

FAVELA BAIRRO: A BRIEF INSTITUTIONAL ANALYSIS OF THE PROGRAM AND ITS LAND ASPECTS¹

Sonia Rabello de Castro
Professor of Administrative Law
University of the State of Rio de Janeiro^{*}

1 - INTRODUCTION

The program denominated and known as *Favela Bairro* (from slum to neighborhood) is a policy conceived and implemented by the Government of the City of Rio de Janeiro, starting in 1994.

This program has received national and international recognition because it is an example of efficient state intervention in urban housing through government investment. The program aims to integrate slums into the legal city, by providing access for the population of the favelas to basic urban and social services, as well as the regularization of its public and private spaces.

It is important to note that this program was instituted exclusively on the basis of a local government policy decision, and has been carried out by technical staff from the Municipal Government. This represents a very unusual institutional arrangement, from the perspective of housing programs of the size of *Favela Bairro*. This was possible because of the federal system of government in Brazil, which differs from other models like those found in the United States or Germany. In Brazil, municipalities are autonomous entities (they are part of the Federation) with their jurisdiction prescribed by the Federal Constitution, and not by delegation of state entities, as usually occurs in other federal models.

These conditions allow municipalities sufficient constitutional autonomy to decide and implement their own public policies, without interference from Federal or State Government, although they have to do so with their own funds, assuming responsibility for associated risks. Thus in the case of *Favela Bairro*, the Government of the City of Rio de Janeiro assumes all responsibility for the conception and implementation of the program.

There are aspects of the program where the actions of Federal and State Governments overlap. Most of those circumstances have no political importance, except when there is a need to obtain approval from the Federal Government for

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^{*} My acknowledgements to Angela Cartier, who translated this work into English.
(acartier@openlink.com.br)

negotiation of international financing of a share of the program, as determined under Brazilian law.

The *Favela Bairro* program requires a combination of measures by public authorities; thus, any governmental authority intending to implement it must ascertain the appropriate legal/constitutional jurisdiction. Its implementation was possible only by exclusive political determination on the part of the Government of the City of Rio de Janeiro. This is because Brazilian municipalities, besides being autonomous federated entities, also hold the specific set of competencies to provide all - or almost all - public services necessary for the basic development of the program.

Once again, we would like to emphasize that the federal model of the Brazilian State was a major factor in allowing for the implementation of the program, that is, through a simple political decision of the head of the local executive branch and the consequent approval of the budget by the local City Council. On the other hand, the program required of the municipality of Rio de Janeiro an executive, administrative and financial capacity that is found in very few Brazilian municipalities.

Two central points emerge from this introduction:

- a) That a simple and exclusive political decision of the local government made the program - the way it was conceived - possible, because the Brazilian federal model provides the competencies required for its implementation; and
- b) On the other hand, because it is a program of technical and administrative complexity and considerable financial demands, few local governments in Brazil have the financial, executive and administrative capacity to carry it out on their own.

These are two aspects that should be emphasized in presenting the *Favela Bairro* program as a paradigm for housing policy in other countries. We should also take into consideration the intrinsic relationship of the program to specific aspects of favelas in Rio de Janeiro, such as social, physical and legal features, since without them, the program would have lost its relevance. Here we will explore this point further.

2 - ANTECEDENTS AND CURRENT ASPECTS

2.1. - Antecedents

As the name says, the *Favela Bairro* program designates areas denominated "Favelas" (slums) as the object of the governmental action. Favelas are largely residential areas, where poor populations took possession of vacant public or private areas.

In Rio de Janeiro, the most important indications of their existence date from the late 19th and early 20th centuries. Curiously, the name “*favela*” comes from *Favela Hill* (“*Morro da Favela*”), a hill located in the central area of the city. Since that time, the name became a stereotype for urban occupation for the poor. Nevertheless, occupations with these characteristics existed before the end of the 19th century, on the slopes of the *Castelo* and *Santo Antônio* hills, but were demolished in favor of urban projects aimed at modernizing the downtown area of the city during the early decades of the 20th century.

It is also interesting to note that what is considered the causal factor for this type of social occupation of city land, typically seen as socially undesirable, has remained practically constant throughout: a population lacking the resources to secure housing seeks a place to live, in urban vacant areas, or other areas not being used by their owners (public or private), located close to places of work or accessible to transportation.

“...It is worth saying that the occupation of these areas has a special character, that is, the search for a place to live "(...) "They are people attracted by the combination of modern transportation and available space.”²

The lack of sufficient income, which made it impossible for the very poor to rent or buy standard housing (under the norms of municipal law), was worsened by various factors. Among these we will highlight those particularly related to public policies:

- a) During the first quarter of the 20th century, public authorities implemented urbanization projects in Brazil, clearing a number of areas where poor residents used to live in collective houses close to places of work;
- b) The complete absence of governmental policies which would supply new homes for the displaced population; and
- c) Municipal urban legislation not only ignored but also aggravated the housing problem, since the traditional communal houses, known as “*estalagens*” (lodges), “*cortiços, casas de cômodos, avenidas*” and more recently also “*vilas*”³ were successively forbidden in the new urban areas.

² PORTO ROCHA, Oswaldo. *A Era das Demolições*. Rio de Janeiro. Coleção Biblioteca Carioca. Secretaria Municipal de Cultura. 1999, p. 75.

³ CARVALHO, Lia de Aquino. *Habitações Populares*. Rio de Janeiro. Coleção Biblioteca Carioca. Secretaria Municipal de Cultura. 1995. 2^a ed. pp. 134, 138. This work includes descriptions of several forms of communal housing:

Cortiço: communal house usually made of wood, with small rooms, no kitchen, located sometimes in the backyard of buildings, or one on top of the other, and with just one common bathroom and laundry to be shared by all families.

In some ways, all of these aspects of urban public policy have remained the same throughout the 20th century in Rio de Janeiro. This allowed for *favelas*⁴ to become the most common and systematic social reality in the city, as the means by which the low-income population could solve their unavoidable and persistent housing problem.

2.2. - Current Features

Favelas, as we have seen, can be characterized as precarious settlements in vacant urban areas, mainly those close to work places.

Favelas are different from other kinds of irregular urban land occupations, called irregular or clandestine developments. This differentiating factor has important consequences for the distribution of building space, for the style of building and for the introduction of urban services.

What differentiates these irregular or clandestine land divisions from *favelas* is the question of equitable ownership. Irregular and clandestine developments both contradict the rules of public authority: in the first case, because the owner of the plot did not follow the approved project or carried it out irregularly; in the second case, they are clandestine because the owner did not submit the project for the approval of the local urban authority. Nevertheless, in both cases, the owner sells the plot, although without proper documents.

However, these sales operations have, without any doubt, validity to prove the intention of the disposal of assets, the good faith of the buyer, and are legal deeds according to civil law, which provides the essential elements to fulfill a legal transaction between the private parts.

These documents, although precarious, are the basis – an important starting point - for the regularization of ownership. It is important to make a clear distinction between the *favelas* and that of the irregular/clandestine developments. The fact that *favelas* are spaces occupied without the consent of

Estalagem: usually had a patio, rooms divided into two (bedroom and living or dining room); the kitchen could be inside or outside, with public bathroom and laundry area outside in the patio.

Casas de cômodos: old houses of several floors, divided and subdivided by many wooden partitions.

Avenidas: small individual houses with bedrooms, living/dining room, bathroom, sewer and water available. They were very similar to the Vilas.

⁴ **Favelas** in Rio de Janeiro today are not so different from the forms of housing mentioned above, given the lack of sanitation and their very precarious nature. Earlier housing arrangements were even more precarious, while today at times they present slightly better sanitary conditions, and more permanent constructions with more space. The difference is that formerly they were located in central parts of the city, which became the subject of real estate speculation because of urbanization. These areas were highly valued through urban public investments, and especially because of their prime business location. Today *favelas* are located in peripheral areas and in locations close to business and work places, mainly on hillsides in the city, or in highly risk-prone areas, lacking speculative interest in the real estate market.

the owner creates an enduring situation of uncertainty and insecurity: the stigma of precariousness.

It is important to stress that Brazilian society, in general, has little or no information about the illegality of acts that are performed when urban rules concerned with the use of private land are not followed. Most of the time, people ignore those rules and, consequently, the illegal act being committed.

Nevertheless, for the majority of the population, especially the poorest, the general consensus is that the owner holds command over his property. Thus, if he sells it, the transaction is valid, no matter how it is carried out.

For this reason, people do not worry about buying irregular/ clandestine lots since these are being sold by the person who is supposed to be the owner, even if the purchase is proven by an invalid document from an official point of view. This document still gives to the buyer the assurance of ownership of that lot.

This fundamental circumstance brings important consequences: the “new owner”, assured of his situation, will be inclined to respect the limits of “his property”, “legally” bought, to invest more money in permanent construction, and will request urban services such as water, sewer, transportation and health clinics from the local authorities. He feels secure of his legitimate ownership.

The situation of the “*favelas*” is different, since everything begins, and consequently remains, precarious and irregular. Nevertheless, it is in this kind of occupation *non dominum*, but extremely necessary to the survival of many people, that is the origin of the complex system of uncertainties and irregularities. The area is settled with neither *a priori* criteria for the definition of areas of occupation, nor for the number and size of the lots, since occupation is continuous, as people arrive, and settle, within the limits of local physical conditions. From this point, unplanned accesses and passageways are built among the houses in a disorganized fashion. Evidently, there is no claim for basic public services since this “luxury” is not a priority for those who, at this point, are concerned about survival and a roof over their heads, however precarious.

These citizens, workers who with their labor help to increase urban social wealth, acknowledge the precariousness of such occupation, since nobody has given them any guarantee of ownership. For many years they will face great uncertainty about whether they will be allowed to remain. As a result, their homes are indeed very insecure, since there is no reason to invest in their improvement, as there is no reason to invest in any common space or services. Likewise, there is little incentive to create a system for receiving newcomers to the settlement.

In the favelas, everything is irregular and uncertain, and will remain so for many years: symbolic of their literal exclusion from the “legal” or official city. But, as with any social group and for purposes of their own survival as such,

residents create their own internal rules. Self-appointed leaders and chiefs develop coercive measures in order to assure that their “laws” are respected.

The State has remained completely disassociated from the favelas: here, its laws are not applicable, nor do its police or courts enforce them; public services do not even reach the favela. *Favelas* are like an urban limbo, as compared to formal and regular society.

This is the very way these areas are presented in laws governing urban planning in the City of Rio de Janeiro.

3 – INTRODUCTION: THE *FAVELA BAIRRO* PROGRAM

3.1. - General Features of the *Favela Bairro* Program

The *Favela Bairro* program was introduced in 1993, when the newly elected Government of the City of Rio de Janeiro took office. At the time, local government did not include a Housing Secretariat in its administrative structure. The question of public intervention in the favelas was considered to be the jurisdiction of the Urban Planning Secretariat. Before the implementation of the *Favela Bairro* program, the local government had taken some measures. In some of the favelas there were programs for reforestation and basic water and sewage systems were introduced, in the form of “*mutirão*” (collective community work). But there had been no systematic or widespread program on the scale of *Favela Bairro*.

In fact, beyond these sporadic actions, before the introduction of the *Favela Bairro* program as an official public policy of the government, there was almost no systematic public intervention in the favelas. The virtual absence of the State was evident in the lack of planned settlement, and in the lack of basic services. In the favelas, there is no public transportation, often because there is little access for motor vehicles. There is no sanitary infrastructure, such as water and sewer systems. The supply of electric power supply is weak, especially in public lighting. Only some favelas, usually the oldest ones, have elementary schools, and these are in very poor condition; very few have health clinics; there is no garbage collection or, if it exists, it is inefficient. As a result, environmental and sanitary conditions are extremely poor.

There is no systematic urban planning, that is, the adaptation of legislation for land use (for division, building and utilization of the land), since there is no urban legislation applicable to these areas⁵. As we have seen, land tenure (when it is not violent and/or clandestine, which would make it illegal also under private law) is uncertain, and it is very difficult to demarcate areas due to irregular housing arrangements.

⁵ In the Master Plan of the city of Rio de Janeiro, favelas are shown as blank areas, in other words, lacking any legal recognition whatsoever.

Given such a multiplicity of uncertainties, the struggle for power is inevitable, as is social violence and criminality, which operate completely beyond the limits of State control.

All these aspects make favelas antithetical to the standards that regulate the formal city. Favelas are chaotic spaces compared to the notion of official urban regularity. Nevertheless, after a century of existence, the favelas are home to almost 1 million people, or 20% of the urban population of the city.

Thus, the program *Favela Bairro* comes from the acceptance of this inevitable reality: the existence of the favela as an urban social reality, and the urgent need for the official system to adapt to this reality as best as possible. The name of the program represents the goal of changing *favelas* into neighborhoods, so that they are integrated into the city. It is hoped that with the implementation of the program, *favelas* might even lose the name “*favela*”, so as to be called by their true names, like other recognized neighborhoods: *Borel, Mangueira, São Carlos, Copacabana, Tijuca, Ipanema, etc.*

At this point, we should ask: what is the nature of the *Favela Bairro* program, and of what does it consist? The answer is not the one that would apparently seem most obvious, that is, a housing project.

While favelas are basically residential, from the perspective of the city as a whole today they are more complex and problematic. The housing question may be the origin and principal purpose of the program, but the program encompasses all basic and fundamental aspects of urban administration, with the implementation of public and social services and infrastructure. This is the reason that the Master Plan of the City, art.139, establishes that the responsibility for city housing policies will be that of the agency in charge of urban planning.⁶

Thus, the Secretariat of Urban Planning was responsible for the favelas until March, 1994, when the Municipal Government granted the new Housing Secretariat total jurisdiction over the implementation of housing policies in the City of Rio de Janeiro. In this regard, it is important to mention two points:

- a) The housing policy of the city is not limited to the *Favela Bairro* program; and
- b) Although the program is conceptually considered an aspect of housing policy, it is basically a very complex urban planning program, encompassing social goals as well as a plan for the regularization of land ownership.

Summarizing, the *Favela Bairro* program is essentially an urban planning program, in the broadest sense. From the point of view of its goals, *Favela Bairro* is a housing program, since it aims at the legal and urbanistic regularization of predominantly residential areas.

⁶ Master Plan of the city of Rio de Janeiro: Complementary Law n. 16, of June 14th, 1999

Despite the conception of *Favela Bairro* as urban planning, due to a political decision, and for purposes of administrative convenience, it was decided that the program would be administered by the Housing Secretariat.

The general scope of the *Favela Bairro* program and the housing policies associated with its implementation, had been included since 1992 in the Law of the Master Plan⁷, article 138, and in the so-called Organic Law that sets out the organization of the Municipality of Rio de Janeiro:

"Art. 429. Urban development policies will obey the following precepts:

IV - urbanization, landed regulation and registry of the areas occupied by the favelas and low-income population without the removal of residents unless required due to physical limitations that put its inhabitants at risk. In this case, the following rules are to be followed:

- a) A technical report is to be issued by the responsible agency;
- b) Participation of the interested community in the analysis and definition of solutions;
- c) If displacement is necessary, the population has to be settled in areas close to their original dwellings, or close to work."

As the executor of the Program, the Municipal Secretariat of Housing directs and coordinates the work of a special task force formed of managers from the highest levels of local Government, named the Executive Group for Popular Settlements – GEAP. The priority of this group is the interaction and coordination of programs carried out by each one of the Municipal Secretariats responsible for the implementation of specific aspects of the *Favela Bairro* program.

In its effort to transform the favelas into regular neighborhoods, the program seeks to provide them with the entire urban and social infrastructure typical of neighborhoods. For this reason, in each *favela* there are many different urban infrastructure projects, such as those that provide accessibility by main and secondary roads, provision of water and sewerage, the availability of electric power, public areas for leisure and sports, public works to contain erosion,⁸ as well as environmental projects, such as reforestation. Another important aspect is the removal of houses from high-risk areas, and the clearing of places where projected passageways, roads and common social spaces are to be built.

Except for the replacement of a displaced house, there is no provision for new homes in the program, but it is probable that improvements brought about by infrastructure projects will motivate individuals to invest more in their houses.

⁷ Master Plan of the City of Rio de Janeiro: Complementary Law n. 16, of June 14th, 1999

⁸ Note: Rio is a city surrounded by mountains, where most of the *favelas* are located

Beyond the implementation of urban planning projects it is important to note that the *Favela Bairro* program envisions the introduction of important social development programs. These include sports, leisure, and culture, healthcare, as well as training for the job market, and educational programs, especially those implemented through the municipal network of primary schools.

The implementation of these diverse social projects makes the program unique and gives it real possibilities of sustainability and future development by means of the communities themselves.

It is important to stress that in implementing these projects through local government has acknowledged the existence of the urban favelas as an urban social reality, and is investing in their improvement, as it has always done for the other neighborhoods in the city.

Once again, we return to the fact that because the Brazilian federal model grants autonomy and legal authority to municipalities, allowing them to develop their own programs, local government can carry out all the projects of the program, without State or Federal legal authorization. Municipal Government has exclusive jurisdiction over urban planning in the city, and thus has the power to decide on zoning, building codes and other parameters for the use of land in any part of the city. This allows for local government to consider various urban models and their relevance for the areas occupied by the favelas, accepting them as they are, with only slight adjustments.

The Municipality also has jurisdiction to install basic infrastructure and public services, such as water, sewerage,⁹ electric power, areas for leisure, and garbage collection, construct public roads and passageways, and prevent erosion on hillsides and areas of risk.

Finally, the Municipality may implement, by its own means, all social projects that affect the community, especially those related to public health, education, environment, labor, social development, and culture.

3.2. - Institutional Features of the *Favela Bairro* Program

Here we will discuss what the Brazilian Constitution says about the housing question from the legal and institutional perspective.

By the Brazilian Constitution, all the three levels of the Government, federal, state and municipal, have executive authority to implement housing projects.

Art. 23 of the Federal Constitution states explicitly:

⁹ There are legal questions about the capacity of the Municipality to provide water and sewer systems, related to the eventual ability of State government to provide these services.

"Art. 23. It is the common responsibility of the Union, States, Federal District, and Municipalities:(...)

IX - to promote housing programs and the improvement of housing conditions and basic sanitary programs; (...)"

By this constitutional measure, Brazilian legislation included housing within the activities for the public good to be promoted. Housing is basically a private economic activity subject to the private investment market.

This means that, from the constitutional point of view, the economic activity of the real estate market for housing is not restricted to private investors. The provision of the market for housing and improvements in housing conditions became a question of public interest for the State.

Consequently, this authority given to the Brazilian municipalities implies responsibility for its administration. At the same time, it allows local political authorities to approve the development of projects as comprehensive and complex as *Favela Bairro* by a relatively simple political decision, independent of the approval of authorities from State and Federal Government.

4 – LAND TENURE ISSUES OF THE *FAVELA BAIRRO* PROGRAM AND ITS REGULARIZATION

4.1. - General Aspects of Land Issues

We have described how favelas appear, and differ from other kinds of irregular land occupation (irregular/ clandestine lots), because they exist under the stigma of the uncertain land tenure.

These are forms of occupation for which the Brazilian legal system does not so far admit a mechanism to protect the occupant, despite the fact that he may be poor, and acting in good faith, occupying unused or abandoned land.

In the city of Rio de Janeiro, until the Municipal Organic Law was passed, every occupation that had become a *favela* was under constant threat of removal¹⁰. Consequently, for decades, due to an urban culture developed over the course of the century, these urban residential centers were excluded from public and social investments. Furthermore, no effort was made for their integration into a system of legal ownership or safe tenure.

Another serious consequence was the exclusion of the *favelas* from normal public services, especially their marginalization from the system of public security,

¹⁰ Municipal Organic Law, art. 429, inc. VI, forbid the displacement of favelas unless they are located in areas of risk.

and from legal protection. These settlements developed in spite of the State; thus there was little room for knowledge or application of official laws. The *favelas* developed their own code of rules, and "rights of occupation". Today those rules are "enforced" by local groups who, most of times, use weapons and violence to maintain their power. Linked to the criminal world, they are the "owners" of the *favelas*.

This situation led to the emergence of another "State" within the official "State", of which the very population of the *favelas* became hostage. The consolidation of this insecurity in relation to the official State legal system has occurred through a new order that, **by violence, has dominated the population of the *favelas*.**

Owners, for two main reasons neglected the land where the *favelas* are located:

- a) When the owner was the State, which was either not aware of its own holdings, or although conscious, did not react to unauthorized occupation, by rich or poor.
- b) In the cases of privately held land, the areas had been considered unattractive by their owners, since they were located in inaccessible places and difficult building conditions - the actual *favelas* are often located on the slopes of mountains or close to lakes. These are areas still excluded from the speculative land market, which has invested in centrally located, flat areas (from which poor people had been displaced at the beginning of the century) and, more recently, in the coastal area and its proximity.

Eventually, *favelas* were removed from those areas as a result of land market speculation, as occurred during the 1960s and 1970s - when *favelas* located in areas close to Lagoa Rodrigo de Freitas (*favela da Catacumba*) and another one at the edge of the elegant quarter of Gávea, close to an expensive private university (*favela do Morro do Pinto*), were removed.

Nevertheless, most of the *favelas* that were settled on the slopes of the hillsides along the coastal area of the city, such as Copacabana, Leblon and São Conrado, still remain. In fact, the largest *favela* of Rio de Janeiro, called "Rocinha", with more than 150,000 inhabitants, is located in *São Conrado*, a wealthy neighborhood of Rio.

All this took place due to the absolute lack of affordable houses for the poor population, which had been forced, over the course of the century, to occupy irregularly and precariously, areas of little interest to the urban real estate market.

4.2. - The Question of Land Regularization of the *Favelas*

Knowing that the land question is the most basic problem for the social and urban integration of the favelas, the *Favela Bairro* program emphasizes regularization as one aspect of the Program. Besides, as we had seen, the Municipal Organic Law foresees it as a necessary feature of urban development policies (see page 10).

Landed regularization is explicitly mentioned in all proposals relating to the program but, among the elements of the *Favela Bairro* program, it has been the only one that has not shown great progress. In sporadic cases, municipal authorities provided title deeds to lots, but this occurred only under special conditions; for example, in public areas that were not hilly, and thus with a type of occupation that facilitated delimitation of the lots. Nevertheless, even in these cases, the landed regularization is still unfinished, since only the title deeds had been issued to the tenants, without any follow up measures. Legal and social effects related to the stability of property holding have not been monitored.

The reason that the regularization program has not been carried out according to the Program proposals is, in our view, a result of the Brazilian legal system, which involves complex legal, urban and civil law questions. In this regard, even the political decision from local government, and the resources to support it do not suffice.

The formulation of a specific program of action is needed, one that takes account of factors beyond the jurisdiction of the local Government. These include: civil legislation, included in the federal power, which defines the terms of the rights to property, the legal nature and effects of real estate rights in general, contracts and condominium agreements, location and general rules for the division of land, family and succession rights, as well as the rules of procedural law (ways to access Judicial Power). Federal law also defines the rules that determine the acquisition by the effects of tenure (*usucapiao*), the rules of public registry, and expropriation.

Consequently, landed regularization of the favelas cannot be considered simply in terms of the implementation of urban projects. A specific and complex plan must be developed in order to be effective. Many legal studies will be necessary in order to consider the legal variables presented by each situation; clearly outline alternatives that appear, including them among other legal possibilities, and adjusting everything in a frame of pre-determined objectives to be implemented in different occasions. Undoubtedly, that will surpass the foreseen term for the execution of public works.

Besides these legal questions that extend beyond the legal power of the municipality, that is, questions pre-determined by the federal legal system, landed regularization will necessarily be subject to two other partners: the Judiciary Power and the affected population.

In Brazil, conflicts of interest and questions concerning rights to rural or urban land are part of our social and legal history. It is the Judicial Power that, in the end, interprets the rule of law over said conflicts.

Without the participation of the Judiciary, it will be ineffective to build legal theories or even enact laws since there is a possibility that, in the medium term, they could be judged incompatible with the rule of law instituted constitutionally. It is in the Judiciary decisions the safest source of a new interpretation of the right to property, more suitable to its social function.

For this reason, the participation of the Judiciary Power is vital from the beginning, in the conception and implementation of the landed regularization program. This is neither a simple nor a small task, since it is an act that involves the participation of another State branch, constitutionally independent. Furthermore, legal authorities tend not to get involved in social problems, intending, by this stance, to maintain their “neutrality”.

The involvement of the interested communities in the program is not any easier, although we believe that landed regularization will only be effective if the community is the primary agent responsible for its implementation. Obviously this is a long process, which initially will require government support. However it is the community that will need to gradually come to know its rights, their content, and significance, and pursue ways to achieve them. This is the practice of citizenship, and only exists when the individual himself seeks it, consciously and effectively.

This is a prolonged process: to get to know one’s rights and to find a way to achieve them. This is true also because assumptions will require new interpretations and alternatives to those traditionally associated with the law. Besides, this will require a basic knowledge of the rules of law, concerning the several legal fields that directly affect questions of ownership as, for instance, family and succession rights, registry files, tax laws, etc.

Nevertheless although the task appears complex, it is not impossible. Undoubtedly it will require, initially, a clear understanding of the overall problem and of the objectives to be achieved; of the legal instruments available to be used; of the ways the project can be carried out, the agents involved, objectives, and time limitations.

Because of all those factors, the landed regularization program will require considerable determination and patience since, as we said, it will only be implemented and consolidated over the long term.

4.3. - Specific Problems of Landed Regularization

Among the many problematic aspects of landed regularization, from the legal point of view, we will present two that are related, and that we consider

fundamental to the project: the design and form of occupation of the area of the *favelas*, and the question of rights with respect to laws of registry.

4.3.1. - The occupation of the *favelas*, as we have seen, happened in a disorganized way, as a consequence of the absence of secure rights of tenure. As a result, the form of occupation and style in which houses were built is completely incompatible with other traditional forms of urban occupation, determined by urban legislation and civil law.

As can be seen in images of *favelas*, for those who have never been to one, it is easy to see that houses are built one on top of another, to take maximum advantage of the space available. Often it is almost impossible to determine where the limits of one house start and finish. Sometimes they consist in one or two rooms barely separated from one another.

Not only is it difficult to determine spaces for exclusive use inside of these houses (privately occupied), but it is even harder to do so in relation to the lots in which they are located. Consider, that is, creating a layout of lots, even at their most minimum or irregular in form, where a house could be built. Consequently it is difficult to provide title deeds for properties or possessions in the *favelas*, due to the nature of their layout, which has already been consolidated.

It is unviable to propose their regularization through an urban plan that aims at the demarcation of individual lots in a traditional form, even though this is the legal requirement for their registry in the Registry of Deeds. Any proposal of this nature is possible only if we consider a complete remake of the *favelas*.

That is the reason that we propose a program that accounts for a situation not in accordance with legally approved civil and urban standards. It is absolutely necessary to conceive and propose instruments and different legal, civil and urban models that, instead of adapting the *favelas* to the legislation, seek to adjust the legislation to the reality of the *favelas*, so that they may be integrated into the city as officially recognized neighborhoods.

There is a need to find an innovative solution to the problem of how to update the title deeds of houses. The forms of construction and the occupation of the *favelas* are totally incompatible with the timing, the format, and costs as set out by the Registry of Deeds. Notwithstanding, it is worth remembering that any other alternative that excludes the participation of such registries should consider that, by Brazilian Law, they provide legal guarantee of property, through the registry of the real estate rights over the property, creating *erga omnis* effects.

The *Favela Bairro* program has included plans for the demarcation of public areas, main and secondary roads space for urban public infrastructure, and areas and buildings for the use of the community. However, if the demarcation of public areas represents an important advance because it allows the clear identification of those areas and leads the population to respect their boundaries,

there are also similar challenges associated with their title deeds. Up to now it was not possible to register them at the Registry of Deeds because a detailed plan of the whole area would be required, as well as their original registry.

Finally, we should also take into account the regularization of unofficial systems in the *favelas*. We are not aware of the creation of any alternative local norms or conventions that specify alternative models for buildings in the *favelas*, where the program has been implemented. There is also, in this case, an enormous difficulty in bringing consensus, and in the adaptation of traditional approaches to alternative forms of construction and occupation which are so different from the *favelas*.

4.3.2. - As was already mentioned, the acquisition of title deeds, as is required by Brazilian legislation, is difficult to adjust to a landed regularization project for the *favelas*, not only due to questions of urban planning but also because of questions related exclusively to property.

The registry of an urban property, so as to obtain the title deed, includes the assumption of facts, which are very difficult to find or maintain in areas like the *favelas*. Those facts are basically related to the conditions related to achieving title deeds to the plot where they are located.

In many instances, ownership is not clearly established, and in other cases the question of ownership involves conflict. There are also cases where plots are under legal litigation; or others, not so rare, where the plots do not officially exist since they have never been registered. The latter situation, which would seem simple, actually complicates the program of regularization, in that in Brazil, in principle, there is no "land without ownership"; it is the Registry that has the effect of creating the title deed of ownership.

At the Registry of Deeds, nothing is registered unless it is precise, official, and legally defined in the legislation. Its object, the title deed, is only issued according to precise formal definitions. The parts must have their personal situations well identified, a condition which is very seldom found in the *favelas*.

Thus, it becomes even harder and more costly to understand and satisfy the complex requirements of the Registry of Deeds. For this reason, they become ever more distant from the accomplishment of their mission, that is, to describe the legal dominion situations and to provide legal assurance for business transactions.

Nevertheless, because of its complexity and inaccessibility, the Registry of Deeds has always been the most commonly used instrument and the easiest form of real estate "*grilagem*"¹¹ in Brazil.

¹¹ *Grilagem*: is essentially the means by which individuals, who are not owners, become, by illegal or irregular means, the owners of lands, occupied by other tenants without a title deed

5 - PRELIMINARY CONCLUSIONS

The *Favela Bairro* program is undoubtedly a project that has been successfully implemented, in terms of its urban planning objectives.

The program addresses the housing policies of the Municipal Government, since the *favelas* represent a possible and already consolidated housing option for a significant number of people in Rio de Janeiro.

The implementation of the *Favela Bairro* program has only been possible because it had been conceived starting from a simple political decision, exclusive of the local authorities that, by the Brazilian Constitution, have jurisdiction over the execution of social projects and urban services.

The program involves complex implementation, since it deals with the realization of different type of projects and services such as urban planning, projects for urban and environmental infrastructure, as well as social and land regularization projects.

The land/housing question constitutes the cause of the irregularity and precariousness of the favelas. The uncertainty of the legal situation of the *favelas* leads to their social exclusion, marginalization from access to benefits, services, and urban and social rights overall. The exclusion is also evident the lack of protection by police forces and legal guardianship from the State.

The completely marginal condition of the *favelas* in the face of the rule of law causes the communities to make their own "rights" that are enforced by groups and local "authorities", beyond the power of the State, which maintain local power, most of time through the use of violence and force.

The part of the program related to land regularization has not yet been developed. This area does not enjoy the same conditions and facilitating factors of the other projects in the program because there are questions and aspects that are not the exclusive decision of local authorities.

The landed regularization project of *Favela Bairro* program, because of its complexity, requires a specific plan of action in order to be viable. The objectives to be achieved should be clearly established. They are: ownership or assurance of ownership; the issuance of title deeds in the short or medium term; the legal means to implement the project; the participation and involvement of local agents; the knowledge of related problems and the solution for critical social, urban, economic and bureaucratic issues, as well as possible legal alternatives.

This specific land regularization project has not been developed or even conceived as of yet. This fact is, for us, the most critical point of the *Favela Bairro* program. If the project is not executed in the future, the whole program will be

affected because of the unsolved question of the precariousness of ownership, which generated the irregularities and the total exclusion of the favelas in the first place.