

¹¹¹ *Id.* art. 150.

¹¹² *Id.* art. 150, § 1.

¹¹³ *Id.* art. 162.

water, and mountains; (5) the maximum shading allowed on the beaches; (6) preserved goods; (7) use and type of building; (8) existing infrastructure or projected infrastructure; (9) restriction cones and bands imposed for airports and aerodromes in specific legislation; and (10) occupancy characteristics of the surroundings.¹¹⁴

Municipal law has the ability to designate areas that contain many clashes in land ownership, including favelas, as “special social interest zones.”¹¹⁵ This legally assures the stability of residents’ homes by legally acknowledging that these types of areas are intended to provide housing to groups that rely on being able to continue living in informal settlements, such as favelas.¹¹⁶ Furthermore, designating such areas as “special social interest zones” helps avoid any forced evictions that would result from breaking zoning laws.¹¹⁷ Whenever residents confront the possibility of eviction, courts can rule for the social group that lives in the informal settlement and begin a negotiation conversation between whoever owns the area, the inhabitants, and the government.¹¹⁸

C. *The Cartório System*

Any reform proposals will require a clear grounding in Brazil’s system of administration and title registration. One key piece of this system is the *cartório*, who is essentially a notary that takes care of several different types of important documents.¹¹⁹ The majority of documents in Brazil that require a signature, including, but not limited to, a power of attorney, title of property, marriage certificates, and more, must be notarized by a *cartório* for them to be recognized as legal documents.¹²⁰

After the fall of the Roman Empire and during the ascent of the Catholic Church, the *cartório* system took over the registration of births and deaths.¹²¹ Initially, it was mostly just registering nobles, kings,

¹¹⁴ *Id.* art. 161.

¹¹⁵ Nelson Saule Junior, *The Right to Housing and the Prevention of Forced Evictions in Brazil*, in HOLDING THEIR GROUND: SECURE LAND TENURE FOR THE URBAN POOR IN DEVELOPING COUNTRIES, *supra* note 93, at 138, 147.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *O que é Serventia Extrajudicial (Cartório)?*, PODER JUDICIÁRIO, http://www7.tjce.jus.br/sefin/?page_id=945 [https://web.archive.org/web/20160417080253/http://www7.tjce.jus.br/sefin/?page_id=945].

¹²⁰ *Id.*; see also Patrick Bruha, *Notary Public Offices in Brazil*, BRAZ. BUS. (Apr. 14, 2015), <http://thebrazilbusiness.com/article/notary-public-offices-in-brazil>.

¹²¹ Robério Fernandes, *A Origem Dos Cartórios de Registros Civis*, HISTÓRIA E SUAS CURIOSIDADES (Feb. 1, 2011, 7:59 PM), <http://historiaesuascurioidades.blogspot.com/2011/02/origem-dos-cartorios-de-registros-civis.html>.

clerics, and others who were considered important.¹²² France has a long tradition of universally registering births and graves.¹²³ The country began to register these events in the mid-sixteenth century, an initiative that the Catholic Church started.¹²⁴ After the Council of Trent ended in 1563, the Church officially implemented civil registration and registration of deaths across socioeconomic strata.¹²⁵ With the adoption of the Napoleonic Code in the early-nineteenth century, France officially transferred the responsibility of civil registration to the State.¹²⁶

Similarly, in Brazil the Church also transitioned away from maintaining such records in the second half of the nineteenth century.¹²⁷ In 1863, through a decree, the imperial government started recording the marriages of non-Catholics, and, in 1874, the process of recording and registering birth, marriage, and death certificates began in Brazil.¹²⁸

The word *cartório* was originally coined in Portugal to designate a recorder or notary.¹²⁹ In Brazil, the word came to designate an entity that possessed a wider range of skills and responsibilities, including civil registration of individuals and legal entities, property registration, registration of deeds and documents, notary notes, bonds, court documents, and more.¹³⁰

The Brazilian Constitution describes *cartórios* and registrar services as “extrajudicial services.”¹³¹ Private individuals, who act under authority delegated to them by the State, provide both *cartório* and property registration services.¹³² Although these individuals are not technically “state employees” or “public officials,” under article 327 of the Brazilian Criminal Code, they can be considered public officials and held liable for certain criminal actions.¹³³ According to Law 8.935, which was established in 1994, general *cartórios*, known as *tabeliaes de notas*, and property registrars, known as *oficiais de registro de imóveis*,¹³⁴ have ample power to manage their offices and may contract as many assistants (substitutes, clerks, and auxiliaries) as they deem necessary to

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Cartório*, WORDREFERENCE.COM, <http://www.wordreference.com/pten/cartório> (last visited Apr. 28, 2017); *História dos Cartórios*, ARPEN.SP, http://www.arpensp.org.br/principal/index.cfm?pagina_id=181 (last visited June 24, 2015).

¹³⁰ *História dos Cartórios*, *supra* note 129.

¹³¹ *Id.*; see also C.F. art. 236 (Braz.).

¹³² C.F. art. 236 (Braz.).

¹³³ Código Penal [C.P.] [Penal Code] art. 327 (Braz.).

¹³⁴ See generally 12 REGISTRO DE IMÓVEIS DO RIO DE JANEIRO, <https://www.12registro.com.br> (last visited Apr. 28, 2017).

assist them in providing efficient services.¹³⁵ General *cartórios* have exclusive authority to draft public writings and powers of attorneys, notarial acts, and authenticate signatures and copies.¹³⁶ *Cartórios* may only exercise authority within the municipality in which they have been appointed.¹³⁷ To become a notary, an individual must, among other things, take a public examination, have a legal degree or at least ten years of experience in notarial or register services, and exhibit professional conduct in accordance with ethical business standards.¹³⁸ There is no requirement in any of the regulations that *cartórios* post any bond or acquire insurance to cover their liability.¹³⁹

Cartórios and registrars are liable to third parties for damages caused by any act performed by them or their respective assistants that violate a formal requirement of their duties.¹⁴⁰ Additionally, the State has subsidiary liability because *cartórios* and registrars perform functions delegated by the State.¹⁴¹ Injured parties must first sue the *cartório*, and can only make a claim against the State if such suit has been successful and the *cartório* does not have funds to cover the claim.¹⁴² In practice, however, litigation in Brazil is a complex and lengthy proposition.

III. THE EVOLUTION OF FAVELA—STATE RELATIONSHIP

A. *The History of and the Current Mechanisms for Real Estate Transactions Inside the Favelas*

The history of Brazilian politics and the history of favela growth inform the evolving and fluctuating relationship between the Brazilian government and the favelas.¹⁴³ The relationship, at any given time, is further complicated by the fact that any given favela may be located on land owned by an amalgam of interests.¹⁴⁴ A favela may sit on parcels of land that are owned by the federal government, the state government,

¹³⁵ Lei No. 8.935, de 18 de Novembro de 1994, arts. 20–21, D.O.U. de 21.11.1994 (Braz.).

¹³⁶ *Id.* art. 7.

¹³⁷ *Id.* art. 9.

¹³⁸ *Id.* arts. 14–19.

¹³⁹ *See id.*

¹⁴⁰ *Id.* arts. 22–24.

¹⁴¹ *See, e.g.,* R.S.T.J., Ap. Civ. No. 2008/0204801-9, Relator: Des. Herman Benjamin, 02.02.2010 (Braz.).

¹⁴² *See, e.g., id.*

¹⁴³ *See generally* Anthony, *supra* note 66.

¹⁴⁴ *See* JANICE E. PERLMAN, INT'L HOUS. COAL., IT ALL DEPENDS: BUYING AND SELLING HOUSES IN RIO'S FAVELAS 11–12 (2010) [hereinafter PERLMAN, IT DEPENDS], <http://ihcglobal.org/wp-content/uploads/2016/04/perlman-final-final-paper.pdf>.

the municipal government, and one or more private parties.¹⁴⁵ Thus, a uniform policy toward regularizing the ownership within a given favela, much less across the favelas, is quite hard to implement.¹⁴⁶ These difficulties are compounded by the putative beneficiaries' lack of understanding¹⁴⁷ and of resources to navigate a complex judicial and administrative system.¹⁴⁸ This Section will describe the evolution of the government policy toward the favelas, the current state of affairs, as well as the perception of the current state of affairs by the residents of the favelas themselves.

The relationship between the Brazilian authorities and the favelas has undergone a substantial evolution and is still in a state of considerable flux. Given their origin as settlements for discharged soldiers and freed slaves¹⁴⁹—both relatively outcast groups—it is not surprising that the favelas were a breeding ground for non-conformist behavior of all types.¹⁵⁰ Indeed, the very creation of favelas in violation of the law and property rights of true owners was a subversive act.¹⁵¹ The government's response to these acts, therefore, often tracked the government's general toleration of non-conforming behavior.¹⁵²

The first thrust against the favelas happened in 1937 during the so-called *Estado Novo* (New State) era.¹⁵³ That year, Getúlio Vargas assumed dictatorial powers and abolished Congress and political

¹⁴⁵ *Id.* at 12. For example, the favela of “Santa Marta has three parts, two are private and anything that is above . . . 100 meters and the hill belongs to the government.” Interview with Favela Residents 29 (Feb. 7, 2016) (transcript and audio on file with authors).

¹⁴⁶ PERLMAN, *IT DEPENDS*, *supra* note 144, at 12 (“There are favelas in which land ownership of a particular parcel is contested among the descendents [sic] of private owners who claim to have historic deeds. Under existing land use laws, these claims have to be adjudicated parcel by parcel and lot by lot, so no overall resolution of land tenure for the entire community is possible.”).

¹⁴⁷ *See id.* at 17 (describing how unscrupulous individuals take advantage of favela residents who are unable to understand the “fine print” of legal documents).

¹⁴⁸ *See* Adam Smith, *The Cantagalo Project: Judicial and Administrative Land Titling in the Favelas of Rio de Janeiro*, *DIVERSITATES*, Dec. 2011, at 19, 36, https://diversitatesjournal.files.wordpress.com/2012/01/diversitates_3_-n-2_-artigo-2.pdf (“The first significant obstacle to the adoption of administrative land titling is the cost of the project.”).

¹⁴⁹ *See supra* notes 23–25 and accompanying text; *see also* Anthony, *supra* note 66, at 344.

¹⁵⁰ *See* PERLMAN, *FAVELA*, *supra* note 24, at XXIII–XXIV.

¹⁵¹ *See generally* Peter Bishop, *From the Subversive to the Serious: Temporary Urbanism as a Positive Force*, in *PAVILIONS, POP-UPS AND PARASOLS: THE IMPACT OF REAL AND VIRTUAL MEETING ON PHYSICAL SPACE* 136 (Leon van Schaik & Fleur Watson eds., 2015).

¹⁵² *See* ERIKA ROBB LARKINS, *THE SPECTACULAR FAVELA: VIOLENCE IN MODERN BRAZIL* 8 (2015).

¹⁵³ *See* Enrique R. Carrasco & Sean Williams, *Emerging Economies After the Global Financial Crisis: The Case of Brazil*, 33 *NW. J. INT'L L. & BUS.* 81, 93 (2012) (describing the establishment of *Estado Novo*).

parties.¹⁵⁴ Not coincidentally, that same year, a new building code was promulgated which “strictly forb[ade] the building of new favelas and [the improvement of] any aspect of established buildings.”¹⁵⁵ By 1940, the Vargas regime began “wholesale razing” of the favelas, with the concomitant attempts to move the disposed residents into public housing.¹⁵⁶ Although promoted as a way to improve living conditions and reduce poverty among the residents of the favelas,¹⁵⁷ the project had another goal in mind as well. The “entry gates, ID cards, and an evening loud speaker that broadcast lectures on moral behavior”¹⁵⁸ within the new public housing projects were “designed not only to accommodate but also to isolate and control.”¹⁵⁹ Furthermore, and as is common in non-democratic regimes, corruption prevailed and “[t]he best units . . . went to public employees and those with influence.”¹⁶⁰ The *Estado Novo* came to an end in 1945¹⁶¹ and with it, the policy of favela eradication ended¹⁶² (though as described below, only for a while). The top-down policies of the Vargas regime “did not result in a more vibrant community, less poverty, and did not solve the low-income housing crisis.”¹⁶³

With the return to democracy, the policies toward favelas shifted from eradication to amelioration, though not yet to regularization of ownership.¹⁶⁴ The new government, now in need of votes from the residents of the favelas, began to provide some services, including roads, clinics, power lines, etc.¹⁶⁵ At the same time, the threat of eviction and dispossession remained omnipresent, thus providing a powerful combination for the authorities—they could entice votes with various improvement projects, while at the same time threatening the recalcitrant residents with eviction.¹⁶⁶ The Catholic Church, consistent

¹⁵⁴ See Keith S. Rosenn, *Federalism in Brazil*, 43 DUQ. L. REV. 577, 580 (2005) [hereinafter Rosenn, *Federalism*]; Keith S. Rosenn, *Separation of Powers in Brazil*, 47 DUQ. L. REV. 839, 843–44 (2009) [hereinafter Rosenn, *Separation of Powers*].

¹⁵⁵ Anthony, *supra* note 66, at 346.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* (quoting ROBERT GAY, *POPULAR ORGANIZATION AND DEMOCRACY IN RIO DE JANEIRO: A TALE OF TWO FAVELAS* 16 (1994)).

¹⁶⁰ *Id.*

¹⁶¹ See Rosenn, *Separation of Powers*, *supra* note 154, at 845.

¹⁶² See Anthony, *supra* note 66, at 346.

¹⁶³ *Id.*

¹⁶⁴ See *id.* at 346–47 (“With democracy came more attention to social welfare and the deceleration of favela eradication.”).

¹⁶⁵ See GAY, *supra* note 159, at 18; Lea Ramsdell, *National Housing Policy and the Favela in Brazil*, in *THE POLITICAL ECONOMY OF BRAZIL: PUBLIC POLICIES IN AN ERA OF TRANSITION* 164, 167 (Lawrence S. Graham & Robert H. Wilson eds., 1990).

¹⁶⁶ GAY, *supra* note 159, at 18; Anthony, *supra* note 66, at 347.

with its mission to help the poor, also began addressing the problems with favela life.¹⁶⁷ In 1955, Dom Hélder Câmara, the then-Bishop of Recife and Auxiliary Bishop of Rio de Janeiro, started the *Cruzada São Sebastião* (St. Sebastian's Crusade), which was a federal scheme to construct an apartment complex in the largest horizontal favela at the time, Praia do Pinto.¹⁶⁸ The goal of the *Cruzada* was to transform favela residents into more acceptable citizens by only housing those willing to give up the corruptions associated with favela life.¹⁶⁹

As mentioned previously, the policies toward the favelas have tracked the political situation overall. So when in 1964 an additional coup resulted in yet another military dictatorship,¹⁷⁰ the State's policy toward the favelas reverted back to that of the 1930s and 1940s.¹⁷¹ The Brazilian military government of the 1960s and 1970s has a well-deserved reputation as a brutal and oppressive regime that did not tolerate much, if any, dissent.¹⁷² This attitude was also projected onto the favelas. As a result, once again, the policy was that of favela eradication in preference to any other approach.¹⁷³ During this period, the favelas that occupied particularly attractive locations were the most targeted for demolition.¹⁷⁴ In all, over 175,000 *Cariocas* residing in favelas were dispossessed of their homes with the land being used for the benefit of parties more in favor with the ruling junta.¹⁷⁵ The military government of the 1960s also copied the attempts of its 1940s predecessor to build public housing for the displaced favela residents where the latter could be better "controlled."¹⁷⁶ This attempt was an

¹⁶⁷ Anthony, *supra* note 66, at 346; Smith, *supra* note 148, at 22.

¹⁶⁸ Julio Cesar Pino, *Sources on the History of the Favelas in Rio de Janeiro*, 32 LATIN AM. RES. REV. 111, 114 (1997); *The Disappearing Favelas*, RIO THEN (Dec. 18, 2013), <https://riothen.wordpress.com/tag/praiado-pinto>.

¹⁶⁹ Pino, *supra* note 168, at 114.

¹⁷⁰ Rosenn, *Federalism*, *supra* note 154, at 581.

¹⁷¹ Anthony, *supra* note 66, at 347.

¹⁷² See Kristin Tennyson Graham et al., *Mobilizing Law in Latin America: An Evaluation of Black's Theory in Brazil*, 38 LAW & SOC. INQUIRY 322, 323–24 (2013); *Brazil: Report on Past Atrocities a Key Step Forward*, HUM. RTS. WATCH (Aug. 30, 2007, 8:00 PM) <https://www.hrw.org/news/2007/08/30/brazil-report-past-atrocities-key-step-forward> ("Brazil has finally released a comprehensive account of the brutal methods that its military regime used to dispose of political opponents.").

¹⁷³ See Cristiane Rose Duarte & Fernanda Magalhães, *Upgrading Squatter Settlements into City Neighborhoods*, in CONTEMPORARY URBANISM IN BRAZIL: BEYOND BRASÍLIA 268 (Vicente del Rio & William Siembieda eds., 2009) ("[G]overnment policies took a radical approach by viewing favelas as a malaise that should be removed from cities.").

¹⁷⁴ *Id.* (noting that most of the removed favelas were "occupying attractive sites near the coastline and in middle-class neighborhoods").

¹⁷⁵ Anthony, *supra* note 66, at 348.

¹⁷⁶ See *id.* ("The large-scale public housing in the north that was created was similar to the Parque Prolitarios but even less attentive to the needs of its residents for community and urban amenities."); Michel Jaquet, *Cidade de Deus—Working with Informalized Mass Housing in*

even bigger failure than its 1940s cousin and is perhaps best exemplified by the flagship project *Cidade de Deus* or “City of God” in English.¹⁷⁷ Because the junta’s actual goal was not alleviation of poverty or improvement in the lot of the poor (as the junta did not need their electoral or economic support),¹⁷⁸ the *Cidade de Deus* project was located far from the center of Rio, and with little to no access to things like electricity or running water.¹⁷⁹ Those familiar with the eponymous film know the end result of this project, and that, far from being a solution to any of the favela problems, the public housing project concentrated poverty even further and became a breeding ground for violence, drug trade, disease, and early and untimely death.¹⁸⁰ What is even more remarkable is that *Cidade de Deus*, originally conceived as an orderly public housing project, itself became a favela as soon as the military junta relaxed its grip on the country.¹⁸¹

The eradication process began to significantly slow down as Brazil entered the 1980s.¹⁸² At the time, the military’s position began to weaken as the opposition to its iron-fisted rule grew.¹⁸³ The Catholic Church (again mirroring the post-*Estado Novo* period) regained much influence and expanded its work in the favelas.¹⁸⁴ Indeed, as a current resident recounted, the Church’s influence became so great that some of the favelas became known as “pastoral favelas.”¹⁸⁵ However, once again, the Church could do little to change the fundamental legal issues in the favelas—the lack of legal rights to the homes that the favela residents

Brazil by Marc Angéilil and Rainer Hehl [Book Review], RIOONWATCH (Apr. 5, 2014), <http://www.rioonwatch.org/?p=14308>.

¹⁷⁷ See Jaquet, *supra* note 176.

¹⁷⁸ Anthony, *supra* note 66, at 339 (“[An authoritarian] state need not be attentive to elections or the need for legitimacy with a larger constituency. As a consequence, the state privileges some population groups over others in the urban, political imagination.” (footnote omitted)); Jaquet, *supra* note 176.

¹⁷⁹ See *Favelas: City of God*, JAUREGUI (last visited July 17, 2016), http://www.jauregui.arq.br/favelas_city_of_god.html; see also BRYAN MCCANN, *HARD TIMES IN THE MARVELOUS CITY: FROM DICTATORSHIP TO DEMOCRACY IN THE FAVELAS OF RIO DE JANEIRO* 31–32 (2014).

¹⁸⁰ See Alex Bellos, *Film Shows Violence of Rio’s Gangster Children, but the Reality Is Far Worse*, *GUARDIAN WKLY.* (Jan. 23, 2003), <https://www.theguardian.com/GWeekly/Story/0,,879929,00.html>.

¹⁸¹ See Jaquet, *supra* note 176.

¹⁸² See PERLMAN, *IT DEPENDS*, *supra* note 144, at 7; Anthony, *supra* note 66, at 348–49; Smith, *supra* note 148, at 23–24.

¹⁸³ Anthony, *supra* note 66, at 348–49.

¹⁸⁴ See John C. Martin, Note, *Bringing Dead Capital to Life: International Mandates for Land Titling in Brazil*, 31 *B.C. INT’L & COMP. L. REV.* 121, 121 (2008).

¹⁸⁵ Interview with Favela Residents, *supra* note 145, at 40–41; see also *Pastoral Land Commission (CPT)*, *ENCYCLOPEDIA.COM*, <http://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/pastoral-land-commission-cpt> (last visited Apr. 28, 2017); cf. Taylor Reeves Dalton, *Rights for the Landless: Comparing Approaches to Historical Injustice in Brazil and South Africa*, 44 *COLUM. HUM. RTS. L. REV.* 171, 183–84 (2012).

occupied.¹⁸⁶ Even with the abatement of the eradication process, the residents of the favelas remained at the mercy of government officials who could expel them at whim, because, after all, the residents had no legal right to be on the land in question.¹⁸⁷

Making matters worse still, when the military finally surrendered power in the mid to late 1980s, it bequeathed the new civilian government massive economic problems.¹⁸⁸ With the Brazilian economy plagued by hyperinflation, soaring unemployment, and high interest rates,¹⁸⁹ the underprivileged residents of the favelas were the hardest hit.¹⁹⁰ At the same time, and perhaps in part because of the absence of legitimate avenues for economic improvement, Brazil as a whole, and Rio in particular, became a major hub for international drug trafficking.¹⁹¹ Rio's favelas presented a perfect milieu for the gangs that sought to control the flow of drugs and money.¹⁹² Not only were the favelas poor, but their physical characteristics were often ideal for illegal

¹⁸⁶ See generally Kristen Mitchell, *Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem*, 22 N.Y.L. SCH. J. INT'L & COMP. L. 557, 571 (2003).

¹⁸⁷ See, e.g., PERLMAN, *IT DEPENDS*, *supra* note 144, at 4 (“The possibility of eviction is much lower since the return to democracy in 1985 following 21 years of military dictatorship, but in the past five years the issue has been raised again. As recently as 2009, the Mayor of Rio declared that with regard to favela policy, ‘nothing is off the table.’”); *id.* at 15 (noting that prices within favelas vary according to the risk of removal); *id.* at 24 (noting that there is always risk of favela removal, especially “where land values are high”); Anthony, *supra* note 66, at 351 (“In 2005, the city’s Public Prosecutor’s office wanted to see fourteen favelas removed, all of which were proximate to middle class neighborhoods.”). The favela residents know about the precariousness of their situation. One of them explained that the uncertainty has made people skeptical even of government documents that confer some rights to the land, stating “what we’re saying now is even in favelas where people actually had that document, if the government wants to evict them they will anyway, so there isn’t that much of a point for it.” Interview with Favela Residents, *supra* note 145, at 31.

¹⁸⁸ See Marcos Aurélio Pereira Valadao, *Washington Consensus and Latin America Integration: Mercosur and the Road to Regional Inconsistencies—To Where Are We Going Exactly?*, 15 LAW & BUS. REV. AM. 207, 211 (2009); William H. Page, *Antitrust Review of Mergers in Transition Economies: A Comment, with Some Lessons from Brazil*, 66 U. CIN. L. REV. 1113, 1119 (1998).

¹⁸⁹ See Janice E. Perlman, *The Metamorphosis of Marginality: Four Generations in the Favelas of Rio de Janeiro*, 606 ANNALS AM. ACAD. POL. & SOC. SCI. 154, 154–55 (2006) [hereinafter Perlman, *Metamorphosis*]. See generally Marcelo de Paiva Abreu, *The Brazilian Economy, 1980–1994* (Pontifical Catholic Univ., Dep’t of Econ., Discussion Paper No. 492, 2004), <http://www.econ.puc-rio.br/uploads/adm/trabalhos/files/td492.pdf>.

¹⁹⁰ Isabella Di Paolo, *Inflation and Instability: Brazil’s Lost Decade and Cardoso’s Response*, 27 STUDENT ECON. REV. 99, 101 (2013) (“As high and volatile inflation rates damaged economic performance, Brazil’s poorest were hit the hardest.”).

¹⁹¹ See Anthony, *supra* note 66, at 350; *Favelas in Rio de Janeiro, Past and Present*, BROWN U. LIBR., <http://library.brown.edu/create/fivecenturiesofchange/chapters/chapter-9/favelas-in-rio-de-janeiro-past-and-present> (last visited July 17, 2016).

¹⁹² See Sandra Jovchelovitch, *Life and Death in the Favelas of Brazil*, LSE CONNECT, Summer 2012, at 11, 11, <http://www.lse.ac.uk/alumni/LSEConnect/pdf/summer2012/Life-and-death-in-the-favelas-of-Brazil.pdf>.

activities.¹⁹³ Thus, for example, the narrow streets with convoluted and randomly created passageways—all of which often lack a formal address, making them nearly impossible to find for anyone not part of the favela community—created a hospitable environment for the gangs to conduct their activities undetected by the police forces and to win outright confrontations with rival gangs or law enforcement officials.¹⁹⁴ The takeover of the favelas by armed gangs had a significant impact on the development of property rights in the favelas—an effect that reverberates to this day.¹⁹⁵

As favelas grew, the life within them began to be organized—first completely informally and then with some quasi-recognition from the government.¹⁹⁶ As the favelas began to grow, there was often a need to expand existing property or to buy a bigger house for an expanding family.¹⁹⁷ A mechanism developed to facilitate these transactions outside of the regular business of real estate because neither buyers nor sellers legally owned that which they were buying and selling and there were no legally recognized means to verify whether the person selling the dwelling indeed owned it—even in the colloquial sense of the word.¹⁹⁸ The favela communities organized into residents' associations—a form of local self-government responsible for the inner workings of the favelas.¹⁹⁹ It is both curious and understandable that favelas were required to have formal associations starting in the 1960s—for example, during the time of the second military government.²⁰⁰ It is curious because the military government's goal was eradication rather than regularization of favelas,²⁰¹ whereas requiring any sort of formal structure would seem to be contrary to such goals. On the other hand, because control of the population (including that living in the favelas)

¹⁹³ *Id.*

¹⁹⁴ *Id.*; see also PERLMAN, *IT DEPENDS*, *supra* note 144, at 13. During an interview with a president of one of the favelas' residents' associations, he explained that although “all have a name and number . . . it's made up and it's not official. And the main thing is they haven't got a zip code . . . you don't have an official address where you can receive a letter, for example. Folks can find you, but within the communities.” Interview with Favela Residents, *supra* note 145, at 42.

¹⁹⁵ See generally PERLMAN, *IT DEPENDS*, *supra* note 144.

¹⁹⁶ See generally Boaventura de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, 12 *LAW & SOC'Y REV.* 5, 118–19 (1977) (describing the rise of the residents' associations).

¹⁹⁷ See PERLMAN, *IT DEPENDS*, *supra* note 144, at 13.

¹⁹⁸ See William Twining, *Normative and Legal Pluralism: A Global Perspective*, 20 *DUKE J. COMP. & INT'L L.* 473, 493 (2010).

¹⁹⁹ Sousa Santos, *supra* note 196, at 118–19.

²⁰⁰ PERLMAN, *IT DEPENDS*, *supra* note 144, at 13.

²⁰¹ See *supra* notes 170–74 and accompanying text.

was the junta's paramount goal,²⁰² creating structures that would make such control easier made perfect sense.²⁰³

The residents' associations, each headed by a president, "are the internal arm of local authority, the liaison between the community and the government and the voice of the favela community in public matters," and "are authorized to act with some degree of public authority within their own territories."²⁰⁴ As such, these entities are indispensable for real estate transactions within the community.²⁰⁵ The elected officials of the association would verify that the person selling the real estate was in fact the one that "owned" it, and would also record the buyer as a new "owner."²⁰⁶ These verifications could be accomplished with relative ease because everyone involved (buyer, seller, and the verifying official) was part of the same community and knew each other.²⁰⁷ In this environment, further assurances were often unnecessary.²⁰⁸

Indeed, the informal (or to be charitable, semi-formal) system of real estate transactions worked fairly well for the residents of a given community.²⁰⁹ While the transactions in the favelas do not fully match those in the city proper, they are comparable.²¹⁰ Engaging in real estate transactions in Brazil within the formal city boundaries is somewhat similar to engaging in real estate transactions in the United States, though perhaps not as technologically advanced. A person wishing to buy real estate in Brazil would check the local newspapers, look for locally distributed fliers, or listen to "word of mouth."²¹¹ As of late, websites also have become a source of information.²¹² The buyer then contacts a licensed real estate agent that is listed in the advertisement

²⁰² See *supra* note 176 and accompanying text.

²⁰³ See Sousa Santos, *supra* note 196, at 42.

²⁰⁴ PERLMAN, IT DEPENDS, *supra* note 144, at 13.

²⁰⁵ See *id.* at 13–14, 17; Twining, *supra* note 198, at 493.

²⁰⁶ PERLMAN, IT DEPENDS, *supra* note 144, at 17. In an interview with the president of a residents' association, the president explained that "if there was someone buying or selling they had a paper, just a sheet of paper, with a header of the residents' association saying who was buying and who was selling and the president signed it," and would also enter the transaction "into the association[']s own] register." Interview with Favela Residents, *supra* note 145, at 27.

²⁰⁷ See Interview with Favela Residents, *supra* note 145, at 27 ("There's nobody that could walk up and say, 'It's mine,' because they knew exactly who built it, who lived there, who lived afterwards, who their relatives were. And their neighbors and witnesses as well.").

²⁰⁸ *Id.* at 26–27.

²⁰⁹ *Id.* at 27.

²¹⁰ Compare PERLMAN, IT DEPENDS, *supra* note 144, at 9–11, with *id.* at 11–20.

²¹¹ See *id.* at 9. While the "word of mouth" method of finding real estate may seem to be overly informal, it is not unusual in the United States, either, where properties are often sold without ever formally being on the market. Indeed, one of the authors of this Article bought real estate in this very manner within the past year.

²¹² *Id.* at 9.

and the transaction proceeds in much the same way as it would in the United States.²¹³ Once the sale is consummated, the real estate agent helps in formalizing and registering the transaction. All real estate transactions within the formal city are registered in the *cartórios* which then serve as a repository of information on ownership of any given lot of land, performing roughly the same function as American county clerks do.²¹⁴ A prospective buyer can therefore come and check to ensure that the seller is indeed a true owner of the land, the taxes have been paid, the proper permits have been obtained, etc.²¹⁵

None of this formality exists within the favelas, but parallel processes emulate the transactions present within the city proper. These processes, however, rely heavily on the leadership of the residents' associations and the diligence of the elected representatives.²¹⁶ Neither the licensed real estate agents nor the *cartórios* operate within the favelas.²¹⁷ *Cartórios* do not register any favela real estate transactions "since by definition, favelas are considered irregular dwellings given that they were built without a construction permit, do not conform to building code norms and occupy the land illegally."²¹⁸ The licensed real estate agents do not operate within the favelas largely for the same reason—after all, the homes that they would be selling are not located on "legally-owned property."²¹⁹ Some better-located favelas do have informal, unlicensed real estate brokers, but even those serve mainly outsiders to the community.²²⁰

Instead, a person wishing to buy or sell a house within the favela would rely either on "word of mouth" or post a notice on a bulletin board at the residents' association's office.²²¹ Once the seller and the buyer have found each other, they complete their transaction with the help of the residents' association.²²² The residents' association (though it keeps records of its own) will ask the seller to prove that she is the

²¹³ See *id.* at 9–10.

²¹⁴ See *id.* at 11; see also Mitchell, *supra* note 186, at 570.

²¹⁵ PERLMAN, IT DEPENDS, *supra* note 144, at 11; see also CRISTIANA MOREIRA ET AL., PRACTICAL LAW, COMMERCIAL REAL ESTATE IN BRAZIL: OVERVIEW, Westlaw (database updated Jan. 1, 2015); Andrew J. Dell'Olio, *Public-Private Partnerships in Brazil: Opportunities and Risks for Investors*, INT'L L. PRACTICUM, Spring 2006, at 58, 61; *Buying a House or Property in Brazil*, PALMAS TOCANTINS BRAZ. (Jan. 17, 2012), <http://www.visitpalmas.com/archives/buying-a-house-or-property-in-brazil>.

²¹⁶ See PERLMAN, IT DEPENDS, *supra* note 144, at 11–20; *id.* at 18 (noting that many presidents used to be long-time community residents, but are now appointed and controlled by drug lords); Interview with Favela Residents, *supra* note 145, at 26–28.

²¹⁷ PERLMAN, IT DEPENDS, *supra* note 144, at 11, 13–14.

²¹⁸ *Id.* at 11.

²¹⁹ *Id.* at 13–14.

²²⁰ *Id.* at 14.

²²¹ *Id.* at 12.

²²² *Id.* at 16–18.

rightful owner of the house, which may be a problem within older favelas where housing has been built prior to the formation of the residents' associations and where the current owners who may have inherited the property would have no paper to show the chain of "title."²²³ In any event, the entire transaction is complete when the seller and the buyer execute a transfer agreement, which is then signed by two witnesses who attest that they know the seller to be the rightful owner, and the president of the residents' association signs and stamps the document.²²⁴ Similarly, the residents' association would deal with registering land that is inherited or otherwise transferred after a change in family circumstances.²²⁵ Additionally, because technically none of the papers provided by the residents' association are legal documents, as they purport to transfer land that is not, in the eyes of the state, legally occupied, the disputes over land ownership are not taken to law courts, but are also resolved within and by the residents' association.²²⁶ From the perspective of many favela residents, the system works fairly well.²²⁷ However, it only works where the president (and other officers) of the residents' association are conscientious about their work, which is not always the case.²²⁸

With the arrival of the drug gangs, the arrangement partially broke down. "Up until 1985, the president and officers of the Associations were elected by the community and accountable to the community," but "[a]s the sale of drugs and arms increased, territorial control became

²²³ *Id.* at 16. However, because of the interwoven nature of the favela community, everyone tends to know not only who lives there but also the status of her residence, i.e., whether it is rented or owned. Interview with Favela Residents, *supra* note 145, at 27 ("There's nobody that could walk up and say, 'It's mine,' because they knew exactly who built it, who lived there, who lived afterwards, who their relatives were. And their neighbors and witnesses as well.").

²²⁴ PERLMAN, IT DEPENDS, *supra* note 144, at 17–18, 20; *see also* Dell'Olio, *supra* note 215, at 61 n.60. The parties to the transaction may also choose to verify the president's signature at the *cartório*, but such verification only serves to confirm that the president's signature is indeed a true signature. PERLMAN, IT DEPENDS, *supra* note 144, at 18. The verification provided by the *cartório* does not in any way register the transaction or ownership.

²²⁵ As was explained to us by a favela resident, the residents' association provides the buyer and a seller with a document signed and sealed by the president, and also records the transaction in the association's own books. Interview with Favela Residents, *supra* note 145, at 26–28. Nevertheless, none of this has the same formal status as a document verified by a notary and recorded with the *cartório*. *See supra* note 224.

²²⁶ Interview with Favela Residents, *supra* note 145, at 26–27. When asked what would happen should there be a dispute regarding ownership of land, a favela resident replied that "[p]eople would contact the [residents'] association and they would try to make it right." *Id.* at 27. Nonetheless, a prospect of violence does exist as that resident recognized by following up the previous explanation with suggesting that the parties to the dispute "could just fight." *Id.*

²²⁷ *See id.* at 31.

²²⁸ *See id.* at 43. The interviewee cautioned that a lot depends on personal relations and when those deteriorate, the internal favela processes cannot work anymore. It is also a problem that in a number of favelas, presidents are controlled by local gangs, and therefore serve gangs' interests. *See id.*; *see also* PERLMAN, IT DEPENDS, *supra* note 144, at 13–14, 18.

very lucrative and the drug gangs began to take over the Residents' Associations by driving out or killing the elected presidents."²²⁹ The end result is that today, the majority of favelas "are under the control of the drug traffic."²³⁰ This situation persists even though in 2009, prompted by the upcoming hosting of the World Cup and the Olympic Games, the Brazilian government created Police Pacification Units (*Unidades de Polícia Pacificadora* or UPPs) meant to clear out the gangs from the favelas.²³¹ Generally, the UPPs have been considered to be successful in increasing state presence in the favelas and have contributed to rising land values in favelas and positive responses from residents and community leaders.²³² Needless to say, the gang takeover of favelas seriously undermined the interpersonal connections and the ability of the residents of the favelas to engage in real estate transactions with some modicum of assuredness over the status of the property being transferred.²³³ Furthermore, with the gang takeover, dispute resolution within the favelas is often based on brute force rather than on any facts or sense of fairness.²³⁴

The final piece of the puzzle that is the "on the ground" situation in the favelas is the Brazilian Constitution adopted during the transition to the democratic regime. As discussed above, the drafters of Brazil's Constitution had a particular vision of the role of property rights in society. The Constitution of 1988 simultaneously committed the government to respect people's property (including that in the favelas) and gave the government the authority to remove people from the favelas if the land was not, in the State's opinion, being put to "rational and adequate use."²³⁵ Additionally, the 1988 Constitution limited the ability of the government to transfer the land to private parties,²³⁶ which in turn made the government's ability to formally grant the land to

²²⁹ PERLMAN, *IT DEPENDS*, *supra* note 144, at 13.

²³⁰ *Id.* at 8.

²³¹ *Id.*; Megan Corrarino, Note, "Law Exclusion Zones": Mega-Events as Sites of Procedural and Substantive Human Rights Violations, 17 *YALE HUM. RTS. & DEV. L.J.* 180, 197 (2014).

²³² *Chegada da UPP à Tijuca Pode Valorizar Imóveis no Bairro em até 40%*, *Dizem Especialistas*, O GLOBO (Nov. 1, 2011, 4:00 PM), <http://oglobo.globo.com/economia/imoveis/chegada-da-upp-tijuca-pode-valorizar-imoveis-no-bairro-em-ate-40-dizem-especialistas-3012765>.

²³³ Enrique Desmond Arias & Corinne Davis Rodrigues, *The Myth of Personal Security: Criminal Gangs, Dispute Resolution, and Identity in Rio de Janeiro's Favelas*, 48 *LATIN AM. POL. & SOC'Y* 53, 71–73 (2006).

²³⁴ *Id.*; see also PERLMAN, *IT DEPENDS*, *supra* note 144, at 18 ("[I]n more than one case, the Residents' Association was burned down and all records lost when the drug traffic took control from the elected President."); Anthony, *supra* note 66, at 350; Interview with Favela Residents, *supra* note 145, at 44 (describing how if drug gangs wanted someone's house, they would just take it, with or without minor "compensation").

²³⁵ C.F. art. 186 (Braz.); see also *supra* notes 75–81 and accompanying text.

²³⁶ C.F. art. 183 (Braz.).

favela residents (to the extent that the houses sit on government- rather than privately-owned land) problematic.²³⁷

The conglomeration of these rules, together with the problems of gang violence, poverty, lack of education, etc., is what the favelas and the Brazilian government are facing as they attempt to regularize the legal status of favela properties. Over the past several decades, the Brazilian government attempted to create several programs that aimed to regularize and legalize the legal rights inside the favelas. These programs, however, can in many ways be described as “one step forward, two steps back,” because oftentimes, what they gave with one hand they took away with another. Additionally, local programs are often short-lived due to shifts in political agendas.²³⁸ For example, in 1985 the government in Rio de Janeiro proposed a five-year plan that would fully incorporate favelas into the city and have them all receive real neighborhood services such as street paving and lighting.²³⁹ Yet the program never got past the initial planning because the government failed to give financial support to the City, and there also happened to be a flood a year later.²⁴⁰ As a result, all city funds went toward cleanup.²⁴¹ Nonetheless, various levels of Brazilian government continue to attempt to regularize life in the favelas.

The first comprehensive program known as *Favela-Bairro* began in 1994 and continues to this day.²⁴² The goal of the program was to integrate favelas with the city proper.²⁴³ The purpose of the program was “to incorporate the favelas into the city with extension of infrastructure and public spaces and the regularization of property ownership.”²⁴⁴ The program was meant to extend legal utilities into the favelas as well as to create public spaces like plazas, wider streets, and other amenities.²⁴⁵ In some sense, the project is quite successful and laudable. It succeeded in bringing some of the promised improvements to the few favelas where the program was undertaken. Nonetheless, some of these improvements were at the cost of depriving existing favela residents of their homes (and relocating them elsewhere, though usually within the same favela). In the favela of Santa Marta, for example, the City government planned

²³⁷ See Interview with Favela Residents, *supra* note 145, at 44–45 (discussing how there are limits on whom the federal government can transfer land to); see also Smith, *supra* note 148, at 34–35.

²³⁸ See, e.g., PERLMAN, IT DEPENDS, *supra* note 144, at 8, 24, 30–31.

²³⁹ PERLMAN, FAVELA, *supra* note 24, at 274.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at 275; PERLMAN, IT DEPENDS, *supra* note 144, at 26.

²⁴³ PERLMAN, FAVELA, *supra* note 24, at 275; PERLMAN, IT DEPENDS, *supra* note 144, at 26.

²⁴⁴ White, *supra* note 54, at 320.

²⁴⁵ See Smith, *supra* note 148, at 24.

and attempted “a complete urbanization project . . . involv[ing] two lifts, one on each side of the favela, the opening of streets for cars, and investment in the houses.”²⁴⁶ This was a multi-purpose, ambitious project. It was supposed

to invest in the houses that were extremely full, so they’re wooden houses and they also have a quite precarious situation, for example the people that live in basements in the favela. And then the other point would be to create more ventilation, more room for air in parts of the favela where . . . there’s no air running around. . . . And then the third point that they were going to pass on was in the drainage system²⁴⁷

Although the project did not live up to its original plans, some improvements were made.²⁴⁸ Yet, as a result, the government had “to relocate [the affected] famil[ies] but [they were] promised that they [would] stay in the favela.”²⁴⁹ And the number of families removed and relocated is significant. By some estimates, in Santa Marta alone, 100 families would have had to be relocated in 2004, but because the project was not completed, and the favela continued to grow, today, if the government were to complete the project as initially planned, the number of families subject to relocation would be close to 300.²⁵⁰

Furthermore, the *Favela-Bairro* program suffers from two additional and interwoven problems. First, “[d]espite the construction of paved plazas at the entrance to many of the participating favelas, no one is in doubt as to where the formal city (called the *asfalto* or paved city) ends and the informal city (called the *morro* or hillside) begins.”²⁵¹ This clear delineation allows for the favelas to “remain highly stigmatized territories of exclusion,” with the “discrimination against favela residents [exceeding that] against dark-skinned people, women, migrants from rural areas or any other” group.²⁵² It is not surprising that the line between the favelas and the city proper remains as bright as ever.²⁵³ One of the reasons is that the various improvement projects are not only too small in scale, but are also carried out in fits and starts.²⁵⁴ The problem is that the implementation of various plans is dependent

²⁴⁶ Interview with Favela Residents, *supra* note 145, at 22.

²⁴⁷ *Id.* at 24.

²⁴⁸ *Id.* As one resident put it “a lot was done but we still have just a little bit of each problem. They didn’t solve any of them completely. That’s the main problem of all organization projects in the favelas is really that they’re never complete, they always get interrupted.” *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ PERLMAN, IT DEPENDS, *supra* note 144, at 26.

²⁵² *Id.*

²⁵³ *See id.*

²⁵⁴ Interview with Favela Residents, *supra* note 145, at 24.

on the political will of elected officials. Thus, for example in Santa Marta “the mayor [who negotiated the improvement project with the favela residents] lost the election and the new mayor came and he was [in] opposition. And that was the end of that agreement.”²⁵⁵ Luckily, in that case the State government took responsibility of the project and saw to it that it was not completely abandoned.²⁵⁶ Nonetheless, the initial plan to fully integrate Santa Marta into the city, much like other *Favela-Bairro* plans, did not succeed.²⁵⁷

To address these disparities, in 2010, Rio authorities expanded *Favela-Bairro* and named the expansion *Morar Carioca* (which roughly translates to “to live as someone from Rio de Janeiro”).²⁵⁸ The goal remained the same—to re-urbanize and socially integrate all of the city’s favelas by 2020,²⁵⁹ by providing housing units, infrastructure, landscaping, improvement of sanitation systems, implementation of leisure and educational programs, and more.²⁶⁰ Though formally an extension of the *Favela-Bairro* program, *Morar Carioca* was conceived as the most ambitious that Rio de Janeiro has seen and as a key part of the legacy of the 2016 Olympics.²⁶¹ When field research took place in 2012, architects and urban planners felt a need for quick action and experienced excitement.²⁶² They hoped that the *Morar Carioca* model would even out the differences in the type of urban infrastructure and level of service provision various dwellers experienced.²⁶³ In December 2010, the outcome of the Institute of Brazilian Architects (IAB) design contest was released and forty architecture firms were chosen to mediate

²⁵⁵ *Id.* at 23.

²⁵⁶ *Id.*

²⁵⁷ *Id.* In describing the present-day state of affairs, the resident contrasted Santa Marta with the “formal city” thus:

[I]n the formal city, you have order and you have to respect it, and here nobody is checking it. So if the state played the same role of checking in the favela as they check in the formal city then you prevent that, but the problem is the state only comes to the favela to reprimand or to remove people. They are not doing the natural control, ordering that they do in the formal city.

Id. at 25–26.

²⁵⁸ See Kate Steiker-Ginzberg, *Morar Carioca: The Dismantling of a Dream Favela Upgrading Program*, RIOONWATCH (Sept. 10, 2014), <http://www.rioonwatch.org/?p=17687>.

²⁵⁹ Paula Alvarado, *The Urbanization of Rio de Janeiro’s Slums, a Model for Sustainable Development*, TREEHUGGER (June 12, 2012), <https://www.treehugger.com/urban-design/the-urbanization-of-rio-de-janeiro-s-slums-a-model-for-sustainable-development.html>; Helen Walters, *Four Commandments for Cities of the Future: Eduardo Paes at TED2012*, TEDBLOG (Feb. 29, 2012, 9:49 PM), <http://blog.ted.com/four-commandments-for-cities-of-the-future-eduardo-paes-at-ted2012>.

²⁶⁰ See Steiker-Ginzberg, *supra* note 258.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

in specific favela “groupings.”²⁶⁴ “The first group of eleven firms were contracted in June 2012 and began performing qualitative diagnostics in the communities with the support of iBase,” a non-governmental organization (NGO) that was employed by the Municipal Secretary of Housing (SMH) “to hold participatory meetings and collect residents’ demands.”²⁶⁵ The City, however, “cut iBase’s contract in January 2013, financially dismantling the projects.”²⁶⁶ Despite the fact that individual parts of the project are still in progress, the plan to integrate the favelas within the context of the Olympics has faded because both the funding and the participatory structures targeted a completion goal of 2016.²⁶⁷ When Mayor Eduardo Paes “was questioned about *Morar Carioca* at an event in 2013, he cited lack of financial resources.”²⁶⁸ Architects and urban planners blame a shift in political agendas, and the way that politicians balanced different priorities and competing interests that resulted in the dismantling of the program.²⁶⁹

The next program meant to help the residents of the favelas, known as *Minha Casa, Minha Vida* (My Home, My Life), is equally a mixed bag. The goal of the program is to allow poor working families to obtain credit to buy a home.²⁷⁰ However, the property for which a mortgage can be obtained “must be formally registered with legal land title and must show proof of paying property taxes.”²⁷¹ Almost definitionally, this requirement excludes homes within favelas as those homes are not “formally registered with legal land title,” and often cannot “show proof of paying property taxes.”²⁷² Furthermore, the mortgage amount is rather modest, meaning that the only non-favela housing that would qualify would be on the city’s outskirts far from their work.²⁷³ Thus, favela residents (especially of those favelas that are centrally located) are loath to trade their illegal, convenient abode for a legal, very inconvenient one.²⁷⁴

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*; see also Stefan Johnson, *Providência’s Cable Car Launch: Urban Mobility or Tourism?*, RIOONWATCH (July 1, 2014), <http://www.rioonwatch.org/?p=16464>.

²⁶⁸ Steiker-Ginzberg, *supra* note 258.

²⁶⁹ *Id.*

²⁷⁰ PERLMAN, *IT DEPENDS*, *supra* note 144, at 26.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.* at 16.

B. *Toward Individual Titling and Ownership*

All of this leads to the discussion of the programs aimed at empowering residents of the favelas to improve their own lot by giving them ownership rights to their houses and the land on which the houses stand. The idea is that once acquired, such rights would be subject to traditional market forces and not be dependent on the political winds or the necessity to trade convenience for legalization. This Section will attempt to describe these efforts, as well as the barriers to the realization of the program.

The first efforts to provide favela residents with title to their land actually began quite early. In 1984, during the time of transition from military to civilian rule, Leonel Brizola, the then-governor of the State of Rio de Janeiro, announced the *Cada Familia, Um Lote* (A Plot for Every Family) program.²⁷⁵ As conceived, the program was quite ambitious. The original plan involved titling 400,000 lots, improving the infrastructure of another 400,000, and creating 200,000 new lots to account for the in-country immigration into Rio.²⁷⁶ The final outcome of the program, which ran for only three years, was much more modest, with only 23,000 lots being transferred into private ownership.²⁷⁷ However, the program did bequeath Brazil an important innovation. As part of the *Cada Familia, Um Lote*, the government created a semi-public entity to which publicly held land could be transferred consistent with the law on alienation of public land.²⁷⁸ This entity, known by its Portuguese acronym CEHAB-RJ, continues to exist and is now a nominal title-holder for vast swaths of land.²⁷⁹ These holdings affect how today's titling process proceeds.

The current land titling process is best illustrated by the example of the *Cantagalo Project*, named after an eponymous favela near the upscale neighborhoods of Ipanema and Copacabana.²⁸⁰ While there are other programs, the *Cantagalo Project* is illustrative of both the process for title regularization and the difficulties that arise in the course of this endeavor.

²⁷⁵ Smith, *supra* note 148, at 27.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ PERLMAN, FAVELA, *supra* note 24, at 271; *see, e.g.*, Smith, *supra* note 148, at 29–30 (“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 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.”).

²⁸⁰ Smith, *supra* note 148, at 29.

The *Cantagalo Project* began in 2008 with attorneys acting on behalf of the entire community of Cantagalo filing a *usucapião* (an equivalent to adverse possession) claim against CEHAB-RJ, which holds a large portion of the land on which this particular favela sits.²⁸¹ Under the Brazilian Constitution of 1988, “a possessor who can demonstrate uninterrupted, uncontested possession of land for a period of time [can] gain title to that land.”²⁸² Usually, for possessors who used the land for residential purposes and believed themselves to be true owners of the land in question, the period is five years.²⁸³ What is particularly interesting is that the Brazilian adverse possession process (the *usucapião*) can be invoked not just by individuals, but also by groups and communities.²⁸⁴ This is what happened at the first stage of the *Cantagalo Project*—the Cantagalo favela asserted adverse possession over the land on which it sat as a community rather than as individual land occupiers.²⁸⁵

As in the United States, the Brazilian adverse possession process is a judicial one.²⁸⁶ To begin the process, the land in question must be defined.²⁸⁷ This is where proceeding as a community makes things easier, but where ultimately giving title to a particular individual or family becomes quite complicated.²⁸⁸ In the Cantagalo favela, the residents’ association, working together with Instituto Atlântico (a non-profit public policy organization) secured the services of a pro bono attorney who “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.”²⁸⁹ This was by no means a small undertaking. Finally, with the results in hand, in 2009 the case was brought before a Brazilian court.²⁹⁰ It is important to observe that the defendant in the case was CEHAB-RJ, rather than the State or a private party.²⁹¹ Having CEHAB-RJ—an entity established decades earlier with the specific mandate to transfer title to the favela residents—in many ways made all the

²⁸¹ *Id.* at 28.

²⁸² *Id.* at 30. See generally C.F. arts. 183, 191 (Braz.) (outlining the procedures and requirements for establishing *usucapião*).

²⁸³ See discussion *supra* notes 80–100.

²⁸⁴ Smith, *supra* note 148, at 32.

²⁸⁵ *Id.* at 32–33.

²⁸⁶ See Alexandre dos Santos Cunha, *Informal Land Subdivision and Real Estate Regularization: A Comparative Study Between Colombia and Brazil*, 40 U. MIAMI INTER-AM. L. REV. 315, 321–22 (2009); Smith, *supra* note 148, at 30.

²⁸⁷ See Smith, *supra* note 148, at 36.

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 29.

²⁹⁰ *Id.* at 30.

²⁹¹ *Id.* at 29–30.

difference.²⁹² The Brazilian Constitution denies anyone the ability to adversely possess as against the government²⁹³—a doctrine that is also present in American law.²⁹⁴ Thus, had the land in the Cantagalo favela been owned by the State, it may have been impossible to bring the action to acquire possession.²⁹⁵ Had the land been owned by a private party, there may well have been a more contentious litigation process. But with the land owned by CEHAB-RJ, and taking into account that the residents' association conducted extensive preliminary negotiations and consultations before filing suit to essentially quiet title, the suit proceeded rather smoothly and without much adversity,²⁹⁶ if still at glacial pace.²⁹⁷

The court proved receptive to the claims by the residents' association,²⁹⁸ though the fact that there still does not appear to be a final judgment seven years later is indicative of the difficulty of the process.²⁹⁹ However, as it turned out, not all land on which the favela stands was owned by CEHAB-RJ.³⁰⁰ Some land was still owned by the State itself,³⁰¹ and therefore was not included in the *usucapião* process.³⁰² At the same time, there is an ability to obtain a "concession" (rather than full title) "that grants the possessor limited rights of use and occupation."³⁰³ To obtain such a concessionary right, the applicant must show 1) "five-year[s of] uninterrupted and uncontested possession or urban land"; 2) that the applicant is an "individual or individuals of low income"; 3) "use of land for residential purposes"; and 4) "possession of no other rural or urban properties."³⁰⁴ Despite the alienability of concessionary title, including through mortgage,³⁰⁵ there are several limitations. First, the concession can only be transferred to another person meeting the income restrictions.³⁰⁶ Second, the holder of a

²⁹² *Id.* at 28–30, 33.

²⁹³ C.F. art. 183 (Braz.).

²⁹⁴ See generally Walter Quentin Impert, Comment, *Whose Land Is It Anyway?: It's Time to Reconsider Sovereign Immunity from Adverse Possession*, 49 UCLA L. REV. 447 (2001).

²⁹⁵ See Smith, *supra* note 148, at 32. See generally C.F. art. 183 (Braz.) ("Public real estate shall not be acquired by prescription.").

²⁹⁶ Smith, *supra* note 148, at 29.

²⁹⁷ The case was initially filed in 2009, yet by 2016, only forty-four families had received title. See *Project Cantagalo: Overview*, INSTITUTO ATLÂNTICO, <http://www.atlantico.org.br/en/projetos/cantagalo/apresentacao> (last visited July 26, 2016).

²⁹⁸ Smith, *supra* note 148, at 30, 33–34.

²⁹⁹ See *supra* note 297.

³⁰⁰ Smith, *supra* note 148, at 29.

³⁰¹ *Id.*

³⁰² See *id.* at 31–33.

³⁰³ *Id.* at 32.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Interview with Favela Residents, *supra* note 145, at 57–58.

concessionary title can only use it as his own residence.³⁰⁷ On the other hand, the concessionary title may be easier to obtain as it does not require a full-blown judicial process, but rather somewhat abbreviated administrative procedures.³⁰⁸ Nonetheless, the administrative process has its own limitations. As the president of one of the residents' associations explained during a conversation, before invoking the administrative process, the claimants

have to do topography and all the land research, not just who the owner is but all the research that it's not an area of risk, if it's got minimum infrastructure, and the law terms that the land has to have at least two types of minimum infrastructure, so streets, sewage, public lighting, and water supply.³⁰⁹

That is why favelas that benefited from the *Favela-Bairro* program discussed above, which widened streets and improved the infrastructure,³¹⁰ are in a better position to succeed in the administrative process than the ones where the level of squalor is higher.³¹¹

It should also be noted that, at least in the state of Rio de Janeiro, the Constitution has been amended to allow the use of the shorter administrative process to seek land donation (rather than concession).³¹² Unlike adverse possession judicial actions, however, the donation through the administrative procedure is a negotiated process where the government has to agree to donate and can impose conditions on the donation.³¹³ The recourse to these administrative proceedings is the second phase of the *Cantagalo Project*.³¹⁴

The *Cantagalo Project* illuminates both the opportunities to achieve land regularization and the roadblocks on the way to that goal. In terms of opportunities, as already mentioned, the *Cantagalo Project* spurred the government of Rio de Janeiro not only to begin the land transfer process, but also to change the law to allow for quicker and easier procedures.³¹⁵ The *Cantagalo Project* has also been emulated in

³⁰⁷ Smith, *supra* note 148, at 33.

³⁰⁸ *Id.* at 28, 34–35; Interview with Favela Residents, *supra* note 145, at 57–63.

³⁰⁹ Interview with Favela Residents, *supra* note 145, at 60.

³¹⁰ See *supra* notes 244–48 and accompanying text.

³¹¹ See PERLMAN, *IT DEPENDS*, *supra* note 144, at 19 (discussing how the *Favela-Bairro* program, though it ended up being little help in terms of obtaining full title, allowed residents to obtain a “permit of occupancy”); *id.* at 15 (“The favelas which were upgraded by the *Favela-Bairro* Program . . . have the lowest risk of removal.”).

³¹² Smith, *supra* note 148, at 34–35; *Project Cantagalo: Finalized Stages*, INSTITUTO ATLÂNTICO, <http://www.atlantico.org.br/en/projetos/cantagalo/etapas-concluidas> (last visited July 26, 2016).

³¹³ UN-HABITAT, *LAND TENURE, HOUSING RIGHTS AND GENDER IN BRAZIL* 43–44 (2005); Smith, *supra* note 148, at 35.

³¹⁴ Smith, *supra* note 148, at 28.

³¹⁵ *Id.* at 34.

other favelas, with residents and/or residents' associations seeking title to the land on which their homes sit.³¹⁶ At the same time, the *Cantagalo Project* laid bare the Herculean scope of the effort. As of the day of this writing in 2017 the adverse possession case that began in 2008 has yet to reach final judgment.³¹⁷ Furthermore, thus far only forty-four out of over 9000 residents have received title to their land.³¹⁸ And all of this was under the most favorable of conditions. The *Cantagalo Project* is somewhat unique in that it

was nurtured and supported by private entities in the formal sector. . . . [T]he 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.³¹⁹

The reason why the financial support is so critical to the regularization procedure stems from the very first requirement for the process to begin. Before any judicial or administrative claims can be filed, the property in question must be surveyed, the residents and their length of stay ascertained, plots mapped, and any possible disputes between residents laying claim to the same land resolved.³²⁰ The costs of such an undertaking for every favela and every resident are enormous.³²¹ Absent significant infusion of funds from the State or private entities, it is unlikely that significant progress could be made.³²²

The lack of affordable counsel to represent the favela residents and the backlogs in the judicial system are additional significant problems that greatly slow down the process of regularization.³²³ Although there have been some improvements on this front, the backlog continues to stretch back years.³²⁴

³¹⁶ See *id.* at 35; *supra* note 312 and accompanying text.

³¹⁷ See *supra* notes 297–99 and accompanying text.

³¹⁸ See Smith, *supra* note 148, at 29 (noting that the Cantagalo favela has a population of 9000 residents); *supra* note 297.

³¹⁹ Smith, *supra* note 148, at 37.

³²⁰ *Id.* at 36.

³²¹ *Id.*

³²² See Interview with Favela Residents, *supra* note 145, at 58 (“[Favela residents and communities] always had to rely on the work of the public lawyers and the public lawyers are already overloaded. . . . [R]esearch . . . shows that 87% of all lawsuits in Rio rely on the works of these public lawyers, so with that the process was very slow.”); cf. Smith, *supra* note 148, at 37.

³²³ Smith, *supra* note 148, at 36–37.

³²⁴ PERLMAN, IT DEPENDS, *supra* note 144, at 12 (“The city office of the Attorney General is in charge of these [regularization] cases, and has an interminable backlog of pending cases. There is no end in sight until a new system is put into place. So far, that has not happened even with the ambitious squatter upgrading program, Favela-Bairro.”); Interview with Favela

Even if one were to consider only collective regularization rather than individual titling, the Cantagalo favela is better situated than many of its counterparts. This particular favela has the advantage of having been “pacified” by the UPP.³²⁵ This means that the residents’ association was in charge and could represent residents’ best interests in its interactions with CEHAB-RJ and the government. The same cannot be said for other favelas that remain gang-controlled.³²⁶ Even if those favelas were to begin the same process, it is unlikely that the interaction with the government and other officials would be nearly as fruitful as they were in Cantagalo’s case.³²⁷

Finally, it should be observed that the laws undergirding the regularization process also tend to limit it. As mentioned above, oftentimes a number of conditions must be satisfied for individuals to obtain title from the government.³²⁸ One of those conditions is that the land in question be used for residential purposes only, which is not the case for all land in the favelas.

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.” 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.³²⁹

In these situations, the title may be transferred to the favela community, but perhaps not to the individual.³³⁰ This in turn limits the full alienability of land.³³¹ Similarly, downstream transfers may be constrained to individuals within a certain income level.³³² Such restrictions are not uncommon in cities such as New York City,³³³ which

Residents, *supra* note 145, at 2 (noting that at best it takes six months to process a single claim, whereas thousands of people are waiting).

³²⁵ Smith, *supra* note 148, at 29.

³²⁶ See PERLMAN, IT DEPENDS, *supra* note 144, at 13 (“Today, the majority of favelas are under the control of the drug traffic.”).

³²⁷ See Smith, *supra* note 148, at 38 (discussing unique features of the Cantagalo favela).

³²⁸ See *supra* notes 303–07 and accompanying text.

³²⁹ Smith, *supra* note 148, at 37 (citation omitted).

³³⁰ Compare *id.* at 34 (noting that the administrative claim can be brought collectively), with *id.* at 37–38 (discussing limitations to acquisitions of land by someone who rents rather than lives on it).

³³¹ See *id.* at 33.

³³² Interview with Favela Residents, *supra* note 145, at 58.

³³³ See N.Y. PRIV. HOUS. FIN. LAW § 576(1)(b) (McKinney 2015) (limiting purchase of certain properties to “persons or families whose probable aggregate annual income does not exceed six times the rental”).

also limits the alienability and marketability of the land,³³⁴ making it potentially not worth it for people to regularize their possessions.

C. Residents' Concerns About Regularization

Before turning to the next Part of this Article, two additional observations about the current state of affairs in the regularization efforts should be made. First, during our interviews with the residents of the favelas, it became quite evident that the complexity of the regularization process is confusing to them and that they are not certain of what rights they would acquire at any given stage of the process. The clearest example of this was the confusion over two types of documents that the residents can acquire. One is referred to as a *posse* and another one is *escritura*. The *escritura* is a formal deed, and the rights associated with it are the same as with any deed on any piece of property within the city proper.³³⁵ The *posse*, on the other hand, is much more amorphous or is at least perceived as such. The *posse* is a document that recognizes the holder's tenure on land.³³⁶ The tenure recognition is important for the adverse possession five-year clock to begin ticking.³³⁷ Perceptions of the *posse*, however, vary wildly between different favela residents. Thus, during one conversation a favela resident, when asked "What has changed for the people who have obtained *posse*?" replied: "[N]othing. Because . . . what makes [a difference] is when you have the [*escritura*], so when you have the *posse* nothing has changed."³³⁸ Another resident said that "*posse* doesn't have a legal meaning."³³⁹ On the other hand, another resident explained that *posse* is indeed a legal document that

³³⁴ See Michelle Higgins, *Bargains with a 'but': Affordable New York Apartments with a Catch*, N.Y. TIMES (June 27, 2014), <http://www.nytimes.com/2014/06/29/realestate/affordable-new-york-apartments-with-a-catch.html> ("[S]ome of the city's most affordable apartments [are] struggling to find buyers . . . because they belong to a small and quirky breed of co-op that requires buyers to meet income caps . . .").

³³⁵ Jose Santiago, *The Closing Process in Brazil*, GRINGOES, <http://www.gringoes.com/the-closing-process-in-brazil> (last visited Apr. 28, 2017). The *escritura* is important because, as one of the favela residents stated, "when you have the *escritura*, if you want to get your house better, do constructions, you can . . . [g]et a loan from the bank." Interview with Favela Residents, *supra* note 145, at 7. Furthermore, if the government were to evict an *escritura* holder using its eminent domain powers, the owner who has an *escritura* "will be paid by the land and the house. And, if they don't have the *escritura*, they just get money from the house." *Id.*

³³⁶ According to one resident's understanding of the process: "When you see somebody living like the owner then you can say that this person has the *posse*," but not the right to the title. Interview with Favela Residents, *supra* note 145, at 56.

³³⁷ See discussion *supra* notes 81–100.

³³⁸ Interview with Favela Residents, *supra* note 145, at 6.

³³⁹ *Id.* at 32.

confirms a concessionary title from the government.³⁴⁰ He explained that *posse* came into being in the 1980s “because the law still says that public land could not be donated to private people,” and to comply with that formality, “[the government] started the whole *posse* title,” which was in turn “valid for 99 years.”³⁴¹

It appears that the mass confusion over the meaning and value of the *posse* title stems from the different rules for regularizing land title depending on who happens to be the owner of record and on the rather Byzantine and interminable process of regularization. For non-government land, it seems that *posse* is indeed an intermediate step toward full title embodied by the *escritura*.³⁴² The *posse* proves that the person holding it is in possession of the land described in the document and begins the ticking of the clock on the five-year adverse possession statute of limitations, but does not in and of itself confer the right of ownership.³⁴³ Conversely, when the land in question is government owned, *escritura* cannot be obtained, because government land cannot be transferred to private ownership³⁴⁴ (or at least could not be until the previously discussed state constitutional amendment which permits donation, but not adverse possession³⁴⁵). Thus, the *posse* serves a function of a title for the concessionary transfer.³⁴⁶ The confusion, however caused, results in the favela residents losing faith in the regularization process. Thus, one resident commented that though “an NGO actually come[s] and do[es] the surveys and all the work and all the documents, but people didn’t even bother picking up the *posse* documents,” choosing to rely instead on the informal documents received from the residents’ association.³⁴⁷ Such attitudes present a significant barrier to regularization of ownership in the favelas, but they may abate if the procedures become faster, more transparent, and more understandable to the average layperson.

³⁴⁰ *Id.* at 43–44; see also *Brazil Property Guide: Key Facts and Markets*, NUWIRE INV. (Dec. 19, 2008), <http://www.nuwireinvestor.com/brazil-property-guide-key-facts-and-markets>.

³⁴¹ Interview with Favela Residents, *supra* note 145, at 41, 43.

³⁴² *Id.* at 3–4, 6, 32.

³⁴³ *Id.* at 66–67 (explaining that it takes a long time to acquire documents needed to obtain *posse* and then once *posse* is in hand, the five-year clock for adverse possession, and ultimately *escritura* begins ticking). However, even when the five years are up, there may still be a protracted legal process to get the land by adverse possession. See *supra* notes 297–99, 323–24 and accompanying text.

³⁴⁴ C.F. art. 183 (Braz.).

³⁴⁵ See *supra* note 312 and accompanying text.

³⁴⁶ Interview with Favela Residents, *supra* note 145, at 57, 83 (explaining that under the concessionary regime, no *escritura* is ever granted, and *posse* “title” is evidence of concession); see also Smith, *supra* note 148, at 32 (noting that “a government concession . . . grants the possessor limited rights of use and occupation,” rather than title).

³⁴⁷ Interview with Favela Residents, *supra* note 145, at 31.

The second observation that we made was the unease of a number of favela residents with regularization as a whole, aside from the particular procedures to achieve it.³⁴⁸ The concerns were two-fold. First, the residents worried about the gentrification of the favelas, especially those located in the central and desirable areas of Rio.³⁴⁹ They understand that once individuals have proper registerable title to their land, they would no longer be limited to selling within the favela community and with the approval of the residents' association.³⁵⁰ Instead, the newly titled individuals would be able to sell to anyone able and willing to pay the market price for the lot.³⁵¹ If such a practice becomes widespread, some residents believe that the very people whom the regularization process was supposed to help would end up priced out of their own neighborhoods and the favela problem would simply be pushed to a new location, with the cycle repeating itself.³⁵² The second concern is that regularization would also bring with it new obligations, including paying real estate taxes³⁵³ and obeying the various building codes.³⁵⁴

While there is not necessarily objection to the payment of taxes as such, much depends on where a given favela is located. For example, as one of our interviewees observed, the favela of "Santa Marta is in the south of the city"—"the most expensive part of the city"—and, unless special designations are made, the tax imposed on the residents of Santa Marta may become unaffordable.³⁵⁵ Similarly, the residents are concerned that the building codes and permits currently inapplicable to favelas will start operating with full force as part of the regularization process.³⁵⁶ The problem is that although such codes apply in the city

³⁴⁸ *Id.* at 10–11 (expressing the concern that "the biggest problem in terms of regularization is gentrification" since "once you have the property . . . anybody of the city can buy your area"); Smith, *supra* note 148, at 38 (noting that "[t]here may also be elements within the favelas which oppose formal titling" for various—including nefarious—reasons).

³⁴⁹ See Jo Griffin, *Olympic Exclusion Zone: The Gentrification of a Rio Favela*, GUARDIAN (June 15, 2016, 6:37 AM), <https://www.theguardian.com/cities/2016/jun/15/rio-olympics-exclusion-zone-gentrification-favela-babilonia>.

³⁵⁰ See generally Christopher Gaffney, *The Blind Hand of the Market*, GEOSTADIA (May 2, 2014, 12:39 PM), <http://geostadia.blogspot.com/2014/05/the-blind-hand-of-market.html>.

³⁵¹ See Interview with Favela Residents, *supra* note 145, at 11 ("[S]peculators are the first ones that come and buy the land.").

³⁵² See Pindell, *supra* note 18, at 457; Smith, *supra* note 148, at 25–27.

³⁵³ See Marc R. Poirier, *Brazilian Regularization of Title in Light of Moradia, Compared to the United States Understandings of Homeownership and Homelessness*, 44 U. MIAMI INTER-AM. L. REV. 259, 268 (2013).

³⁵⁴ See Perlman, *Metamorphosis*, *supra* note 189, at 176 ("Rio's favela residents are mostly opposed to regularization of land titles. They do not want to pay property taxes or submit to building codes . . .").

³⁵⁵ Interview with Favela Residents, *supra* note 145, at 33.

³⁵⁶ *Id.* at 33–34.

proper, the wealthier residents of the city can always find a way (legal or not quite) to avoid particularly troublesome restrictions or to secure the necessary permits.³⁵⁷ The residents of favelas, with their lack of funds, are not so fortunate.³⁵⁸ Thus, it may be that the regularization will disadvantage the newly minted formal owners by limiting their current ability to expand or renovate their housing.

In short, the regularization process, though mostly welcomed by the residents of the favelas, is not viewed as an unalloyed good, and the favela residents do retain a number of concerns that also tend to retard the process of regularization.

IV. PROPERTY RIGHTS VIOLATIONS AND THE IMPORTANCE OF TITLE

A. *Removals for Large-Scale Sports Events*

This Section describes how, while the informal property system in the favelas may have worked for many intents and purposes, the Brazilian government was able to seize land without much ado from the many title-less residents when the government wanted to build large-scale athletic facilities for the 2014 World Cup and 2016 Olympics. In the past decade, Brazilian officials have devoted significant resources to cinching lucrative relationships with global athletic mega-events.³⁵⁹ In an effort to further Brazil's newfound economic dexterity and cosmopolitan standing, Rio de Janeiro has become the de facto epicenter of ambitious projects with global organizations like FIFA and the International Olympic Committee (IOC).³⁶⁰ Brazil's host city is following the global trend of furthering international elite interests to capitalize on the highly profitable sponsor influx and global spotlight.³⁶¹ The actions taken by Brazilian officials to revamp city infrastructure in preparation for these large-scale events expose the complete lack of recognition of the property rights of thousands of Brazilian favela residents.³⁶²

³⁵⁷ See PERLMAN, *IT DEPENDS*, *supra* note 144, at 21.

³⁵⁸ *Id.*

³⁵⁹ Corrarino, *supra* note 231, at 190–92.

³⁶⁰ *Id.*

³⁶¹ *Id.* at 185–86.

³⁶² Stefan Norgaard, *Why the Olympics and Other Major Sporting Events Usually Increase Inequality in the Host City*, FORDFOUNDATION (Aug. 1, 2016), <http://www.fordfoundation.org/ideas/equals-change-blog/posts/why-the-olympics-and-other-major-sporting-events-usually-increase-inequality-in-the-host-city>; Adam Talbot, Opinion, *Rio 2016: Who Stands to Benefit from a Successful Olympics?*, NEWSWEEK (Apr. 30, 2016, 5:02 AM), <http://www.newsweek.com/rio-2016-who-stands-benefit-successful-olympics-453094>.

The organization of global sporting events, such as the Olympics and World Cup, have an extensive history of exclusively benefitting the elite and well-connected upper class of the host country.³⁶³ In Brazil, the 2014 World Cup and 2016 Olympics have been used pretextually for Brazilian officials to initiate a “social cleansing” of prominent Rio de Janeiro properties.³⁶⁴ As substantial public investment funnels into new infrastructure put in place for these major events, property prices of the surrounding areas surge in response.³⁶⁵

Human Rights Advisor of Amnesty International Brazil, Renata Neder, suggested that the process of gentrification taking place throughout Rio de Janeiro in anticipation of the 2014 World Cup and 2016 Olympics reveals how the government sees the city: “[I]t is no longer a place for residents, but as a business to sell to foreign investors. That’s what the World Cup is about.”³⁶⁶ The opportunities for business development in the wake of hosting a mega event are unprecedented in terms of foreign interest in adjacent properties.³⁶⁷ Brazil has capitalized upon the lucrative, global limelight with utter disregard for the human rights of its most vulnerable and indigent population.³⁶⁸

As Rio de Janeiro infrastructure was put into place in preparation for the World Cup and Olympics, the city’s real estate prices skyrocketed.³⁶⁹ The police pacification process, while improving safety, also contributed to rising prices. For example, Vidigal was one of Rio’s most notorious favelas before the City jailed many of the drug traffickers previously in charge.³⁷⁰ Real estate advocacy groups estimate that within seventy-two hours of the police taking control of Vidigal, the neighboring property prices rose by fifty percent, effectively pricing out thousands of native families in the process.³⁷¹ The exodus of the original poorer residents made the new wave of investor- and owner-occupied real estate transactions possible. While some residents asserted that the safer environment was due to the increased police presence in the

³⁶³ See Norgaard, *supra* note 362; Talbot, *supra* note 362.

³⁶⁴ Owen Gibson & Jonathan Watts, *World Cup: Rio Favelas Being ‘Socially Cleansed’ in Runup to Sporting Events*, GUARDIAN (Dec. 5, 2013, 12:58 PM), <https://www.theguardian.com/world/2013/dec/05/world-cup-favelas-socially-cleansed-olympics>.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ Francesca Steele, *Brazil Property: Buyers Target Homes in Rio’s ‘Pacified’ Favelas*, FIN. TIMES (Sept. 13, 2013), <http://www.ft.com/cms/s/2/5a4c57ea-1612-11e3-a57d-00144fea bdc0.html>.

³⁷⁰ Nick Boulos, *A Fresh Perspective on Rio from Its Most Notorious Favela*, TELEGRAPH (Aug. 4, 2016, 5:52 PM), <http://www.telegraph.co.uk/travel/destinations/south-america/brazil/articles/a-fresh-perspective-on-rio-from-one-of-its-most-notorious-favelas>.

³⁷¹ Steele, *supra* note 369.

favelas, contentious property ownership disputes remained commonplace.³⁷²

In 2013, a local resident in the Vidigal area, Andreas Wieland, “won a dispute over his ownership” of a popular Vidigal nightclub, which he had bought in 2009 for \$10,000.³⁷³ Upon establishing his ownership, he was promptly offered over \$300,000 to sell it.³⁷⁴ The effects of the World Cup and Olympic planning exacerbated an already precarious dichotomy of economic disparity and social development. The cost of living rose as a result of Rio’s role as host city to these major events.³⁷⁵ While the construction boom intended to improve the urban mobility crisis of Rio, the income inequality and construction issues only compounded it.³⁷⁶

While Brazilian officials offered safety concerns for the basis of the forced evictions, this pretense falls flat as the actions taken by the Brazilian officials revealed the true motivation. In defense of the City’s widespread demolition of thousands of longstanding housing structures for the most disenfranchised citizens, Rio de Janeiro’s housing secretary, Jorge Bittar, said the demolition was part of a multi-million dollar project to transform the area developed for the World Cup.³⁷⁷ Bittar justified the systematic demolitions as necessary to develop the land into the epicenter of the World Cup festivities.³⁷⁸ While the areas marked for demolition lacked basic infrastructure, such as running water, electricity, or school systems, the Rio de Janeiro housing authorities prioritized the construction of lavish cultural centers, tree-lined plazas, and cinemas.³⁷⁹ Bittar recognized that the areas targeted for demolition were very poor communities, but he blindly suggested that the forced removals experienced by these residents were meant to offer the affected families dignity.³⁸⁰

Despite the noble reasoning that Rio de Janeiro authorities offered for the forced removals, the ensuing rampant destruction devastated the

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ Vincent Bevins, *Ipanema Has It All, Including Skyrocketing City Home Prices*, N.Y. TIMES (Jan. 19, 2012), <http://www.nytimes.com/2012/01/20/greathomesanddestinations/20iht-reipanema20.html>.

³⁷⁶ Paula Daibert, *Brazil’s Evicted ‘Won’t Celebrate World Cup’*, ALJAZEERA (May 26, 2014), <http://www.aljazeera.com/indepth/features/2014/05/brazil-evicted-won-celebrate-world-cup-201452012437552695.html>.

³⁷⁷ Tom Phillips, *Rio World Cup Demolitions Leave Favela Families Trapped in Ghost Town*, GUARDIAN (Apr. 26, 2011, 10:57 AM), <http://www.theguardian.com/world/2011/apr/26/favela-ghost-town-rio-world-cup>.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

livelihood of an entire sub-culture.³⁸¹ Favela residents reported waking up to the demolition of their community without any prior indication, resulting in thousands of residents living amongst the rubble of their former communities.³⁸² When asked why city-sponsored demolition began in favelas still inhabited, Bittar blamed a construction company for not finishing new housing in time for the displaced inhabitants to relocate.³⁸³ While Rio de Janeiro's government claimed that the demolitions were necessary to rectify the unsafe living conditions of favela residents, children were left to live and play amid the wreckage that used to be their functioning community.³⁸⁴

The Rio de Janeiro government undertook initial demolitions in November 2010 to transform the area designated to become a parking lot for the Maracanã Stadium.³⁸⁵ Favela do Metrô, a Rio de Janeiro community that was home to over 700 families, faced the brunt of the lofty development goals of the City.³⁸⁶ Seasonal workers, who eventually established their own livelihoods and businesses in the favela, constructed Favela do Metrô in the late 1970s.³⁸⁷ By 2010, Favela do Metrô was a self-governing community comprised of 126 small family businesses.³⁸⁸ It was common for several generations to live in one structure within the favela, with that one structure providing not only shelter, but also the livelihood for the entire family.³⁸⁹ A family would run a small business out of the first floor of its dwelling, offering income security and housing for future generations. In a community with slight public infrastructure, a family's hand-constructed shelter was often the only means to endure systemic poverty.

As the City began unannounced and sporadic rounds of demolitions throughout Favela do Metrô, living conditions disintegrated from the prior self-governed community.³⁹⁰ Causing widespread "panic and despair," the City began demolition on inhabited

³⁸¹ See NAT'L COALITION OF LOCAL COMMS. FOR A PEOPLE'S WORLD CUP & OLYMPICS, MEGA-EVENTS AND HUMAN RIGHTS VIOLATIONS IN BRAZIL 13-14 (2012), [http://www.conectas.org/arquivos-site/Sumario_eng%20\(1\).pdf](http://www.conectas.org/arquivos-site/Sumario_eng%20(1).pdf).

³⁸² *Id.*

³⁸³ Phillips, *supra* note 377.

³⁸⁴ *Id.*

³⁸⁵ Elena Hodges, *The World Cup Is Underway. What Has Become of Favela do Metrô?*, RIOONWATCH (June 21, 2014), <http://www.rioonwatch.org/?p=16094>; Phillips, *supra* note 377.

³⁸⁶ Hodges, *supra* note 385.

³⁸⁷ Phillips, *supra* note 377.

³⁸⁸ Hodges, *supra* note 385.

³⁸⁹ See Susie Seefelt Lesieutre, *From Favela to Bairro: Rio's Neighborhoods in Transition*, DRCLAS NEWS (David Rockefeller Ctr. for Latin Am. Studies, Harvard Univ., Boston, Mass.), Winter 2001, at 53, 53 ("Many times these favelas are home to generations of the same family. Relocating them disrupts their already adverse lives, removing them from longstanding social ties and jobs.").

³⁹⁰ Hodges, *supra* note 385.

homes, “some with the occupants’ belongings still inside.”³⁹¹ A fraction of the most vulnerable residents were relocated to other housing over forty miles away in Cosmos, West Zone.³⁹² Even those lucky enough to accept resettlement offers faced extreme hardships, as the isolated relocations offered few job prospects.³⁹³ Because the City failed to manage matters properly and displayed significant negligence, drug users and criminal enterprises flocked to the half-demolished, abandoned structures, followed by problems with mosquitos carrying dengue as well as with rats.³⁹⁴ Shortly thereafter, the City halted all garbage disposal services throughout Favela do Metrô, worsening the conditions for the remaining residents.³⁹⁵ As the quality of life declined, officials used the exact health concerns that initial demolitions had caused to explain why more removals were necessary.³⁹⁶

Countless Rio de Janeiro favelas faced systemic evictions at the hands of the Brazilian government after centuries of low public investment in infrastructure, and of the failure to recognize property titles.³⁹⁷ Even those families that consented to relocation to other areas based on Rio officials’ promise of an improvement in their difficult living conditions experienced violations of their rights along the way.³⁹⁸ Residents were frequently coerced and threatened by Rio de Janeiro officials to intimidate the residents into consenting to a meager relocation package.³⁹⁹ The minority of residents that were offered any reparations whatsoever often were relocated to distant, isolated areas with even less access to services and infrastructure than their previous land had.⁴⁰⁰ Those who accepted the government’s offer of resettlement received compensation below the market price for their property.⁴⁰¹ Brazil researchers received reports that favela residents who refused to accept the meager compensation offers had effectively been forced out of their communities after authorities initiated large-scale demolitions

³⁹¹ Felicity Clarke, *The Never-Ending Eviction: Demolition, Protest and Police Violence Once Again Rock Favela do Metrô*, RIOONWATCH (Jan. 9, 2014), <http://www.rioonwatch.org/?p=12978>.

³⁹² *Id.*

³⁹³ See Douglas, *supra* note 8.

³⁹⁴ See Hodges, *supra* note 385.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ See *supra* Part I.

³⁹⁸ See Daibert, *supra* note 376.

³⁹⁹ Ben Tavener, *The Olympics Are Screwing Rio de Janeiro’s Poorest Citizens out of Housing*, VICE NEWS (Apr. 16, 2015, 3:40 PM), <https://news.vice.com/article/the-olympics-are-screwing-rio-de-janeiros-poorest-citizens-out-of-housing>.

⁴⁰⁰ Daibert, *supra* note 376.

⁴⁰¹ *Id.*

of the favela communities, while hundreds of families had yet to be relocated or remained.⁴⁰²

Despite the destruction, hundreds of Favela do Metrô families who declined to abandon their livelihoods were left to live in the semi-demolished structures that remained in the construction's wake.⁴⁰³ Other families with no other options remained in the construction site for over three years while awaiting the promise of resettlement and compensation.⁴⁰⁴ The City's complete disregard for the rights of the favela residents left countless children, elderly, and pregnant women with few options for resettlement.⁴⁰⁵

Sporadic destruction and inconsistent construction ensued for three years, until Rio de Janeiro police violently evicted those remaining in the rubble of Favela do Metrô, with no prospect of compensation or resettlement.⁴⁰⁶ The police gave no justification for the militaristic tactics employed to evict the remaining destitute families using rubber bullets, pepper spray, and other similar techniques.⁴⁰⁷

City authorities predicated the destruction of Favela do Metrô as necessary due to its close proximity to the site of the Maracanã Stadium.⁴⁰⁸ The City's plans for the favela property were never officially disclosed, though the construction contracts indicated that the property was to be developed into a parking lot and commercial strip for the nearby stadium.⁴⁰⁹ Ultimately, the mass destruction of Favela do Metrô under the World Cup agenda was in vain, as neither a parking lot nor any redevelopment of the site has occurred.⁴¹⁰ As of this writing, abandoned construction materials are scattered throughout mountains of rubble as the land remains unutilized.⁴¹¹ The chaos and panic inflicted under Rio de Janeiro authorities in Favela do Metrô has yet to serve any purpose.⁴¹²

It is useful to delve into some of the history of Rio de Janeiro's selection as an Olympic and FIFA World Cup site before further

⁴⁰² Phillips, *supra* note 377.

⁴⁰³ *Id.*; Hodges, *supra* note 385.

⁴⁰⁴ Clarke, *supra* note 391.

⁴⁰⁵ Phillips, *supra* note 377.

⁴⁰⁶ Hodges, *supra* note 385.

⁴⁰⁷ *Id.*

⁴⁰⁸ See Vinod Sreeharsha, *Sporting Events Leave Rio's Favela Residents Terrified*, MIAMI HERALD (Dec. 8, 2014, 9:44 PM), <http://www.miamiherald.com/news/nation-world/world/americas/article4376989.html>.

⁴⁰⁹ David Sim, *Rio 2016: Favela Residents Refuse to Move out to Make Way for Olympic Construction*, INT'L BUS. TIMES (Dec. 30, 2015, 10:55 GMT), <http://www.ibtimes.co.uk/rio-2016-favela-residents-refuse-move-out-make-way-olympic-construction-photo-report-1512821>.

⁴¹⁰ Hodges, *supra* note 385.

⁴¹¹ See *id.*

⁴¹² *Id.*

examining the consequences of that decision. Initially, the Executive Council of the Brazilian Olympic Committee (BOC) conducted a technical analysis to evaluate the conditions of Rio de Janeiro as a viable city to host the 2016 Summer Olympics, whose findings were then incorporated into the analysis of the International Olympic Committee (IOC).⁴¹³ With the support of the Brazilian government and the Mayor of Rio de Janeiro, the BOC nominated the city to host the 2016 Summer Olympics.⁴¹⁴

Rio's bid was considered by the IOC based upon the BOC's application file as well as a technical analysis by the IOC's Evaluation Commission on the City's potential for staging successful Olympic Games.⁴¹⁵ In selecting a host city, the Evaluation Commission's 2016 report commended Rio's strong government support, legal backing, and public opinion.⁴¹⁶ The report outlined Rio de Janeiro's biggest weakness as a potential host city stemming from the recurrent issues of violence potentially affecting the security and safety of holding Olympic events.⁴¹⁷ The IOC's concern for the safety of the events may have encouraged Brazilian officials' intensive police intrusion into many favelas neighboring Rio de Janeiro.⁴¹⁸ Despite these security concerns, the Brazilian government triumphantly celebrated when the IOC's Evaluation Commission selected Rio de Janeiro as the first city in South America to host the Olympic games.⁴¹⁹ In preparation for the Olympic events, Brazilian officials built and redeveloped many venues to meet the demands of holding the festivities, many of which sat empty just months later.⁴²⁰

⁴¹³ INT'L OLYMPIC COMM. CANDIDATURE ACCEPTANCE WORKING GRP., GAMES OF THE XXXI OLYMPIAD 2016 WORKING GROUP REPORT (2008) [hereinafter 2016 OLYMPIAD REPORT], <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXI-Olympiad-2016/Working-Group-Report-for-the-Games-of-the-XXXI-Olympiad-in-2016.pdf>.

⁴¹⁴ Anderson Gomes, *COB Lança Candidatura do Rio para Olimpíadas de 2016*, UOL ESPORTE (Sept. 1, 2016, 10:24 AM), <http://esporte.uol.com.br/outros/ultimas/2006/09/01/ult807u851.jhtm>.

⁴¹⁵ 2016 OLYMPIAD REPORT, *supra* note 413.

⁴¹⁶ *Id.* at 20.

⁴¹⁷ *Id.* at 78.

⁴¹⁸ See Jonathan Watts, *World Cup 2014: Rio's Favela Pacification Turns into Slick Operation*, GUARDIAN (Oct. 7, 2013, 6:33 AM), <https://www.theguardian.com/world/2013/oct/07/2014-world-cup-rio-favela-pacification>.

⁴¹⁹ Juliet Macur, *Rio Wins 2016 Olympics in a First for South America*, N.Y. TIMES (Oct. 2, 2009), http://www.nytimes.com/2009/10/03/sports/03olympics.html?pagewanted=all&_r=1.

⁴²⁰ Nancy Armour, *Six Months After Olympics, Rio Is Falling Apart and the IOC Should Have Seen It Coming*, USA TODAY (Feb. 22, 2017, 8:28 AM), <https://www.usatoday.com/story/sports/columnist/nancy-armour/2017/02/21/rio-olympics-venues-disrepair-wasteland/98220698>.

In 2007, FIFA, the world soccer body, announced that the 2014 FIFA World Cup tournament would be held in Brazil.⁴²¹ Upon selection, government officials promised to redirect all public resources to meet FIFA's stadium requirements and to develop a city that can handle the mass influx of event visitors.⁴²² Brazil's planning of the 2014 World Cup was riddled with inefficiency and controversy from the initial stage, which served to exacerbate the underlying social and economic tensions.⁴²³ While awarded the 2014 World Cup in 2007, Brazil wasted almost two whole years in designating which cities would host the games.⁴²⁴ The vast infrastructure requirements dictated by FIFA to the Brazilian authorities prompted the largest public display of anger in the country in over twenty years.⁴²⁵ The plans enacted by Brazilian officials showed minimal concern for public opinion.⁴²⁶ The priority of constructing multi-billion dollar mega stadiums outweighed the need to improve the underfunded hospitals and schools of a country replete with slums.⁴²⁷

To construct the necessary facilities, Brazilian officials violated the rights of an estimated 250,000 residents by systematically removing properties with force. These forced takings had little effect on the elite and wealthy.⁴²⁸ The exact count of those displaced is a fleeting number.⁴²⁹ The majority of favela residents affected by the takings had spent generations maintaining and improving their properties, despite having no legal protection to their land.⁴³⁰

Vila Autódromo, a well-organized favela within the state of Rio de Janeiro, has a well-documented history of organization and

⁴²¹ *Brazil Confirmed as 2014 Hosts*, FIFA.COM (Oct. 30, 2007), <http://www.fifa.com/worldcup/news/y=2007/m=10/news=brazil-confirmed-2014-hosts-625695.html>.

⁴²² Tariq Panja, *FIFA's \$100 Million to Boost Brazil as World Cup Gift*, BLOOMBERG (Nov. 10, 2014, 11:00 PM), <https://www.bloomberg.com/news/articles/2014-11-10/fifa-s-100-million-to-boost-brazil-soccer-as-world-cup>.

⁴²³ Arjyo Mitra, *An Ethical Analysis of the 2014 FIFA World Cup in Brazil*, SEVEN PILLARS INST. (Sept. 8, 2014), <http://sevenpillarsinstitute.org/case-studies/ethical-analysis-of-the-2014-fifa-world-cup-brazil>.

⁴²⁴ Andrew Downie, *Brazil's World Cup Protests Intensify as Country's Politicians and FIFA Squirm*, TIME (June 21, 2013), <http://world.time.com/2013/06/21/brazils-world-cup-protests-intensify-as-countrys-politicians-and-fifa-squirm>.

⁴²⁵ *Id.*

⁴²⁶ *See id.*; see also Anderson Antunes, *How the 2014 FIFA World Cup Became the Worst Publicity Stunt in History*, FORBES (May 27, 2014, 5:50 PM), <https://www.forbes.com/sites/andersonantunes/2014/05/27/how-the-2014-fifa-world-cup-became-the-worse-publicity-stunt-in-history/#4f52b7fc2b2f>.

⁴²⁷ Downie, *supra* note 424.

⁴²⁸ *See id.*

⁴²⁹ At one point, it was believed that 30,000 people were relocated. Barney Ronay, *World Cup 2014: Brazil's Horribly Invasive Footballing Trauma*, GUARDIAN (Jan. 2, 2014, 2:00 PM), <https://www.theguardian.com/football/2014/jan/02/world-cup-2014-brazil-football-trauma>.

⁴³⁰ Anthony, *supra* note 66, at 362–63.

development.⁴³¹ Local fishermen settled Vila Autódromo for its close proximity to a nearby lagoon.⁴³² In the following couple of decades, construction workers and other local migrants flocked to the expanding community.⁴³³ Despite the lack of government support, in 1987, the community joined together to found an encompassing residents' association to cultivate infrastructure such as water and electricity.⁴³⁴ In 1992, the governor of the state of Rio de Janeiro granted 354 households a lease for the land for a thirty-three-year period.⁴³⁵ The granted lease was subsequently extended to ninety-nine years in 1994 by the governor of Rio de Janeiro.⁴³⁶ By 2005, as an additional security against government evictions, Rio de Janeiro officials declared part of Vila Autódromo to be a "Special Zone of Social Interest."⁴³⁷ The formal nature of Rio officials' various recognition of Vila Autódromo as a legally occupied community suggests that the community was to be protected from government removals.

However, the safeguards for which these residents fought ultimately were obtained in vain because, in 2009, Rio officials began discussion of relocating the residents of Vila Autódromo to accommodate the necessary Olympic infrastructure.⁴³⁸ Therein, the City formally committed to the IOC a plan to connect competition venues and existing transportation routes throughout Rio, now known as TransOlimpica. The proposed route was designated to cut directly through Vila Autódromo, despite countless other video projections demonstrating that the planned expansion of travel routes could have spared or upgraded the community to comply with the Olympic infrastructure needs.⁴³⁹ Fabricio Leal de Oliveira, an urban planning

⁴³¹ See, e.g., Catherine Osborn, *Vila Autódromo Unites in Protest Following Weeks of Pressure*, RIOONWATCH (July 23, 2013), <http://www.rioonwatch.org/?p=10496>.

⁴³² M. Warburg Sørensen, *Mega Events in Rio de Janeiro—The Case of Vila Autódromo: Community Planning as Resistance to Forced Evictions* 30 (2013) (unpublished M.A. thesis, Roskilde University), http://www.academia.edu/3005429/Mega_Events_in_Rio_de_Janeiro_The_Case_of_Vila_Aut%C3%B3dromo_Community_Planning_as_Resistance_to_Forced_Evictions.

⁴³³ See Jo Griffin, *Change Beckons for Vila Autódromo, the Favela that Got in the Rio Olympics' Way*, GUARDIAN (Apr. 26, 2016, 7:38 AM), <https://www.theguardian.com/global-development/2016/apr/26/rio-de-janeiro-favela-change-vila-autodromo-favela-olympics>.

⁴³⁴ Veronique Dupont et al., *Settlement Stories I: A Question of Knowledge?*, in *THE POLITICS OF SLUMS IN THE GLOBAL SOUTH: URBAN INFORMALITY IN BRAZIL, INDIA, SOUTH AFRICA AND PERU* 79, 101 (Veronique Dupont et al. eds., 2016).

⁴³⁵ Lawrence Vale & Annemarie Gray, *The Displacement Decathlon*, PLACES J. (Apr. 2013), <https://placesjournal.org/article/the-displacement-decathlon>.

⁴³⁶ Felicity Clarke, *Vila Autódromo Unites Thousands in Landmark Demonstration*, RIOONWATCH (June 29, 2012), <http://www.rioonwatch.org/?p=4141>.

⁴³⁷ Vale & Gray, *supra* note 435.

⁴³⁸ *Id.*

⁴³⁹ See Luke Milner, *Rio's Olympic Legacy and Vila Autódromo*, RIO TIMES (Mar. 6, 2012), <http://riotimesonline.com/brazil-news/rio-politics/rios-olympic-legacy-and-vila-autodromo>.

professor from the Federal University of Rio de Janeiro, explained that Vila Autódromo had “favorable conditions for upgrading,” unlike the challenges many other Rio favelas would present.⁴⁴⁰ Oliveira went on to distinguish Vila Autódromo from the majority of other Rio de Janeiro favelas: “Normally favelas are narrower and denser with smaller plots, which is much more difficult to upgrade. Here the plots are relatively regular. . . . If the City wanted, they’d have urbanized this a long time ago.”⁴⁴¹ The environmental characteristics of Vila Autódromo are consistent with those of the adjacent, upscale neighborhood of Barra da Tijuca, with defined roads, plots, and well-built structures.⁴⁴² Ultimately, Rio de Janeiro’s assertion that the demolition of Vila Autódromo was necessary to construct the Olympic infrastructure proved deceitful and inaccurate.⁴⁴³

The City’s strong intent to displace Vila Autódromo became evident, as resident and activist Jane Nascimento de Oliveira stated that she first learned of plans for her community’s removal through a television broadcast by Rio’s mayor, Eduardo Paes.⁴⁴⁴ Paes explained, through media proxy, that the land leases to Vila Autódromo instated in 1994 by former governor Leonel de Moura Brizola were not legally recognized under his administration.⁴⁴⁵ Paes went on to arbitrarily denounce the 1994 documents provided to Vila Autódromo residents as inconsequential “little [pieces of] paper.”⁴⁴⁶ Thereafter, the City took action to revoke the community’s Special Zone of Social Interest status to bolster the logic behind resettlement.⁴⁴⁷ Rio de Janeiro officials explicitly nullified property leases legally issued under a previous City administration to ease the City’s ability to satisfy Olympic contracts.⁴⁴⁸

In March 2010, in response to the stringent actions taken by officials, Vila Autódromo community representatives met with city government officials, the state housing secretary, public defenders, and activist groups in hopes of conciliation.⁴⁴⁹ City officials sought to justify

⁴⁴⁰ Felicity Clarke, *Vila Autódromo Creates Upgrading Plan in Fight Against Olympic Eviction*, RIOONWATCH (July 26, 2012), <http://www.rioonwatch.org/?p=4405>.

⁴⁴¹ *Id.*

⁴⁴² See Luísa Cortés, *Plano de Urbanização para a Vila Autódromo, no Rio de Janeiro, é Apresentado*, INFRAESTRUTURA (Mar. 31, 2016), <http://infraestruturaurbana.pini.com.br/solucoes-tecnicas/urbanismo/plano-de-urbanizacao-para-a-vila-autodromo-no-rio-de-370049-1.aspx>.

⁴⁴³ See Watts, *supra* note 9.

⁴⁴⁴ Andréia Coutinho et al., *Jane’s Awakening*, RIOONWATCH (June 10, 2011), <http://www.rioonwatch.org/?p=1290>.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ Vale & Grey, *supra* note 435.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

the City's plan for resettlement by diverting the blame to the IOC, suggesting that the IOC designated the demolition of Vila Autódromo as necessary.⁴⁵⁰ City officials continued to justify the demolition of Vila Autódromo with various, fluctuating reasons. The City later introduced a new rationale, suggesting that safer conditions needed to be secured for the new Olympic structures.⁴⁵¹ The different safety concerns asserted alternated between prioritizing the safety for Vila Autódromo residents, and community safety from these same residents.⁴⁵² City officials argued that Vila Autódromo posed an environmental risk and must be relocated.⁴⁵³ In response to the inconsistent rationales provided by the City, residents and community supporters unified in front of the Rio de Janeiro City Hall to ask for both formal documentation and clearer description of the presented environmental claims.⁴⁵⁴

In October 2011, based on information provided by City officials, the Rio newspaper *O Globo* reported that Vila Autódromo would be removed in whole by 2013.⁴⁵⁵ According to Theresa Williamson,⁴⁵⁶ the City employed a typical method of intimidation by using the local newspaper to first announce the plans for forced removals of Vila Autódromo, prior to the plans even being finalized.⁴⁵⁷ Williamson went on to specify that residents threatened with relocation had to be offered three options by municipal law: monetary compensation, nearby housing, or assisted purchase, stipulating that there should be "no removal of established communities" unless the area presents a crucial risk to the population.⁴⁵⁸

The community support of Vila Autódromo, along with strong resident activism against city officials, strengthened the community's efforts to fight back.⁴⁵⁹ Throughout 2012, Vila Autódromo consistently unified to combat the power of the City's redevelopment plans.⁴⁶⁰ The

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ Ellen Marrone, *A Public Defense of Rio's Public Defenders*, RIOONWATCH (Mar. 6, 2011), <http://www.rioonwatch.org/?p=739>.

⁴⁵⁴ Vale & Gray, *supra* note 435.

⁴⁵⁵ *Id.*

⁴⁵⁶ Theresa Williamson is a City Planner and Executive Director of the activist network Catalytic Communities, which has been closely following the Vila Autódromo case. *See Theresa Williamson's Bio*, CATCOMM.ORG, <http://catcomm.org/theresa-williamson> (last visited Apr. 30, 2017).

⁴⁵⁷ Vale & Gray, *supra* note 435.

⁴⁵⁸ Theresa Williamson, *Opinion, Resettlement Cannot Represent a Step Backwards in the Development of Communities*, RIOONWATCH (Oct. 12, 2012), <http://www.rioonwatch.org/?p=5577>.

⁴⁵⁹ *See generally* Sørensen, *supra* note 432.

⁴⁶⁰ Lia Timson, *Rio's Vila Autodromo, the Other Olympic Legacy*, SYDNEY MORNING HERALD (Aug. 17, 2016), <http://www.smh.com.au/sport/olympics/rio-2016/rios-vila-autodromo-the>

Vila Autódromo residents' association organized the community to educate residents about their rights and undermine the government's intimidation tactics.⁴⁶¹ The turmoil of Vila Autódromo gained national attention when activists shot a video filming government officials intimidating residents during a "registration for relocation" drive, a formal process mandated when people hold legal property claims.⁴⁶²

The efforts of community activists proved beneficial, as Vila Autódromo gained legal advisors and additional resources to fight the government's circumvention of the legal requirements.⁴⁶³ The residents' association collaborated with public defenders to record community members who wished to stay in Vila Autódromo by conducting door-to-door interviews to amass a community census and inform residents of their rights.⁴⁶⁴ The community census confirmed that among the approximately 720 families owning homes in the community, well over half of the families affirmed their wish to remain.⁴⁶⁵ This activism proved critical as it prevented city officials from being able to argue that a majority of Vila Autódromo residents wanted to leave, a standard tactic in forced removal regimes.

B. *To Title or Not to Title?*

The dramatic way in which the Brazilian government has treated citizens during removals to make way for facilities for the World Cup and Olympics is illustrative of a larger principle, which is that even a decently well-functioning informal property system puts politically powerless individuals at the mercy of the government's whims. While the absence of title is not the only factor explaining the actions of the Brazilian government toward its people, it contributes to the sense that favela residents lack legitimacy and are thereby holders of privileges rather than of rights. The informal property system allows residents to get by on a daily basis and effectuate transfers, but their ability to invest in their property and use it as collateral is diminished via the lack of title. In his seminal work on the subject, Hernando de Soto argued that property rights are a key component to the formation of capital and that a titling system is crucial to allow individuals to secure property rights

other-olympic-legacy-20160813-gqrygm.html.

⁴⁶¹ Vale & Gray, *supra* note 435.

⁴⁶² *Id.*

⁴⁶³ See Timson, *supra* note 460.

⁴⁶⁴ Kate Steiker-Ginzberg, *Vila Autódromo Under Pressure from City to Accept Resettlement Housing*, RIOONWATCH (Mar. 22, 2013), <http://www.rioonwatch.org/?p=7832>.

⁴⁶⁵ Vale & Gray, *supra* note 435.

and use land to secure loans.⁴⁶⁶ Martha Nussbaum went a step further and listed “[b]eing able to hold property (both land and movable goods), and having property rights on an equal basis with others” as necessary conditions of “a life worthy of human dignity.”⁴⁶⁷ Indeed, the resentment of favela residents at not being treated like the inhabitants of the *asfalto*⁴⁶⁸ is palpable.

Rio de Janeiro’s experience with informal property rights shows some of the limitations of the type of self-organization described most famously in Robert Ellickson’s work, *Order Without Law*.⁴⁶⁹ Informal property systems have been criticized for a number of reasons over the years, including their high propensity for triggering violence.⁴⁷⁰ Certainly, the residents’ associations are not models of providers of due process, and favela inhabitants lack significant recourse if they feel wronged. Title is a prerequisite to accessing the courts both for inter-resident disputes and, more importantly, when the government seeks to dispossess residents.⁴⁷¹ Brazil has specific laws in place for the exercise of eminent domain on the *asfalto*. The laws delineate both the conditions under which eminent domain can take place—which is only in situations where the government can prove public utility or social interest—and what constitutes fair compensation.⁴⁷² The way that favela residents can access this compensation as a matter of right is through the formalization of ownership, which requires access to the same documentation as everyone else, mainly in the form of title.⁴⁷³

In addition to favela inhabitants’ struggle with the government and the *cartório* system, the residents’ associations have a vested interest in

⁴⁶⁶ See generally HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000).

⁴⁶⁷ MARTHA C. NUSSBAUM, *FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP* 77–78 (2006).

⁴⁶⁸

Nowhere is this more evident than in the contrast between the *favelas* and affluent paved areas of the city, described in the everyday language of *Cariocas*, as the dichotomy *morro/asfalto* (hill/asphalt), a signifier everyone understands and uses to navigate the complexity of divisions and lines of segregation that characterise Rio.

Sandra Jovchelovitch, *Self, Community and Urban Frontiers in Rio de Janeiro*, LSECITIES, <https://lsecities.net/media/objects/articles/self-community-and-urban-frontiers-in-rio-de-janeiro/en-gb> (last visited Apr. 30, 2017).

⁴⁶⁹ ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

⁴⁷⁰ See, e.g., Stephen Clowney, *Rule of Flesh and Bone: The Dark Side of Informal Property Rights*, 2015 U. ILL. L. REV. 59.

⁴⁷¹ Lee J. Alston et al., *The Determinants and Impact of Property Rights: Land Titles on the Brazilian Frontier*, 12 J.L. ECON. & ORG. 25, 28 (1996).

⁴⁷² Lei No. 3.365, de 21 de Junho de 1941, D.O.U. de 18.7.1941.

⁴⁷³ See Interview with Favela Residents, *supra* note 145, at 33–34; see also Douglas, *supra* note 8.

keeping individual title out of the hands of the inhabitants. For example, the *Cada Familia* program did not simply fail due to a lack of government resources; rather the residents' associations refused to

collaborate because it was neither in their financial nor their political interest to do so. . . . [D]istribution of property title would have eliminated their ability to parcel out new lots in the favela[, and] [p]olitically, it would have weakened their role as the intermediary between local residents and state power.⁴⁷⁴

Nominally, the residents' associations have at times opposed title due to concerns about gentrification.⁴⁷⁵ Even among those skeptical of the importance of individual title, however, some have questioned the level of gentrification likely to occur given that

[e]ven if the head of the household was able to move, it was unlikely that he or she was able to afford to buy a space outside the favela that was both large enough and close enough to the city to bring the extended family along. The cost of such a move would be prohibitive or mean giving up work.⁴⁷⁶

To the extent that gentrification does occur, it is not all created equal. For instance, some studies about gentrification in the United States suggest that this effect does not cause widespread displacement and can in fact motivate long-term residents to stay because the neighborhood becomes more attractive.⁴⁷⁷ At times, this will also involve the opening of businesses that not only further blur the lines between the favelas and the *asfalto*, but also offer employment opportunities for residents. It stands to reason that investors in such businesses would find the proposition of starting up in a favela more attractive if it came with the reliability of title.

Certainly, at times the sales price increases inherent in gentrification⁴⁷⁸ may prove irresistible to residents pondering letting go of their property. It is believed that pacification alone has raised real estate prices in the beneficiary favelas by about forty to fifty percent.⁴⁷⁹ The greater the price increases, however, the less unreasonable the

⁴⁷⁴ MCCANN, *supra* note 179, at 85.

⁴⁷⁵ Interview with Favela Residents, *supra* note 145, at 10–11, 57, 60.

⁴⁷⁶ PERLMAN, FAVELA, *supra* note 24, at 234.

⁴⁷⁷ Lance Freeman, Opinion, *Five Myths About Gentrification*, WASH. POST (June 3, 2016), https://www.washingtonpost.com/opinions/five-myths-about-gentrification/2016/06/03/b6c80e56-1ba5-11e6-8c7b-6931e66333e7_story.html.

⁴⁷⁸ Chris Arsenault, *Rio's 'Favela Chic' Phenomenon Could Price Slum Residents out of Their Homes*, BUS. INSIDER (Aug. 15, 2016, 12:17 AM), <http://www.businessinsider.com/r-favela-chic-will-price-us-out-of-our-homes-rios-slum-residents-speak-out-2016-8>.

⁴⁷⁹ Steele, *supra* note 369; see also Chris Arsenault, *Meet the Brazilian Man Who Sells Property Nobody Owns*, REUTERS (May 18, 2016, 9:19 AM), <http://www.reuters.com/article/us-brazil-landrights-idUSKCN0Y91R0>.

decision to sell may represent. This may be especially true for specific segments of the population. For example, the elderly may no longer need to remain located as closely to places of employment and could be benefitted by receiving large lump sum payments that allow them to retire earlier or under better conditions, albeit in a neighborhood farther away from the center. The effects of individual title in Rio de Janeiro will have differential consequences just like it does in countries that already possess formalized property systems such as the United States.

It is the case that titling alone does not resolve the problem of lagging economic development. One recent empirical study focused on Peru questioned de Soto's conclusions about the use of land title as a means to secure property rights, though it appears that part of the problem may have consisted of the fact that the titling in question lacked appropriate enforcement mechanisms.⁴⁸⁰ Some have also questioned whether Rio de Janeiro's favela inhabitants are actually willing to take the risk of using their homes as collateral given the uncertainties inherent in securing steady employment.⁴⁸¹ The usefulness of title is thus potentially wrapped up in numerous other complications, such as the lack of trust in many parts of the Brazilian government and the widespread general economic uncertainty from which the country suffers. One open question, as mentioned previously, is also to what extent favela residents worry that the consequences of owning title will involve paying property taxes. Some use the lack of title as a mechanism not to pay taxes (whether because they cannot afford them or simply do not wish to pay).⁴⁸² As described, residents would also become subject to zoning regulations and building codes after acquiring title.⁴⁸³ Eighty percent of the favela residents that scholar Janice Perlman interviewed stated that "they would like to have legal ownership of their property but only if it did not mean incurring land taxes and service fees—especially since they will still be excluded from the respect and urban amenities enjoyed by other property owners in the city of Rio."⁴⁸⁴ Perlman suggests a number of solutions to alleviate this problem, including

⁴⁸⁰ Claudia R. Williamson, *The Two Sides of de Soto: Property Rights, Land Titling, and Development*, in 2 THE ANNUAL PROCEEDINGS OF THE WEALTH AND WELL-BEING OF NATIONS 2009–2010, at 95 (Emily Chamlee-Wright & Jennifer Kodi eds., 2010); see also Claudia R. Williamson & Carrie B. Kerekes, *Securing Private Property: Formal Versus Informal Institutions*, 54 J.L. & ECON. 537, 564 (2011) (arguing that the role of informal institutions has been underestimated and that the costs of formal institutions have at times been neglected).

⁴⁸¹ PERLMAN, *FAVELA*, *supra* note 24, at 300.

⁴⁸² *Id.* at 297.

⁴⁸³ See *id.*

⁴⁸⁴ *Id.*

giving a grace period for property taxes and ensuring that favela residents receive the same package of services as the rest of the city.⁴⁸⁵

On balance, the problems with lack of title and the current attitude of the Brazilian government toward favela residents suggest the need for improved mechanisms to obtain the individual title to which the residents have a legal right. The first step is the drastic lowering of the price and bureaucratic hurdles inherent in regularization. The second is a showing on the part of the government that enforcement mechanisms will actually accompany the implementation of title. The third is an educational campaign, along with potential legal change to ensure that the acquisition of title does not come with exorbitant property taxes that continue to encourage favela residents to remain in the shadows.

CONCLUSION

No one solution will fix Brazil's many economic, political, and social problems. Integrating the vast proportion of the population living in the favelas, however, is an important step toward a stabler and better-functioning society. Awarding title to individuals in the favelas will encourage equality between the residents of different parts of Rio de Janeiro and may lower some of the resentment that has built over many years. It would give the residents access to the courts in the case of property disputes. More importantly, it would diminish the government's ability to engage in property takings without disbursing appropriate compensation. Rather than being a privilege whose level remains at the discretion of the State, compensation would become a full-fledged right of favela residents and may disincentivize the government from exercising the power of eminent domain unless absolutely necessary. The case-by-case political process when it comes to removals has already exposed its inability to protect the most vulnerable segments of Rio's society. Awarding title would effectuate in law what is already the case de facto: show that favela residents have been the long-time owners and stewards of their property. It would encourage investments into the bettering of property and enhance the sense of security of the populace. And it would help to ensure that more than five interlocked rings stand between spending dozens of years in a community and being ripped out of it by force.

⁴⁸⁵ *Id.*