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Analysing Approaches to Legalising Urban Squatter Settlements

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I undertake that all material presented for examination is my own work and has not been written for me, in whole or in part, by another person(s). I also undertake that any quotation or paraphrase from the published or unpublished work of another person has been duly acknowledged in the work which I present for examination.

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ABSTRACT

One billion people currently live in informal and extralegal squatter communities, and this figure is expected to rise to three billion – or one third of humanity – by 2050. Squatters often live without access to the most basic services, surviving on the fringes of society, ignored and marginalised. In this paper, I question the property system that defines such squatter settlements as illegal, and suggest that governments reconsider this system in order to prioritise the needs of citizens and to combat inequality. The cities of Rio de Janeiro, Brazil, and Istanbul, Turkey are examined as case studies showcasing legal approaches aimed at bringing squatter communities into the formal municipality. I then analyze various policy approaches to addressing squatter communities, and ultimately advocate that governments consider avenues to guarantee tenure security via traditional land systems and unconventional laws and regulations in order to formalise and integrate slums into the legal system. This would both benefit current residents and accommodate the expected two billion newcomers, while enhancing conditions in the broader municipalities.

PART A: Introduction

> "The equal right of all men to the use of land is as clear as their equal right to breathe the air… For we cannot suppose that some men have a right to be in this world and others have no right." – Henry George, 1879[1]

Nearly one sixth of the planet's people now live in informal and extralegal squatter communities,[2] most without access to the most basic services, marginalised on the fringes of law and society. This number is expected to double to two billion squatters by 2030, and then rise to three billion – or one in three people on earth – by 2050.[3] In this paper, I argue that the challenge that governments face today lies in finding approaches to change current laws and property systems to allow the tenure security and underlying infrastructure of today's slums to improve in time to accommodate the expected population boom. I examine legal models that enable such communities to leave their "extralegal" status behind, and argue for flexible approaches to traditional property schemes.

This analysis includes references to several concepts defining property relationships. "Land tenure" is the social construct that defines the "rights and obligations (with respect to control and use of resources)" between individuals.[4] Legal land tenure widely incorporates the perpetuation and protection of private ownership of property, or "freeholds" – typically evidenced by formally recorded title deeds, and premised on "a traditionally Western concept implying the absolute right to control, manage, use and dispose of a piece of property."[5] "Tenure security," on the other hand, can exist in the absence of freeholds, and is present when an individual or group can confidently stay on land, protected from dispossession and given reasonable assurances that they will benefit from any improvements they make to the property.[6]

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[1] Henry George, Progress and Poverty (1879) at 241.
[2] Neuwirth, Robert, "How shantytowns become real cities" *Fortune*, Vol. 152(8) (17 October 2005).
[3] Anticipated population is 9 million in 2050; *Id*.
[4] ECA,"Land Tenure systems and their Impacts on Food Security and Sustainable Development in Africa" (2004) at 4.
[5] *Id* at 5.
[6] Hanstad, Tim et al. "Poverty, Law and Land Tenure Reform," in Prosterman, Roy, et al. One Billion Rising (2009) at 2.

I. Argument and Structure

In this paper, I attempt to show that, in order to mitigate the risks of squatter communities remaining marginalised from the law and city services, governments must be flexible and reform-minded in creating legislation that will provide security of tenure, integration into the legal system and city grid, and an accommodating approach to the private property regime. I argue that squatters should not be evicted, relocated, isolated from city services, or even necessarily given title deeds, but they should receive inventive *de jure* tenure security, and that their communities should be legally integrated into formal municipalities.

This project employs two case studies – the cities of Istanbul, Turkey, and Rio de Janeiro, Brazil – to demonstrate avenues by which legislation can be developed to legalise squatter communities. The case studies are not presented as blueprints for other states to follow, but highlight some interesting legal approaches and suggest factors to consider in effective policy formulation.

Assumptions and Acknowledgement of Limitations

This proposal assumes that the law, if applied creatively and with purpose, can be effectively used for social change.[7] Due to the limited length of this paper, the multitude of legal issues surrounding informal urban housing settlements – home to nearly one billion people – cannot be addressed in depth.[8] Therefore the scope is restricted to analysing methods in which legal reforms and property law may be used to liberate squatter communities from their extralegal status.

It is also outside of the scope of this paper to give an in-depth analysis of housing as a human right, but the project will operate on the premise put forth by the 1948 United Nations Declaration of Human Rights (and subsequently reinforced in international human rights law and manifested clearly and legally in the ICESCR[9]) that there is a universal right to housing.[10] Given this presupposition, this project addresses those who have been forced to improvise to meet this essential human need, asserting that such

[7] Seidman, A. and Seidman, R.B., "Law, Social Change, Development: The Fatal Race–Causes and Solutions" in A. Seidman, et. al. (Eds.) Africa's Challenge: Using Law for Good Governance and Development (2007) at 21- 22.
[8] Gender aspects of tenure security are particularly significant, but the issue is beyond the scope of this paper.
[9] See ICESCR, Article 11(1).
[10] Universal Declaration of Human Rights, G.A. Res 217A (71); U.N. Doc A/810 (1948).

individuals deserve city services, legal protection, and opportunities to improve their living standards within the confines of the law.

II. The Issue of Urban Slums

A. Origins, Growth, and Causes

Urban slum households are defined as lacking durable housing, sufficient living space, easy access to safe and sufficient water, access to adequate sanitation, and/or security of tenure.[11] Although each society's specific growth experiences differ, making generalisations impractical, by and large urban slums grew rapidly in the second half of the 20th century. This was often the result of colonial segregation policies designed to keep native populations out of urban areas, and, even when they did settle in urban areas, "native labour was consigned to slums and shantytowns."[12] Unfortunately, as political circumstances changed and migrants poured into urban centres in search of better economic opportunities, they often found that formal housing was unaffordable and in short supply.

The rapid increase of slum-dwellers has many complex causes. The most apparent is the lack of affordable formal housing, but also includes population growth, urbanisation, and poverty. Squatters in developing world megacities are unable to access formal housing markets because governments are unable or reluctant "to provide low-income housing, and because of the speculative price levels in formal urban land and housing markets."[13] Indeed, it would be a monumental task to construct affordable homes able to accommodate the rapidly growing population, which receives up to 70 million people migrating to cities per year.[14]

This urbanisation is occurring due to many contributing factors, including climate change, "urban bias" in development policy, conflict, corruption,[15] and the rising price of food.[16] Simply put, "rural poverty is just much worse than urban poverty," thus

[11] UN-Habitat, "Slums: Some Definitions" (2006).
[12] Davis, Mike, Planet of Slums (2006) at 53.
[13] Yonder, Ayse, "Informal Land and Housing Markets: The Case of Istanbul, Turkey," *Journal of the American Planning Association*, 53(2) pp. 213-219 (1987) at 213.
[14] *Supra* note 2.
[15] *Supra* note 12 at 67.
[16] Rising food prices typically have a detrimental effect on small-scale farmers.

motivating the rural poor to seek opportunities in the cities.[17] In his book Planet of Slums, Mike Davis places the blame for the rapid growth of slum settlements largely on Structural Adjustment Policies of the IMF and World Bank, as well as corruption and the failure of various institutions, which, he argues, together cultivated inequality and unrepresentative policies and legislation.[18]

The root causes of population growth and poverty are beyond the scope of this paper, and in addressing methods of approaching squatter settlements, we will assume that urbanisation and population growth will continue at their anticipated rates.[19]

B. Common Characteristics

Though it is difficult to make claims about such varied and widespread settlements, there are many characteristics shared by slums around the world. The majority of squatter settlements and squatter housing markets operate "outside formal institutional channels," leaving members of informal communities "in a precarious position vis-à-vis government authorities and powerful land dealers."[20] These informal communities are then left in a state of great uncertainty, vulnerable to the threat of eviction or removal as well as exploitation by land dealers and corrupt officials.[21]

In addition to these vulnerabilities, many of the lowest-income groups remain unreached by the services and programs that would benefit them the most. Today's slums are defined by many of the conditions present in cities in the middle ages, including a lack of basic service provision (such as adequate clean water, sanitation, and rubbish collection); substandard housing structures; overcrowding and high density; unhealthy living conditions and hazardous locations; vulnerability to exploitation; and, of course, extralegality, informality, and insecure tenure.[22]

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[17] Cameron Sinclair, of the non-profit design organisation Architecture for Humanity, on Mason, Paul "Slums 101" *BBC Radio* (17:00 21 August 2011)
[18] *Supra* note 12 at 58.
[19] Population experts anticipate global population will level off close to 10 billion by the end of the century.
[20] *Supra* note 13.
[21] *Id*.
[22] UN-Habitat, "Enhancing Urban Safety and Security: Global Report on Human Settlements" (2007) at 14.

III. Potential Social and Individual Benefits of Formalisation

Aside from the potential for investment and service provision, the formalisation of squatter communities would go far in reducing crime and exploitation, preventing disease, and improving the overall quality of life.

A. Crime and the Rule of Law

A disproportionately high rate of criminal activity has been long-documented in slums, as they provide an almost ideal safe haven for criminal organisations due to their extralegal status. In the city of Rio de Janeiro, Brazil, for example, *favela* (urban slum) dwellers are ruled not only by the elected government, but also by members of one of Rio's drug trafficking gangs.[23] Although "only 1 percent of the residents of the *favelas* are actively involved in the drug trade," the traffickers exercise authority over virtually all residents.[24] Aside from the challenge that this "parallel power" presents to the rule of law and civilian safety, it accentuates and solidifies the separation between those forced to live in slums and those able to afford formal housing. Criminals and traffickers routinely take up residence in, and exert control over, the slums, and they are able to do so largely because slums remain legally segregated from municipalities.

B. Health and Safety

Slums that are not integrated onto city grids face the threat of disease – particularly cholera and typhoid outbreaks – due to a lack of basic services. Without these services, slum-dwellers often have only contaminated water and are exposed to refuse and raw sewage on a daily basis.

Furthermore, informal settlements without sewage systems may pose a risk to entire municipal water supplies. In Istanbul, Turkey, *gecekondus,* or informal urban slums, "encroach on the crucial watershed of the Omerli forests," and in São Paulo, Brazil, *favelas* lacking sewage systems contaminate the Guarapiranga reservoir, which provides 21 percent of the city's water supply.[25] Indeed, it is estimated that "[half] of Sao Paulo's *favelas* are located on the banks of the reservoirs that supply water to the city,"[26] putting the entire municipality at risk, as "the squatters throw their wastes directly into

[23] There are three major gangs in the city that constitute a so-called "parallel power."
[24] Neuwirth, Robert, Shadow Cities (2004) at 266.
[25] *Supra* note 12 at 136.
[26] Taschner, Suzana, "Squatter Settlements and slums in Brazil" in Brian C. Aldrich and R S Sandhu Housing the Urban Poor (London 1995) at 193.

the reservoir."[27] The simple formal provision of basic services thus has the potential to prevent public health catastrophes, while bringing greater dignity and quality of life of millions.

IV. Context: Property and Housing

A. Questioning the Current Property Regime

When discussing property in the developing world, it is vital to note the origins of current property holdings. In cities where huge portions of the urban population are sequestered in small portions of the city land, the massive difference in population density between elite and poor areas often reflects "the physical footprints of segregated colonial cities."[28] While racial segregation and colonial domination have been acknowledged as unjust, little has been done to address their legacy as manifested in today's property divisions.[29] In post-colonial societies, "freehold and leasehold land rights are treated as superior to customary land rights," though the newer land rights were implemented for the benefit of a small group.[30] Yet, in a sense, any defence of the current system of private property in post-colonial countries today embodies, inherently, a defence of the ideologies and colonialist systems that established them.

Even among the Western elite, private property in land has been questioned for decades as "a bold, bare, enormous wrong,"[31] and yet it has been widely accepted as "the foundation of modern society."[32] Many contend that the purpose of the government is in fact to protect private property, making any re-distribution plan, or alternative of property regime, inherently difficult to facilitate. [33] Private property was popularised as the most efficient land management system in the developing world after Garrett Hardin's 1968 article "The Tragedy of the Commons" advocated individual land title, arguing that alternatives will result in land mismanagement.[34]

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[27] Galvao, Luis, "A water pollution Crisis in the Americas" *Habitat Debate* (September 2003) at 10.
[28] *Supra* note 12 at 96.
[29] *Supra* note 4.
[30] *Id*.
[31] *Supra* note 1 at 254. See also Rousseau's Discourse on the Origin of Inequality (1755).
[32] See "Land" in Bierce, Ambrose The Devil's Dictionary (Oxford 1911).
[33] See Hannah Arendt's The Human Condition and Adam Smith's The Wealth of Nations at 775.
[34] Hardin, Garrett, "The Tragedy of the Commons," 162 *Science* (1968).

As the evidence in this paper demonstrates, a strict defence of freeholds and the private property system must be reconsidered if we are to find feasible solutions to legalising informal housing for the urban poor.

B. Brief Overview of the Informal Housing Discipline

Despite their growing prominence, slums in the developing world received little academic attention until the 1980s.[35] One exception was architect John Turner's "Housing by People: Towards Autonomy in Building Environments," published in 1976, which popularized the idea of upgrading existing slums via service projects rather than replacing them with alternative housing.[36] Articles detailing the issues in individual cities were gradually published, and international financial institutions and development agencies began to recognise the need to improve conditions in informal urban housing. In acknowledgement of the growing issue, the United Nations Human Settlements Program (UN-Habitat) was established in 1978 with the motto "a better urban future."[37]

Some economists took note of the extralegal position of slums, and suggested that legal property rights lead to development, advocating land-titling schemes are the solution to urban slums in developing countries (discussed in Part C).[38] The growing issue of urban slums has truly come into the academic spotlight in the past decade, beginning with UN Habitat's 2003 publication entitled "The Challenge of Slums," which paints a grim picture of slum settlements while offering hope for their future.[39] The report also inspired several other publications, such as Davis' Planet of Slums and Robert Neuwirth's Shadow Cities, some of the first books about squatters written for the general public. Davis[40] puts forth the premise that the situation of inequality and the rapid growth of slums is due to the failures of neo-liberal capitalism, and offers a rather pessimistic view about the future of squatter settlements when, as Alan Gilbert suggests, "more families will occupy smaller plots, will take longer to consolidate their homes, and

[35] Payne, Geoffrey, "Urban Land Tenure Policy Options: Titles or Rights?" *Habitat International* 25(3) pp.415-429 (April 2000).
[36] Turner, John F. C., Housing By People: Towards Autonomy in Building Environments. Ideas in Progress (London 1976).
[37] See www.unhabitat.org for further information.
[38] De Soto, Hernando, The Mystery of Capital (2000) at 5-7.
[39] UN-Habitat, "The Challenge of Slums" (2003).
[40] A self-described "old-school socialist" (In "Bill Moyers Journal," *PBS* (20 March 2009)).

will be forced to live longer without services."[41] Neuwirth, glorifies squatters' ingenuity and self-sufficiency, expressing optimism about their future and arguing for *de facto* tenure security in slums.

This project builds upon this body of work and seeks to contribute a practical overview and analysis of approaches to legalise slums, and to ultimately suggest factors to consider in the formation of slum regularisation policies.

[41] *Supra* note 12 at 90.

PART B: Case Studies

This section examines the unique and effective policies used in Istanbul, Turkey and Rio de Janeiro, Brazil, to address the large urban squatter populations.[42]

I. Case A: Istanbul, Turkey

Roughly half the residents of Istanbul, Turkey,[43] live in what were once informal and basic squatter communities, but today are woven into the municipality, complete with political representation and access to services. Turkey has accomplished this by legalising squatter communities through progressive laws formalising extralegal communities and enabling the establishment of quasi-independent municipalities.

A. History and Context

i. The Ottoman Empire

During the early Ottoman Empire,[44] land laws protected the use of – rather than ownership over – land, which was not regarded as a commodity.[45] All land legally belonged to the Sultan, and "landowners" merely used the land, able to collect rent and to profit from its spoils in exchange for supplying soldiers for the military.[46] Citizens had "the right to seize vacant parcels owned by the government, as long as the appropriators were willing to use [and give function to] the property" until 1858, when the Ottoman Land Code first required registration of ownership, while maintaining the distinction between ownership over and the right to cultivate land.[47]

ii. Independence Through Present

In 1923, the Turkish Republic became an independent state and adopted Roman laws (which support a private property regime) in addition to customary Ottoman law, and the two different property approaches coexist to this day.[48] Thus, the land tenure system is based on legal rights allocated to communities, not registered private land

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[42] Although there may be more drastically different case studies available, these are sufficiently different to demonstrate two distinct legislative approaches.
[43] Population: 12 million.
[44] The Ottoman Empire lasted from the 13th through the 20th century.
[45] Neuwirth, Robert, "Security of Tenure in Istanbul: the triumph of the 'self service city'" Prepared for "*Enhancing Urban Safety and Security" (*2007) at 3.
[46] *Id*.
[47] *Id*.
[48] *Id*.

title.[49] This Eastern system of land tenure "has enabled Turkey to accommodate massive urbanization in a sensible and successful way by harnessing the power of self-building and sweat equity," and is an example of the sort of flexibility regarding private property that is necessary to accommodate the growth of informal urban communities.[50]

After the Second World War, Istanbul experienced heavy immigration, and this countrywide urbanisation "was stimulated by Marshall Plan aid, the modernisation of agriculture, and the growth of import-substitution manufacture."[51] The state was unable to provide adequate housing for the immigrants, who constructed informal homes on the outskirts of major cities. The squatter population grew from 5 percent in 1955 to 23 percent just ten years later.[52]

Large areas of land remained public as the Ottoman land system persisted under the Turkish Republic, and squatters occupied these parcels when progressive squatter-friendly policies prevailed after the 1950s.[53] Between 1950 and 1980, the population of Istanbul grew from one million to almost five million, and during this time the campaigns of two prominent, competing national parties promised title deeds and service delivery to informal settlements, encouraging still more squatter construction.[54]

B. Key Legislation

i. Legalisation of *Gecekondu* Communities

In Istanbul today, roughly half of all homes were originally constructed as a *gecekondu*,[55] or informal squatter homes.[56] "*Gecekondu"* roughly translates to "it happened at night," because squatters pouring into the city "took advantage of an ancient Turkish legal precept: that no matter who owns the land, if people get their houses built overnight and are moved in by morning, they cannot be evicted without being taken to

[49] *Id* at 4.
[50] *Id* at 4.
[51] *Supra* note 12 at 57.
[52] *Id*.
[53] *Supra* note 13 at 214.
[54] *Id*.
[55] Plural: "*gecekondular.*"
[56] *Supra* note 45 at 6.

court."[57] The *gecekondu* construction began in Istanbul in the 1940s,[58] and those who built on unused land were rarely challenged.[59]

Gecekondular arose when squatters occupied land that was either public or owned by someone else,[60] and the Federal government initially responded to the rise in squatter housing by passing a law in 1949 that required municipalities to destroy illegal buildings.[61] However, this law proved unpopular, and the government ultimately passed a series of laws throughout the second half of the 20th century legalising previously established *gecekondular*. It began with the alteration of this law in 1953 to allow "existing [*gecekondular]* to be improved and… mandating demolition of [only] new developments."[62]

In 1966, Law No. 775, also known as the "*Gecekondu* Law," gave amnesty to all *gecekondular* built over the past 13 years.[63] It also mandated the destruction of *gecekondular* that were poorly built, resulting in some *gecekondu* clearings and conflicts with squatters, though few of the planned demolitions were ultimately carried out.[64] In light of the *Gecekondu* Law, municipalities began assuming increasing responsibility for service delivery and for title deed management, with local governments even "resolving legal ambiguities regarding unauthorized subdivisions."[65] With the authority of enforcement in the hands of municipalities, squatters gained even more practical tenure security, as politicians were hesitant to risk the favour of large voter groups.[66]

Turkey's 1961 Constitution included provisions that attempted to "come to terms with informal settlements,"[67] and by 1976, another law legalised informal settlements that had been built since the *Gecekondu* Law. Although subsequent laws continued to legalise these homes, *gecekondu* residents rarely received formal title deeds.[68] Instead, the new laws embodied acceptance and acknowledgement of the specific needs of the

[57] *Id.*
[58] *Supra* note 13 at 215.
[59] *Supra* note 2.
[60] *Supra* note 53.
[61] *Supra* note 56.
[62] *Id.*
[63] *Id;* Law No. 775 remains in effect today.
[64] *Supra* note 13 at 215.
[65] *Id* at 214.
[66] *Supra* note 45 at 6.
[67] *Supra* note 13 at 215.
[68] *Id*.

housing market in Turkey's major cities, and ensured the tenure security necessary to make investments.[69] By 1984, "the government essentially gave up the fight against squatters" and passed yet another law that granted "amnesty to all existing *gecekondu* communities and authorized the areas to be redeveloped with higher-density housing," after which residents began improving the areas and making structures more permanent.[70]

Once again, in 1990, another *gecekondu* amnesty was granted, and "[suddenly], most of the [*gecekondular*] were legal – even if they didn't have title deeds."[71] This progression of amnesty laws enabled the improvement and integration of municipal services into the communities. Today, it is estimated that six million people, or nearly half of Istanbul's population, live in homes that are or were originally *gecekondular*, and now "many of these *gecekondu* areas are indistinguishable from legal neighbourhoods."[72]

ii. Political Organisation

Perhaps the most sensible of Turkey's squatter-related laws is that which allows communities that reach a population of 2,000 to apply for "recognition as a municipality, which gives the residents a chance at self-government" and integrates the once-unofficial settlements into the legal municipal fold.[73] A community can register as either a district or a municipality, and gain the right to create a local government, thus gaining the options to expand and to integrate into the municipal service grid.[74]

iii. Supreme Court Acceptance of *Hisseli Tapu*

Unlike *gecekondu* settlements, which are built with no formal land title, informal settlements known as *hisseli tapu*, or shared title deed, exist when land is divided but official ownership is not reallocated among the additional individuals.[75] This practice became popular in the 1960s, and remains a main avenue for the poor to live in residential areas.[76] Because they are built on privately owned land in residential neighbourhoods, *hisseli tapu* structures tend to cost more than *gecekondular*, but offer

[69] Laws No. 775 (1966), 2805 (1983), and 2981 (1984) are amnesty laws, and Laws No. 327 (1963), 1990 (1976), 3366 (1987), and 3290 (1986) expand upon the previously established content.
[70] *Supra* note 24 at 165.
[71] *Id*.
[72] *Id*.
[73] *Supra* note 2.
[74] *Supra* note 45 at 7.
[75] *Id* at 5.
[76] *Supra* note 13 at 215.

more tenure security.[77] Under this system, landowners could sell parcels of their land to the squatters who were already living on it.[78] In 1976, the Supreme Court approved *hisseli tapu* as legitimate under the Civil Code, and even "acknowledged their "inevitability" under the current conditions in Turkey," demonstrating the Court's ability to respond to local circumstances and prioritise the need for housing.[79]

II. Case B: Rio de Janeiro, Brazil

Today, it is estimated that approximately one-third of Rio's nearly 12 million residents live in *favelas*, or informal urban slums, within the city.[80] Brazil is uniquely unequal, with its GINI coefficient climbing from 0.58 to 0.67 between 1981 and 1989,[81] and the results of this can be seen in the neighbourhoods of Rio. For example, the difference between *Gávea* a wealthy neighbourhood, and *Rocinha*, an adjacent *favela,* is marked by "a ninefold difference in unemployment, a 17-fold difference in income and a 13-year variation in life expectancy."[82]

A. History and Context

Favelas originally appeared in Rio over one hundred years ago, though their exact origin is uncertain. It is widely speculated that the term "*favela*" stems from the name of a plant that grew on the hillside that became the first *favela* when it was occupied by unpaid soldiers returning to Rio from the Canudos War.[83] In Rio, *favelas* have expanded quickly due to rapid urbanisation and a vast housing shortage.[84]

i. Early History and Colonisation

Before colonisation, there were no formal property rights among Brazil's indigenous groups,[85] and when the Portuguese ruled,[86] "all land was suddenly viewed as owned by the royal family, and private individuals could only own land if " given grants

[77] *Id* at 215-216.
[78] *Id* at 218.
[79] *Id* at 215; Secondary source cited, as author does not speak Turkish.
[80] COHRE, "Mission Report: Housing Rights in Brazil" *COHRE Americas Program* (2003) at 26.
[81] The GINI coefficient measures income disparity; *supra* note 12 at 157.
[82] Statement by "Andre Urani of the think-tank IETS" in "Rich Man, Poor Man," *The Economist (*12 April 2007).
[83] "Favelas: Name and Genesis" *Favela e isso ai!*
[84] Fernandes, Edesio, "The Legal Regularization of Favelas in Brazil" in Jones, Gareth (Ed.) Urban Land Markets in Transition (2003) at 1.
[85] *Supra* note 24 at 60.
[86] Rule lasted from the 16th to 19th centuries.

from the monarch,[87] creating little tradition of private ownership and few records of title deeds.[88]

ii. Independence Through Present

Brazil gained independence in 1822, and its legal tradition derives from Portuguese civil law (which is based on Roman law). The 1916 Civil Code guaranteed private property rights and declared the infringement thereof to be an unlawful taking of property.[89] However, it also provided for adverse possession rights, which squatters could claim if they had "pacific" and uncontested occupation of the property.[90]

During the period of military rule (1964-1985), despite rural land reform enabling government expropriations,[91] forced evictions and government relocations were widespread as part of a campaign to industrialise the city.[92] Nevertheless, some early *favelas* "were able to survive in part because of Brazil's murky position on property rights."[93]

B. Key Legislation

i. The Constitution

After the restoration of democratic governance, the 1988 Federal Constitution came into effect, laying the groundwork for the right to housing by validated government expropriations, social justice, and a unique urban land policy.[94] It declares the importance of land's social function, and articulates that all levels of government are responsible for "housing construction programmes and the improvement of living and basic sanitation conditions," and that minimum wage must enable employees to meet the basic necessities of life, which include housing.[95]

The Constitution serves as the supreme law, but provides for municipal government autonomy as well, enabling each city to adapt to its unique circumstances. Brazil has incorporated the "right to the city"[96] into its legislation, and the Constitution

[87] *Supra* note 24 at 60.
[88] *Id.*
[89] Law No. 3.071 (1916)
[90] *Supra* note 84 at 2.
[91] See Land Statute (1964).
[92] *Supra* note 26 at 205.
[93] *Supra* note 24 at 60.
[94] [Federal Constitution] (C.F.) (1988). See Articles 182 and 184.
[95] *Id* at Articles 23 (IX) and 7 (IV).
[96] The "right to the city" is a socio-legal movement inspired by Henri Lefebvre, linking the right to

requires municipalities with over 20,000 residents to incorporate the constitutional "right to the city" principles into their City Master Plans, which serve as a legal foundation for urban development.[97]

Adverse Possession Legislation

Article 183 of the Constitution creates flexible adverse possession law, stating that a person who has lived in an urban area "for five years, without interruption or opposition, using it as his or as his family's home, shall acquire domain of it, provided that he does not own any other… property."[98] This provides Brazilian citizens with the right of *usucapião* (derived from the Roman law of "*usucapio*," meaning "acquired through use") under which the burden of proof rests on landowners who seek to evict squatters. Under the Constitution, the right of *usucapião* was reduced in urban areas from at least 20 to 5 years of occupancy.[99]

For various reasons, *usucapião* is difficult to prove and, because it was not initially applicable to state-owned land, it could not be claimed "by perhaps as much as 50 percent of *favela* dwellers."[100] However, many of the loopholes that disqualified *favela* residents have been closed through new legislation such as Provisional Measure No. 2.220 (discussed below), which recognise the rights of occupiers on public land, and the introduction of special urban *usucapião* in the City Statute, which recognises collective *usucapião* rights "where it is not possible to identify the land occupied by each possessor," extending the right to shared or divided structures.[101]

Thus, private property rights are now more fluid in urban *favelas* in response to housing shortages. The right of *usucapião,* as enshrined in federal law, not only gives squatters hope of tenure security, it actually translates their longstanding land use into legal tenure security, if not ownership.

ii. The 2001 City Statue

Law No. 10.257, also known as the City Statute, was enacted in 2001 to implement articles of the Constitution relating to urban land policy and "establishes a

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habitation to the right of participation.
[97] *Supra* note 94 at Article 182; *Supra* note 22 at 156.
[98] *Id* at Article 183.
[99] *Id*.
[100] *Supra* note 84 at 2.
[101] Law No. 10.257 Articles 10-12.

new legal framework for dealing with urban issues."[102] The Statute addresses the legal nature of parcelling, use, occupation, and development of urban land, ultimately regulating the urban policy chapter of the Constitution.[103] It defines the social function of property, thereby contradicting the Roman law principle (*usus fructus* and *abusus*) that an owner has total control over property.[104] Under the Statute, "property rights are subject to its social function, which must be defined in the City Master Plan."[105]

Interestingly, the Statute bridges Civil Law and the "social function" of, and right to, urban land by permitting municipalities to weigh the rights and benefits of landowners with social needs.[106] Furthermore, the Statute calls on municipalities to democratise decision-making at the local level, and declares that the socio-economic situation of the population must be considered when legislating land construction, occupation, and use.[107] In order to see these policies through, Provisional Measure No. 2.220 (September 2001) established the National Urban Development Council, tasked with issuing recommendations about the application of the City Statute and other acts related to urban development.[108]

C. Government Programs

In 1996, the municipality of Rio launched the Inter-American Development Bank-funded *Favela-Bairro* ("slum to neighbourhood") program with the goal of integrating some of the city's many *favelas* into the formal grid. Though it affected fewer than one-fourth of the over 500 *favelas* within the city, this program was successful in implementing water and sewage connections as well as lighting and garbage collection, with additional phases approved.[109]

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[102] *Id; Supra* note 94 at Article 183.
[103] Fernandes, Edesio, "The City Statute and the legal-urban order" in *The City Statute of Brazil: A Commentary (*São Paulo 2010) at 1.
[104] Maricato, Erminia, "Housing and Cities in Brazil and Latin America," (São Paulo) at 5.
[105] *Id*.
[106] Ottolenghi, R., "The Statute of the City: New tools for assuring the right to the city in Brasil," UN-Habitat (2002) at 28.
[107] *Supra* note 101 at Article 2(XIV).
[108] Provisional Measure No 2.220 (Brasilia 4 September 2001) Ch.II, Art. 10(IV).
[109] IADB "Improving living conditions in low-income neighborhoods in Rio de Janeiro" Inter-American Development Bank (3 March 2011).

At the federal level, the Ministry of the Cities was created in 2003 to oversee national programs supporting slum upgrading, land regularisation, and social housing.[110] In 2005, the Federal Senate approved Law No 11.124, which established the National Social Housing System to facilitate land access by the poor "through implementation of a policy of subsidies" and a National Social Housing Fund.[111]

Some *favelas* have become too large to be ignored by the municipal government, and *Rocinha* (one of the largest) has become a legal district of the city, though it remains an unofficial neighbourhood and was not part of the *Favela-Bairro* program.[112] The city even maintains an office in the slum, and works with residents' associations to manage sprawl and planning.[113]

Many of Rio's more established *favelas* are becoming increasingly formalised, a process described by *favela* residents as "*asfaltização*," which translates roughly to "becoming asphalt."[114] In this process, the originally informal *favelas* are becoming paved with asphalt and gaining formal services and institutions (such as banks, restaurants, and municipal bus routes), marking an increase in regularisation.

[110] *Supra* note 22 at 156.
[111] *Id* at 157.
[112] *Supra* note 24 at 56.
[113] *Id* at 56-57.
[114] *Id*; translation author's own.

PART C. Analysis

This section will highlight the successful aspects of Turkish and Brazilian law, touch on some main policies implemented as "solutions" to slums, and analyse legal approaches for regularisation, contrasting title deed allocation with alternative legal approaches. It will ultimately highlight factors for consideration in policy formation aimed at legalising and regularising slums.

I. Case Studies Analysis

Informal settlements and their residents differ around the world. The slums in Rio and Istanbul are far more advanced and permanent than those in other cities in the developing world where residents lack similar tenure security. In many countries throughout the developing world (including virtually all of Sub-Saharan Africa) the majority of urbanites in fact now live in slums.[115] For this reason, the lessons that can be learned from successful policies in Turkey and Brazil may have global application.

Both Istanbul and Rio acknowledged that large numbers of city residents were slum-dwellers and that the cities lacked adequate affordable housing, and both used legislation to regularise slums and empower squatters. Both ultimately focused on implementing legislation that would create *de facto* (via municipal integration) and *de jure* (via legislation) tenure security, and instituted or maintained alternatives to Roman-based private property law, creating a balance between citizens' socio-economic rights and the rigid enforcement of private property ownership.

Istanbul's successful policies demonstrate that significant portions of a city can be legalised and integrated *without* assigning or changing formal land title. Lawmakers considered the unique legal history of the country, embracing Ottoman legal concepts alongside Roman-based law. This approach has demonstrated the social benefits that can arise when courts and lawmakers consider current housing and social conditions when forming legislation, as exemplified when the Supreme Court considered the "inevitability" of *hisseli tapu* given Istanbul's housing climate. With each new law strengthening *gecekondular*, the government gave added recognition and respect to

[115] UN-Habitat, "Table 1," in *Slum Estimates Data* (2001).

structures already built and occupied, enabling residents to invest in and improve the communities.

And Brazil 's creative crafting of legal tools to improve access to urban tenure security **"**has clearly demonstrated that urban reform calls for a precise combination (almost always elusive) of renewed social mobilisation, legal reform and institutional change.**"**[116] Brazilian law is uniquely progressive in its inclusion of the notion of the "right to the city," and the City Statute incorporates the innovative "social function" criteria to create a new urban-legal policy framework clarifying the goals and priorities for urban areas. Lawmakers have responded to the unique situation in *favelas* by reducing the requirement for *usucapião* in urban areas, and by recognising group rights in special circumstances. Additionally, Rio has invested heavily in regularisation through programs such as *Favela-Bairro*, illustrating commitment to incorporating slums into the municipal plan.

Each city has taken a different political approach: Istanbul enables communities of over 2,000 residents to apply for status as a municipality or district, thus establishing themselves politically and cultivating their own integration. Rio, on the other hand, recognises significant *favela* communities, but, rather than stimulating political organisation and official representation, attempts to integrate them into the existing municipality via retroactive ad hoc programs.[117]

While Turkish lawmakers regularised *gecekondu* settlements through wide-sweeping amnesty laws, Brazil modified its federal laws to help individual squatters protect themselves from eviction through urban *usucapião* and through legal tools such as the City Statute, which provided for a legally defensible right to housing.

Although the standard of living in Rio's *favelas* and Turkey's *gecekondular* are not necessarily equal to those in formal neighbourhoods, the legislation passed to legalise squatter structures has enabled significant improvements on that score and in municipal integration, providing an example of the kinds of targeted policies that might improve the lives of nearly a billion people worldwide.

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116 *Supra* note 103.

117 This is largely due to the drug trafficker situation in *favelas*.

II. Main Policy Approaches

With one-sixth of the earth's population calling informal settlements home, and with the generally negative perception of squatter settlements, governments have reacted with a variety of responses. Following is a brief discussion of the major policy alternatives to legalisation and integration.

A. Forced Eviction and Demolition

Forced eviction was a common approach to squatter settlements in Europe in the 19th century,[118] and shantytowns have since been cleared on the basis of their illegality and the occupants' lack of property ownership – often to make way for new developments as cities expanded.[119] In 2004, forced eviction was prohibited by the Commission on Human Rights as "a gross violation of a broad range of human rights, in particular the right to adequate housing," and members were urged to eliminated the practice, replacing it instead with security of tenure.[120] Residents are increasingly protected against forced evictions due to legislation regularising slums as well as pressure from international human rights bodies. As a result, "[traditional] slum clearance... is [now] out of fashion,"[121] as there is a greater recognition among governments and companies that evictions may fairly be characterized as human rights violations; however, "the scale of eviction continues to grow."[122]

B. Relocation

One policy, widely viewed as the more humanitarian approach, is relocation from slums to government-built high-density housing, usually on the city periphery. Although such relocation programs are effective in improving access to basic services and adequate structural shelter, they often cause greater financial hardship for residents, who may remain in central slums to stay close to their places of work.

In addition to the "barrack-like" quality in many of these new buildings, families are often given less space per person, less privacy, a reduced sense of community, and no

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[118] UN-Habitat, "Slums: Past, Present and Future," *Secretary General's Visit to Kibera, Nairobi* (2007) at 1.
[119] *Supra* note 22 at 267.
[120] *Commission on Human Rights, Resolution 2004/28.*
[121] *Supra* note 17.
[122] *Supra* note 24 at 274.

option to expand or to use their homes as a storefront.[123] One report shows that squatters relocated from one of Delhi's slums to a peripheral area experienced a decrease in average income of about 50 percent due to the high costs of commuting.[124] Indeed, unemployment generally rises among squatter groups when relocated to peripheral areas, and these programs tend to have little positive impact, as many squatters simply return to the inner city.[125]

While urban planners may see slums as "a mere cancer in the city,"[126] for slum-dwellers, "the slum is the place where production under deteriorating circumstances is still possible."[127] In fact, relocated squatters in Bangkok were found to "actively prefer their old slums to the new tower-blocks."[128] Governments had once hoped that cities would be slum-free, but today they are beginning to realise that there are benefits to the central slums that house workers vital to the economy, and that the informal settlements should be kept "as integral" in city areas.[129] However, there are still some situations, such as cases involving environmental risk, in which government relocation of squatters may be the only viable response.[130]

C. Redevelopment

Redevelopment schemes typically replace or add to informal houses in the same area as the original slum. In the past decade, there have been many proposals in India to "redevelop" slums located on now-valuable real estate into apartment buildings in an effort to both profit and provide improved conditions for slum-dwellers.[131] One such plan was hatched in Mumbai in 2007, when developers were invited to submit bids to replace *Dharavi*, then the city's largest slum, with commercial high-rise buildings.[132] Squatters who could prove that they had lived in *Dharavi* since before 1995 would be re-housed in the buildings, but this demographic excluded the majority of current residents,

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[123] *Supra* note 12 at 64.
[124] *Id* at 100.
[125] *Supra* note 17.
[126] *Supra* note 12 at 65.
[127] Evers, Hans-Dieter and Rudiger Korff, Southeast Asian Urbanism (2001) at 168.
[128] *Supra* note 12 at 64.
[129] Muhammad Kadhim, Senior Human Settlements Officer at UN-Habitat in *supra* note 17.
[130] For example, India's National Slum Policy proposes that only slums in environmental risk areas be relocated.
[131] Karishma Vaswani, "Mumbai slum-dwellers fight redevelopment plan" *BBC News* (30 August 2007).
[132] *Id*.

and those who did qualify would have received apartments of only 225 square feet at no cost, and would be charged for additional space, making it a difficult sacrifice for the typically large families.[133] The plans were eventually scrapped due to community opposition. It remains to be seen if such systems will meet with success, but the initial issues in *Dharavi* suggests that they are may be ineffective in providing squatters with affordable, functional, or comfortably-sized homes.

III. Tenure-Based Approaches to the Regularization of Slums

Land tenure systems are evolutionary, complex, overlapping, and pluralistic, and they vary widely depending on distinct historical, cultural, social, political, and economic factors.[134] This section analyses the approach of legal titling and contrasts it with alternative policy approaches to achieving *de jure* tenure security.

A. Title Deed Allocation

State-led individual titling and registration has been the key avenue of formalisation and land tenure reform schemes in the past decades, and it has certainly met with some success. But, in my view, it is not feasible as a universal solution for providing tenure security in slums.

i. Advantages

Land tenure reform has been the cornerstone of many social justice movements, as the idea that "land is the basis of freedom, justice, and equality"[135] gained increasing support in the second half of the 20th century. Land titling systems have provided enormous benefit for agricultural societies, and states such as Mexico and Bolivia instituted significant reforms through rural household deed allocation. Perhaps the most prominent proponent of title deed allocation is Peruvian economist Hernando de Soto, who urges that squatters receive formal title deeds to their land in order to "tap" the capital of their homes.[136] He contends that frontiersmen living in the western states of pre-Civil War United States were in a similar position to squatters in the developing world today; they were living on and using land that did not legally belong to them.

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[133] Ramanathan, Gayatri, "Dharavi redevelopment plan is robbing us of space: residents" *Mint* (5 September 2007).
[134] *Supra* note 6 at 21-22.
[135] Malcolm X in speech ''Message to the Grass Roots" (1963)
[136] See The Mystery of Capital for more information.

Through the Pre-emption Act of 1841[137] and the Homestead Act of 1862,[138] the U.S. Government validated these legal and extralegal claims, distributing formal property deeds.[139] De Soto suggests that doing the same in urban settlements will unshackle the "dead capital" currently inaccessible in squatter property, and will integrate squatters into economic society, to great overall advantage.[140]

ii. Disadvantages

While some states have lifted citizens out of poverty through title deed distribution, land issues in rural areas differ substantially from urban areas. In urban slums, parcel distinction and sharing is complex, renters comprise a significant portion of residents, populations are increasing rapidly, and there are urgent service provision needs. Additionally this "single bullet" solution disregards cultural precedents and traditional forms of property, which might contribute to more effective legal reforms and promote the incorporation of socio-economic rights and country conditions.[141]

a. Structure Sharing and Rental

Many squatter communities are defined by their chaotic parcel use, with families sharing structures, dividing homes by storey, and respecting indistinguishable boundaries. Although a community could receive titles as cooperative associations, the complex division of parcels would certainly slow and complicate the title deed allocation process.

It is also important to acknowledge that large portions of many squatter communities rent (often from absentee landlords), rather than own, their homes. In Bangkok, for example, two-thirds of squatters rent the land that they have built upon.[142] In such situations, title deed allocation would serve only to benefit the higher-income landlords rather than the actual inhabitants, and could invite rent increases. In fact, without significant study and market analysis, title deed allocation risks undermining the rental market in slums, which provides housing for significant portions of many urban cities.

b. Cost

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[137] The Preemption Act 1841, 27th Congress, Ch. 16, 5 Stat. 453 (1841)
[138] The Homestead Act of 1862, 37th Congress, Session II, Ch. 75 (1862)
[139] *Supra* note 38 at 5.
[140] *Id* at 6.
[141] Samuelson, Robert, "The Spirit of Capitalism," *Foreign Affairs* (January/February 2001) at 3.
[142] *Supra* note 12 at 43.

The cost of title deed schemes can be significant for squatters, who often must pay a fee or purchase the land upon which they live, sending them into debt in order to legally stay in their homes. In fact, the reason that many squatters choose to build their own informal and often precarious housing is due to their inability to afford formal housing, or their reluctance to incur long-term debt. Furthermore, granting of title deeds can be risky for squatters, as this "tends to lead to market evictions of tenants,"[143] whereby people are induced to sell their land out of desperation, and it can push those unable to afford taxes out of the slums as well, forcing them "to relocate to other informal settlements,"[144] or leaving them with no housing at all.[145] Therefore funds would be better allocated to the provision of the basic services, and to other measures offering simpler and more immediate means of achieving tenure security.

The cost to the state, and the risk of corruption, are high, as "land administration is one of the most corrupt public services,"[146] and the lengthy process coupled with anticipated squatter growth makes more immediate and broad legislative solutions more practical. Given this context, *de jure* tenure security is better achieved through creative legislation rather than costly title deed allocation schemes.

B. Tenure Security: Alternative Legal Approaches

Rethinking the Property Regime

> "[It] remains to be seen how… [title-based property rights] can possibly be… a long-term solution to meeting the complex needs of the poor. Meeting those needs for the long term would require addressing the political, social, cultural and economic factors (on both the national and international levels) that created the gross inequalities in the first place and exacerbates them in a globalized world..."[147]

De Soto argues that five-sixths[148] of the world is poor because their houses and businesses remain extralegal, and the solution must therefore lie in legalising this

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[143] *Supra* note 22 at 268.
[144] *Id*.
[145] Geoffrey Payne referenced in Gilbert, Alan and Ann Varley Landlord and Tenant: Housing the Poor in Urban Mexico (London 1991) at 4.
[146] Working Group on Property Rights, "Empowering the Poor Through Property Rights" in Making the Law Work for Everyone Volume II, UNDP pp.63-128 (New York 2008) at 82.
[147] Nobel Peace Prize winner Jody Williams, quoted in *supra* note 22 at 266.
[148] *Supra* note 38 at 6.

property through title deeds. However, this suggests that the majority of people operate under the property regime supported by (according to de Soto's calculations) the minority. It would seem more logical to re-evaluate property and legality, ensuring that the vast majority of people and their homes are recognised and incorporated without significant cost or delay.

Social Construction and the Coexistence of Rights with Roman law

The private property regime is a social construct, and "there is no foundation in nature or in natural law why a set of words upon parchment should convey the dominion of land."[149] It is well within the ability and scope of a government and society to change its approach to property and ownership, and the inequality perpetuated through strict adherence to post-colonial private property systems in much of the developing world has led to the marginalisation of a significant population.

Gita Verma argues that focusing on anti-eviction is a way of addressing the symptoms of a problem rather than its root cause, distracting from the inherently flawed and unequal system that has left a large portion of many cities' populations living on a small portion of its land and vulnerable to eviction.[150] Certainly, in order to reach a long-term solution that will enable a more equitable and just system of land use, governments must be willing to reform the property regime to become a system "of social policy with targeted measures of capacity building, information, and access to property and housing."[151]

However, none of this is to say that Roman-law-based property systems should be replaced completely[152] as it is has been proven entirely compatible with modifications and additions that make space for socio-economic rights and urban-political frameworks. South Africa's infant democracy has provided another successful example of the integration of socio-economic rights, using the concept of "progressive realisation" as a bridge between civil private property law and the immediate needs of the vulnerable.[153]

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[149] Blackstone, Sir William, Commentaries on the Laws of England Vol. II (1766) at 2.
[150] Verma, Gita, Slumming India: A Chronicle of Slums and Their Saviors, (New Delhi 2002) at150-2.
[151] The World Bank, "Sustainable Land Management: Challenges, Opportunities and Trade-offs" (Washington, DC 2006) at 86.
[152] The seizure and large-scale redistribution of private property has met with unproductive and economically detrimental results.
[153] See *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000(11) BCLR 1169(CC) for example of "progressive realisation" enforcement.

C. Customary Land Rights

While customary and group property rights have typically been recognised in rural areas, methodology from these systems can be implemented in urban areas as well. In fact, customary tenure systems can be preferable "because they are seen as culturally appropriate, grounded deeply in the history of the area concerned, and because they work and are more equitable than approaches based on modern law and private property rights."[154] Several nations instituted customary land reform in the 1990s and early 2000s, holding the view that community-based systems better reflect the complex rights of groups, individuals, families, and the secondary rights that might be neglected in titles, and that communities have a unique relationship with land beyond the mere aggregate of individual parcels.[155]

Many states have successfully provided tenure security via policies such as the public trust doctrine, traditional and community rights, or other forms of land management or hybrid systems. In fact, "customary tenure systems are to be considered as providing an adequate framework for private group-owned property," and have "been flexible and responsive to changing economic circumstances."[156] One interesting case of customary land rights is the Mozambique Land Law of 1997,[157] which facilitates the granting of secure tenure rights to village communities[158] according to customary rights and good faith occupation.[159] The Act allows for communities to collectively hold rights to land, and affords protection regardless of whether the owners have documented title.[160] Tanzania has implemented similar legislation. Its 1999 Land Act[161] recognises the tenure rights of informal squatters, and their rights are recorded and maintained by authorities that register the land based on rights of occupancy.[162]

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[154] *Supra* note 22 at 159.
[155] *Supra* note 151 at 88.
[156] *Supra* note 151at 83.
[157] Land Law No.19/97 (1997).
[158] The term "communities" includes a wide range of groups.
[159] Cotula, Lorenzo, Camilla Toulmin and Ced Hess, "Land Tenure and Administration in Africa," *International Institute for Environment and Development* (2004) at 6.
[160] *Id*.
[161] The Tanzania Land Act (No. 4 of 1999)
[162] *Supra* note 22 at 148.

I. In Opposition to Approaching Slums as Autonomous Areas

One argument against *de jure* tenure security approaches says that squatters have proven that, if granted only *de facto* tenure security, they will "improve [slums] themselves."[163] This may be true, but it ignores the possibility that the goal should perhaps go beyond basic improvements in living standards, and aim to achieve an effective integration of slums into law and society. Although I underscore the ingenuity and self-reliance of these communities, I do not assert that slums should be left as semi-autonomous areas that "can be safely left to look after themselves;"[164] rather, I submit that full-scale integration (*de facto* and *de jure*, employing methods other than title deeds) should be the cornerstone in any formalisation policy.[165]

The detriments of such autonomy are best demonstrated by the municipal service deficits found in places such as Nairobi, Kenya, where it is estimated that 60% of residents are slum-dwellers,[166] and this poorest group is forced to pay dearly for their non-formal status. Because their homes are extralegal and therefore unprotected, residents are forced to pay off corrupt provincial administration officials for permission to construct or repair their homes,[167] and they pay up to "30 to 40 times the official price of water" by purchasing it through a kiosk system rather than through the official municipal metered supply.[168] Indeed, integration into municipal services would significantly benefit squatters, and, in turn, the "integration of settlements also implies secure land tenure."[169] Furthermore, government involvement might increase developer and landlord accountability, as well as facilitate improved structure quality.[170]

While title deeds will allow slum-dwellers to improve their situation and invest in their community, I argue that this perpetuates strict adherence to the current private property system, and that tenure security, attainable through both legislation and integration, are most important in effecting immediate and fundamental improvements.

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[163] Cameron Sinclair in *supra* note 17.
[164] Seabrook, Jeremy, In the cities of the South (1996) at 197.
[165] See Mike Davis in *supra* note 17.
[166] Warah, Rasna, "Land rights campaign in Nairobi," *Africa Recovery* Vol. 15(1-2) (June 2001) at 35.
[167] Harding, Andrew, "Nairobi Slum Life: Into Kibera," *BBC News* (4 October 2002)
[168] *Supra* note 24 at 81.
[169] Durand-Lasserve, Alain, "Regularization and Integration of Irregular Settlements" *Working Paper No.6* (May 1996) at 10.
[170] *Supra* note 13 at 218.

A government that is not committed to providing social services to large portions of city-dwellers neglects its essential function and perpetuates separation and exclusion of cities and communities.

II. Considerations in Policy Formation

Given the variation in circumstances and urban conditions from country to country, it would be impractical to propose a single formula or set of policies for the legalisation of urban slums. Instead, this section will recite key factors and avenues of thought that deserve special attention when formulating policy in the field.

A. General Considerations

As the evidence has shown, a flexible approach to property and an adaptation to the unique needs of the city are critical to effective policy formation, and significant legal and institutional change may be necessary. It is important to note that tenure security, municipal integration, and legal and social inclusion and protection are all mutually enforcing.[171]

B. Country Conditions

Country factors to consider include the specific socio-economic conditions, socio-economic rights, cultural conditions, and trends in inequality, urbanisation, demographics, and formal and informal housing markets. Courts and other legal entities can and should consider socio-economic circumstances in their decisions, as this can ensure constituency representation and provide reinforcing legal underpinnings for necessary change. Policymakers should take into account the legal traditions within the country, including customary and traditional rights and systems, and should be wary of transplanting laws from other states.

C. Balancing Competing Theories of Property law

As the case studies and other evidence have demonstrated, socio-economic rights, social-legal frameworks, and alternative tenure systems can inform the civil property code, creating a balance. Property alternatives are not incompatible with Roman property law, and legislation can keep the entitlement regime in place while adding flexibility to the meaning of entitlement. Newly recognised rights need not wholly supplant existing

[171] *Supra* note 169.

rights, and policies can be implemented to strengthen or protect existing forms of property and tenure.[172]

D. Legislation

States may also re-examine burdensome, discriminatory, and outdated planning, zoning, and property regulations, and may streamline or clarify the intent of legislation. Just as Brazil's City Statue outlined a new framework to guide policy, policy-makers might begin by creating legislation that simply articulates government objectives to facilitate policy implementation. It is also highly valuable to incorporate international human rights standards regarding the right to housing.

E. Market Conditions

Renters in slums are particularly vulnerable, and the volatility of both formal and informal markets should therefore be considered before drafting new policy. Urban planner Ayse Yonder emphasizes that policy makers should look beyond formal titling schemes and examine informal land and housing markets, developing effective policies based on a solid understanding of the individual structure and circumstances of each municipal area and its informal markets in order to "strengthen the position of low-income renters and owners in these markets."[173]

Successful legal approaches to formalising slums must include consideration of flexible and communal property systems, creative legislation, socio-economic rights, and the provision of legal tenure security without necessarily allocating or reallocating title deeds.

[172] As in Mozambique, where customary use rights are protected even without registration.
[173] *Supra* note 13.

PART D. Conclusion

In this paper, I have examined legal approaches to formalising extralegal squatter settlements, and suggest further study in the area of slum renters and potential policy approaches to ameliorate the negative effects of absentee landlordism, increasing rents, and exploitation.[174]

With one billion people currently living in extralegal homes, governments face a challenge to find legal methods of integrating them into formal social, legal, and municipal systems. The evidence and analysis presented has shown that the continued extralegality of their living situations disadvantages the poor in service provision and standard of living, increases health and safety risks, facilitates crime and weakens the rule of law, discourages investment, enables local strong men and corrupt officials to exploit slum-dwellers and charge unreasonable rents, and fosters the abuse of vulnerable groups.[175] It has demonstrated that, while the private property regime has the potential to perpetuate and entrench inequality and poverty, it can also be complemented with targeted legislation enacting a balance between social needs and private ownership protection. I propose that there are several key needs in urban slums today: that of municipal integration, legal and political inclusion, and tenure security. Finally, I suggest that slums be examined in light of the malleability of the property regime, and that alternative legal approaches be considered to legalise and integrate them into the fabric of cities.

[174] The cases of Rio and Istanbul did not detail policy approaches for slums comprised largely of renters.
[175] Yonder, Ayse, "Implications of Double Standards in Housing Policy" in Fernandes, Edesio and Anne Varley (Ed.s) Illegal Cities: Law and Urban Change in Developing Countries (1998) at 62.

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