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URBAN LAND TRENDS IN SOUTHERN COUNTRIES

THE INFORMAL RENTAL MARKET IN THE FAVELAS OF RIO DE JANEIRO AND ITS REGULATION FROM A HISTORICAL PERSPECTIVE

Rafael Soares Gonçalves*

This paper intends to analyze from a historical perspective the important role played by the informal rental market in the expansion of *favelas* and in the formulation of public policies in this respect. Although historical data about this market in the *favelas* are limited and often unreliable, this is not a recent phenomenon. In fact, this is a public problem that has existed since the first half of the twentieth century. This study first analyzes the presence of a rental market since the beginning of *favela* expansion. Second, it examines the process of criminalizing rent collection in the *favelas* following the introduction of the 1937 Building Code. Third, it looks at issues arising from the informal rental market in the context of land tenure regularization projects from the 1980s onward.

Keywords: *Favelas*, informal rental market, Rio de Janeiro, land tenure regularization, urban history

The informal nature of access to urban land and the development of self-built housing have no doubt been key factors in keeping labor costs in Brazil—and in Rio de Janeiro in particular—as low as possible. The *favelas* have always been associated with illegality, which historically has justified a lack of public investment in these urban areas. This state of affairs has been compounded by clientelist practices, and the public authorities' tolerance for the formation and spread of these areas has become a kind of patronage arrangement, albeit without any *de facto* recognition of this situation. The authorities have maintained—or even cultivated—the temporary and precarious nature of the

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favelas by prohibiting all permanent construction or the connection of houses to the official public electricity and water grids. These conditions ensured that the *favelas* could be eradicated at any time, as evidenced by the massive re-housing operations that took place in the 1960s and 1970s.

The construction of the legal concept of the *favela* (Gonçalves 2010) associated these urban areas, under conditions of illegality in terms of both town planning and land ownership, served to strengthen the negative social perceptions of the *favelas* and their inhabitants. Yet these perceptions ignored the social and legal complexity of these areas. There is not just one *favela* but a myriad of *favelas* displaying strongly dynamic and diversified economic activity, sharp social stratification, and a wide range of land tenure conditions. Although several authors since the 1960s have highlighted the mixed, atomistic, and dynamic aspects of the *favelas* (SAGMACS 1960; Medina 1969; Silva 1967; Parisse 1970), the simplistic, negative social perceptions of the *favelas* have barely changed, and they continue to systematically equate *favelas* with all forms of illegality, from squatting to drug trafficking. These perceptions have increasingly underscored the social changes taking place in the *favelas*, to which their external features bear clear witness, including the multi-story houses that have sprung up all over, permanent public services (albeit often of extremely dubious quality), and the economic flourishing of trade and of a real estate market that operates according to its own principles. Despite the still-unfinished appearance of the buildings, the *favelas* no longer have the temporary, precarious appearance that they have had in the past. A number of threats along with recent small-scale re-housing projects implemented by the municipal authorities have not stopped the *favelas* from becoming a solid feature of Rio de Janeiro.

Although, as Abramo (2009, 6) notes, the expansion of the informal housing market is driven by necessity, and is a highly dynamic market. The view that the expansion of the informal real estate market, and of the rental market in particular, is currently taking on uncontrollable proportions as part of the process of growth of the *favelas* is endlessly repeated. Yet few studies have looked into the complex structure of this market.¹ Without claiming to exhaust the issue, this paper aims to examine from a historical perspective the rental market's importance in the expansion of the *favelas* as well as in the formulation of public policies in this respect. Although historical data on this market in the *favelas* are scarce and often unreliable, it is clear that this is not a recent phenomenon. On the contrary, this state of affairs has been a serious public concern since the mid-twentieth century and has mobilized the municipal authorities, legislators, and *favela* residents themselves. This study will first address the presence of tenancy relationships in the first *favelas* of

1. The pioneering work of economist Pedro Abramo is undeniably a notable exception.

the late nineteenth century before turning to the process of criminalizing rent collection in the *favelas* set in motion by the 1937 Building Code. Finally, it will analyze the issues raised by the rental market with regard to land tenure regularization programs from the 1980s onward.

RENT COLLECTION AND THE ORIGINS OF THE FAVELAS IN THE LATE NINETEENTH CENTURY

Since the late nineteenth century, the *favelas* have been associated with illegality and marginality. Following the hygienist measures that aimed to eradicate the *cortiços*² and the various urban reforms of the early decades of the twentieth century, *favelados*³ are said to have gradually invaded vacant land, mainly in the hills near the city center. However, while a large portion of the *favelas* was undeniably formed by the occupation of the city's abandoned lots, there was more to the process, and the formation of the first *favelas* was in fact much more complex. The well-known story of the city's supposed first *favela* has soldiers returning from the *Canudos* conflict and settling on Providência hill with the army's consent. That same consent also enabled the birth of the Santo Antonio *favela* (Gonçalves 2010, 37). In short, these early residents only stayed by virtue of active support from the military authorities. Similarly, as Vaz indicates (1988, 48–50), many *favelas* were formed on the initiative of the landowners themselves. This was the case, for example, of the Providência *favela*, following the eradication in 1893 of the Cabeça de Porco *cortiço*. To escape hygienist controls, the *cortiço* landlords transferred their business to the hillsides, renting out plots or small houses. In fact, the first *favelas* were fairly similar in appearance to the *cortiços*, being made up of permanent buildings and largely overcrowded.

Several historical sources reveal the complexity of access to housing in the city's first *favelas*, which suggests that the systematic identification of the *favelados* as invaders is inaccurate. The urban reform spearheaded by Mayor Pereira Passos (1902–1906) accelerated the process of occupation of the hills of the city center. Everardo Backheuser, a municipal engineer at the time, wrote that “the workers seek the hilltops where they benefit from a lower rent and a gentle breeze that blows continuously, alleviating the harshness of the accommodation” (Backheuser 1906, 111). Although he also wrote that Mayor Passos already had his eye on the *favelas* and that measures would be implemented to demolish these buildings shortly, his description of the *favelas* could not hide the municipality's tolerance of the *favelas*' growth as part of a typically

2. These consisted of communal buildings that housed the city's poorest in the city center under precarious conditions.

3. Inhabitants of *favelas*.

hygienist discourse. The redevelopment of the city along Haussmannian lines in the early twentieth century saw thousands of people evicted, and the *favelas* became the makeshift and precarious solution to the problem of housing Rio de Janeiro's poor. This process, combined with the hygienist measures taken against the *cortiços*, radically reduced the housing supply and led to an increase in rents. If the workers sought the hilltops, it was partly because of the cheaper rents that were charged there.

A report in the *Correio da Manhã* newspaper of June 2, 1907 on Babilônia hill also describes the common practice of house renting in the *favelas* at the turn of last century. As the person interviewed in the story, former soldier João Carlos de Andrade, explained: "Rent? We don't pay anything at all—the hill belongs to the government. Down there, sure, the land belongs to an Englishman who rents it out." In short, the report leads us to conclude that occupying the land was not the only way to access accommodation in the first *favelas*. Moreover, this was well known in Rio de Janeiro in the early decades of the twentieth century. Although writer Benjamin Constallat contributed to the negative social perceptions of the *favelas*, in 1924 he acknowledged the presence of a rental market for shacks in the *favelas*:

In the *favelas*, no one pays taxes and there are no policemen. In the *favelas*, it is the law of the jungle that reigns. (. . .) There are no divorces because no one gets married. No contracts are signed there. There are neither tenants nor landlords. There are also no legal evictions. If the tenant is more powerful than the owner, the rent will never be paid. On the other hand, if it is the owner who is more influential, then, yes, the rent will be paid punctually at the start of every month. This is the law of the lease in the *favela*!⁴

Despite Constallat's account, there is evidence that the occupation of the hills was not only tolerated but also recognized by the authorities of the day. The notarial act cited below, which recorded the lease of shacks located in the Mangueira *favela* on January 26, 1928, shows that in some cases, rent collection was officially recognized in the *favelas*:

The lease of the shacks on lot no. 17 on Rua Visconde de Niteroi near the Mangueira train station by Mrs. Julieta de Medeiro Lobato, the mother of minor Décio José (. . .) [means] the leasing of several shacks, described below, to Jacintho Pereira Frade: the shack located on Rua Visconde de Niteroi, with no number, formerly no. 166 and today arbitrarily identified as no. 290, built in brick with a tiled roof, with a frontage measuring 9.5 m on the aforementioned street and four doors opening onto that street and three others on the side of Rua Saião Lobato; b) two shacks at the back of the lot (. . .); c) one shack located a little further down the same lane, arbitrarily identified as no. 16 (. . .); d) a shack arbitrarily identified as no. 18 (. . .); e) another shack identified as no. [?] (. . .); f) a group of four shacks

4. Benjamin Constallat, *A favela que eu vi*, 1924, cited by Alvito (2003, 31).

located at the back of the lot in that same lane (. . .). The lease term is five years (. . .) and the rent is fixed at six million three hundred sixty thousand *reais*, payable in monthly installments of five hundred and thirty-thousand *reais*.⁵

It is difficult to say whether the above example of a notarial act was repeated on other occasions in other *favelas*. However, one way to maintain the temporary and precarious nature of the *favelas* was precisely to deny any judiciary consideration of leases within them. Moreover, the 1937 Building Code sought to counter the collection of rents by the owners of lots where the *favelas* were located. This is yet another demonstration of the fact that rent collection was fairly widespread at the time, to the point of inciting the municipal authorities to include measures in this code to discourage the practice in the *favelas*:

Article 349: The formation of *favelas*, that is, groups of at least two shacks arranged in a regular or disorderly fashion, built using makeshift materials and in contravention of the provisions of this decree, shall not be permitted in any way.

§1 – It is strictly prohibited to build new shacks in the existing *favelas*, to undertake repairs, or to undertake any kind of work on pre-existing buildings. (. . .)

§5 – In the case of *favelas* installed or built on private land, the respective owner will be subject (. . .) to a fine for any construction work done without a building permit and which fails to comply with zoning provisions.

§6 – The fine set in §5 shall be applied to each shack built or renovated regardless of the summary demolition thereof, the cost of which shall be borne by the landowner through a judiciary or administrative procedure. In the latter case, the cost shall rise by 20%.

§7 – If the municipality ascertains that the *favela* is being commercially exploited through the renting out of shacks or land, the level of the fines shall be doubled. (. . .)

§9 – The municipality shall be responsible, in accordance with Title IV of this chapter, for the eradication of the *favelas* and for their replacement by the construction of minimum-cost housing developments.

The provisions of the 1937 Building Code highlight the practice of renting land or houses in the *favelas* as well as the fact that in many cases, it was the owners themselves who tolerated and even encouraged the “favelization” of their land. This Code had serious consequences for the lives of *favelados*, even though it was never actually enforced, at least not until the 1960s. In a political context dominated by patronage, the *favelas* gradually acquired a *sui generis* legal and political status (Conn 1968, 51) as they became tolerated without being consolidated. The impact of the 1937 Building Code depended more on the possibility of the Code being enforced than on its actual enforcement. As Carbonnier notes (1979, 101), “the unapplied law nonetheless remains available at the public’s convenience, and it is in this availability that its essential

5. National archives (AN): Microfilm 010.169-79. Cited by Silva (2005, 102–3).

utility lies. For this type of law, applicability is more important than application; it is effective in itself.” This kind of legal limbo represents a symbolic and institutional boundary that defines the *favelas* as both marginal and founding areas of the city. Despite clear signs of the *favelados*’ social inclusion in the city, the space defined by the *favelas* could be considered “more as being ‘in’ the city than ‘of’ the city” (Parisse 1970, 199).

THE CRIMINALIZATION OF RENT COLLECTION IN THE *FAVELAS* FROM THE 1940S ONWARD

With the coming to power of the Vargas administration, rents became a central issue in the exceptional political context of World War II. Keen to provide conditions conducive to the accumulation of industrial capital, Vargas exercised strict control over the working class under the auspices of the Ministry of Labor, Industry, and Commerce. He compensated for the decline in the population’s purchasing power through a series of concessions in terms of social policy, including the introduction of rent control in 1942 to mitigate the rising cost of living. This measure became one of the pillars of Vargas’ populist regime and was maintained even after the end of the war. While the State made some adjustments to rent levels over the years, these remained well below the rate of inflation. In the event, rent control did not come to a definitive end until after the military coup of March 31, 1964.

Although very popular, this measure indirectly exacerbated the housing crisis because it led to a dramatic reduction in real estate investment and an increase in eviction proceedings, while favoring the emergence of an informal real estate market that contrived to circumvent the legislation. It also triggered capital flight toward other economic sectors, such as industry and civil construction, especially given that rent control initially lowered labor costs, thus providing considerable advantages for sectors with large workforce requirements (Bonduki 1988, 77). In fact, by making housing scarce and expensive, rent control encouraged a large part of the population to resort to the *favela* as a solution to the housing shortage. As Nabil Bonduki remarks, by introducing the subsidized production of social housing through social welfare institutions, significantly penalizing urban landowners, and implementing a *laissez-faire* policy in the city’s *favelas* and suburbs, the State—whether consciously or unconsciously—contributed to reducing the cost of labor, indirectly stimulating the industrial, civil construction, and real estate sectors (Bonduki 1996, 837).

In this context, it was clearly advantageous for tenants to be able to sign an official lease under the protection of legislation favorable to them. During the years in which this law was in effect (1942–1964), *favelados* often sought to acquire and maintain tenant status, as was the case, for example, in the

temporary “Proletariat Park” project. This project relocated about 4,000 *favelados* in the early 1940s into temporary wooden housing, with the aim of rehabilitating the original *favelas* where they stood. However, that part of the project was never carried out. These parks, often well situated in the city, deteriorated rapidly to such an extent that the national census of 1950 already officially considered Proletariat Park no. 1 a *favela* like any other.

The residents of these parks paid the government a small rent, which gave their accommodation legal status. As a result of the rising value of the land where some of these parks were located, the government stopped collecting rents under cover of a populist message. In doing so, it stripped the residents of their tenant status, thereby creating the option of evicting them. An article dated February 11, 1953 in *Diário de Notícias* clearly shows that the residents were perfectly aware of the underlying aims of this municipal decision: “We do not believe that the government’s decision to no longer ask us for these tiny rents will provide us with a more comfortable life. We suspect, in fact, that it is simply the best way to get rid of the parks” (cited by Oliveira 1981, 53).

Throughout the 1950s, landowners and tenants alike regularly used the benefits conferred on them by their landlord and tenant status in legal disputes. Indeed, as Silva points out, when the legal and political situation was clearly unfavorable to the *favelados* in the countless property disputes that erupted in the 1950s, they sought to establish legal ties with the putative owner of the land by paying him rent, which conferred a stronger legal status to their occupation of the land and made judicial evictions more difficult (Silva 2005, 121). Furthermore, the supposed owners of the land often allowed it to be occupied without complying with existing urban planning standards. This was pointed out by José Henrique da Silva Queiroz, the head of the municipal department responsible for eradicating the *favelas*, in an interview granted to *Diário de Notícias* on October 6, 1955: “However hard the municipality tries to curb the proliferation of *favelas*, the fact is that many owners thwart our department’s efforts by encouraging their proliferation, which is in their interest since they collect rent on the shacks (. . .).”

Despite the lack of mass public campaigns to eradicate the *favelas* in the 1950s, a few were nonetheless eradicated to make way for major urban development projects. One example is the Santo Antonio *favela*, which was destroyed in 1954 so that the entire hill of the same name could be flattened. Moreover, during this period, despite the relative lack of re-housing operations, the *favelados* were subjected to strong pressure from the countless legal disputes that arose from, among other things, the non-payment of rent. This situation caused so much political tension that a special law had to be enacted, namely “the law of the *favelas*” (law no. 2.875 of September 19, 1956), which was intended to temporarily block legal evictions. This legal text provided, in

addition to substantial public subsidies for various low-cost housing development projects throughout Brazil, for a two-year ban on the eviction of *favelados*⁶ as well as the safeguarding of their homes until they could benefit from these low-cost housing development projects:

Article 5: For two years from the date of enactment of this law, no legal eviction shall be carried out against the residents of the *favelas* located in the Federal District.

Article 6: The current residents of the *favelas* are guaranteed the preservation of their homes in the event that they do not benefit from the housing to be built using the special funds specified in this law.

In the event, this law was prejudicial to the real estate market in the *favelas* as it tacitly declared the renting of shacks illegal. Yet, despite the abuses of the *favela* landlords—dubbed the “*favela sharks*” by the press of the time—the tenancy condition gave the *favelas* a stronger legal status and the *favelados* the chance to claim certain rights by minimizing the *sui generis* legal nature of these urban areas. The initiative did not exactly discourage real estate practices in the *favelas*, which continued to grow informally. Consequently, a legal debate emerged concerning the regulation of the growing and lucrative real estate market in the *favelas*. The courts consistently applied rent legislation to the shacks and small houses located in the city’s *favelas* (Espínola Filho 1957, 40). By ruling on eviction procedures on the grounds of non-payment of rent,⁷ some judges conferred a degree of legal status on the *favelas*. This is shown, for example, in the following excerpt from the decision by the First Civil Chamber of the Federal District Court of December 7, 1953 (cited by Espínola Filho 1957, 1051):

Although the eviction action was proposed by the plaintiff as the owner of shack no. 338 in the Santo Antonio *favela* against the tenants of rooms within this same shack, it must be highlighted that law no. 1.300 clearly refers to the rental of an urban building. (. . .) Whether the building is light, poor, modest, or collapsible is of little consequence as law no. 1.300 still applies provided the building is urban. The housing of the poor, however modest, also deserves the law’s protection.

Despite the judicial authorities’ recognition, the municipal authorities consistently upheld the illegal status of renting in the *favelas*. In fact, the Special

6. During the legislative debate, lawmaker Bruzzi Mendaça explained the importance of this two-year period as follows: “This amendment [the two-year ban on evictions] is intended to safeguard the rights of the current occupants of the *favelas* by granting them relative stability while the public housing projects that are to be built with these funds are under construction.” *Anais da Câmara dos Deputados* (1955/1956), vol. 7, IBGE, 1956, 291.

7. The following extract from a 1958 court ruling relating to the *favelas* law shows that some judges fully accepted the presence of the real estate business in the *favelas* despite the prohibitions imposed by the 1937 Building Code and by the *favelas* law: “It would indeed be strange for housing to have been offered free of charge to the tenant for two years, during which time the owner would have paid all costs while watching the ruin and destruction of his property without being able to defend his asset.” Cited by Conn (1968, 63).

Agency for the Rehabilitation of the *Favelas* and of Sub-Standard Housing (SERFHA) issued a decree on June 25, 1959 that reinforced the ban on rentals in the *favelas* in Rio de Janeiro:

With the aim of combating speculation and abuses committed against this city's poor who live in our *favelas*, SERFHA hereby makes it known that demands for the payment of rent for these houses is prohibited. Any payment made in any capacity to the exploiters who finance or encourage the construction of these homes without the permission of the competent bodies must be halted.

The public authorities are not required to recognize rights arising from illegal construction, which clearly contravenes the relevant laws.

Moreover, SERFHA informs the victims of these exploiters that it is available to support them in taking all the steps necessary to protect their rights through its legal assistance and miscellaneous support services located on Avenida Antonio Carlos and open daily from 8:00 to 5:00 p.m.⁸

This decree influenced a number of subsequent court rulings. For example, Judge Irineu Jofilly of the 6th Civil Chamber prevented the eviction of some *favelados* for not paying rent. As an article in *Diário de Notícias* of August 8, 1959 makes clear: "By ousting the '*favela shark's*' claim, the judge recognized the pre-eminence of the SERFHA decree prohibiting the collection of rents in the *favelas*." However, this judge's position was not consensual. For example, Judge Antonio Soares Pinho of the 14th Civil Chamber accepted the claims of a purported owner of lots in the Rocinha *favela* and ordered the eviction of the residents despite the SERFHA decree.⁹ Given that several *favelados* immediately stopped paying their rent upon the decree's promulgation, several landlords resorted to violence as a means of demanding payment or referred the matter to the courts, which swelled the number of lawsuits enormously and seriously aggravated social tensions. As demonstrated by the following excerpt from *Diário de Notícias* of August 8, 1958, this situation was by no means marginal in the *favelas*:

Taking their criminal activities to their logical conclusion, about a hundred shack owners have rebelled against the SERFHA decree and taken the matter to court, demanding the eviction of the tenants who have been using them. The result is that there are currently 79 lawsuits against *favelados* before the courts.

This encouraged the municipal authorities to strengthen the ban. The promulgation of decree no. 374 of February 24, 1961 not only reinforced these provisions but also prohibited all transfers of shacks in the *favelas*. Even the legitimate owners of lots where the *favelas* were located had to submit their land titles to SERFHA prior to obtaining permission to collect rents. By

8. Cited by *Diário Carioca* of June 26, 1959.

9. See *Última Hora* of November 26, 1959.

making difficult any legal judgment likely to entail a *de facto* recognition of the *favelas*, this measure further consolidated their illegal status. The preamble to the aforementioned decree stated that:

Federal Law no. 2,875 of September 19, 1956 guarantees the *favelados* permanent residency in their respective homes. However, it should be clear that the public authorities are not required to recognize any rights in connection with illegal buildings.

According to Stephen Conn (1968, 100–1), the precarious legal status of constructions in the *favelas* prevented the judicial authorities from taking into account any rights resulting from the real estate business in these locations, even with respect to permanent houses made of brick or concrete. Conn argues that since the “law of the *favelas*” was promulgated in 1956, buildings in the *favelas* were increasingly considered temporary features and liable to be destroyed as soon as the authorities had built low-income housing to replace them. In the end, despite the provisions of article 4 of decree no. 374 of 1961, which recognized no rights arising from documents concerning illegal shacks, public control over these activities was not lacking.

As noted above, several *favelas* were developed with the agreement or even the support of the landowners. Some of these landowners even signed leases with the *favelados*, thus establishing a kind of legal relationship with them. However, they could suspend rent collection at any time in order to create a legal situation favorable to the eviction of their tenants. According to Silva (2005, 101), there are strong indications that about 40% of the *favelas* built before 1964 may well have developed through some type of prior authorization granted either by the supposed landowners or, in the case of public land, by public officials.

In the end, despite the lack of existing data on the informal market, some authors confirmed its growth at the time by showing that it was not a marginal affair. In 1957, Victor Tavares de Moura stated that he knew a man who had abandoned the construction of skyscrapers to build shacks in the *favelas* because of the profits this could bring him.¹⁰ He also cited the case of the Modesto brothers of the Cantagalo *favela*, who owned 190 rental shacks on the hill as well as 52 *biroscas*.¹¹ For his part, Parisse showed that 13.7% of *favela* residents in the 1960s paid rent on either the land or their house (Parisse 1970, 162).

The criminalization of the rental market thus reinforced the precarious status of the *favelas*, helping to legitimize the resettlement policy that resulted in the displacement of about 140,000 *favelados* to housing projects in the suburbs between 1962 and 1975. However, the move toward democracy put an end

10. Victor Tavares de Moura's speech on the *favelas*, January 8, 1957. Archives of the Oswaldo Cruz Foundation (FIOCRUZ), Victor Tavares de Moura collection—VT/PI/19570108.

11. Small commercial housing units.

to the *favela* eradication policy and shifted the focus toward public measures aimed at rehabilitating these urban areas. Although rent collection is still criticized and even discouraged by current legislation, public land tenure regularization programs have, as we shall see below, gradually recognized it.

RENTS AND LAND TENURE REGULARIZATION ISSUES FROM THE 1980S ONWARD

The first real land tenure regularization program in Rio de Janeiro was the *Cada Família um Lote* (CFUL) ["A Lot for Each Family"] project initiated by the first Brizola administration in the State of Rio de Janeiro (1983–1986). Prior to the innovations introduced by the 1988 Constitution, this program was a pioneer for land tenure regularization policies in the *favelas*. The State of Rio de Janeiro Housing Company (CEHAB) issued a purchase agreement in favor of the program's beneficiaries who, after having paid 48 monthly installments not normally exceeding 10% of the minimum wage, had the right to formally register their title deed with the land registry (Araújo 1990, 28). While the project imposed no restrictions on the use of these properties by its beneficiaries, it prohibited the selling of the properties during the payment period, in contravention of which the purchase agreement would be canceled. However, this rule was not always complied with, and the informal transfer of purchase agreements did take place (Araújo 1988, 74–6). The program also had to deal with the issue of informally rented buildings. A letter from the residents' association of the Jacarezinho *favela* addressed to the housing secretary of the State of Rio de Janeiro in 1983 makes the social implications of such a process clear (Araújo 1990, 29):

We are totally against real estate operations, and we think that the government should make home ownership possible for each tenant, or if this is not viable, at least ensure that rents are not raised exorbitantly on the grounds that the owner now has a title deed. (. . .) There are people renting out houses who do not even live in the *favela*. We do not believe that these people can be considered poor. (. . .) If the owner of ten rental houses receives ten title deeds, the government will in fact have turned its back on the true objectives of the CFUL program.

In fact, the government, which wanted to grant a single deed per family, was forced to intervene in disputes between landlords and tenants so that the latter could buy their home. If the landlords did not accept this agreement, CEHAB did not issue the deed (Araújo 1988, 29). The issue of tenants created a vast number of problems, and the tenants' interest in the project soon dwindled, not only due to the fact that they often lacked the capital to buy but also because some landlords, who belonged to mafia networks and were obviously unwilling to lose their capital, systematically forced them to remain silent (Araújo 1988, 30–1).

Following the promulgation of the 1988 Constitution, urban legislation sought to combat the concentration of ownership resulting from land tenure regularization programs. Some legal instruments, such as the special provision for urban acquisition, the special concession for housing, and, more recently, the right of possession,¹² only recognize the land tenure rights of occupants of buildings who may be neither owners nor beneficiaries of a right to use a title deed for other buildings. This restriction aimed to limit the process of gentrification of the district following land tenure regularization by seeking to reconcile social functions and the market value of title deeds. Theoretically, social mobility in the neighborhood should have been horizontal. As a result, legislation on land tenure regularization gave precedence to the owner-occupier over those who owned several buildings and hence played the role of local property developers.¹³

Despite the existing legislation, the major *favela* upgrade project, *Favela-Bairro*, which began in 1995, recognized the structure of the informal property market. Item 5.1.9.e. of the operational regulations of the Program for the Urbanization of Popular Settlements in Rio de Janeiro (PROAP-Rio), which includes *Favela-Bairro* and the Lot Tenure Regularization program, and which concerns compensation for people re-housed during upgrading and construction work, stipulated that tenants should receive compensation equivalent to three months' rent in addition to assistance in finding a new home, while informal owners should be fully compensated for the value of their homes. Although the land titling efforts of the *Favela-Bairro* project ended in a resounding failure, this project clearly consolidated the *favelas* in Rio de Janeiro and recognized the internal structure of the rental market in these urban areas.

As regards the rental market, the question is whether local landowners, some of whom are genuine real estate developers, should benefit for free from public efforts to regularize land tenure in the *favelas*. In some current projects, such as the regularization of the Rocinha *favela* as part of the *Papel Passado* federal program, only the first title deed is issued free of charge.¹⁴ Those who own several buildings must bear the costs of registration for the second title.

12. The special provision for urban acquisition allows occupants of private land who are not owners or concession holders of other urban or rural property to acquire through a court order the ownership of the land if they have lived there over five years, if the owner has not attempted to recover the land during this period, and provided that the surface area of the lot does not exceed 250 m². As regards public land, the occupant can claim administratively under the conditions stated above a special concession for housing from the public agency that owns the building. To circumvent the administrative requirements of the land registry and the judicial authorities in the process of land tenure regularization, a 2009 law introduced the right of possession, which recognizes possession by occupants and simplifies procedures for urban regularization. After five years, occupants can convert their right of possession title into private property with the land registry without the need for judicial involvement.

13. It is nonetheless possible to regularize the tenure of the owners of several buildings. However, the procedures are longer and more complex.

14. Public land tenure regularization projects require the free registration of title deeds with the land registry on social grounds. Moreover, some judges have turned down several requests for free registration on the grounds that some *favelados* are not necessarily poor and thus capable of bearing the significant costs of registering their land titles.

However, tenants have no voice in the regularization process and are often not even registered by the project.

Over the last few years, there has been a significant rise in the number of property developers in some of the city's *favelas*. In the specific case of the Rocinha *favela*, Leitão (2007) recounts the arrival of outside investors in the *favela*, who decided to invest because of the high return on real estate activities in the area. Despite criticism of the growth of an informal rental market concentrated in some *favelas* in the hands of a few owners, Pedro Abramo stresses that this market in Rio de Janeiro is fairly fragmented and that it focuses on the poorest residents and on newcomers to the *favelas*, who have neither the means of saving capital to buy a house in the *favela* nor the ability to access credit. Abramo argues that the growth in rental stock is due in part to the informality of the labor market, which led many of the *favelados* to extend or subdivide their own homes in order to rent them out (Abramo 2009, 36–7).

This sector does not bother with excessive formality in the guarantees required of new tenants, and it offers a degree of flexibility regarding rent collection, which is fundamental given the unstable employment conditions of many of the tenants. Despite the exorbitant property prices in some of the more central *favelas*, such as Rocinha, it is still more cost-effective to live in the *favela*, as Leitão points out (2007), than to pay a lower rent in the suburbs but bear the financial and time cost of commuting by way of a highly inefficient public transportation system.¹⁵

According to Pedro Abramo (2009, 41), the informal rental market is characterized by a majority of one-bedroom rentals, or approximately 70.1% of the rental stock in the *favelas* of Rio de Janeiro. This is the result of the sub-division of houses into multiple family units or of the construction of multi-story buildings consisting of several small apartments. Today, the population is returning to the city center, including to *favelas*, where the multi-story buildings in part resemble the old *cortiços* of the early twentieth century. Furthermore, the absorption of new residents into the *favelas* in the last decade has been largely accomplished through the rental market. According to Abramo's research, the percentage of tenants increased from 14.8% in 2002 to 27.27% in 2008 (2009, 35–6). However, the informal rental market may yet become a problem because it is in the process of further degrading the situation of the underprivileged (Abramo 2009, 43) by putting up housing where living conditions are extremely dubious. However, it must be acknowledged that this market fills a large part of the housing deficit in Rio de Janeiro and that any attempts

15. The public authorities had to increase the temporary housing benefits from 250 *reais* to 400 *reais* in cases of displaced people due to the risk of collapse of houses or due to large-scale public works taking place within the *favelas* because the previous amount no longer covered the costs of renting in many of the *favelas* in Rio de Janeiro. For comparison, the national minimum wage was 510 *reais* in 2010.

at regulation must improve living conditions in the *favelas* without completely prohibiting existing practices. A return to the criminalization of rental activity would most certainly be ineffective as well as disastrous.

CONCLUSION: REGULARIZING LAND TENURE AND REGULATING THE INFORMAL RENTAL MARKET

From their beginnings in the late twentieth century, the status and the space occupied by the *favelas* have been both tolerated and illegal. Hygienist measures to destroy the *cortiços* and the redevelopment of the city along Haussmannian lines in the early twentieth century encouraged the occupation of the hills as a precarious solution to the housing crisis. Moreover, many of the *favelas* were formed with the consent of the putative landowners through the renting of lots or of houses. The debate over rentals in the *favelas* took on major importance in the context of rent control legislation (1942–1964), with legal disputes over unpaid rents in the *favelas* being triggered at the time. Acknowledging the rental market could have led to a *de facto* recognition of the *favelas*, which prompted the municipality to prohibit rent collection due to the illegal status of buildings and land in the *favelas*. Following the resounding failure of re-housing policies (1962–1975) and in the late-1970s context of political openness, several upgrading and land tenure regularization projects in the *favelas* were launched. Although these projects resulted in the renovation of a large number of *favelas* over the years, they have made very little progress with regard to land titling for the residents, nor have they brought about any kind of effective process for formalizing the rental market.

Although the *favelas* remain associated with illegal land occupation and their inhabitants with poverty-stricken and marginal groups, looking at the rental market in the *favelas* from a historical perspective shows that they have been diverse and dynamic places from the very start. While rent could become a form of recognition of the *favelas*, the current vitality of informal rental markets can work, as we have seen, to the detriment of the poor. Although this market may well represent a significant supply of housing, the current *laissez-faire* policies serve in the medium term only to compound precarious housing conditions and the concentration of property ownership in the *favelas*. Without criminalizing these real estate activities and taking into account the specific features of the informal rental market, the regulation of this market is essential to ensuring both socially beneficial land use and the improvement of housing quality in the *favelas*.

BIBLIOGRAPHY

- Abramo, Pedro. 2009. *Favela e mercado informal: A nova porta de entrada dos pobres nas cidades brasileiras*. Porto Alegre: ANTAC.
- Alvito, Marcos. 2003. *Lecture notes: O Rio de Janeiro e as favelas*. Rio de Janeiro. Accessed on May 2005 from: www.opandeiro.net/cadernos_cursos/favelas-parte1.pdf
- de Araújo, Maria S.M. 1988. *As praticas de execucao do programa Cada Familia um Lote*. Master's dissertation, Universidade Federal do Rio de Janeiro.
- de Araújo, Maria Silvia de Muylaert. 1990. "Regularização fundiária de favelas—imóveis alugados: O caso do programa 'Cada Família um Lote' no Rio de Janeiro." *Revista de Administração Municipal* 195:26–35.
- Backheuser, Everardo. 1906. *Habitações populares*. Rio de Janeiro: Imprensa Nacional.
- Bonduki, Nabil. 1988. *Origens da habitação social no Brasil: Arquitetura moderna, lei do inquilinato, e difusão da casa própria*. São Paulo: Estação Liberdade/FAPESP.
- Bonduki, Nabil. 1996. "Habitação, estado, e movimento moderno: A ação dos IAPs." In *Anais do VI Encontro Nacional do ANPUR: Modernidade, exclusão, e a espacialidade do futuro*, edited by Ricardo Farret, 836–51. Brasília: ANPUR.
- Carbonnier, Jean. 1979. *Flexible droit: Textes pour une sociologie du droit sans rigueur*. Paris: LGDJ.
- Conn, Stephen. 1968. "The Squatters' Rights of Favelados." *Ciências Econômicas e Sociais* 2:50–142.
- Espínola Filho, Eduardo. 1957. *Manual do inquilinato no direito civil vigente estudo de toda a legislação brasileira em vigor, inclusive as leis 2.875, de 19 de setembro de 1956 e 3.085, de 29 de dezembro de 1956*. Rio de Janeiro: Borsoi.
- Leitão, Gerônimo. 2007. "Transformações na estrutura socioespacial das favelas cariocas: A rocinha como um exemplo." *Cadernos Metrópole* 18:135–55.
- Gonçalves, Rafael Soares. 2010. *Les favelas de Rio de Janeiro: Histoire et droit—XIXe-XIXe siècle*. Paris: L'Harmattan.
- Medina, Carlos Alberto. 1969. "A favela como uma estrutura atomística: Elementos descritivos e constitutivos." *América Latina* 3:113–36.
- Oliveira, Ney dos Santos. 1981. "Parque proletário da Gavea: Uma experiência de Habitação popular." Master's dissertation, Universidade Federal do Rio de Janeiro.
- Parisse, Lucien. 1970. *Favelas de l'agglomération de Rio de Janeiro*, PhD dissertation, Université de Strasbourg.
- SAGMACS. 1960. "Aspectos humanos da Favela Carioca." *O Estado de São Paulo*, April 8 and 15. São Paulo.
- da Silva, Luiz Antônio Machado. 1967. "A política na Favela." *Cadernos Brasileiros* 41:35–47.
- da Silva, Maria Lais Pereira. 2005. *Favelas Cariocas 1930–1945*. Rio de Janeiro: Contraponto.
- Vaz, Lilian Fessler. 1988. "Do Cortiço à Favela: Um lado obscuro da modernização do Rio de Janeiro." In *Habitação e cidade*, edited by Maria Ruth Amaral de Sampaio, 39–52. São Paulo, FAU/USP-FABESP, 39–52.