



ANNUAL CONFERENCE ON LAND AND POVERTY

ACCESS TO JUSTICE FOR A RESPONSIVE AND INCLUSIVE LAND GOVERNANCE TO TARGET THE MOST ECONOMICALLY VULNERABLE GROUPS IN BRAZIL

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Paper prepared for presentation at the
“ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, April 23-26, 2012

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ABSTRACT

Brazil has developed an important urban reform recognizing the urban issue as central to national interest, promoting the *right to the city* for present and future generations; and enhancing the *social function of the property and the city* as a mechanism to overcome social inequalities. This study (2012) is about the role of the Court of Justice of the State of Pernambuco in implementing the *Special Collective Usucapion* – SCU to enhance the access to justice. The SCU recognizes ownership on behalf of economically vulnerable families living in the Special Zones of Social Interest - ZEIS in the city of Recife. The institutional framework; cases studied; methodology for the analysis; and the main barriers hampering the successful implementation of the SCU are presented. The evidences reveal two main type of obstacles: i) structural (bureaucracy and conflicts of jurisdiction); and ii) a restrictive interpretation of the existing legal norms by the judicial authorities. This questions the ability in the Judiciary and relevant public entities to implement innovative land reforms, and brings implications for political action to adjust institutions addressing land governance; and capacity development in the judiciary whose resources will address those skills for socially inclusive, equitable and more accountable decisions.

KEYWORDS

Access to Justice, Women and Economically Vulnerable Groups, Land Governance, Land Tenure,
Special Collective Usucapion

BACKGROUND

In Brazil, around 83%ⁱ of the urban population lives in poor conditions (habitability)¹ and 40% of families do not have security of land tenure or any legal document(s) to confirm possession of the land they live on. In the segment of the population with less than 3 minimum salaries the lack of security of tenure is 35.1%, 21.2% for the segment of 5 to 10 minimum salaries; and 22.5% in the segment above 10 minimum salariesⁱⁱ.

Habitat for Humanity Brazil (HFH) and the Center Dom Helder Camara CENDHEC are partner implementers of 'Empowering Women and Vulnerable Groups to Exercise their Rights for Inclusion and Secure Land Tenure and Property', a project financed by UKAID. This project aims to increase the access of women and vulnerable groups to secure land tenure through; an empowered citizenship and stronger community networks (capable of advocating, defending and exerting social control, with women as protagonists), specialized entities in the State and Municipal offices, new policies, and a Judiciary that uses the full potential of existing laws to the benefit of the target groups. It is expected that this will enhance efficiency, transparency, inclusiveness, responsiveness, and accountability in land governance.

This study was planned as a base line of the project and arises from the long experience of the Right to the City Program in CENDHEC which testifies the time duration of proceedings in the Judiciary is an obstacle to the recognition of the land rights of the residents of poor settlements in Recife. Given this empirical finding the Project felt the need to collect data to corroborate or deny this conclusion. The approach of the study could shed light on time intervals which together constitute the denial of the right to reasonable processing time, a right guaranteed by the Constitution in its article 5 LXXVIII: *All are equal before the law, without distinction whatsoever, guaranteeing Brazilians and the foreigners residing in the country the inviolable right to life, liberty, equality, security and property, as follows:*

(...)

LXXVIII all within judicial and administrative fields, are assured a reasonable length of process and ways to ensure the speed of its progress.

FRAMEWORK

The access to justice is a basic human right, people and their legal causes require a process observing the rules that guide the participation and dialogue between parties in conflict, ensuring their access to tools

¹ Adequate habitability conditions are associated with the right of access to land development, a healthy environment, sanitation, water, transportation, public services, culture, labor, education, health, among others, essential to ensure the effectiveness the principle of human dignity and human rights.

that guarantee their right. From this perspective, the case of the residents who seek land tenure regularization is not just the right to get a sentence at the end of a process in the Judiciary; but rather applying the existing legal body as established by the human right to adequate housing; the Brazilian Federal Constitution - FC; the usucapion²; the especial zones of social interest ZEIS; the land tenure regularization process; and the Statute of the City (Law 10.257/2001) (SCL) to guarantee their access to justice with the purpose of preserving welfare, social peace and dignity.

The right to adequate housing recognized in international agreements³, and incorporated in the FC 1988 art.6 (Constitutional Amendment 26/2000); and the urban development policy as expressed in art. 182 and 183 both are intended to order the full development of the social functions of the city and ensure the welfare of its inhabitants.

The progressive realization of the right to housing produces the following immediate effects:

- The right of the citizen to demand immediate actions that are essential to that right;
- The right of access to justice through lawsuits and other proceedings for the effective protection of the right to housing;
- The right to participate in the formulation and execution and implementation of housing policies.

The Statute of the City Law - SCL regulates the chapter on urban policy of the FC 1988 (Articles 182 and 183), recognizes the urban issue is central to the national interest, promotes the right to the cityⁱⁱⁱ for the present and futures generation; and the social function of the property and the city as a mechanism to overcome social inequalities.

The SCL establishes principles and guidelines that express new processes for the use, development and occupation of urban territory that should guide the actions of public and private actors in the

² See explanation in page 7

³ Universal Declaration of Human Rights (1948) Art. XXV; International Covenant on Economic, Social and Cultural Rights (1966) Art. 11; General Observations No. 4 and No.7 of the International Covenant on Economic, Social and Economic Rights (1991); International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination (1965) Art. 5; International Convention on the Elimination of All Forms of Discrimination against Women Art.14 (1979); ; International Convention on the Rights of Children Art. 27(1989); Resolutions: Equal opportunities for women and equal access to ownership and control over land, and equal rights to property and adequate housing (2003-22); Agenda 21, 1992 and Agenda Habitat – 1996. According to General Observations No 4 and No 7 of the Committee on Economic, Social and Cultural Rights, the main UN body charged with overseeing the implementation of housing rights by the states, the following have been established as the basic principles of adequate housing: i. legal security of tenure, including legal protection against eviction, harassment and other threats; ii. availability of services, equipment and necessary infrastructure, including access to safe drinking water and sanitation; iii. affordable costs, even for the poor, through subsidies for housing and protection against tenants who charge excessively; iv. habitability, including protection against the cold, humidity, wind, heat, rain, and disease; v. access to the most vulnerable groups, including the elderly, children, people with physical disabilities and victims of natural disasters; vi. an appropriate location for homes, secure, away from sources of pollution, and next to public services and schools.

reconstruction of cities from the perspective of justice, democracy and sustainability. City property acquires new meaning and scope in the context of urban Brazilian legal-constitutional norms. It should attend to social functions with regard access, use and distribution of wealth and possibilities.

Its contents originated in popular urban reform amendment that was presented during the constitutional process of 1988, which was based on the following principles: a) Right to the City and Citizenship, which includes universal access to services and urban, land, housing, healthy environment, leisure, transport, sanitation, participation in city planning, education and health, b) Management of a Democratic Town, understood as how to plan, make decisions, legislate and govern cities with social participation and control, c) Social Function of Property in order to prevent speculative holding of urban land or inappropriate land use that results in its non-utilization or under-utilization, ensuring socially just and environmentally balanced urban space.

The SCL defines the instruments that the government, especially the Municipality, should be used to address problems of social and territorial inequalities in cities:

- Instruments to guarantee the fulfillment of the social function of property - the master plan, subdivision and building requirements, progressive tax over time on urban real estate, and special areas of social interest, among others;
- Instruments for land tenure regularization – usucapion or urban adverse possession, special concession for housing purposes, and granting the right to use land;
- Instruments for a democratic management of the city - urban policy councils, city conferences, participatory budgeting, public hearings, popular initiative of bills, and neighborhood impact studies.

The social function of property has always been a constitutional principle from the Brazilian FC 1934. However, the enforcement of this rule has been omitted by the authorities. The concentration of land in Brazil is one of the largest in the world in both the countryside and in the cities. The FC 1988 states that land that does not fulfill its social function should be expropriated for agrarian reform purposes or urban use. The extension of the right to use and dispose of property is limited in favor of the collective good, safety and welfare of citizens and subject to the fulfillment of a social function. According to the Constitution (art. 182) and the City Statute (art. 39) an urban property fulfills its social function when it meets the fundamental requirements expressed in the city's master plan, ensuring compliance with citizens' needs for quality of life, social justice and the development of economic activities. The master plan should link the functions of land ownership to the guidelines and goals of the urban policy democratically established in the municipality.

The municipal government, through the master plan, may require the land owner to fulfill its duties for the benefit of the community, which implies the allocation of the property to serve its social function, which may be economic, housing, environmental protection, correct distortions on the urban growth, and so on. The City Statute obliges owners to promote the appropriate use of vacant underutilized or idle urban land; the local government can apply sanctions to owners who keep land underutilized. The municipalities have a period of five years from the date of approval of the City Statute, to develop or adapt the master plan guidelines and tools contained in this law^{iv}.

The Special Zones of Social Interest ZEIS were legislated for locations with a qualitative deficit of basic urban infrastructure and services, occupied by the poor, often threatened by environmental and tenure instability. The ZEIS were initially defined by Land Use and Occupation Municipal Act 14.511 of the city of Recife passed in 1983. The Regularization Plan of the Special Zones of Social Interest - PREZEIS was passed by the Municipal Act 14.947, 1987, as a regulatory tool aiming to provide the principles and provisions of land use set out in the legislation for the treatment of ZEIS. It is characterized primarily as a management system in the regularization process of the favelas, which are defined by zoning regulations, the responsibilities of government officials and representatives of the communities concerned, as well as the institutionalization of a space for discussion and deliberation on investments and special policies for the ZEIS. Over the last decades experiences have been accumulated as principles, and methodological frameworks which are a national benchmark in driving local public policies

The Regularization of land tenure, if understood in the sense adopted by the jurist Edesio Fernandes is among the public policies needed to address the effects of inequalities in land and property: "The Regularization should not be understood only as a means of legalization of land tenure consolidated, but also comprises a series of actions that promote social and spatial integration of these areas". Article 2 of the Statute of the City, reaffirms this understanding when it says that urban policy aims to order the full development of the social functions of the city and urban property by the guidelines of the guarantee of the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, the urban infrastructure, transport and public services, work and leisure for present and future generations.

The Special Collective Usucapion (SCU) was created by the SCL to: i) overcome administrative and legal delays; ii) foster collective legal actions; iii) reduce processing steps; and iv) to allow 5 years to be reached by the occupant of a plot (time required to claim SCU) by adding his possession to that of his predecessor, as long as the contact is continuous for both.

The SCU is one of the tools available in the Brazilian legislation to regulate the possession of low-income communities, attributing security to the tenure of land that was missing due to the informality of the occupation. "The usucapion was created in the FC Article 183 with the purpose of enabling low income persons and the homeless to acquire a property up to the size of 250 square meters"^v. It states in art. 10 and subparagraphs of the City Statute: "Urban areas with more than two hundred and fifty square meters occupied by low-income people for housing, for five years, without interruption or opposition, where it is not possible to identify the land occupied by each possessor, are likely to apply collective usucapion provided that the holders are not owners of other urban or rural property".

- § 1. The possessor may, for the purpose of the time required by this article, add to the possession of its predecessor, as long as both are continuous;
- § 2. The collective special adverse possession of urban property will be declared by the judge upon sentencing, which will serve as the basis for registration in the registry of property registration;
- § 3. In the sentence, the judge assigns equal undivided rights to every possessor of land, irrespective of the size of the land that each occupies, except in the case of a written agreement between the tenants, establishing a preferred arrangement of rights;
- § 4. The established condominium is indivisible and cannot be destroyed unless a decision is agreed by at least two thirds of the tenants.
- § 5. The decisions relating to the administration of special condominium shall be by majority vote of the shareholders present, over and above those who are discordant or absent.

The judiciary is responsible for mediating disputes between people, deciding who is entitled to something or not. The function of the judiciary is to ensure people's rights and promote justice through law enforcement. The organization of the Judiciary in the State of Pernambuco is showed in Figure 1.

The Ombudsman or Public Defender is the guarantor of the access to justice, role conferred by the Federal Constitution, in Article 134, which says that "The Ombudsman institution is essential to the jurisdictional function of the State, requesting all grades of legal guidance and defense to the needy, in the form of Art 5, LXXIV". Thus, is largely serving as an instrument of citizenship. The lawyer in the role of the Ombudsman has office and duties essential for the consolidation of a democratic state of rights. The Ombudsman beyond representing the needy in court should promote legal defense, counseling, consulting, legal information and also to assist the needy and all citizens who cannot afford a lawyer following the case from beginning to end the process without any cost.

The prosecutor is a sort of "Public Advocacy" to defend the interests of the whole of society. The federal, state and local prosecutors and the promoters of justice and labor are part of the Public Ministry. In the exercise of his constitutional and statutory duties, the prosecutor may work with the judiciary or not. For instance, when the prosecutor acts in defense of social rights such as those relating to health, education, the rights of children and adolescents and persons with disability they may act in the administrative field or before the judiciary.

METHODOLOGY

Cases Studied

The study was implemented in the ZEIS Mustardinha and Manguera located in the Micro Region 5.1 within the Political-Administrative Region 5 (RPA 5) of the City of Recife (Map 1). The Micro-region 5.1 with a total population of around of 60,000 is formed of the following communities: *Afogados, Areias, Barro, Bongi, Caçote, Coqueiral, Curado, Estância, Jardim São Paulo, Jiquiá; Mangueria, Mustardinha, San Martin, Sancho, Tejipió e Totó* (Map 2). In the ZEIS Mustardinha and Manguera a high deficit of urban housing services (social, transportation, infrastructures, water, and sanitation) is prevalent; people need to walk around 3 km to get to the closer Social Assistance Reference Center to register access to federal benefits such as *Bolsa Família* or to receive information on this issue. There is no leisure, art, or cultural amenities for children and the youth and the streets are used by street vendors.

Although the largest population in the three communities is female (Table 1), young black men suffer the most from urban violence. According to the Institute PAPAÍ more young black men die in cities as victims of the police violence, drug dealing and fights in the streets than women.

A gender relations analysis shows on average, about 40% of women from these communities are responsible for family income, these same women are also responsible for performing the "reproductive" activities of their families (i.e. education and nutrition of their children, care for the elderly and maintaining the organization of their homes) resulting in accumulated responsibilities.

The average family monthly income in these three communities is around R\$500.00 (around US \$250) - which represents less than 1 minimum wage; this income is based in informal activities without a fixed income; but also includes occupations such as maids, nannies, housekeepers, security guards, among others^{vi}.

Informal negotiations with landowners are documented by simple deeds or private payment receipts or often without any documentation at all. The area at the time of occupation (1940) was located in a region thought to be unproductive, distant and devalued, and the buyers were invariably the poor in need for housing, lacking financial resources, uneducated and / or who did not understand the importance of registering property with the land registry office or simply lacked the resources to promote it. People settled on unused and unclaimed land which lacked a social function.

Statistical Sample

The first stage targeted a random selection of 63 individual usucapion - IU *plurimas* or collective usucapion – CU, and Special Collective Usucapion - SCU cases (13.5%) of a universe of 472 usucapion cases (1506 beneficiary families) filed in the CPE from 2005 to 2010 related to the Mangueira and Mustardinha slums designated as Zones of Special Interest (ZEIS) in the city of Recife. These actions were supported by CENDHEC's Right to the City Program.

The 63 usucapion cases are distributed as follows: 16 IU, 28 CU actions, and 19 SCU actions (Figure 2). The concept of IU, CU, and SCU relate to the number of authors of the action and how the judge will grant the request made in the action, which influences the procedure by which it is processed. Individual actions, as the term suggests, have only one person in the procedural relationship. That is, if the sentence is successful it will only effect in the one person listed as the author of the adverse possession action.

Procedure is the orderly succession of acts within models provided by law; in other words, it is the way that the usucapion actions will be processed to go through to a final ruling. The ordinary/common and the summary procedures are two such models. The IU as well as the CU actions are processed by the ordinary common procedure, unlike the collective actions that should be processed by a summary procedure. In the ordinary procedure, several stages must be met before sentencing, unlike the summary procedure which aims to provide rapid solution to certain causes. By law this rapid solutions is reflected in the concentration and simplification of procedural acts.

In the CU and the SCU more than one person are the authors of the action. In the CU action various authors associate voluntarily to filing the suit and each resident or family is seeking its own interest. The application may be declared upheld for one family and unfounded for another one. The SCU action is a group that seeks recognition of a single application that will result in the declaration of a condominium shared between them.

In the second stage, a sample of 45 cases were analyzed which although a smaller sample shows a more significant percentage 50.56% of 89 SCU filed between 2005 and 2006 in partnership with ZEIS Mustardinha. The methodology used can pinpoint the causes of every procedural obstacle faced in the process. This analysis was developed in four steps the: i) reconstruction of the progress of proceedings; ii) identification of causes or barriers in the proceedings; iii) identification of types of barriers (homologies); and iv) analysis of the homologies according to the initial conceptual framework.

First Stage Analysis

Intervals and other issues identified which create procedural obstacles and extend significantly the time for the usucapion process, are:

- I. Time interval (months) between filing the usucapion action and a judge's first deliberation.
- II. Time interval (months) for a usucapion action to have a judge's first deliberation in the context of disagreement which court's has jurisdiction on the case.
- III. Time interval (months) between the judge's first deliberation and the initial citation of the defendant.
- IV. Percentage of usucapion actions without a judge's citation of the defendant.
- V. Time interval (months) between a judge's first deliberation and the response from the relevant public administration entities at Federal, State and Municipal levels.
- VI. Percentage of judge's consultation with no answer from the relevant public administration entities at Federal, State and Municipal levels.
- VII. Percentage of usucapion actions where the judge has not consulted the relevant public administration entities at Federal, State and Municipal levels.
- VIII. Time interval (months) between the judge's first deliberation and the hearing in court.

I. Time interval between filing the usucapion action and the judge's first deliberation

All lawsuits are brought to the *varas*⁴ to verify that all necessary documents for the trial of the case are in place. After this has happened, the lawsuits are taken for review by the judge responsible of the *vara*. These processes will be assessed in the *vara* according to the order of arrival, competing with several other issues judged by civil courts. The only preference given is if the authors are elderly, since they have preference in the judicial proceeding (art. 1211-A, 1211-B and 1211-C of the Code of Civil Process - CPC).

⁴ *Varas* are territorial or specialized first level civil courts.

In the absence of elder authors the usucapion actions can fail due to the lack of a deadline for the judge to assess the case and take the first deliberation, to move the process along. However, despite this being a stalemate common to all types of actions, it was identify that the time interval between the filing and the judge's first deliberation over the adverse possession action are unusually extensive.

It takes an average interval of 32 months between filing a SCU and being considered for a first deliberation by the judge (Fig.3). Theoretically, at this very first stage there would be no distinction between the SCU and the other types of adverse possession. However, this data is demonstrating greater difficulty of the judiciary in dealing with the collective type of adverse possession action. Difficulties that may be linked to the classical private property approach in the civil law, which favors the individual actions. Furthermore, these delays discourage the families and create a lack of trust in the Judiciary.

II. Time interval (months) for an usucapion action to have a judge's first deliberation in a context of court's jurisdiction conflicts

The usucapion actions studied were filed in the Capital Succession *varas* in the district of Recife. These *varas* were until 2007 responsible for judging the actions of adverse possession. The 5 *varas* in the district dealt with the 413 usucapion cases from Mustardinha and Mangueira filed by CENDHEC and jeopardized the progress of actions. Meanwhile, the adoption of the Code of the Organization of the Judiciary of the State of Pernambuco (COJE) in November 2007⁵ also made a strong impact on processing the actions. The legislation removed the term adverse possession from the list of responsibilities of the Capital Succession *varas*. This led to belief that the power had been transferred to the Civil Capital Courts; this resulted in actions that had not received a first deliberation from a judge for two years being rapidly transferred to the civil courts.

Recife has 34 civil courts, which would be more likely to implement quick procedural practices. However, the reaction of the civil courts, in a substantial number of usucapion actions was to return them to the succession courts stating that there hasn't been any change in the jurisdiction of these courts. Some cases were returned to the civil courts at least four times, without the matter being brought to the presidency of the Court of Justice of Pernambuco (TJPE) to clarify the divergent understandings.

⁵ State Complementary Law No. 100 dated November 21, 2007

In this context, as the data shows (Figure 4), the IU actions took 24 months to get procedural progress, 4 months for the CU, and 16 months for the SCU. The resolution of the conflict of jurisdiction only had a resolution in a year or two years after the adoption of the Code of judicial organization (2007).

III. Time interval (months) between the judge's first deliberation and the initial citation of the defendant

The Defendant's citation is "the procedural act of communicating to the passive subject (defendant or other interested parties) about the legal proceedings of the action, so that they can defend themselves...^{vii}". In the case of the usucapion actions studied, the citation of the defendant is the way the judiciary informs the legal owner of the property that residents have sued him to implement the adverse possession of the property in which they reside, giving the owner the opportunity to present his defense.

This phase is essential for the process and should be performed as soon as is in keeping with the law. According to Didier Freddie Jr. "it is a condition of effectiveness in the process regarding the defendant (Art. 219 and 263 of the CPC) and a requirement for the validity of the proceeding in the acts that will follow" That is, without a proper citation of the defendant, all acts performed by the judge might in future be cancelled on the grounds that the defendant had no opportunity to present his defense.

The action only gets to that stage when the judge believes that all requirements for the regular development process are present, for example, when the judge considers that an action lacks an essential document or some of the requirements to the application (Art. 282, CPC), the defendant is not cited until the author solves the problem. The absence of some of the elements considered essential can lead to the termination of the action before the citation of the defendant.

The average time between the initial judge's deliberation and the initial citation of the defendant was 17 months in the SCU actions, 16 months in the IU, and one month in the CU (Figure 5).

IV. Percentage of usucapion actions without a judge's citation of the defendant.

The analysis also shows that the defendant was not cited at all in around 63% of the SCU action (Figure 6) which strengthens the hypothesis that it becomes very difficult for judges to declare a SCU is ready to proceed because there is "not sufficient information". The judge gives a deadline

to comply with the submission of documents; if the deadline is surpassed he declares the case closed.

V. Time interval (months) between a judge's first deliberation and the response from relevant public administration entities at Federal, State and Municipal levels.

While the land owner is called for appearance, another legal requirement is to consult the Public Administration (at Federal, State, and municipal levels) about ongoing processes over the land so that they can register interest in the areas in question. In practical terms the judge queries these governmental entities to identify if the property is part of public area or interest. If it is, the case must be referred to a *vara* of the Public Administration and actions processed to terminate the case as usucapion cannot proceed on public land.

According to the data obtained (Figure 7), in the IU and CU actions there is an average "balance" of 8 months to receive an answer from the relevant public entities. Interestingly, the SCU actions have the shortest time (2.66 months on average) to get responses. It is worth noting that the judges do not always consult public entities in SCU action.

VI. Percentage of judge's consultation with no answer from the relevant public administration entities at Federal, State and Municipal levels.

Note that the analysis is linked to the previous information. The data (Figure 8) reveals that the State is the most inefficient entity, by failing to respond to 71.4% of the IU; 82.3% of the CU, and 75% of the SCU. Some judges show excessive care while waiting for the response from the public entity highlighting another factor that contributes to lengthy State Judiciary processes.. Let's emphasize in strict terms according to Law if there is an absence of response from public entity (positive silence), the process should take its course and not be paralyzed waiting for the response.

VII. Percentage of usucapion actions where the judge has not consulted the relevant public administration entities at Federal, State and Municipal levels.

The study shows that the judges did not consult the Public Administration in 79% of the SCU actions studied (Figure 9). There is a legal obligation for the state to be contacted and express its interests so there is a need in the future to identify the interpretative elements that act as barriers to the process, because this could be a possible violation of the law. Non-compliance not only

hurts the interests of the public entities, but also generates delays in the legal process, and ultimately act as an impediment to the full enjoyment of the action authors' right to access justice.

VIII. Time interval (months) between the judge's first deliberation and the first hearing in court.

It takes a total of 42 months for a SCU to travel from the intake stage to the first hearing in the Judiciary (the first audience takes place when the land owner and the claimant's neighbors are cited, consulted public entities have responded, and the Judge considers that requirements are completed) (Figure 10). This is not compliant with the summary process that corresponds to the SCU.

It is claimed^{viii} that time is a major obstacle to effective access to justice. This is not only a factor that makes litigation more expensive, as it is also a discouraging factor for the population to seek the judiciary. The sample points unequivocally to "Time" as a serious obstacle to guaranteeing the right of the poor to access justice. The intervals between procedural acts up to the first hearing were identified to give an indication of the barriers and time taken for regularization to be completed. As a result of this analysis, the complete process could easily take a decade. This assumption is strengthened when some of the cases studied have already been in process for seven years and have not reached the point of receiving a final decision.

We emphasize that all adverse possession actions suffer difficulties, but the SCU appear to have the biggest barriers. Looking at the overall picture of these actions in survey SCU: take longer to receive the first deliberation (32 months), ranked second in delays for the initial citation of the defendant (17 months); a high % of the actions were not consulted with relevant public entities (78.9%) and still have the highest percentage of cases where the defendants were not cited (63.1%), and finally, have the largest time interval between the first judge deliberation and the hearing (42 months).

The evidence from the first stage of the study reveal two types of obstacles: i) structural (bureaucracy and conflicts of competences among State institutions); and ii) a restrictive interpretation of the existing legal norms by the judicial authorities.

Second Stage Analysis: the causes of delays for judges to deliver their final decision in the Judiciary.

Thus, in order to start a more detailed diagnosis of the performance of the TJPE, a second phase of this study was implemented. Figure 11 shows nine types of barriers identified within the judicial process of the SCU:

- **H1**-conflict of competences within the Judiciary about which court should undertake SCU proceedings; this has resulted in 28.88% of cases studied being closed without legal analysis.

- **H2**-time taken by the administrators in the proceedings.
- **H3**-restrictive interpretation of the Art. 12 III of the SCL. It is legally established that representatives of a community and those explicitly authorized can represent the SCU's claimants in the Judiciary, however judges do not accept this type of representation.
- **H4**-unrecognition of the ZEIS, the designation of the settlement as a ZEIS is not mentioned in the judge's decisions.
- **H5**-restrictive interpretation of the Art 10 of the SCL (no-individualization of land parcels).
- **H6**-restrictive interpretation of the Art. 10 of the SCL (records of ownership). According to this Law, a signed document from the claimant is all that is necessary to prove that no other property is owned by the claimants; however, the judge requires each claimant to present a certificate issued by each one of the Land Property Registry Offices throughout the country⁶.
- **H7** - restrictive interpretation of Art 12 of the SCL (economically vulnerable families should have all court benefits and free legal assistance but instead NGOs such as Habitat for Humanity and CENDHEC and others deliver free legal support)
- **H8** –Even though the SCL Art 14 establishes that the legal action of SCU is a summary action; the practice is slow and bureaucratic (as an ordinary action)
- **H9** –Requirement of authenticated copies of personal documents proofs of property and possession time.

Issues 1 and 2 are of a structural nature, linked to the bureaucratic functioning of the judiciary. While 3 to 10 are of an interpretative nature in the judiciary. Thus, the worksheet for analysis (Table 2) is organized according to these two characteristics. Another surprising issue is that 28.88% of the sample was handled by the same *vara* (33th Civil Court). And most importantly, the magistrate of this court had taken exactly the same position in all actions. Transferring the information to the homologues worksheet showed that increased occurrences of certain obstacles is due to repeated practice. In the analysis special attention has been given to the 33th Civil Court.

❖ STRUCTURAL ELEMENTS

Structural elements are obstacles related to legal or organizational issues in the Judiciary of the State of Pernambuco. The structural elements include mainly two obstacles: H1: Conflict of Jurisdiction, and H2: Time. Both have been developed in the analysis of the first stage of the study. Here the 3-10 issues will be further developed.

⁶ There are thousands of registry offices throughout the country, and each registry certificate costs around US\$20, which is economically burdensome

To further emphasize Time issues (Fig. 12), only 4.44% of the sample in this analysis had a hearing audience at the time of completion of this research. This illustrates that in these cases, enough evidence was still not in place. 40% of the cases had a sentence, note that none of them was favorable to the plaintiff. In most of these cases CENDHEC has appealed the sentence. Five years after the cases were accepted 55.56% of them have not completed the citations phase.

Most of the cases have one or two hearings per year. For instance the action M-022 accepted in the Judiciary on March 30, 2006 went through 4 audiences up to 2011. One audience was in 2009 when the Succession Court declined jurisdiction and transferred the action to the Civil Court and another in 2006, when the first judge deliberation took place, which totals an average of 0.8 audiences per year.

An unexpected finding was that the prosecutor has also collaborated with the slowness of the judiciary. The average time to provide an opinion was 10 months. However, there were a few cases in which this time exceeds one year (Figure 13).

❖ INTERPRETATIVE ELEMENTS

There are three obstacles that appear more frequent in the analysis:

- **H4**-unrecognition of the ZEIS, the designation of the settlement as a ZEIS is not mentioned in the judge's decisions.
- **H5**-restrictive interpretation of the Art 10 of the SCL (no-individualization of land parcels).
- **H6**-restrictive interpretation of the Art. 10 of the SCL (records of ownership). According to this Law, only a signed document from the claimant is necessary to prove that they do not own other property, however, the judge requires each claimant to present a certificate issued by each one of the Land Property Registry Offices throughout the country.

H4 had a frequency of 35.56% of the legal actions analyzed, H5, 28.88%, and H7 in 31.11% of the cases. An initial assessment of this evidence is that the three obstacles have an economic character. While the obstacles seem to keep a technical similarity, they are specifically aimed to respond to the reality of the economically vulnerable populations who are authors of adverse possession action in the Judiciary.

The no-recognition of ZEIS was measured in two ways: i. a first concern is the almost total lack of mention of the ZEIS communities in the manifestations presented by the Judge, or by the Prosecutor; and ii. a second concern was the reiterated qualification of "poor according to the law" or the requirement of proofs of poverty to the claimants. This manifestation was identified in three ways:

1. Denial of the benefit of free legal support as the claimants were sponsored by a private attorney (CENDHEC);
2. Proof that claimants are poor (even though there are proofs that they live in areas declared as ZEIS)
3. Consideration that the land is too big for the number of beneficiaries and too small compared to the size of the community (33rd Civil).

All positions are the result of a misinterpretation of the Law on Legal Aid - Law No. 1.060/50; in addition the interpretation does not respond to principles such as the social function of property and the right to effective access to justice. It highlights a narrow view or lack of knowledge of the legislative body or municipal legislation.

The other obstacle is that it is an interpretation guided by excessive traditionalism and literalism which was present in around 30% of the cases analyzed. We refer to an interpretation of the SCL (Art.10). Judges request the claimants to identify individual lots and then point out that the action should be individual instead of collective. This not only lacks dialogue with the literalness of the rule, but also reflects a lack of understanding of the reality in the city.

Finally, there are a set of obstacles of lower frequency whose appearance in total does not exceed 9% of the cases studied which are related to the interpretations of three articles (10; 12, III; 14) of the City Statute, and article 284 of the CPC.

The interpretation of the Art.10 of the SCL, H6 is related to the condition of beneficiaries of the usucapion (as long as the land possessors do not own another property urban or rural). With a frequency of 6.67% in the sample studied, is the requirement of submission clearance certificates issued by all the offices of real estate. There are thousands of registry offices throughout the country, and each registry certificate costs around US\$20, which is economically burdensome. However, it should be noted that there is no legal rule that applies this requirement, and today, the TJPE would struggle to uphold the decision of a magistrate who requires clearance certificates as a way to prove that the claimants have no other properties.

The homology H8, in the sample taken in formal terms the majority is processing by a summary (short) proceeding; however the process has ignored the principles of judicial economy and speed.

H9 is the requirement for authentication of the documents attached to the application and represents 2.22% of the sample.. It is worth noting that in recent years legislation has attempted to make this procedural requirement less bureaucratic by giving the attorney the competence to declare that copies in files are authentic. Even though, if authentication were strictly necessary to prove the veracity of a particular document, it must be remembered that the authors are members of low-income communities and have the benefit of free access to justice. Authenticating documents is a barrier between the population and effective access to justice.

Finally, we analyze the interpretation of the art. 12, III, of the City Statute, in H3 found in 8.89% of cases studied. It is about the legitimacy of the Association of Residents to act as substitute in the procedural actions. This is to represent a group of residents as plaintiff. The argument of the judge is that the number of beneficiaries is less than stated in the intent of the law and served by the representation of Association of Residents (case of the ZEIS Mustardinha) which is a community of 3,000 people. Moreover, the magistrate pointed to a supposed lack of legitimacy in the representation that is only possible "upon authorization being obtained at a meeting with the quorum set forth in the statutes of the entity". This decision contradicts the provision of art. 6 of the CPC, which makes it clear that such legitimation is authorized by law. The Article 12, III, of the SCL confers legitimacy to act as a substitute in the procedure to the "association of community residents, regularly constituted, with legal personality, if explicitly authorized by the represented".

FINAL CONCLUSIONS – RECOMMENDATIONS

- ❖ As a result of the reforms and changes in public policy a greater welfare is expected for the economically vulnerable population. However, the economically most vulnerable are not able to access the justice needed to regularize the security of land tenure and a huge demand exist which calls for fair inclusive and equitable institutions and practices.
- ❖ Rights are conceived formally however practices from law operators, entities of justice, the public defender and even sometimes the acting prosecutors, violate and place obstacles which require institutional adjustments and capacity building.
- ❖ The issue of access to justice for the regularization of land tenure is of fundamental importance because the judiciary is a tool for enforcing laws and rights.

- ❖ Time is a serious obstacle to guarantee the right to justice; the judicial speed is a key mechanism to guarantee rights, which requires effective, agile Judiciary decisions. In practice the time between filing a legal action and the recognition of ownership takes a decade or more as demonstrated in this study. This highlights the difficulty in the Judiciary to visualize and understand collective land tenure regularization, social function of property, the right of access to justice, and the right to adequate housing and the city in their decision making. It also highlights that the Statute of the City Law has not gained legitimacy in all of society and especially in the judiciary who is blocking its implementation. Furthermore, these delays discourage the families and create a lack of trust in the Judiciary.

- ❖ Currently there is a debate in various media, academics and politicians about the need for reform of the Brazilian judiciary, and some change is occurring to the Federal Constitution of 1988 and the Constitutional Amendment No. 45 of 2004. But still the difficulty in the Judiciary to implement the legal tools that recognize a more diverse set of options of land tenure and ownership than private ownership prevents decision making and practice in the Judiciary to respond to the needs of the most economically vulnerable. Meanwhile, numerous conflicts of ownership in cities exist that require relevant action. Not considering the principles enshrined in the Federal Constitution, and detachment from the reality of the population, severely hinders proper enforcement of laws and the full realization of fundamental rights.

- ❖ The study highlights the need to overcome common difficulties faced by fundamental institutions that administrate justice such as, prosecutors and the Ombudsman. These difficulties include: economic weaknesses; outdated structures; neglect by the executive branch; lack of financial resources for the creation, installation or operation of existing public defender offices; the small number of defenders to meet the demand(reflected in the time taken for legal actions to travel throughout the justice system); the low quality of the service for the needy (i.e. long waiting list to schedule a consultation) and the lack of a structure of entities and specialized centers to address the land issues that meet the social function of the property and the city.

- ❖ Civil society organizations as Habitat for Humanity and CENDHEC are filling the gap of the shortage of public defenders in the state of Pernambuco, especially in the city of Recife by providing legal advice services to needy families who request legal support for land tenure regularization.

- ❖ A shortage of political education in Law students needs to be addressed, for example, in the field of urban laws, different options of land tenure and property rights.

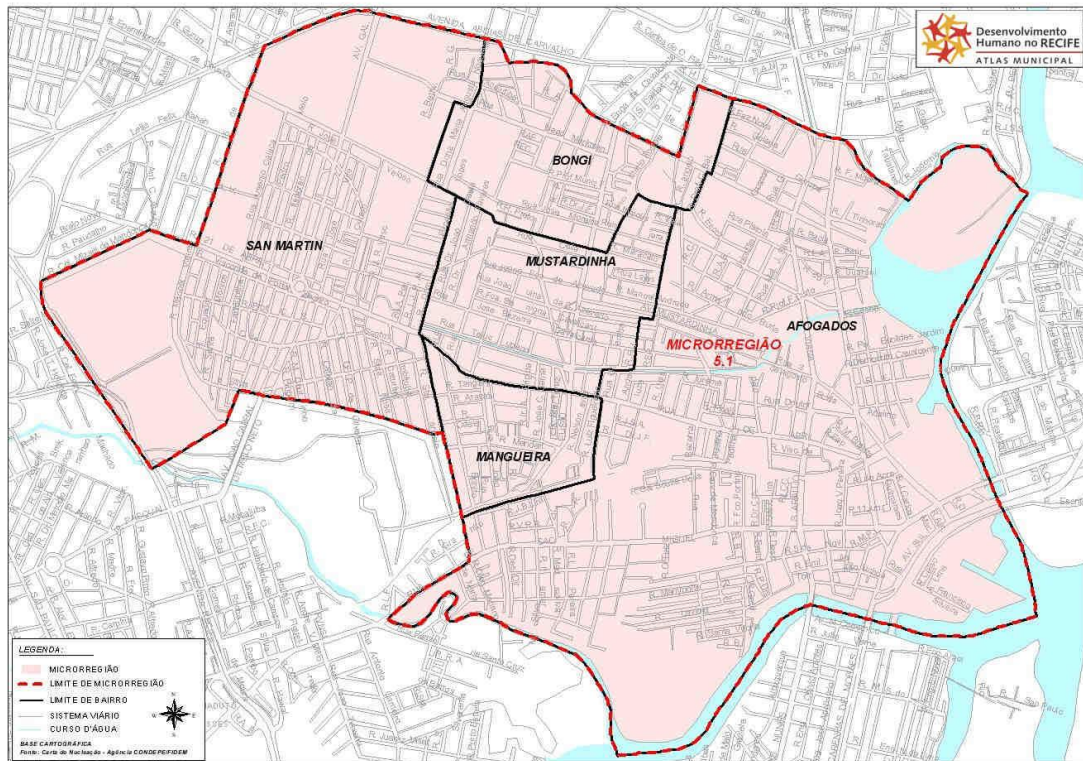
PRACTICAL IMPLICATIONS

- ❖ Advocacy and awareness raising strategies that looks for policy and institutional changes to challenge the current scenario such as strengthening the structure of the Public Defender in the State of Pernambuco by the creation of a specialized land tenure Nucleus within the sphere of the Ombudsman.
- ❖ Actions that support training the judiciary and other relevant public entities
- ❖ Communication campaigns to sensitize the judiciary on the paradigm of collective ownership.

MAPS



Map 1: Political Administrative Region N.5, City of Recife
Source: CENDHEC



Map 2: The Micro-region 5.1 City of Recife
Source: Human Development in Recife, Municipal Atlas

TABLES

Communities	Bongi	Mangueira	Mustardinha
Area (hectare):	60,1	30,1	62,0
Total population (2000)	8.211	8.734	11.693
Population (sex):			
Male	3.883	4.084	5.323
Female	4.328	4.650	6.370
Population per age:			
0 – 4	670	794	1.051
5 – 14	1.418	612	2.002
15 – 39	3.694	3.906	5.201
40 – 59	1.618	1.696	2.271
60 and up	811	726	1.168
Literacy rate in population over 15 years old	87,10 %	86,13%	88,07%
Density:			
Demographic (persons/Hectare):	136,72	290,05	188,48
Household (person/household):	3,90	3,85	3,88
Women head of household	40,33%	40,35%	41,20%
Monthly income per family (Brazilian Real)	727.65	360,06	407,43

Table 1: Demographic data
Source: CENDHEC based on the 2000 census. Date: xxxx

PLANILHA DE HOMOLOGIAS								
ELEMENTOS ESTRUTURAIS		ELEMENTOS INTERPRETATIVOS						
H1	H2	H3	H4	H5	H6	H7	H8	H9
M-003, M-005, M-025, M-027, M-028, M-031, M-032 M-006, M-007, M-010, M-011, M-012, M-013, M-014, M-015, M-017, M-018, M-020, M-021	M-003, M-004, M-005, M-006, M-008, M-009, M-022, M-024, M-025, M-026, M-027, M-028, M-029, M-030, M-031, M-032, M-033, M-034, M-035, M-036, M-037, M-038, M-039, M-041, M-043, M-044, M-045, M-046, M-047	M-016, M-019, M-030, M-044	M-024 M-006, M-007, M-010, M-011, M-012, M-013, M-014, M-015, M-017, M-018, M-020, M-021 M-016 M-030, M-019	M-016, M-006, M-007, M-010, M-011, M-012, M-013, M-014, M-015, M-017, M-018, M-020, M-021	M-023, M-040, M-045	M-024 M-006, M-007, M-010, M-011, M-012, M-013, M-014, M-015, M-017, M-018, M-020, M-021 M-16	M-027	M-042

LEGENDA:

H1	Conflito Negativo de Competência
H2	Tempo
H3	Interpretação restr. Art 12, III, do Estatuto da cidade (Ilegitimidade ativa da associação)
H4	Desconhecimento das ZEIS
H5	Interpretação restritiva do art. 10, caput (não-individualização dos lotes)
H6	Interpretação restritiva do art. 10, caput (Certidões Negativas dos RGI)
H7	interpretação da lei de assistência judiciária (Indeferimento adv / tamanho lote / comprova miserabilidade)
H8	Processamento diverso do art. 14 (conversão para rito para ordinário)
H9	Exigência de autenticação de documentos

TABLE 2: HOMOLOGIES

FIGURES



FIGURE 1: Organogram of the Judiciary
www.guiadedireitos.com

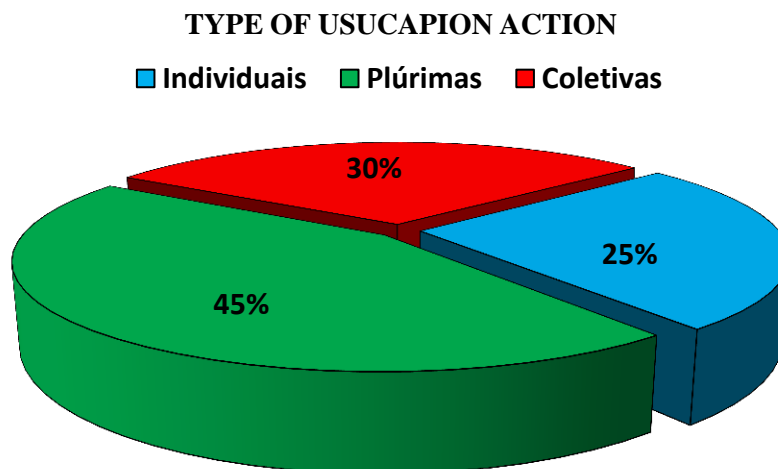


FIGURE 2: Type of Usucapion Action
Individuais: IU; Plúrimas: CU; Coletivas: SCU

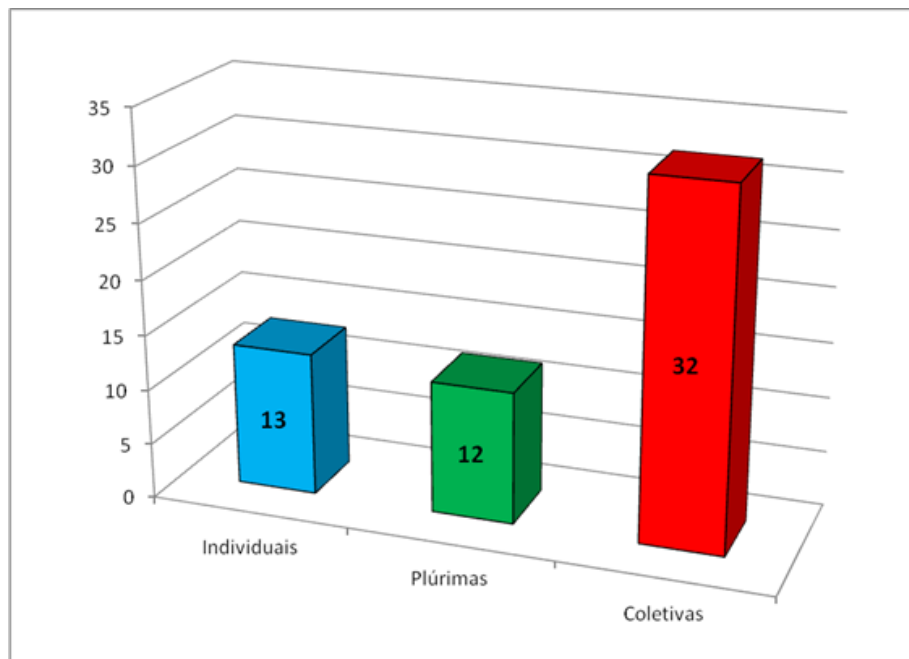


FIGURE 3: Time interval (months) between filing the usucapion action \ and the judge's first deliberation
Individuais: IU; Plúrimas: CU; Coletivas: SCU

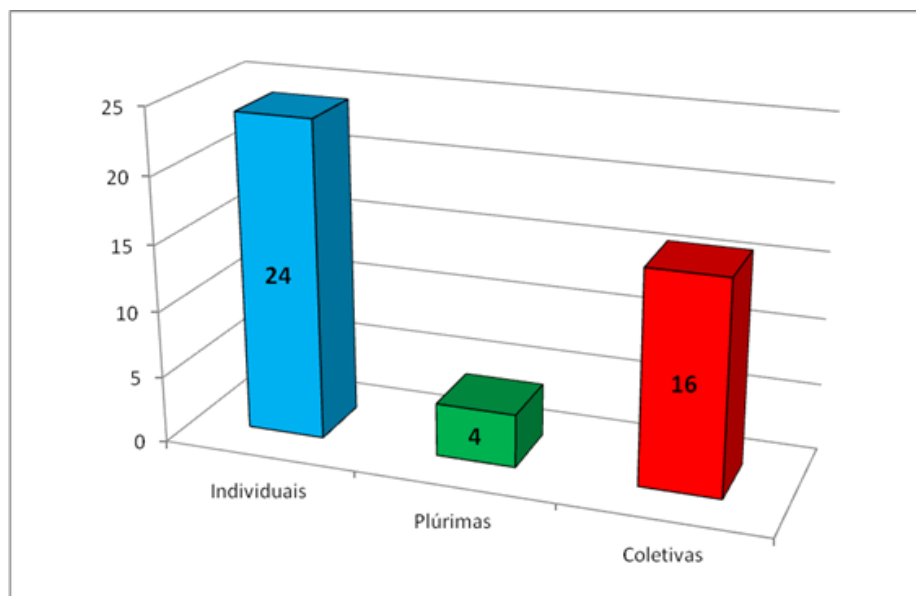
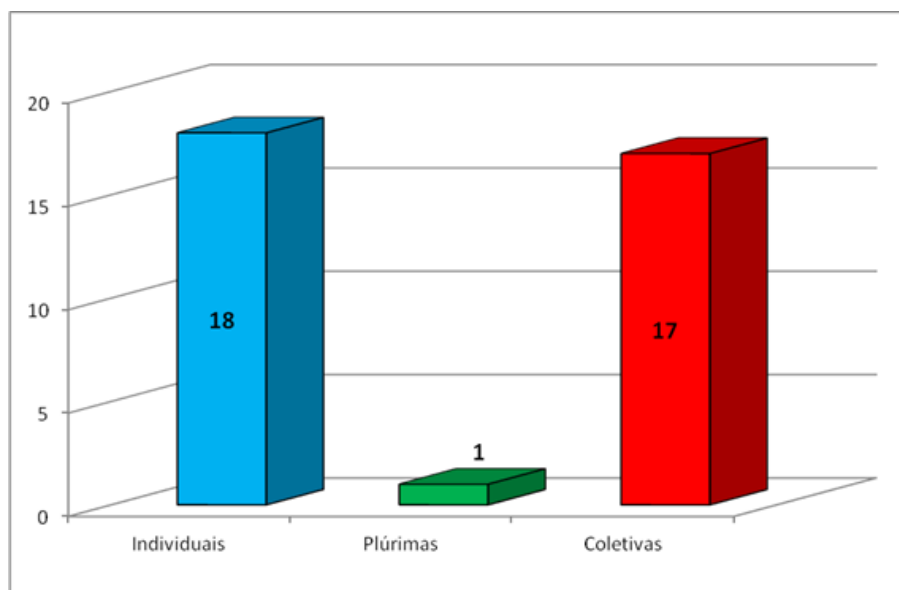
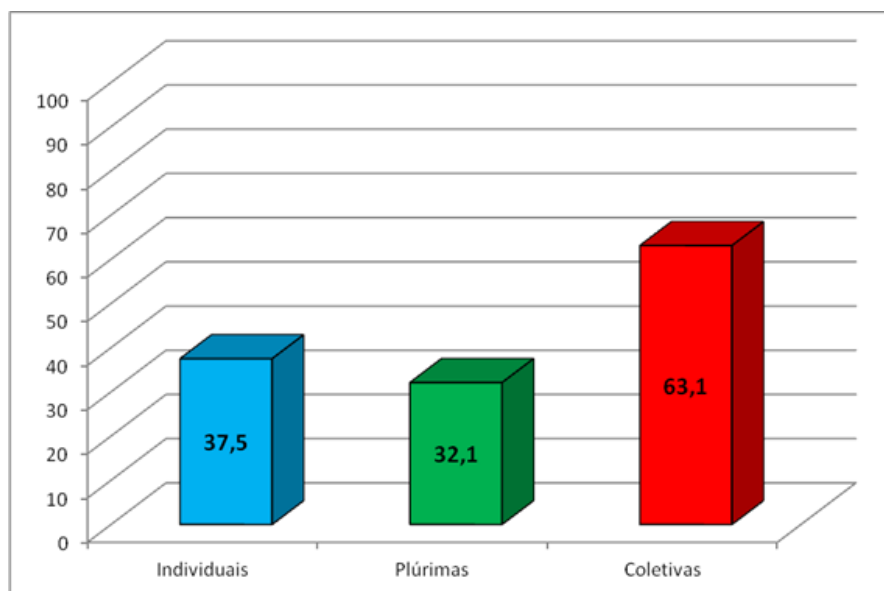


FIGURE 4: Time interval (months) for a usucapion action to have a judge's first deliberation in a context of court's jurisdiction conflicts
Individuais: IU; Plúrimas: CU; Coletivas: SCU



*FIGURE 5: Time interval (months) between the judge's first deliberation and the initial citation of the defendant;
Individuais: IU; Plúrimas: CU; Coletivas: SCU*



*FIGURE 6: Percentage of usucapion actions without the judge's citation of the defendant
Individuais: IU; Plúrimas: CU; Coletivas: SCU*

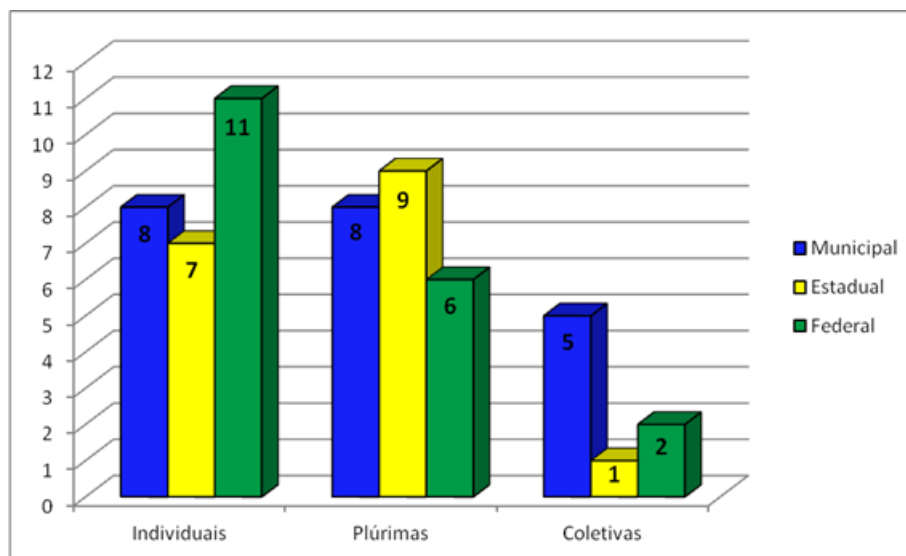


Figure 7: Time interval (months) between a judge's first deliberation and the response from relevant public administration entities at Federal, State and Municipal levels.

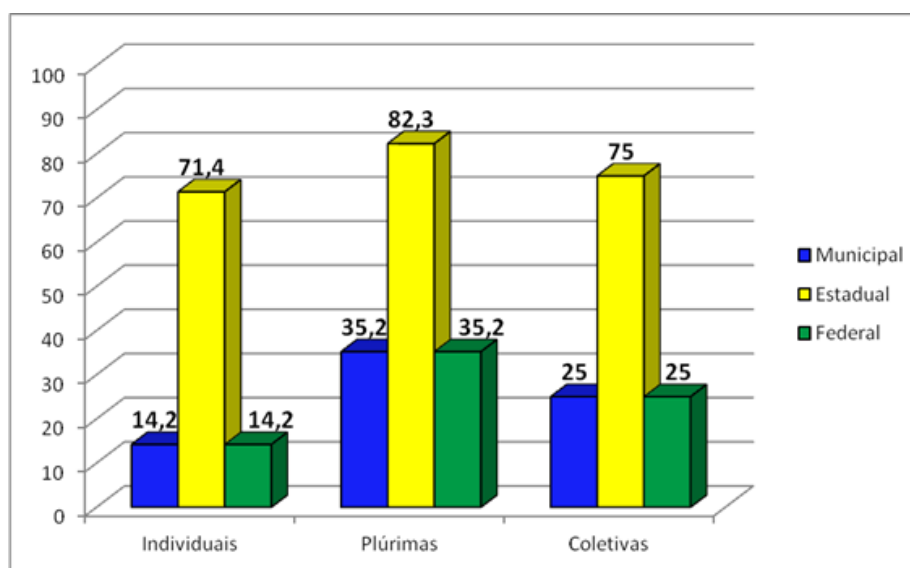


Figure 8: Percentage of judge's consultation with no answer from the relevant public administration entities at Federal, State and Municipal levels.

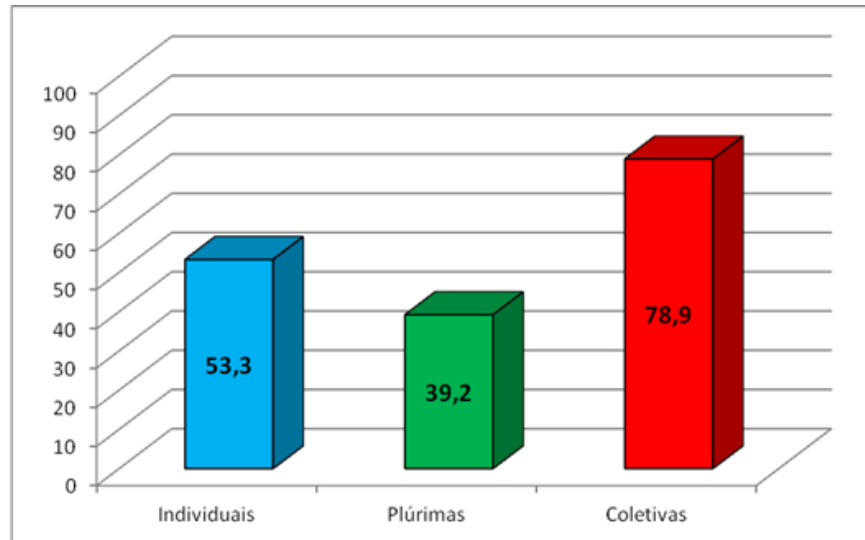


Figure 9: Percentage of usucapion actions where the judge has not consulted the relevant public administration entities at Federal, State and Municipal levels.

Individuais: IU; Plúrimas: CU; Coletivas: SCU

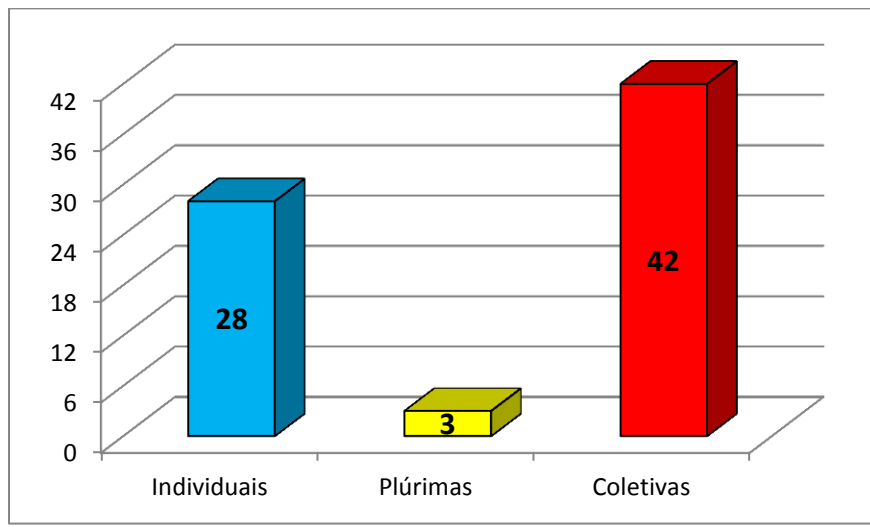


Figure 10: Time interval (months) between the judge's first deliberation and the first hearing in court.

Individuais: IU; Plúrimas: CU; Coletivas: SCU

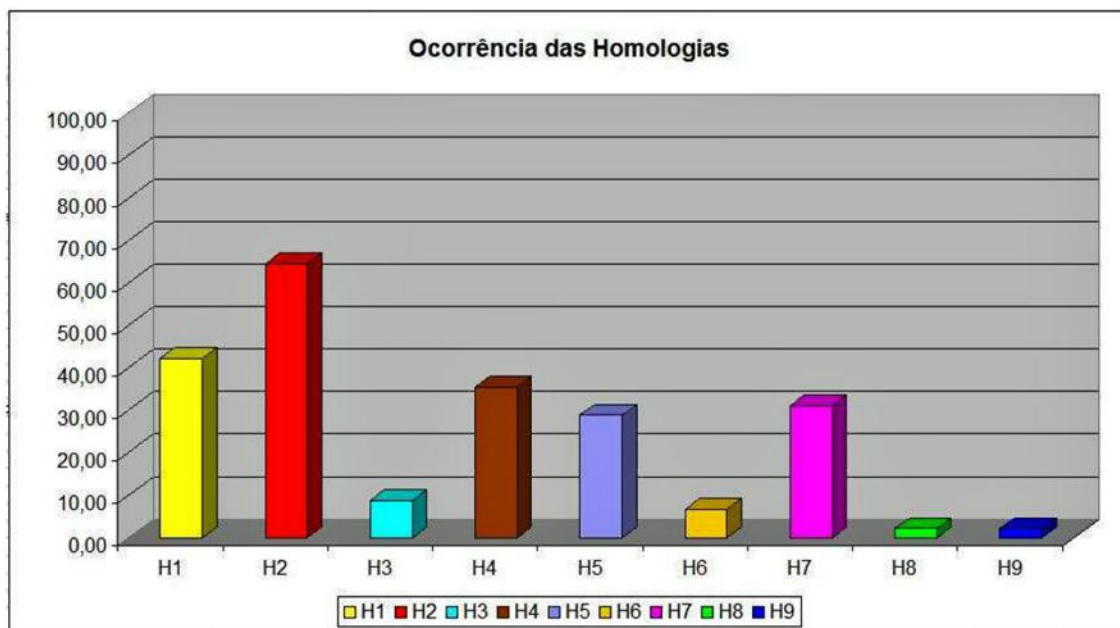


Figure 11: Frequency of the Homologies

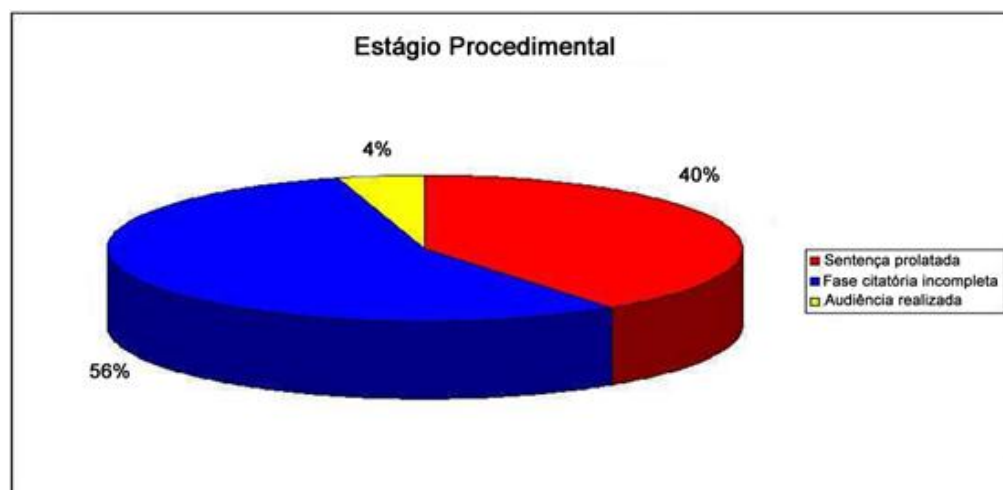


Figure 12: Status of the Action in %



Figure 13: Time taken by the Public Ministry to issue an opinion over a case

ANEXXE 1

Research Tool

- Process:
- Court:
- Date of protocol in justice:
- Was there any conflict of competence?
- There was a redistribution of cases?
- Date of Redistribution:
- Date of the first deliberation of the judge:
- Date of the citation of the defendant::
- Date of citation of the neighbors:
- Date of requesting reports from public entities (Federal, State and Municipal):
- Date that public entities (Federal, State and Municipal) responded:
 - Municipal
 - State
 - Federal
- Date of outreaching the public prosecutor
- Is this is a case for special curator nomination?
 - If yes, there was a nomination and action of a public defender?
- Date of audience:
- Date that the audience took place:
- Public Ministry's opinion
- Demands of more information from the Judge or the Public Ministry
- Date of the sentence
 - With resolution of acceptance
 - Without resolution of acceptance
 - Derived
 - Unfounded
- Date of registration:
- Date of registration in the notary's office:

ANEXXE 2

Modalidade de Usucapião	Fundamento	Requisitos	Remissões
Extraordinária – 1	Decurso do tempo que causa a prescrição aquisitiva	a) posse <i>ad usucapionem</i> ; b) decurso de 15 anos, ininterruptos.	Art 1.238, <i>caput</i> , C.C.
Extraordinária – 2	Prescrição aquisitiva minorada por ter o possuidor dado destinação que atende a função social da propriedade	a) posse <i>ad usucapionem</i> ; b) transcurso de 10 anos sem interrupção; c) ter o possuidor constituído sua morada habitual no imóvel, ou nele realizado obras e serviços de carácter produtivo.	Art 1.238, par. Ún. C.C.
Ordinária – 1	Prescrição aquisitiva	a) posse <i>ad usucapionem</i> ; b) decurso de 10 anos contínuos; c) justo título; d) boa-fé	Art 1.242, <i>caput</i> , C.C.
Ordinária – 2	Prescrição aquisitiva	a) posse <i>ad usucapionem</i> ; b) decurso de 5 anos contínuos; c) aquisição onerosa do imóvel usucapiendo, com base em registro regular, posteriormente cancelado; d) possuidor tenha estabelecido moradia no imóvel ou tenha realizado nele investimentos de interesse social e económico.	Art 1.242, par. Ún. C.C.
Especial Rural (Constitucional Rural, ou <i>Pro Labore</i>)	Prescrição extintiva pelo fato de o proprietário não haver dado cumprimento à função social da propriedade e prescrição aquisitiva, benefício ao possuidor que a atendeu.	a) posse <i>ad usucapiuonem</i> ; b) transcurso de 5 anos sem interrupção; c) área possuída de no máximo 50 hectares localizada em zona rural (CC 1.239); d) propriedade rural que se tornou produtiva pelo trabalho do possuidor ou de sua família; e) haver o possuidor tornado o imóvel sua moradia ou de sua família; f) não ser o possuidor proprietário de imóvel rural ou urbano.	Art. 191 C.F. Lei 6969/81 (Lei da Usucapião Especial) Art. 1.239 C.C.
Especial Urbana Residencial Coletiva (ou constitucional Urbana Coletiva)	Sanção ao proprietário por não dar cumprimento à função social da propriedade e benefício aos possuidores que a	a) posse <i>ad usucapionem</i> ; b) transcurso de 5 anos sem interrupção; c) área maior de 250 m²; d) destine-se a ocupação à morada da população posseira; e) Sejam os possuidores de baixa renda;	Art. 10 e ss. do Estatuto da Cidade

	atendeu	<ul style="list-style-type: none"> f) Não sejam os possuidores proprietários de imóvel rural ou urbano; g) Seja impossível identificar o terreno de cada possuidor, destacadamente. 	
Especial Urbana Residencial Individual (ou Constitucional Urbana Individual)	Sanção ao proprietário por não dar cumprimento à função social da propriedade ao possuidor que a atendeu.	<ul style="list-style-type: none"> a) posse <i>ad usucapionem</i>; b) decurso de 5 anos ininterruptos; c) área urbana de até 250 m²; d) utilização para morada própria ou de sua família; e) não ser o possuidor proprietário de imóvel rural ou urbano; f) não ter o possuidor se valido desse benefício anteriormente. 	Art. 183 CF e §§, Art. 9 e ss. do Estatuto da Cidade e Art. 1.240 C.C.

Famílias sonham com títulos de posse há anos

Moradores do bairro da Mangueira aguardam documento que legalize seus terrenos

JULIA VERAS

Verônica Lima Costa, 30 anos, mora no bairro da Mangueira, Zona Oeste do Recife, desde que nasceu. Sua mãe, a aposentada Marinete Vitor Lima, 59 anos, chegou ao local quando ela era um bebê de oito meses. Naquela época, o que hoje é um bairro era apenas um grande bairro. "Luz, água, telefone, calçamento, tudo o que existe aqui referente à infraestrutura fomos nós que moramos aqui que lutamos muito para conseguir", afirmou Verônica. Apesar de toda luta dos residentes do lugar, eles não têm a escritura das casas onde moram, no bairro que ajudaram a construir. Para tentar

mudar essa realidade, o Centro Dom Helder Câmara de Estudos e Ação Social (Cendhec) entrou, na próxima terça-feira, no Fórum do Recife, com 19 ações judiciais de usucapião que beneficiarão 45 famílias da Zona Especial de Interesse Social (Zeis) da Mangueira.

A advogada do Cendhec, Juliana Accioly, explicou que se enquadra no conceito de Usucapião Constitucional Urbano no Recife quando uma pessoa utiliza um terreno para fins de moradia por mais de cinco anos. "Se ela usa o terreno para fins de moradia e se não possui nenhum outro imóvel, seja urbano ou rural, ela ganha o direito ao terreno da sua casa, que não

pode ter uma área superior a 250 metros quadrados".

Em 2007, o Centro deu entrada em algumas outras ações, mas esse é o primeiro que visa a legalização da posse da terra na comunidade de pelo convênio realizado entre o Cendhec, o Ministério das Cidades e a Instituição Alernã KZE Miteroe. A expectativa é que até julho de 2011 será concluído o processo, que beneficiaria mais de mil famílias. A ação acontece por meio do Programa Direito à Cidade, que trabalha com o direito ao solo urbano. "Há cerca de dez anos trabalhamos com pessoas que estão na iminência de perder as suas casas. Esperamos prevenir qualquer tipo de proble-



MARINETE (sentada) e a filha Verônica esperam receber escritura da casa

ma nesse sentido. O Centro já entrou com mais de 900 ações, beneficiando cerca de 2.600 famílias", explicou Juliana.

No entanto, segundo a advogada, apesar do Estatuto das Cidades estipular que esse tipo de ação deve ser julgada como um procedimento sumário é muito comum que os juízes acabem convertendo para uma ação ordinária. Com isso, esses processos, que deveriam ser julgados rapidamente pelo seu conteúdo de interesse social, acabam se arrastando por anos na Justiça. "Por isso,

apesar da legitimidade do direito dessas pessoas, pouco menos de 10% têm sentenças favoráveis. Além disso, aqui não há uma promotoria voltada para a questão fundiária, como acontece em Salvador. Lá, esse tipo de questão é resolvido como muito mais celeridade", argumentou.

Muitas vezes, os juízes requeiram documentos que essas pessoas encontram dificuldades em disponibilizar. "Pediram-nos conta de água e luz referente há cinco anos, mas muitas pessoas, apesar de morar aqui há 20 ou 30

anos, só se regularizaram com a Celpa ou Compesa há cerca de dois anos, por exemplo. Outros vizinhos simplesmente não têm mais esses comprovantes", lamentou Verônica. Diante da situação de irregularidade, essas pessoas vivem em um contínuo estado de insegurança, já que não têm o documento das casas onde vivem e temem perder seus imóveis. "Hoje, o lugar em que moramos nos acolhem bem. Temos posto de saúde nas proximidades, ruas asfaltadas. Não é justo perdemos isso depois de tanta luta", desabafou Verônica.

Nathália Borniaren

REFERENCES

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- ⁱ Junior N.S. & Marques L. (2003) Relatório Brasileiro sobre direitos humanos e econômicos, sociais e culturais: meio ambiente, saúde, moradia adequada a terra urbana, educação, trabalho, alimentação, água e terra rural.
- ⁱⁱ Junior 2003 Report of the National Relators of the Brazilian Platform Project DHESC p. 160
- ⁱⁱⁱ National Forum for Urban Reform (Fórum Nacional de Reforma Urbana), Text Base for the 2nd National Conference of the Cities (Conferência Nacional das Cidades) 2005. Right to the city is the access to urban land, quality housing, healthy environment, mobility, urban transportation, public services, culture, jobs for the present and future generations
- ^{iv} Junior N.S. & Marques L. (2003) p.4,5
- ^v RIBEIRO, Benedito Silverio (2007) Tratado de usucapiao. 5. ed. São Paulo: Saraiva, 2007. v.2, p.962
- ^{vi} CENDHEC (20XXX) socio-economic survey for land tenure regularization purposes in ZEIS Mustardinha and Mangueira
- ^{vii} Didier Junior F. & da Cunha L. (2009) Curso de direito procesual civil 11Ed. Salvador JusPODIVM p. 463
- ^{viii} Cappelletti M. & Garth B. (1988) Acceso à justice. Porto Alegre: Sergio Antonio Fabris Editor p.20.