MUNICIPAL INTERVENTIONS IN DELIVERING ALTERNATIVE LAND TENURE AND LOW-INCOME HOUSING MARKETS IN BRAZIL

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Summary: The failure of centralized state interventions in urban housing land markets until the 1980s, were largely documented. And, with the reopening of democracy in Brazil, alternative solutions were initiated with some degree of success at municipal levels. Among these, a promising approach initiated at the end of the 1980s aimed at accommodating the urban poor in their existing housing settlements, in recognition of rights to use land for social housing (albeit their present illegal/informal situation). But systematic analysis of these programs is still lacking, and this study contributes to add discussion to the limited extant literature. Therefore, the aim of this paper is to investigate the effectiveness of legal instruments to serve as guarantee for households of disputed land that their permanence in their legalized lots is secure, and that investments are perceived to be permanent.

Key Words: Municipal interventions, alternative land tenure, Brazil.
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I. INTRODUCTION
The failure of centralized state interventions in urban housing land markets until the 1980s, were largely documented. And, with the reopening of democracy in Brazil, alternative solutions were initiated with some degree of success at municipal levels. Among these, a promising approach initiated at the end of the 1980s aimed at accommodating the urban poor in their existing housing settlements, in recognition of rights to use land for social housing (albeit their present illegal/informal situation). But systematic analysis of these programs is still lacking, and this study contributes to add discussion to the limited extant literature. For example, access to urban land for housing has been a major issue for the vast majority of poor families in most developing countries in the last decades. Most recently, the issues related to access to urban land are more acute especially because serviced land or partially serviced land became a highly disputed commodity in the markets. In addition, the demand for clear titles on the part of the markets have intensified access issues, and most importantly for the purposes of this paper, the duration of permanence of the great majority of this population.

Therefore, the aim of this paper is to investigate the effectiveness of legal instruments to serve as guarantee for households of disputed land that their permanence in their legalized lots is secure, and that investments are perceived to be permanent. It investigates the case of Recife and Porto Alegre in Brazil to illustrate the issue and conclusions are drawn on the use of CRRU instrument to secure land tenure.

Data were mainly gathered from in-depth interviews held with housing officials responsible for the promotion of low-income housing settlements in Recife and Porto Alegre. The research focuses on the performance of public interventions on housing land markets through the regularization of illegal housing settlements and the impetus this gives to individuals to sustain their property rights, and to apply for loans using their property as collateral for investments.

Data were also gathered from official documents to measure the performance of municipalities in delivering legalized housing units, the forms of tenure applied, the effective registration of deeds, as well as the degree of public interventions to regulate these housing land markets.

Changes in attitudes towards the recognition of the right to social housing in Brazil are clearly established, as the case studies indicate. However, there are some issues to be overcome, such as flexible responses on the part of the judiciary sector in Brazil to incorporate more alternative tenure options as part of legitimate and recognized rights, the need for more efficient control on the part of the municipality over the legalization process, including the ability to register and validate contracts of real right to use land for housing, and finally, a wider replication of these instruments to impact market performance.

The right to use property rights as collateral for investment may leverage their situation, but on the other hand, it may threaten the sustainability of rights to social housing because the poorest families lack the financial capacity to make monthly payments due to their unstable incomes. To conclude, the crucial variable determining market performance appears to be higher family
income, and not necessarily legal rights to loans using land as collateral. Social policy in Brazil to better target the poor, should have this in focus to multiply effects of the recognition of rights to social housing.

II. PUBLIC POLICY AND ACCESS TO HOUSING LAND FOR THE POOR
In Brazil, as in most Latin American countries, ‘welfare state’ policies were implemented during the military regime (1964-1985). Before this period, housing land provision was undertaken predominantly through the market, with limited state intervention. Since markets were not providing housing land at affordable prices, the poor only gained access to urban land through illegal or informal initiatives, such as land invasions, plot subdivisions, and so forth – a pattern again typical of much of Latin America. Welfare state policies purportedly sought to change that, by controlling the land allocation processes from above. Following the new Brazilian constitution of 1988, municipalities were empowered to set up policies to solve tenure disputes, ameliorate some housing conditions in existing settlements. But no longer did they have an active role in construction, apart from individual initiatives in Porto Alegre, São Paulo, Belo Horizonte, Rio de Janeiro, Salvador, Recife, Fortaleza, and few other cities in Brazil. These experiences have had very little impact on social housing needs as a whole. Even given that incremental changes in social housing are now considered to be a more appropriate form of intervention than the mass housing construction projects of the past, these incremental changes are still localised and have not yet altered the social construction of land rights reform.

Welfare and social policies such as social housing programmes in Brazil, as in most developing countries, have always played an ambivalent role in the country’s development. In the case of Brazil, welfare policies were not instituted as the complementary supporting apparatus of the market economy – the case in many parts of the world and a particular feature of European experience for example. The ‘welfare state’, at least in developing countries such as Brazil, has had a rather different history. First, it developed not as an antidote to the free market but as an instrument of the military dictatorship with specific ends in that era. Second, welfare policies were inevitably never going to play a supporting role to strengthen the market economy, simply because the Brazilian economy was never powerful enough in its own right. Third, the delivery of welfare-oriented urban and housing policies requires strong local administrations. But Brazilian municipalities have always been very weak and unable to tackle a social policy agenda for many reasons, including their incapacity to collect revenues which could facilitate more socially equitable urban and housing policies. In most cases, the municipalities still rely on federal transfer of funds. The potential to develop a local social policy agenda now exists, given the strengthened capabilities which the new institutional reforms of decentralization make possible. Yet, despite nearly two decades of post-military democratisation, just as this window of opportunity opens, the policy agenda at both national and municipal levels has shifted sharply towards market enablement.

More specifically and importantly for the purposes of this paper is the set of policy initiatives adopted in cities like Recife and Porto Alegre, designed to enhance housing options for the urban poor through the delivery of alternative housing land tenure in legalization land tenure programmes. Given the widespread phenomenon of land invasion as the main dynamic of Brazil’s urbanization process, the delivery of CRRU in legalization of land tenure programmes was designed to serve the dual purpose of promoting land tenure security through the legalization of illegal settlements and upgrading the living conditions of existing informal settlements. By
Municipal interventions in delivering alternative land tenure and low-income housing markets in Brazil

shifting from direct intervention to community-based initiatives in line with the reduction of state intervention, the goal of ZEIS was to secure tenure for residents through partial governmental control of the housing market in these circumscribed areas of the cities. The analysis questions the effectiveness of these initiatives.

III. THE CONCESSION OF REAL RIGHT TO USE (CRRU) AND ITS APPROPRIATENESS IN PUBLICLY OWNED LAND IN BRAZIL

The major Brazilian cities are highly urbanized (over 80% of the total population), of which, for most cases, 40% of the total population live in illegal settlements. In these areas, land tenure disputes have become more aggressive (especially on privately owned land), leaving the poor a separate market for publicly owned land occupations. It has been the common practice in the past to tolerate the existence and permanence of low-income settlements on public land (De Souza, 1998, 2001), however, this situation has become less tolerated since competition has also increased on public land. In general, the poor has to compete among themselves for a stake in the market, but more recently, environmental awareness, and historical concerns have limited the availability of public land where the state could tolerate housing settlements. Part of the land is now designated as historical sites, environmental protected areas, etc. In some cases, the poor have to be relocated to other areas, opening space for other uses, and this certainly reduces the total public land stock.

It is now more difficult to accommodate the diversity of interests to use land in urban areas than it was in the past. And more strong regulations have been set up to discipline the use of land in Brazil. For example, according to the Brazilian federal constitution of 1988, it is responsibility of the federal entities (central government, states, federal district, and municipalities) to safeguard and preserve its patrimony (CF, 1988, Art 23). Therefore, it is imperative that public owned land regulations should act in accordance with the constitution (Lima, 2002), since public land is a public patrimony.

Decisions have to be made to limit and control the use of land, and a share of this can be guaranteed for the so-called social housing, in the interest of pursuing the social function of property and the city (CF, 1988). For private land, it can be applied adverse tenure¹, and this instrument transfers property to the occupant as recognition of their acquired property rights due to passage of time.

In terms of public land, adverse possession is not allowed in Brazil. The most common legal instrument applied is the Concession of Real Right to Use (CRRU) land. The law instituting the CRRU was enacted in 1967 (Decree No. 271/67, Art 7 and 8), and it can be applied on both private and public land. However, the use of CRRU on public land for the purposes of securing land tenure for the urban poor in Brazil has not been documented until the late 1980s. Part of this can be credited to the transitional period leading to the re-opening of democracy in Brazil from 1979, and the preceding years which corresponded to the revision of the new constitution of 1988 (1986-1988).

In 1979, there is a crucial benchmark in relation to the move towards the recognition of rights to social housing in Brazil. For example, in Recife, there was the Projeto Recife, financed by the World Bank that clearly initiated the discussion for the creation of Special Zones of Social

¹ Adverse possession (usocapiao especial urbano) can be prescribed on private land up to 250m² provided that the legal land owner does not oppose occupation for a period of five consecutive years, without the payment of rent (CF, 1988).
Interest (Zonas Especiais de Interesse Social – ZEIS) in Recife created in 1983. Projeto Recife provided the guidelines for the design of ZEIS in Recife, and in 1983, 23 areas were declared ZEIS in Recife, but it was only in 1987 with the enactment of the PREZEIS Law (Lei 14.947/87) that ZEIS became functional.

From 1985, with the end of the military regime, most actions on the part of the civil society were directed towards the rejection of centralization, and the apparent negative aspects of this to democratic ruling. This climate appeared to support local initiatives in disputing for more rights, and this might have furnished the newly elected mayors with the necessary opportunities to act in favor of less advantaged groups. For example, the mayors who were elected in Recife, Belo Horizonte, Sao Paulo, Porto Alegre, were affiliated to more leftist parties, and again, this climate (with the legitimate support from the population which elected these parties) provided the necessary means for more pro-poor policies, and the creation of ZEIS were enacted in Recife and Belo Horizonte.

The PREZEIS Law clearly defines the CRRU as the preferential instrument for regulating public land, and adverse possession on private land. It is claimed that Coronel Fabriciano was the first case of CRRU in Brazil (at least publicly known) to use a collective form of CRRU where beneficiaries retain an equal fraction of the real right to use land. Qualitative data indicates that the rationale for using CRRU in Recife was for two reasons: 1) it represented a faster way to resolve the issue, and 2) it represented the most appropriated legal instrument to guarantee land tenure rights to individuals occupying public land.

In the case of Porto Alegre, it is the municipal law of 1990 which regulates the use of CRRU in the regularization of public land for social housing (Lei Orgânica Municipal). It also states a preference for CRRU to solve land tenure disputes on public land.

As can be seen in other examples in Brazil, there is a growing consensus that CRRU should be the legal instrument to secure land tenure rights to occupants since it does not transfer property from the owner to the possessor. Instead, it grants individuals with real rights to use land for a certain period of time (renewable for the same period) while keeping land in the ownership of the state.

However, there are other instruments that does not transfer property of the land, e.g. certificate of use (autorização de uso), permission of use (permissão de uso), and others, but these are insecure (for individuals) since the state has little obligation with beneficiaries, and the state can cancel the permission at any time, and individuals lack rights to compensation for their housing investments. Qualitative data indicates that these have been used in the 1970s and 80s, but have gradually been replaced by CRRU, probably as a result of experiences in Recife, Belo Horizonte, Porto Alegre that have been disseminated by academics, practitioners, NGOs, mobilization of civil society, etc.

The impact of CRRU in shaping government policies to deal with land regularization programmes in Brazil is notorious, see for example of Salvador, Santo Andre, Campinas, Diadema, Belem, etc. In addition, the impact of CRRU in influencing policies at municipal levels can be expected to increase due to the approval of federal law, the City statute and the MP 2220/01, because they clearly advocate the use of real rights to use land for social housing on public land, extending this to federal, state and municipal levels. The impacts of this federal law

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2 The PREZEIS Law of 1987 was updated in 1995 (Lei 16.113/95), and is currently under revision (SEPLAN – PCR, 2002), subject to municipality approval.

3 In Belo Horizonte, a similar instrument was initiated, but called Special Areas of Social Interest (Áreas Especiais de Interesse Social – AEIS).
are not yet perceived by local authorities, because it has been recently approved, but in the near future, it can be anticipated to change perceptions and policy making in Brazil. Next section discusses the potential impacts of this.

IV. THE CITY STATUTE AND THE CONCESSION OF SPECIAL USE FOR HOUSING (CSUH)

It is extremely relevant for the purposes of this research, the inclusion of more recent changes in the land law in Brazil. This section briefly presents some issues that may affect the course of property rights in Brazil with respect to social housing, as follows.

The City Statute (Law 10257/01) reinforces the notion of social housing and the so-called social function of property, which, in this matter, with the Medida Provisória No. 2220/01 (MP 2220/01), it is guaranteed the allocation of public land for social housing (at all federative levels), almost irrespectively of the state willingness (Lima, 2002). Regarding this, the MP 2220/01 particularly refers to the social function of public land when referring to the Concession of Special Use for Housing (CSUH).

According to the MP 2220/01, it is the resident (individual) who has the right to demand from the state to concede real rights to use the land for housing. And the state has the obligation, in a period of one year, to present individuals with alternatives to guaranteeing them with rights to housing. The state is obliged to concede possessors real rights to use the occupied land, or alternatively, to relocate the residents to another area with legal tenure security (real rights to use). However, this right is extended to individuals who have started occupying publicly owned land before 1997. What this means is that the right to social housing on public land from that period onwards is subject to further disputes, and the legal instrument available remains the CRRU.

According to Lima (2002) and Horbach (2002), it can be claimed that MP 2220/01 extends the right to adverse possession (usucapião especial urbano) to individuals occupying public land, since the CSUH is a mere declaration (from the state to possessors) of acquired rights due to passage of time. If this proves right, the notion of adverse possession on public land contradicts the Federal Constitution of 1988.

In observation, it appears that CSUH becomes very close to adverse possession since it allows residents to use their property as collateral for investments. The main difference lies in the use of what property can be used as collateral.

Even though CSUH does not transfer the property of land from the state to individuals, it grants individuals with the right to use their houses as collateral, because the right to the land is isolated from the right to the surface (direito de superfície). What this means is that adverse possession grants individuals with freehold rights (which includes the right to use land as collateral for investment), whilst CSUH grants individuals with extended real rights to use property as collateral, similarly to freehold, but for the productivity of land only.

The extent to which freehold rights and the right to the surface will make in the low-income land market performance is not yet known. My crude prediction is that it will enable the market to work, since the majority of low-income housing transactions (as they happen in the ground in illegal settlements), it is the house which is the main commodity traded. The separation of commodities (in legal terms) will almost certainly facilitate transactions, and this may increase security perceptions among individuals. Again, the extent to which perceived security will vary among individuals in the low-income housing market (where legalization using CSUH and the right to the surface was applied) is hard to predict, and future studies are needed.
This subject is not fully covered in this study, being controversial and jurists in Brazil can diverge in opinion. Further studies may be necessary to be carried out to ascertain the appropriateness of such claims. Therefore, next section returns to the discussion on CRRU to investigate the impacts of such instrument in public policy in Brazil.

V. THE CONCESSION OF CRRU IN RECIFE AND PORTO ALEGRE

1. The Case of Recife

Recife is the capital state of Pernambuco state, located in the Northeast of Brazil. With a population of 1,400,000+ inhabitants, it is estimated that half of Recife’s population lives in 600 low-income (informal) settlements in Recife, of which 300 are located in 65 ZEIS areas. Among these, 34 ZEIS areas are in the process of regularizing land while having their physical conditions being improved through upgrading programmes, whilst one ZEIS is fully legalized (known as Coronel Fabriciano).

CRRUs have been issued in only 7 ZEIS of the total of 35, and they are included in this study (see Table 1 below). The remaining 28 ZEIS which are not included in this table, are somewhere in the process of regularization, and could not be part of the study since they lack CRRU, to date. However, CRRU has only been fully issued and registered in the Registry office (Cartório de Imóveis) in Coronel Fabriciano, and part of Coelhos, and since according to the Brazilian law, contracts have to be registered at the registry office to be validated, therefore, the CRRUs that have not being registered are subject to disputes.

<table>
<thead>
<tr>
<th>Name of ZEIS</th>
<th>Number of lots</th>
<th>CRRU issued² N (%)</th>
<th>CRRU to be sent to the Registry office N (%)</th>
<th>CRRU sent to the Registry office N (%)</th>
<th>CRRU registered N (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coronel Fabriciano¹</td>
<td>82</td>
<td>82 (100%)</td>
<td>-</td>
<td>-</td>
<td>82 (100%)</td>
</tr>
<tr>
<td>Entra Apulso</td>
<td>1097</td>
<td>62 (5.6%)</td>
<td>-</td>
<td>16 (25.8%)</td>
<td>46 (74.2%)</td>
</tr>
<tr>
<td>Torrões</td>
<td>602</td>
<td>101 (16.8%)</td>
<td>-</td>
<td>-</td>
<td>101 (100%)</td>
</tr>
<tr>
<td>Coelhos</td>
<td>1497</td>
<td>620 (41.4%)</td>
<td>352 (56.8%)</td>
<td>-</td>
<td>268 (43.2%)</td>
</tr>
<tr>
<td>Vila União</td>
<td>356</td>
<td>278 (78.1%)</td>
<td>34 (12.2%)</td>
<td>244 (87.8%)</td>
<td>-</td>
</tr>
<tr>
<td>Jardim Uchôa</td>
<td>631</td>
<td>25 (4%)</td>
<td>25 (100%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Greve Geral</td>
<td>138</td>
<td>104 (75.4%)</td>
<td>104 (100%)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL</td>
<td>4403</td>
<td>1272 (28.9%)</td>
<td>515 (40.5%)</td>
<td>260 (20.5%)</td>
<td>497 (39.1%)</td>
</tr>
</tbody>
</table>

Table 1 - Number of CRRUs issued and registered in ZEIS in Recife


¹ There are 88 lots in Coronel Fabriciano, but 82 were allocated for housing.

The number of CRRU issued by the municipality of Recife depends to a great extent on its property (publicly owned land), but also it is dependent on the existence of personal identification on the part of occupant (there are cases where individuals lack a birth certificate, identity cards, social security numbers, etc), but also it depends on effective participation on the part of residents in the legalization process, because they are required to attend meetings, court sessions, etc., and finally, it depends on the adequacy of the lot to meet the standards required by the PREZEIS Law (not exceed 150m², for the use of housing the family of occupant). Therefore, in the column CRRU issued, the frequency stated there does not necessarily reflect efficiency on the part of the municipality, but it is more likely to reflect adequacy of the lot for CRRU.
In terms of efficiency, it can be measured by the levels of CRRU issued that are ready to be sent to the Registry office, the number of CRRU sent to the Registry office, and the number of CRRU registered at the Registry office. It is clear that the function of the Registry office is a crucial variable determining performance.

In terms of the number of cases of CRRU to be sent to the registry office, this can indicate a tendency for delays and bureaucratic procedures on the part of the municipality, since the contract has to be prepared, the beneficiaries have to sign them, a municipal legal advisor has to endorse it, and finally is the mayor who has to sign each contract too, to be sent to the registry office. Since the CRRU is only produced once the local plan for physical upgrading is approved because the physical boundaries of the lots have to be clearly defined, this can also delay the initial legalization process. In some cases, the physical attributes of the settlements, and the adequacy to certain urban standards that are hard to be met (even though lowered by the municipality in the PREZEIS Law), and this initial process can really delay the legalization progression.

In terms of the number of CRRU sent to the registry office, waiting for its recognition and approval, qualitative data indicates that this process is time consuming, and not fully accepted by some of the registry offices. The municipality of Recife is subject to procedures that are defined on a case to case base, depending much on the likelihood of certain ZEIS being under the auspices of a Registry office or another. However, further revision on legislation to empower municipalities to act and register their titles in legalization programmes is still needed. But, up to date, this is a reality that municipalities have to face when regularizing housing land.

As can be seen in Table 1 above, all cases included in the CRRU sent to the Registry office column are waiting for an official response on the part of the Registry office. During this period, in most cases, the contracts have to be revised, and the beneficiaries, the legal advisor and the mayor have to sign the contracts once again, after revision. In some cases, by the time the contracts are revised and returned for the beneficiaries to sign, couples might have divorced; individuals might have died, or forced to move out of their properties due to violence, or the mayor might have been succeeded by election. This illustrates the dynamics and complexity of efficiency in the legalization process.

Previous research (De Souza, 1998) indicates that the CRRU contracts for Entra Apulso and Torrões were ready to be signed by the then mayor in the end of 1996, but, in 2003, only 16 of a total of the 46 contracts issued for residents of Entra Apulso, and 27 of a total of 101 contracts issued for residents of Torrões had been sent to the Registry office for registration, and yet none of those had been returned to the municipality to be delivered to the beneficiaries (De Souza, 2004). It had taken almost six years for a fraction of the process to be partially completed for registration, and the situation has not been solved yet.

As can be seen in Table 1, above, recent evidence indicates that 46 of a total of 62 contracts issued had been registered in Entra Apulso, whilst ZEIS Torrões had managed to obtain 100% registration of the total CRRU issued.

The results of CRRU registration in Recife are not yet satisfactory since, 515 (or 40.5%) of the total 1272 lots entitled for CRRU have passed the initial registration stage (to be sent to the Registry office for registration), and these are still facing difficulties to advance in the process. Another 260 contracts (or 20.5% of the total) have been sent to the Registry office, however, are subject to further adjustments required by the Registry office, and therefore, have not been registered yet. Finally, only 497 lots (or 39.1% of the total or CRRU issued by the municipality
of Recife since the enactment of the PREZEIS Law of 1987) were totally cleared using CRRU, i.e. contracts being issued and registered on the Registry office. This situation is expected to change due to City statute and MP2220/01, but up to now, this is the evidence to illustrate success/failure of CRRU in Recife.

2. The case of Porto Alegre

Porto Alegre is the capital city of Rio Grande do Sul state, in the South of Brazil. Porto Alegre also has a population of 1,400,000+, of which almost one quarter lives in low-income settlements (Moraes and Anton, 2000) declared Special Areas of Social Interest (Áreas Especiais de Interesse Social – AEIS).

According to housing official interviewed in the Departamento Municipal de Habitação (DEMHAB), there are 120+ AEIS in Porto Alegre, of which CRRU have been issued in 28 AEIS. Table 2 below summarizes the figures for CRRU in Porto Alegre.

<table>
<thead>
<tr>
<th>Name of AEIS</th>
<th>Number of housing units N (%)</th>
<th>Legalized units N (%)</th>
<th>Contract for Deed issued N (%)</th>
<th>Permission to Use N (%)</th>
<th>CRRU issued N (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vila Planetario</td>
<td>91 (96.7%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>88 (100%)</td>
</tr>
<tr>
<td>Vila Cai</td>
<td>80 (96.3%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>77 (100%)</td>
</tr>
<tr>
<td>Cond. Lupicinio Rodrigues</td>
<td>82 (99%)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>81 (100%)</td>
</tr>
<tr>
<td>Jardim Monte Cristo</td>
<td>568 (85%)</td>
<td>313 (64.8%)</td>
<td>62 (6.1%)</td>
<td>308 (30.3%)</td>
<td></td>
</tr>
<tr>
<td>Vila Chacara da Fumaca</td>
<td>939 (85%)</td>
<td>313 (64.8%)</td>
<td>2 (0.4%)</td>
<td>168 (34.8%)</td>
<td></td>
</tr>
<tr>
<td>Vila Passo das Pedras II</td>
<td>691 (70.5%)</td>
<td>376 (54.4%)</td>
<td>107 (22%)</td>
<td>4 (0.8%)</td>
<td></td>
</tr>
<tr>
<td>Loteamento Timbauva</td>
<td>709 (67.3%)</td>
<td>647 (63.6%)</td>
<td>62 (6.1%)</td>
<td>308 (30.3%)</td>
<td></td>
</tr>
<tr>
<td>Vila Barracao</td>
<td>342 (54.4%)</td>
<td>-</td>
<td>2 (0.6%)</td>
<td>184 (98.9%)</td>
<td></td>
</tr>
<tr>
<td>Loteamento Cavalhada</td>
<td>443 (67.3%)</td>
<td>-</td>
<td>55 (11.2%)</td>
<td>437 (88.2%)</td>
<td></td>
</tr>
<tr>
<td>Vila Renascence I</td>
<td>38 (63.2%)</td>
<td>-</td>
<td>21 (87.5%)</td>
<td>3 (12.5%)</td>
<td></td>
</tr>
<tr>
<td>Vila Nova Restinga</td>
<td>925 (62.9%)</td>
<td>5 (0.9%)</td>
<td>-</td>
<td>586 (99.1%)</td>
<td></td>
</tr>
<tr>
<td>Cond. N. Sra. da Esperanca</td>
<td>311 (34.1%)</td>
<td>-</td>
<td>104 (98%)</td>
<td>2 (2%)</td>
<td></td>
</tr>
<tr>
<td>Loteamento SaoGuilherme</td>
<td>68 (100%)</td>
<td>5 (7.4%)</td>
<td>3 (4.4%)</td>
<td>60 (88.2%)</td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>2758 (70.8%)</td>
<td>-</td>
<td>-</td>
<td>1881 (96.4%)</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL** 8045 6129 (76.2%) 1346 (22%) 646 (10.5%) 4066 (66.3%)

Table 2 - Number of CRRUs issued and registered in AEIS in Porto Alegre


* Poorly recorded, since the total number of legalized units is more than the number of units.

The number of housing units officially recorded accounts for 8045, of which 6129 (or 76%) was partially legalized using one of these instruments: Contract for Deed, Permission to Use, and CRRU. The vast majority of the cases used CRRU to legalize land tenure (4066 contracts or 66% of the legalized units). Contract for Deed accounted for 1346 cases (or 22%), followed by Permission to Use (646 cases or 11%).

In the case of Porto Alegre, performance is harder to be measured since the data available at the time of collection were very limited, and it was not possible to identify the number of contracts

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4 The total number of housing units legalized in Porto Alegre does not correspond to the total number of lots, since there are many cases of multistory apartments. Although these figures are imprecise, the number of lots and the number of housing units are used interchangeably.
to be registered in the registry office. It was widely claimed by officials that no single case of CRRU registration in the AEIS is formally known. However, it can be claimed that Vila Planetário, Vila Cai, and Condomínio Lupicínio Rodrigues have obtained a great degree of success, since 100% of the housing units were issued with a CRRU. However, as explained already, this does not reflect the number of CRRU registration. In the case of Porto Alegre, the residents are responsible for registering their titles in the Registry office. However, qualitative data indicates that there has not happened a single event in AEIS in Porto Alegre. There might be many reasons explaining this. It was claimed by housing officials in Porto Alegre that there is a great resistance on the part of the Registry offices in the city to accept the registration of CRRU that would not allow individuals to unreservedly register them. In addition, and perhaps more relevant for individuals, by not registering their titles, they would be avoiding paying for the fees that might be perceived not a priority for residents. Even though according to the Brazilian law, these contracts are valid if registered in the Registry office, resident are aware that registration has not been a requirement by the municipality (up to now), therefore, this cost can be avoided.

It is relevant to point out at this stage that, contrary to the case of Recife, permission to use, and CRRU are not free in Porto Alegre. Residents have to pay a monthly fee to the municipality to keep their rights.

Although the number of CRRU is high, there has been gradual replacement of the instrument by Contracts for Deed, since after selling of use rights; the newly residents demand this change to DEMHAB that sometimes meet demand. DEMHAB is entitled to sell their land using Contract for Deed, in contrast to other departments of the municipality.

VI. COMPARISON OF FINDINGS
Comparison between the case studies is not an easy task since the available data from the both municipalities are not in a format to allow extensive comparisons. Therefore, in this study, a tentative comparison is made, but with limitations.

In contrast with the case of CRRU in Porto Alegre, Recife has allowed beneficiaries to trade their rights subject to municipal approval since the beginning of PREZEIS (1987). According to the personnel interviewed in Recife, it is the characteristic of social housing which is to be sustained, and not necessarily individuals that should be attached to their houses. I recognize that the right to social housing should not entail the lack of freedom. Individuals should be allowed to chose when and where to move. By controlling the housing transactions (i.e. selecting potential buyers to maintain social economic profiles in the neighborhood, low-income housing), the municipality has limited individuals’ rights to trade their real use rights, but this has not prevented individuals to find alternative housing locations in the city, whilst sustaining the social function of their land.

It is not to say that by allowing limited rights to be traded, the municipality of Recife would ultimately promote the substitution of residents. Indeed, De Souza (1998, 1999, 2001a, 2002) claimed that there are many dimensions to explain housing mobility besides to internalize housing costs. For example, individuals can trade their housing rights in an attempt to safeguard their family members from personal threats, such as being murdered, or raped, therefore, I claim that mobility should be considered in policy making for social housing.

Nevertheless, it is imperative that some degree of protection for the public owned land (constituting a public patrimony) to be granted for the state, and it appears that the CRRU can serve this purpose, especially because it also guarantees individuals with real rights to use land.
The survival of a low-income housing market (or social housing) is dependent on the existence of a housing land stock to serve this purpose (De Souza, 2001b). Through history in Brazil, the private markets have failed to supply such land (at prices that the poorest can afford) to meet a growing demand, and CRRU can sustain a stake of the housing market for the urban poor, at least in publicly owned land. However, the future of CRRU and the extent to which it can grant real rights to use land for individuals over time is not yet known. Social housing may be replaced by another social function of property in the future, and this can change the dynamics of rights to use land and markets.

When first instituted, the CRRU in Porto Alegre did not allow individuals to transfer their real rights to use public owned land to others, unless on the event of death (Fernandes, 2002), i.e. they only retained inheritance rights. However, this has now been revised and beneficiaries can transfer their rights to others with municipal approval.

Contrary to the case of CRRU in Recife, beneficiaries in Porto Alegre have the legal obligation to pay a monthly fee for sustaining their CRRU. And this might have created some confusion on the part of individuals in understanding the instrument, since it resembles a rental contract. Further efforts are needed to solve this matter, and possibly, revisions will also be necessary.

Another aspect related to the need for monthly payments is the issue of cost recovery. Even though the municipality of Porto Alegre has not claimed this, qualitative data indicates that the costs demanded for the processing of the monthly charges being sent to residents is double the effective payments received by the municipality, since almost half of the residents simply do not pay their fees. Therefore, even in the case of 100% of the payments being made, the costs will be equal the receipts. A different approach to this is clearly necessary.

The effective use of CRRU in regularizing land tenure situations on public land is not clear, because there are many variables that determine performance. In addition, the specificity of events and contexts almost isolates each case making comparisons very hard to be made.

However, an exploratory analysis is made in this study, and some issues are put together to form the picture of performance.

In general terms, officials widely claimed the success of CRRU in dealing with land tenure regularization in both cases. This has been claimed because of the appropriateness of the instrument to deal with public land and the apparent easiness of the process. Nevertheless, housing officials also acknowledge that they lack the institutional capacity to deal with the large demand for legalization of land, the difficulties in controlling the legalization process, the transfer of rights due to selling of houses, the difficulties on dealing with public notaries, and the degree of dependence on political will on the part of the mayor in power.

Housing officials also claimed that CRRU guaranteed real rights to beneficiaries that are secure, having both parties to obey the contract to validate the contract. This generates obligations that would maintain the use of land for social housing while sustaining the permanence of the original population in their houses, avoiding the capitalization of public investments. However, housing officials also stated that residents were not cognizant of the meaning of CRRU despite the municipality effort in promoting and distributing information about the instrument, and the works of NGOs in publicizing CRRU for residents.

In some cases, CRRU can be also perceived by residents as a rental contract due to the perceived temporary nature of the contracts, since they have a time limit, and in some cases a monthly fee is required. For example, beneficiaries in Porto Alegre have the obligation to pay a monthly fee

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5 This is mainly the case in Recife since candidates from difference parties have won elections, and mayors have shown different attitudes and priorities towards the legalization of land tenure in ZEIS areas.
equivalent to 5% to 7.5% of the minimal wage\textsuperscript{6}, for the municipality in order to sustain their real use rights to land. As claimed by individuals living in these settlements, this can be perceived as equivalent to a monthly rent on the minds of individuals, and, at a micro level, has reduced individuals’ interest in participating in this sector of the low-income housing land markets (De Souza, 1998, 2001a). This finding contrasts with orthodoxy regarding property tax payments as a means to secure land tenure claims on the part of the urban poor living in informal settlements, and requires further attention on the part of policy makers.

In addition to this, housing officials in Porto Alegre also acknowledged that beneficiaries in AEIS usually complained that they would rather prefer to be granted a more definite title, such as a Warranty Deed than CRRU. Indeed, officials dealing with the beneficiaries and the signature of contracts claimed that they have been approached by residents asking for freehold rights. Instead, residents were instructed and received further explanations on CRRU, being reinforced about the validity of the instrument. CRRU is a complex instrument and residents have showed some resistance to assimilate this.

Although officials tend to trust the law and claim that CRRU is secure, residents do not take this claim without hesitation. In reality, residents in Recife were more likely to distrust CRRU than in Porto Alegre. But in both cases, there was a general perception that CRRU represented a rental contract signed between the municipality and residents despite the fact of CRRU being free in Recife.

On one hand, individuals living in the ZEIS areas in Recife have been living in their houses for a certain period of time, and have seen their neighborhoods been consolidated. Besides, the fact that they have not paid rent for the period they have lived in their houses; these were sufficient evidence for their perceived rights over their possessions (De Souza, 1998, 2001a).

However, on the other hand, since there has not been a continuity of attitudes towards the legalization of land in ZEIS areas, on the part of the elected mayors in Recife, this has furnished individuals with some degree of insecurity. Insecurity can also be perceived as a result of the fragility of residents in disputing their stake in the land markets, since some ZEIS are located in areas where land markets are highly active. It is generally acknowledged by residents that influential and powerful individuals (outside ZEIS areas) can threaten the permanence of residents (despite the existence of ZEIS regulations).

Residents feel that their permanence may not be granted due to a signed contract. In reality, in relation to CRRU, residents claim that insecurity perceptions do not change as result of the formalization of a contract that does not transfer property from the municipality to residents. Instead, they often claim property of their houses.

\textbf{VII.RELATING TENURE CATEGORIES AND LAND RIGHTS}

The relationship between tenure categories and the rights associated with them were classified in two groups. The first is related with the orthodox category, and the second puts together the orthodox categories and less conventional tenure categories existent in the field. The categories are presented in Tables 3 and 4 respectively below. They were mainly based in interviews held with lawyers working in the field of social housing.

As can be seen in Table 3 below, the tenure category that entitles individuals with a full bundle of rights in the Brazilian land is clearly a freehold. However, even where individuals are not the

\textsuperscript{6} The minimum wage in Brazil is now R$350,00 (effective from 1\textsuperscript{st} April 2006), equivalent to approximately US$160.00.
legal owner, i.e. they claim possession of the land where their houses have been built; they also claim a certain degree of rights, including the right to use and enjoy land, the right to have possession protected, and others. But they lack a key right that is the right to use land as collateral for investments due to the temporary nature of possession.

<table>
<thead>
<tr>
<th>Tenure category</th>
<th>Rights</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pavement dweller</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Tenant</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Possessor</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>CRRU</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>SCUH</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Free holder</td>
<td>1</td>
<td>3</td>
</tr>
</tbody>
</table>

Table 3 - Tenure categories and rights (formal sector)

¹ Yielding of rights (Cessão de direitos); ² Subject to Municipal approval; ³ In good faith; ⁴ City statute

In terms of CRRU, it entitles individuals with similar rights to possession, but in some cases, individuals might have their right to sell their houses limited by the land owner, i.e. the municipality (depending on the contract), being subject to municipal control and approval. In contrast, in terms of the right to let their property, CRRU is less attractive than possession, since possessors can let their houses. In general terms, as perceived by residents, one can conclude that possession furnishes individuals with more rights than CRRU, but this conclusion is false, due to the fragile nature of possession in comparison to CRRU.

Another secure form of legalizing tenure that can be granted to individuals living on public land is the use of the instrument of CSUH, but it does not grant individuals with the right to repossess land. It is very similar to CRRU, but adds the right to use property as collateral for investments. As explained above, SCUH can be understood as a substitute to adverse possession for public land (Silva, 2001; Saule Jr, 2001), but they are different instruments with very similar characteristics. The extent to which SCUH will influence market performance is not yet known. The importance of this discussion is to show that other forms to secure tenure in Brazil have been considered, despite the apparent dominant thinking that considers individual property rights the right to secure tenure. Gradually, this is being revised in Brazil, and other forms to recognize rights to social housing can be expected, though I believe that a revision on CRRU and CSUH are more likely to occur.

In terms of the non-formal category (see Table 4 below), again, possession of house furnishes individuals with some degree of security, and this right is further expanded (albeit illegally). As can be seen in both tables, access to services is apparently not related to the kind of tenure granted to individuals, since services are provided in particular regions of the city, almost
Municipal interventions in delivering alternative land tenure and low-income housing markets in Brazil

irrespective of the tenure situation of the informal settlements. Services are provided to the city as a whole, and individuals benefited from this.

<table>
<thead>
<tr>
<th>Tenure category</th>
<th>Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To use</td>
</tr>
<tr>
<td>Pavement dweller</td>
<td>0</td>
</tr>
<tr>
<td>Tenant</td>
<td>0</td>
</tr>
<tr>
<td>Possessor</td>
<td>0</td>
</tr>
<tr>
<td>CRRU</td>
<td></td>
</tr>
<tr>
<td>SCUH</td>
<td></td>
</tr>
<tr>
<td>Free holder</td>
<td></td>
</tr>
</tbody>
</table>

*Informal rights; ¹ Yielding of rights (Cessão de direitos); ² Subject to Municipal approval; ³ In good faith; ⁴ City statute

The informal tenure categories expand the claimed rights on the part of residents, but this does not affect the legal situation of their claims. The importance of this approach to perceived tenure rights is to improve understanding on the possibilities of extant housing transaction as they happen in the ground (De Souza, 2001a, b). For example, a possessor has the perceived right to repossess its possession despite the fact that formal rights to guarantee this are not available. Also, in relation to CRRU, even where housing transactions are not allowed, individuals can perceive that they can trade their houses, and those interested in purchasing the houses consider that by occupancy it grants them sufficient security for the completion of transaction, despite the apparent lack of this right.

The extent to which land can be used as collateral for loans cannot be measured yet, since CRRU does entitle individuals with this right (see both tables above). This is because the ownership of
land remains on the part of the state, therefore, beneficiaries are not allowed to apply for a loan using a CRRU. Another aspect of this is the lack of interest on the part of financial institutions to take land in these areas as collateral, because they are aware of the high risks of not gaining return from their loans. In Brazil, the common practice is to consider individuals or family capacity to pay for their debts, though the demonstration of formal monthly income. This is a more accepted form of loan application. It is not therefore the practice for finance institutions to request collateral for loans among low-income groups. With the advent of SCHU and the possibility and eligibility of individuals to use their houses as collateral for investments, it can be argued that this scenario might change over time. However, my estimate is that it requires more than legal rights to loan applications to change perceptions on the part of finance institutions in Brazil, and the market may not be clearly opened to changes. The crucial variable appears to be higher family income, and not necessarily legal rights to loans using land as collateral. Policies are needed to promote the idea of loan applications and provision, but with some reservation, since the negative aspects of loan applications and land as collateral is certainly the dispossession of land, that originally was granted by the state for the reason of social housing.

VIII. THE RE-SELLING OF HOUSING AND USE RIGHTS
Even though there are regulations to control the re-selling of property, in both cases it proved to be less efficient than expected, since there have been housing transaction in Recife and in Porto Alegre with very limited control on the part of municipalities. The personnel interviewed in this study acknowledged the inefficiency to control such transactions due to lack of finance. In both cases, the amount of resources allocated to the regularization programmes is not sufficient to cover the costs of local inspections and control. The practice on the part of the municipality of Recife to deal with re-selling of houses with authorization is to cancel the original CRRU and issue a new contract to the present occupants. The rationale for this, according to the housing officials interviewed in this study is that, the issue of a new CRRU substituting a previous contract does not affect the right to social housing since in most cases; the families who purchase the houses are also low-income. However, the extent to which those eventual housing transactions will gradually replace the poor by the better-off is not still measured, and much has to be done to indicate this tendency. Nevertheless, one is indeed dealing of levels of poverty, and this may not lead to the exclusion of the poor in this housing market sector. But, another aspect to this that has to be acknowledged is the issue of allocating new land for housing for the families who leave their houses after the sale of legalized land, since there will be demand for housing land somewhere in the city. Perhaps, this cannot be solved without more structural policy reforms, than CRRU. Another aspect to be highlighted here is the lack of municipal control of housing transactions where CRRU is applied, as the case of Porto Alegre also indicates. The extent to which these practices will be perpetuated since the Estatuto da Cidade has been approved in 2001 is not yet measured. At present, more CRRUs have been issued and the issue of future access to land for social housing is still uncertain. In both cases, SCUH are new policy instruments, and have not yet been applied in any land owned by the neither municipality of Recife nor Porto Alegre. Although it can be claimed that by issuing CRRUs to residents of legalized settlements both municipalities of Recife and Porto Alegre are intending to solve entrenched inequalities such as
access to urban land. However, the experiences discussed above suggest that these instruments have in effect consolidated individual interests and rights in land delivery processes. By the legalization of land in Recife and in Porto Alegre, these areas can be converted into valuable future assets in the housing land market. In effect, the legalization of informal settlements can be seen as a strategy of commodification of illegal settlements by ensuring that such land will inevitably come on to the market once formal legalization is finally accomplished.

IX. CONCLUSIONS
Municipalities in Brazil appear to be searching for a pro-poor policy approach since it has retained some degree of social housing rights for the urban poor, albeit less effective than anticipated. However, it can also be seen as a tool for more powerful interests to safeguard a long-term stake in the land market. For example, by changing land designation in Recife, the ZEIS areas can be converted into valuable future assets in the housing land market. In effect, ZEIS declaration can be seen as a strategy of commodification of illegal settlements by ensuring that such land will inevitably come on to the market once formal legalization is finally accomplished. A similar analysis can be applied to the declaration of AEIS in Porto Alegre. The ZEIS mechanisms could be seen to satisfy the twin objectives of acceptability to the advocates of pro-poor policies in Brazil whilst consonant with the global orthodoxy of promoting cities as market places in which land delivery becomes progressively reconfigured as a formal sector commodity. From this perspective, it can be expected that the ZEIS mechanisms will still retain their place in the policy framework of Brazilian municipalities. Indeed, ZEIS has been enforced by Statute of the City and MP2220/01. But few studies have been produced to challenge the counterproductive consequences and the impacts of this policy in terms of activating housing land markets in the social housing sector.

Public interventions on the housing land markets for the urban poor on the part of the municipalities investigated in this study appear to be directed towards the process as a form of social policy or ‘semi-welfare’ intervention aimed at resource redistribution, and access to housing land. Nevertheless, the process of recognising minimal occupancy rights for illegal settlers, functions as the only social intervention in housing supply systems in the absence of other more substantive welfare state programmes in Brazil. Even so, the intervention is severely constrained since, in practice, even though public recognition of squatters’ rights under a ZEIS declaration is evidence that the municipality is willing to make these settlements eligible for legalisation, the final guarantee of those rights has to be determined in court. Declaration of ZEIS areas is thus the initial turning point in this process, but the municipality lacks both the overall power to manage and co-ordinate the policy instruments and the final authority to make the declaration legally binding.

It can be claimed that CRRU and SCUH are similar instruments since they aim at recognizing rights to social housing, but some technicalities can be encountered to differentiate the instruments. Changes in attitudes towards the recognition of the right to social housing in Brazil are clearly established, as the case studies presented above indicate. However, there are some issues to be overcome, such as flexible responses on the part of the judiciary sector in Brazil to incorporate CRRU and CSUH as part of legitimate and recognized rights, the need for more efficient control on the part of the municipality over the legalization process, including the ability to register and validate contracts of real right to use land for housing, and finally, a wider replication of CRRU and CSUH to impact market performance.
Even though I recognized above that each particular case is different, making difficult the formulation of conclusions, it can be claimed that, at least in numerical terms, the number of CRRU issued in Recife is considerably lower than in Porto Alegre. Nevertheless, the municipality of Recife has been more effective in delivering registered titles to beneficiaries than the municipality of Porto Alegre.

It appears that Porto Alegre has focused resources in the delivery of CRRUs almost irrespectively of the necessity on the registration of public notary. This has proven to enhance success in the total number of contracts issued, but has let the residents with a certain degree of insecurity. Depending on the political commitment to social housing on the part of the mayor in power, residents may be threatened with the prospects of removal (even though the political costs of removal of these families can be extremely high), depending on the diverse interests to exploit land productivity in the city.

On the other hand, by conducting the regularization process until the registration of titles, the municipality of Recife has guaranteed security of tenure for a number of families. But, the total number of CRRU issued may have been prejudiced by this approach.

Some of the issues discussed in this study are summarized below to point out some policy implications of the findings as follows.

- Revisions on current legislation are needed to empower municipalities to act and register their titles in legalization programmes;
- Legal rights to loan applications are needed to change perceptions on the part of finance institutions in Brazil, but the markets may not be clearly opened to changes;
- The replicability of CRRU and CSUH depend to some extent on the availability of access to credit;
- The right to use property rights as collateral for investment may leverage the situation of the urban poor, but on the other hand, it may threaten the sustainability of rights to social housing because the poorest families lack the financial capacity to make monthly payments due to their unstable incomes;

To conclude, the crucial variable determining market performance appears to be higher family income, and not necessarily legal rights to loans using land as collateral. Social policy in Brazil to better target the poor, should have this in focus to multiply effects of the recognition of rights to social housing. Therefore, social policies should be directed towards the creation of job opportunities to enhance the financial capacity of the poor to effectively enter and sustain their stake in the markets.

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X. BIBLIOGRAPHY


