

Moving Away from Forced Evictions and toward Secure Land Tenure



2.1. Introduction

Between 1993 and early 2001, the São Paulo municipal government filed over 100 lawsuits against families living in squatter settlements on public land. At the time, there was no legal precedent supporting land tenure regularisation for these situations, and the municipal administration remained neutral in disputes over private land, although at least 30,000 families living in squatter settlements faced eviction. Finally, the construction of *Águas Espraiadas* Avenue in the late 1990s resulted in the forced eviction of hundreds of families living in *favelas* along the avenue's course, reviving the feeling of insecurity so often felt by people living in illegal settlements¹⁹.

Upon taking office in 2001, Mayor Marta Suplicy and her cabinet made a landmark decision to put a stop to forced evictions and instead, champion land tenure regularisation for the hundreds of thousands of low-income families living in some form of illegality in São Paulo. The new administration was elected, in part, through the support of organised social movements, among which were groups advocating for slum upgrading, land tenure security for low-income families and the resumption of social programmes implemented by previous administrations. In response to the demands of its constituency, the new administration resumed initiatives such as a draft law proposing land tenure regularisation for squatter settlements in public areas. At the same time, it also developed new strategies for the city's urban development.

Over the last four years, the city has made significant progress with respect to land tenure security. The São Paulo Municipal Administration's first advance in this regard was its decision to repeal lawsuits filed by past administrations against families living in *favelas* on public areas. Simultaneously, the local City Hall established a conflict mediation process for disputes involving private land occupied by low-income families, through which the municipality acts to facilitate an agreement preventing forced eviction. As mentioned before, further advances came in the form of the 2002 law authorising the regularisation of illegal subdivisions in existence before April 2000 and the 2003 municipal law providing the legal basis for land tenure regularisation in public areas. Supporting application of these legal breakthroughs are efforts to promote greater interaction among municipal departments and the judiciary in order to establish standard operating procedure for future land tenure regularisation processes.

¹⁹ Families were given the choice of applying for an apartment unit to be constructed outside the area (through PROVER) or to be financially compensated. Most took compensation and moved to other squatter settlements in the city. The process was very traumatic for those involved, as described by Mariana Fix in 'Partners da Exclusão'/ Partners in Exclusion.



Sale of land plots

²⁰ According to IBGE 2000 data, 21.6% of the households in São Paulo were renters, while 60.4% were homeowners and the remaining 9% were classified in other categories.

In the same vein, the 2001 City Statute and provisional measure (MP) 2220/01 on Special Concession for Housing Use have provided foundations for São Paulo's efforts to implement an urban development agenda focused on the low-income population. Their enactment follows the new Brazilian Constitution of 1988, whose principles were not applicable in the absence of federal laws creating and regulating instruments for city management, specifically those concerning use of public property and land tenure regularisation. The City Statute and MP 2220/01 finally filled that void, establishing federal guidelines on the rights and responsibilities of cities and the legal basis for concession of public land for collective and individual housing, crucial elements to the regularisation of the majority of São Paulo's squatter settlements.

behind hundreds of thousands of mass housing units, which were mostly appropriated by the lower middle class, while the impoverished population, the original target of the programme, remained in precarious settlements on informally subdivided land. In the same period, the São Paulo public housing company COHAB built thousands of public housing units under the BNH Programme. Public housing complexes were usually developed at the periphery, entrenching the pattern of segregation and environmental degradation.

Following a national economic crisis in the mid-1970s and the new restrictions established by land use regulations in 1979, informal settlements in São Paulo grew at an alarming rate in the 1980s as a result of declining public investment in the housing sector (see Chapter 1)²¹. Because the municipality did not legally recognise the informal subdivisions, it did not assume responsibility for provision of infrastructure to those areas. Thus, informality continued its expansion and the poor working class began to occupy vacant public areas within residential subdivisions originally slated to be parks and leisure areas²². It is no coincidence that the 1970s also gave rise to organised urban housing movements lobbying against forced eviction and for public provision of low-income housing and infrastructure. Their demands were incorporated into the platforms of political parties created during the late 1970s and 1980s (Silva 1994).

From 1970 to 2000, there was exponential growth in the number of people living in *favelas*, jumping from 1% to 11% of São Paulo's total population (Taschner 2003). Similarly, approximately 15% of its population is living in informal subdivisions and about 1% in centrally-located *cortiços*.

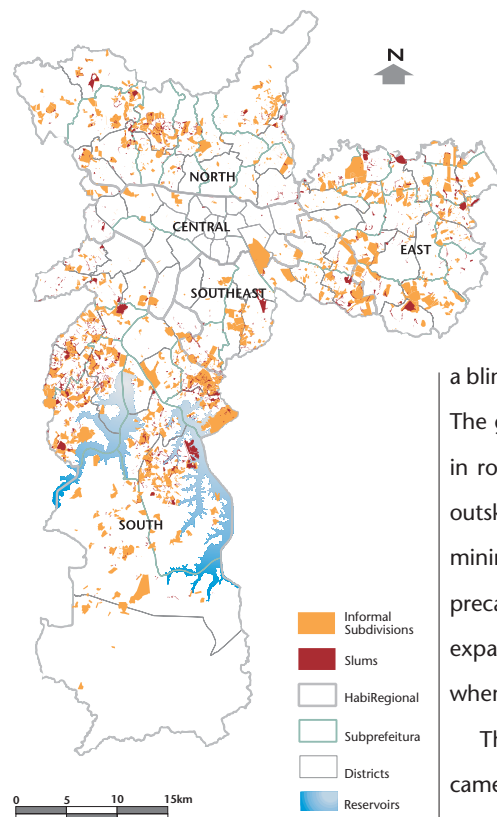
Table 2.1 gives figures on São Paulo's housing inequalities. Map 3 shows the concentration of squatter settlements and informal subdivisions in São Paulo.

²¹ From 1988 to 1996 São Paulo approved 23 mostly upmarket land subdivisions, representing 12,991 lots and occupying 835 hectares. In the same period 147,750 clandestine lots developed, occupying 3,311 hectares (IPEA 2001).

²² In 1973 the majority of the population (60.9%) living in *favelas* had income between the minimum monthly salary (whose 2004 is R\$240 or approximately US\$ 80) and twice that amount, and the population with income above five times the minimum salary was insignificant. In 1993, only 14.3% of the population in *favelas* had income between one and two minimum salaries, and the percentage of population in *favelas* with income above five times the minimum salary was 34.6% (IPEA 2001).

2.2. The State of Housing and Property in São Paulo

2.2.1. Overview



Map 3: Concentration of squatter settlements and informal subdivisions in the City of São Paulo

Source: SEHAB/HABI

São Paulo's rapid transformation into the country's main industrial hub in the 20th century sparked an enormous demographic expansion and a corresponding explosion in the demand for housing to serve the growing working class. Government rent control intervention beginning in 1942, resulted in a drastic retraction in the rental market, which in the 1940s represented over 67% of households²⁰. Aiming to address the demand for working-class housing without affecting the wages paid by the industrial sector, the government relinquished control over urban development, turning

a blind eye to the sizeable growth in individual homebuilding in illegal peripheral subdivisions. The government inadvertently fostered this development model through heavy investments in road infrastructure to the outskirts of the city. Informal, individual homebuilding on the outskirts of the city proved to be an expensive solution for workers, which were served by minimal infrastructure and faced long daily commutes (Bonduki 1998). Furthermore, the precarious infrastructure in these subdivisions jeopardised the environment, due to the expansion of settlements into environmentally-sensitive areas, especially after the 1970s, when many began to occupy the city's protected water source areas.

The year of 1964 marked a turning point in housing production when the military regime came to power and began a public housing initiative through the newly created National Housing System (SFH). Financing for the programme streamed from FGTS resources and individual savings accounts. The National Housing Bank (BNH), SFH's executive arm and the agency responsible for mass construction of public housing, went bankrupt in 1986. It left

Urban and Housing Inequalities by Type of Settlement, São Paulo, 2000

Table 2.1

Indicators	Squatter settlement	Informal Subdivision (1)	Public Housing	Degraded tenements (2)	Homeless (3)
Population	1,160,597	1,597,986	89,760	117,167	8,706
Households	291,983	439,412	24,000	44,550	3,212
Residents/Household	3.97	3.64	3.74	2.63	2.71
Average Income (MW)	1.80	3.48	n.a.	n.a.	n.a.
Average population density/hectare	380	132	n.a.	---	---

(1) Considered the total universe of informal subdivisions, as calculated by the Centro de Estudos Metropolitanos (CEM)/ Serviço Brasileiro de Aperfeiçoamento Profissional (SEBRAP) from 2000 IBGE Census data and the SP City Hall's digitised cartographic base

(2) 2000 IBGE Census

(3) 2000 Fundação Instituto de Pesquisas Econômicas (FIPE) Homeless Census

Source, PMSP 2003

2.2.2. Forced Eviction in Housing and Property Disputes

2.2.2.1. Housing and Property Disputes



Risk Areas/ Favela Parque do Gato

Three groups are generally involved in property disputes in São Paulo: the government, landowners, and families living in some form of land irregularity. These families, occupying land to which they do not hold a deed, are known as squatters. For obvious reasons, squatters and the legal landowners almost always have conflicting positions. On the one hand, squatters hope to obtain legal recognition of their right to an occupied property; while, on the other, legal landowners are always seeking to recover part or all of their capital losses, either through *reintegração de posse* (repossession of land), which ultimately involves forced eviction of squatters, or through land expropriation. The latter is a process in which the government takes possession of private land and pays the previous owner its ‘fair market value’.

In the past, when slum upgrading and land tenure regularisation were not widely practiced or accepted, the municipal government’s standard approach was to support repossession for disputes involving both private and public land. Under the current administration, however, forced evictions or repossession have only been employed in high-risk situations, e.g. settlements in areas prone to natural disasters, such as landslides or flooding.

Although the São Paulo Municipal Administration has taken on a mediation role in recent years, the court system has the main institutional mandate for resolution of land conflicts. Since 1988, when the new Federal Constitution recognised the social value of land, the courts have become more sensitive the squatters’ cause²³. Still, mediation is conducted on a case-by-case basis, and the results seemingly diverge according to the leanings of the court members of the judiciary involved in each case.

Some of the most important instruments for land tenure regularisation of low-income settlements are described in Table 2.2. The City Statute and MP 2220/01 regulate these instruments at the federal level.

²³ According to SEHAB, landowners are still much better equipped to deal with the legal system than squatters, who are often surprised to learn through an eviction order that they have no right to remain on the land in question.

Main Instruments for Land Tenure Regularisation of Low-Income Settlements

Instruments	Description
Urban Usucaption	Urban usucaption can be granted to occupants of urban land who have squatted for at least five years without any formal opposition from the landowner. It can be granted on an individual or collective basis. In either case, individual lot sizes should be no greater than 250 square metres, and the beneficiary cannot hold a title to any other urban property. Collective urban usucaption facilitates the land tenure regularisation of large irregular settlements, where the process of issuing individual titles is lengthy and complex.
Land Use Concession	Land use concession can take two forms: (1) Concession for Real Rights of Use (CDRU), which may or may not be free of charge and can be applied to either private or public land and (2) the Special Concession for Housing Use which is only applicable to public land. Contracts of land use concession are generally valid for 50 to 100 years in order to allow for the consolidation of social housing and may become permanent as long as the property is used for a residential purpose.
Right to the Surface	The right to use the land surface is transferred from the landowner to the squatter for a specific number of years. In this case, the landowner retains the land title.
ZEIS	Zones of Special Social Interest (ZEIS) are areas set aside in municipality’s Master Plan for slum upgrading, tenure regularisation and low-income housing development. An area classified as ZEIS can have urbanisation or development standards reduced in order to have the ‘de facto’ situation regularised. According to São Paulo’s Municipal Strategic Development Plan, which delimited the ZEIS perimeters, each area should have a development plan, produced with the participation of the affected communities.
Expropriation	The municipality pays the fair market value for transfer of the land title. It is the most expensive instrument, adopted only as a last resort.

Source: Pólis 2002.

Table 2.3 presents the most common types of land dispute, by form of illegality, and the most frequent solutions. In some cases, it is not possible to identify a most common solution since decisions are made on a case-by-case basis.

Most Common Types of Housing and Property Disputes According to Situations of Illegality

Types of Dispute	Most Common Solution
<p>Form of illegality: Favelas on public land</p> <p>Dispute between the government (usually the municipality, except when the land belongs to the state or federal governments) and squatters. Of late, this type of dispute has happened only in high-risk areas, where residents are subject to natural disasters such as landslides or floods²⁴.</p>	<p>The government sues for repossession of public land if the illegal settlement faces imminent risk. In exchange, the government commits to providing housing or financial compensation for the evicted families.</p> <p>According to the map of the risk areas developed by the São Paulo administration in early 2003, there are 197 <i>favelas</i> in at-risk areas or 27,500 households, 2,700 of which at high risk.</p>
<p>Form of illegality: Favelas on private land</p> <p>Dispute between the squatters and landowners, in which the latter files a lawsuit against the former for repossession of the land in question.</p> <p>The landowner is required to provide proof of ownership. Often, landowners are willing to accept financial compensation via expropriation of their land, rather than the forced eviction of squatters.</p> <p>Squatters seek advice from the organised housing movement and the municipal government, when the latter is sympathetic to the squatters' cause.</p>	<p>There is no general solution that applies to this type of conflict. In the past, landowners won the majority of lawsuits. But recently, backed by the 1998 Constitution and the City Statute—which recognised the social right to housing and the social function of property— squatters have been more successful in securing the legal right to remain in their dwellings. The Federal Constitution as regulated by the City Statute stipulates that an individual or a group can require the recognition of their right to the land they occupy through urban usucaption. However, usucaption only applies to cases in which the landowner has not sued for repossession within five years.</p> <p>Approximately 400 <i>favelas</i>, with varying degrees of occupation and consolidation, are located in private areas of the city.</p>

²⁴ Under the current municipal policy, a squatter settlement located on public land that does not constitute an at-risk area should be included in upgrading programmes. Tenure regularisation is provided through land use concessions, in which the municipality holds the title and families are granted use.

<p>Irregular subdivisions</p> <p>Dispute between the municipality and the landowner over a plot of land that has not been subdivided in accordance with municipal codes. Frequently, developers or owners fail to comply with municipal norms, in which case, the municipality can send written notification requesting regularisation of the land. (Pólis 2002).</p>	<p>If the landowner does not respond to notification, the municipality can proceed with the urban and legal regularisation of the subdivision. In such cases the municipality can put a lien on rent or payment installments to landowners to cover regularisation expenses. Alternatively, the municipality can seek a court order obliging landowners to reimburse the regularisation costs.</p> <p>After regularisation of the subdivision, resident families can regularise their individual lots and register their property titles.</p> <p>According to SEHAB, 28,970 families living in 22,287 irregular lots were at risk of eviction in the beginning of this administration.</p>
<p>Illegal subdivisions</p> <p>Dispute between the landowner and occupants, who often do not know that they purchased the land from a <i>grileiro</i> (a person conducting a real estate scam). The landowner sues the resident families for repossession.</p>	<p>The court will require that the plaintiff provide proof of both ownership and non-involvement in the development transaction. If such proof is provided, the original landowner is likely to win the lawsuit. Many times landowners and occupants themselves reach informal agreements outside the courts, whereby landowners receive compensation for losses. Because such agreements are often not properly registered, they resolve the immediate dispute, but families remain vulnerable to future lawsuits. This is usually the case until the subdivision is regularised.</p>
<p>Cortiços</p> <p>A dispute usually involving tenants and the property owner over upgrading the building and its installations.</p>	<p>In São Paulo, minimum housing conditions for <i>cortiços</i> are defined by a law, which also establishes the measures and instruments for municipal <i>cortiço</i> upgrading programmes. After undergoing a public upgrading programme, <i>cortiços</i> can be regularised to meet building codes and tenure can be established through instruments such as social rent and land use concessions defined by law, such as the Special Concession for Housing Use (Pólis 2002).</p>

2.3. São Paulo's Current Practices to prevent Forced Eviction and toward Secure Land Tenure

The main measures taken by the current administration since 2001 against repossession lawsuits and for secure land tenure are described below:

2.3.1. Suspension of Repossession Lawsuits and Regularisation of Occupied Public Areas

Land tenure regularisation took centre stage soon after the Marta Suplicy Administration took office in January 2001. Three months into the Administration's term of office, the municipality's Attorney General suspended all lawsuits for repossession of publicly owned land. Subsequently, only repossession lawsuits involving areas of imminent risk, as confirmed by field surveys, were reinstated. The new Administration's aim was to regularise and integrate precarious settlements into the city through municipal slum upgrading programmes.

The urgency of this matter was underscored by a court order authorising the city to repossess public land and evict occupants of the Parque Santa Edwiges subdivision, a consolidated settlement that has been established on public land for over two decades. Parque Santa Edwiges residents appealed to SEHAB. The Housing Department, in turn, passed the matter on to the Attorney General. As a result, the municipal legislature passed a temporary law, requiring the immediate suspension of court orders and sentences for repossession of public land occupied by *favelas* or irregular settlements in São Paulo, when these evictions imply a risk of worsening the city's social conditions. The decision prevented the eviction of Parque Santa Edwiges residents. At the same time, the law established that the municipality be responsible for conducting social impact studies for future lawsuits on repossession of public land. Although these measures served to assuage the concerns of communities facing eviction, SEHAB only arrived at a definitive solution when it submitted a draft law to the town council²⁵, which later became municipal law²⁶.

Based on a similar proposal submitted to the City Council in 1990 by former mayor Luiza Erundina, the draft law called for land tenure regularisation of 140 public areas. The list of areas was then revised, and the number rose to 160 areas. The new draft was unanimously approved by the City Council in early 2003 as the "160 Areas Law".

Under the "160 Areas Law", approximately 45,000 property deeds has been delivered to residents of 330 *favelas* located in 160 public areas throughout the city by the end of the administration's term on December 31, 2004. With a regularised tenure situation, residents will be free to rent or sell their properties. The municipal decree regulating the law envisages a special concession for mixed-use buildings and a special authorisation for commercial buildings located in the areas. In such circumstances the administration is free to decide whether or not to extend the benefit.

The Federal Constitution prohibits usucaption of public land, but authorises a Special Concession for Housing Use. Under the Constitution, this is a subjective right for residents, meaning that the government is required to grant it. Civil Law, in addition, established the Concession for Real Rights of Use (CDRU).

It is important to note that Brazil classifies public land into two categories: (i) public domain, for which the government can concede permission for use (CDRU, described in Table 2.2) and (ii) communal use, for which the government cannot concede permission for use. In order for a concession to occur using the latter, the government must first change the status of the land through a process called *desafetação* or alienation, so it can be classified as a public social interest area. Precarious settlements included in the 160 Areas Law are located on land originally classified as "communal use", which is why the process required a municipal law.

SEHAB officials opted to change of status of these 160 areas so that both forms of concessions can effectively be applied. That way, all residents, even those that do not meet the requirements for Special Concession for Housing Use, will be eligible. It is important to note that legislation on Concession for Real Rights of Use requires a change of land status, whereas the same is not true for Special Concession for Housing Use.

As Article 180 of the São Paulo State Constitution prohibits the alienation of "communal use" land, the constitutionality of the 160 Areas Law was questioned during initial deliberations in the City Council. What prevailed, however, was an interpretation that these areas had been designated for housing long before the São Paulo State Constitution was ratified, raising questions therefore on the constitutionality of Article 180 itself versus the 1988 Federal Constitution.

With that, SEHAB's Social Housing Superintendence, HABI, began local slum upgrading interventions in the 160 areas. Simultaneously, HABI began registering families and conducting an individual analysis of each home to determine eligibility for land concessions (Real Rights of Use or Special Concession for Housing Use).

2.3.1.1. Implementing the 160 Areas Law

While the 160 Areas Law does not guarantee immediate land tenure regularisation in affected areas, it does provide the necessary framework to initiate land tenure regularisation. Under Brazilian law, this process must cover not only the provision of infrastructure and elimination of risk situations (known as urban or technical regularisation), but also legal regularisation. In cases of urban regularisation, the communities, the municipality and all other involved stakeholders are faced with social, technical and financial challenges. In cases of legal regularisation, the challenge, as determined by the court, is to recover any documentation that may provide a better understanding of each stage of the process and all of the parties involved in the transformation of a vacant plot of land into a densely populated settlement.

²⁵ Draft Law 385/02.

²⁶ Law 13.514/03.



Delivery of Property Titles

The current São Paulo Administration intends to obtain complete regularisation of the 160 areas, consolidating housing units and ensuring land tenure through the provision of registered title deeds. To this end, the São Paulo Administration has filed several applications at the First Jurisdiction of Public Registries, laying the groundwork for future registries of individual lots and land concessions in the 160 areas. Many of the plots in the 160 areas were originally registered as open spaces (reserved for public parks or leisure areas) in legal subdivisions created under old legislation or decrees.

The First Jurisdiction of Public Registries is in charge of approving the new land cadastres for the 160 public areas. After several meetings between HABI technicians and the chief justice of the First Jurisdiction of Public Registries, the body issued a service order assigning legal specialists to work with the Technical Commission created by the Administration to establish standard criteria for future land tenure regularisation processes. The measure aimed to increase efficiency and speed in granting property titles to residents.

The First Jurisdiction of Public Registries' legal interpretation is that the de facto situation should prevail over the old registries and it should, thus, grant regularisation. This interpretation, also shared by SEHAB, was officially recognised by the First Jurisdiction of Public Registries in February 2003, and will be followed in future regularisation processes in order to simplify procedures. A case-by-case analysis may also determine that the process be implemented through administrative rather than judicial channels, which would simplify matters considerably.

In order to establish a forum for permanent discussion on the complex matters of land regularisation, the First Jurisdiction of Public Registries and SEHAB created a land registration taskforce to set the rules and procedures for future processes. The municipality also created an in-house working group—with representatives from the Mayor's office, the Housing Department, and the Legal Affairs Department—in order to develop a set of criteria and basic guidelines for future land tenure regularisation.

The 160 Areas Law benefits not only the residents of informal settlements, but also the city as a whole, by allowing for the development of a comprehensive framework for public land tenure. The 160 Areas Law is, in fact, a significant move toward scaling up such measures. The experience has afforded an important opportunity for collaboration between the executive and legislative branches, has contributed towards the resolution of technical conflicts and fostered the development of standard procedures for future land regularisation processes in the city.

2.3.1.2. SEHAB's Efforts in the Dialogue with Other Agents Involved in Land Regularisation

The advances made by SEHAB in public land regularisation are the result of better dialogue and collaboration between several stakeholders. It is important to note that this strategy mirrors the one being implemented on a federal level through the Ministry of Cities, focused on technical capacity building at the three government levels (federal, state and municipal), as well as the Judicial Branch, the Attorney General and civil society. The coordinated effort is likewise based on the adoption of instruments and legal procedures made possible following ratification of the City Statute and MP 2220/01²⁷.

In fact, notwithstanding efforts from SEHAB officials, the success of regularisation programmes in São Paulo is often contingent on the sympathy of the court system. The municipality is not always able to register the subdivision at the Property Registry upon completion of the technical regularisation. In some cases, the legal owner of the plot is not the party responsible for the subdivision project. In other cases, ownership may be split among several family members, some of whom deceased, representing further complications and delays in the registration process.

Cases like these prompted SEHAB and the Municipal Legal Affairs Department to establish a legal assistance agreement with the São Paulo Chapter of the Brazilian Bar Association (OAB), in order to afford legal counsel to those who cannot afford attorney fees. This agreement is based on the Federal Constitution and City Statute, which stipulate the provision of publicly-funded technical and legal assistance to low-income communities and social groups.

Under the agreement, attorneys provide legal assistance to communities living in squatter settlements, irregular subdivisions, multifamily housing, housing developments and any other type of informal housing²⁸, with the objective of defending the right to shelter and its integral regularisation. It is important to note, however, that the municipality has the mandate to indicate macro solutions for regularisation of subdivisions. The Bar Association will only offer assistance in cases in which the municipality cannot legally represent the residents. In a first phase, the agreement with OAB covers five subdivisions.

To promote smooth interaction with other links in the regularisation chain, the Marta Suplicy Administration has developed joint management activities with other agencies involved in the process. The Administration held several meetings with judges, prosecutors and public registry officials, as these individuals will process the urban usucaption lawsuits proposed by the OAB attorneys. The overall objective was to demonstrate the credibility of documentation, such as technical reports and topographical plans, presented by the municipality. The acceptance of such material, previously used in the technical regularisation of the settlements, as evidence in lawsuits speeds up the process and reduces costs.

²⁷ The Ministry of Cities is currently seeking Cities Alliance support to implement a training programme for land regularisation and risk prevention at a national level.

²⁸ Tenure regularisation is often required even in public housing complexes, which many times have been developed "informally" on land lacking full legal title.

In the same vein, SEHAB has also established a working relationship with São Paulo property registries and formed other partnerships for technical assistance with the Engineering and Architecture Council to aid in technical regularisation.

Tackling other impediments, the municipal administration has sought to reduce the costs associated with regularisation, by establishing a symbolic value for legal processes at Public Registries. Still, in cases of extreme need, the municipality may agree to cover the costs of such processes. At the same time, SEHAB has also been working with communities to raise awareness of the need to bear a part of the costs to complete their respective processes.

Efforts to improve dialogue between municipal technicians and other agents involved in land regularisation began to bear fruit after a workshop promoted by SEHAB, for judges, prosecutors, public counsel and registry officials. The debate focused on some of the most controversial and challenging topics on tenure regularisation, particularly, Collective Usucaption, state requirements, existing settlements located in public areas and documentation. The municipality, judges and public notaries are still debating many of these themes, but talks have resulted in the simplification of land regularisation procedures.

2.3.2. Conflict Mediation to Avoid Repossession of Irregularly Occupied Private Land

One common land dispute that has warranted public intervention, although the state is not directly involved, is a conflict between occupants of illegal subdivisions and a private landowner (see Table 2.3, Forms of Illegality: Illegal subdivisions). Technically, the municipality should have no involvement in a dispute between two private parties. Nevertheless, the social function of the land is the legal basis for the municipality to act as a facilitator to prevent forced eviction of low-income families. This is the approach SEHAB has taken since 2001, in part due to demands from the organised housing movement and low-income people who have fallen prey to real estate scams. The latter, as mentioned before in the text, are often unaware that their settlement was developed against the legal landowner's will and upon notification are surprised to discover that they have no legal rights to the land.

In response to demand in this area, SEHAB created a conflict mediation body at its Department for Land Division Regularisation (RESOLO), to assist families facing eviction to appeal land repossession orders. A typical RESOLO case begins with a private landowner suing to evict the residents of an illegal subdivision on his/her property. The residents then seek RESOLO's assistance. RESOLO, which cannot formally interfere in a private dispute, acts only to facilitate dialogue between the two involved parties and prepare materials such as registries and maps to support the residents' legal defence.

Before committing to a case, RESOLO's first step is to analyse the area's urban infrastructure and legal situation. This study determines the body's involvement in the case. If RESOLO commits to take the case, the stakeholders are summoned for negotiations. If an agreement is reached, the administration issues a Decree of Social Interest (DSI), based on the fact that several families risk losing their homes. From this point, two alternative solutions are explored: direct land acquisition by the residents or expropriation, if no agreement is reached between the residents and the landowner. In the former, the administration is only involved in verifying agreements established between the parties and making sure that subdivisions are adequately regularised. This latter alternative is a last resort, which is contingent on the availability of resources since expropriation represents a large expense for public coffers.

More often than not, landowners are quite willing to engage in negotiation and have waged lawsuits to recover financial damages, rather than for actual repossession. Two problems typically emerge in reaching compensation agreements. First, the squatter families have often already "purchased" the lot from someone they believed to be the owner, and are unwilling to pay a second time. Second, payment does not ensure the end of land disputes. In fact, residents may face eviction as long as they lack proof of payment for their lots. Because the turnover is high in these areas, resident families are very likely to be poorly informed of previous payments by earlier residents to settle similar agreements.

RESOLO strives to reach a fair agreement that benefits both parties. In this sense, RESOLO specifically (i) assists people in preparing evidence and materials for negotiations with the landowner, (ii) intermediates the financial negotiation in terms of value and payment conditions, and (iii) prepares a draft agreement to be presented to the courts. Once the agreement is reached, RESOLO assists residents in creating a community association to collect monthly payments made by residents and to transfer proceeds to the landowner, according to the terms of the agreement. RESOLO often recommends creating a new association, even if one already exists in the neighbourhood. This practice prevents disputes between competing parties in the community. RESOLO monitors the process and, when necessary, returns to the community to discuss payment of the monthly instalments.

In order to facilitate acquisition of the land under dispute, SEHAB has established close communication with banking institutions, especially with Bradesco²⁹. Through these special agreements, SEHAB expects to create microfinance programmes in which the bank provides loans at below market interest rates to allow for the direct acquisition of property by the residents.

If there is a condition that precludes agreement (e.g., if the land is part of a mortgage agreement), expropriation can be used. In this case, the municipality declares its social interest in the land and has up to two years to file an expropriation lawsuit. The expropriation constitutes a definitive solution for the dispute, but at a high cost to the municipality.



RESOLO - Parada de Taipas - Jaraguá

²⁹ Bradesco is Brazil's largest private sector bank.

2.3.2.1. Conflict Mediation Achievements to Date

Through its conflict mediation procedures, SEHAB has obtained the following results:

- An agreement at Jardim Pernambuco, renamed Jardim Nova Vitória, benefiting 2,500 families. Residents will make 60 monthly payments to the landowner through a recently created community association. Negotiations spanned one and a half years.
- Two expropriations at Jardim São Carlos and Parque Guarani, preventing eviction of 450 and 70 families, respectively.
- Mediation of a dispute between the state government and a landowner, preventing the eviction of families living in Vila Bela (information on the number of households affected is still not available).
- Declaration of social interest for an area within Jardim Aurora, housing approximately 4,000 families, in order to reach an agreement with the landowner.
- Follow-up of six other processes, which, if resulting in agreements, should benefit 6,000 families, scattered in various settlements.
- Negotiations for two other agreements, one at Pereira involving 150 families and another at Jardim Boa Vista (information on the number of families impacted is still not available).

SEHAB's conflict mediation strategy through RESOLO benefited roughly 13,000 families by the end of Mayor Marta Suplicy's term on December 31, 2004. Nevertheless, RESOLO's actions do not constitute a definitive long-term solution, except in expropriation cases. The City Council therefore altered the law. In the short term, landowners are merely dissuaded from forcing eviction. Hence, it is important that SEHAB, through RESOLO, continue the work initiated with residents of conflict areas to ensure that families make payments and register their properties, thus obtaining secure land tenure.

³⁰ Since it concerns private land, the responsibility for the regularisation is transferred to the landowner (see table 2.3). In cases related to irregular subdivisions, however, the municipality assumes the costs and seeks reimbursement from the owner subsequently.

³¹ In order to achieve the desired results from its regularisation programme, SEHAB rallied to change in municipal legislation. One law 11.775/95 did not authorise regularisation of subdivisions developed after December 1994, thus excluding a significant number of irregular settlements from the regularisation programme. The City Council therefore altered the law, authorising the regularisation of subdivisions in existence by April 2000. It also authorised the establishment of residents associations involved in regularisation in partnership with the Administration as well as long term payment agreements for property taxes related to regularised land. The new law has also altered the percentage required for public spaces, from 35% to 25%.

All types of problems appear in this process. For example, the lack of precise information in property titles or overlapping deeds require lawsuits and delay the process. The greatest obstacle, however, has been the state approval process. From November 2002 to May 2003, twenty requests for approval were submitted to the state-level GRAPROHAB (Housing Project Approval Group), but only one was actually approved. To overcome this problem, SEHAB has been working closely with the First Jurisdiction of Public Registry.

If a project is approved by GRAPROHAB, the state submits the process for approval and registration to the First Jurisdiction of Public Registry, which regulates subdivisions. At this point, the landowner (who should have already reimbursed the municipality for regularisation expenses) must have the subdivision listed in the Property Registry. Once the subdivision is registered, families can register their individual plots.

Based upon the experience of Legal Lot Phase 1, a proposal for a second phase was developed – Legal Lot Phase 2, which does not yet have funding. This second phase, includes 85 subdivisions with a total of 40,000 plots and 200,000 residents. The proposal also includes the *BEM LEGAL* Programme³², targeting small and medium subdivisions with few physical and environmental problems. The 96 subdivisions included in this programme have 42,000 lots and benefit about 210,000 residents.

At the beginning of the current Administration, RESOLO underwent several changes to improve efficiency and transparency. Among the actions of the Administration is the creation of a clear organisational chart for process implementation through five interdisciplinary management groups that oversee each stage of the process, including interaction with the public. An integrated approach to regularisation processes in terms of methodology, planning and procedures has afforded a more efficient analysis process.

³² *BEM LEGAL* is a play on words that means both "Legal Property" and "Very Nice".

³³ As described in Chapter 1, section 1.4.2.4.

2.4. Conclusion

São Paulo has been systematically moving away from forced evictions. It dropped most repossession lawsuits regarding squatter settlements on public land, removing families only where there is extreme need (approximately 2,700 families). In addition, SEHAB has been acting as a facilitator in land disputes among private parties, thus preventing the eviction of over 7,000 families and, with current activities, possibly another 6,000 families. The Law of 160 Areas regularised the situations of 45,000 families living in squatter settlements. Finally, with its several urbanisation, requalification and housing production programmes³³, SEHAB guaranteed land regularisation for more than 150,000 families.

The City Statute and MP 2220/01 clearly signal that land tenure regularisation for the urban poor is becoming a national priority. These new laws underpin SEHAB's efforts in establishing a framework to ensure secure land tenure for low-income families. Innovative regularisation procedures and systematic negotiations with all stakeholders do the rest. SEHAB's dialogue with the judiciary and property registries is a case in point. It is setting precedents whose relevance goes far beyond São Paulo, establishing national trends. For the first time in Brazil, security of land tenure for the urban poor is being promoted at scale and critical mass of capacity is being generated in the process.