



ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

WASHINGTON
701 Pennsylvania Avenue NW
Suite 600
Washington DC 20004-2692
T +1 202 777 4500
F +1 202 777 4555
W freshfields.com

Memorandum

ORGANIZATION
TO | Cyrus R. Vance Center for International Justice
TO | Catalytic Communities

FROM Freshfields Bruckhaus Deringer US LLP
DATE January 9, 2014

Advice on the potential use of community land trusts to create affordable housing in Rio de Janeiro.

1. You have asked us to advise on alternative models for registering land ownership in Rio de Janeiro's favelas with an aim to protect access to affordable housing for local residents. You have also asked us to research the community land trust (CLT) system in the United States, the land price regulations in Zurich, and other models – at the national, state or municipal levels – that may be useful in the context of Rio de Janeiro's favelas.

2. Below, Section I sets out a brief description of current legislation covering land titling in the favelas of Rio de Janeiro as well as an overview of community land trusts. Section II provides examples of existing CLT systems in other jurisdictions. Finally, Section III outlines the common themes among the programs that should be considered and possibly adapted for Rio de Janeiro.<sup>1</sup>

Table of contents

I. BACKGROUND .....2
A. RIO DE JANEIRO'S FAVELAS AND CURRENT HOUSING REGULATIONS .....2
B. OVERVIEW OF COMMUNITY LAND TRUSTS .....4
II. EXAMPLES OF COMMUNITY LAND TRUST SYSTEMS.....5

<sup>1</sup> This memorandum summarizes certain laws and systems in jurisdictions other than the United States and the UK for your information. However, we are only able to provide advice on New York and English law. On Swiss law and Brazilian law, we have relied on the input of Homburger AG, and Mattos Filho respectively.



- A. UNITED STATES.....5
  - 1. Champlain Housing Trust.....6
- B. UNITED KINGDOM.....7
  - 1. East London Community Land Trust (ELCLT).....7
- C. SWITZERLAND.....8
  - 1. Kraftwerk .....9
  - 2. Dreiecke .....9
  - 3. Karthago.....10
- D. KENYA.....10
  - 1. Bondeni Community Land Trust.....10
- E. URUGUAY.....13
  - 1. Nuevo Amanecer (NA) .....13
  - 2. Housing and Family Cooperative (COVIFAM) .....14
  - 3. Cooperative Ufama al Sur, Montevideo (UAS) .....14
- F. BOLIVIA.....15
  - 1. Maria Auxiliadora, “Habitat para la Mujer” .....15
- III. COMMON THEMES AND CONCLUSIONS.....16

**I. BACKGROUND**

**A. Rio de Janeiro’s *favelas* and current housing regulations**

3. Because of a lack of housing for the poor in Rio de Janeiro (**Rio**), people informally occupied parts of the city and created *favelas*. These *favelas*, accounting for approximately one fifth of Rio’s population, often lack access to basic services such as running water, sewage systems, and electricity, and are characterized by poor infrastructure and education (e.g. lack of paved roads, kindergartens, and recreational areas). Until recently, many *favelas* were controlled by and dependent on drug trafficking.

4. Rio has launched a “pacification” program by which police have seized control of several dozen *favelas* as a part of a larger strategy to create a perception of safety ahead of the 2014 World Cup and 2016 Summer Olympic Games. The State's investment in policing has led to an increase in property values. These communities are often centrally located, affordable, culturally rich, and are historically valuable components of Rio.

5. In tandem, the State has initiated renewed efforts to encourage land titling in the pacified *favelas*. State authorities are giving out titles in these areas. This process has occurred through



the implementation of Special Zones of Social Interest (**ZEIS**, as per its Portuguese acronym). ZEIS are created under the “Cities Statute” (Federal Law No. 10,257/2001). The program aims to secure possession of property and title of ownership for low-income residents. Landholding compliance has also taken place under Federal Law 11,977/2009 establishing the *Minha Casa, Minha Vida* - My House, My Life Program.

6. To promote landholding compliance, plots are first declared ZEIS plots through municipal laws. Next, the process requires: (i) the identification and registration of land and buildings; (ii) registration of the social and economic status of inhabitants; (iii) development of compliance projects; and (iv) issuance of a title in the name of the inhabitants.

7. Through this process, Rio has brought over 171 plots into compliance for 120,000 people, who are now able to obtain titles to their land. In addition to plot compliance, the municipality has also developed regulated areas through the provision of water supplies, sewage systems, lighting, paved roads, and the construction of schools and recreational areas.

8. Many *favelas* in Rio are long-standing communities and as such, may have acquired rights to private land through adverse possession. Under Brazilian law, a person who possesses real property as her own for a period of fifteen years, without interruption or opposition, acquires ownership, regardless of whether the title was acquired in good faith (*Usucapião*) (Articles 1238 to 1244 of Brazil’s Civil Code). A person may request a statement from the courts confirming their rights. Such a statement, which must be in the form of a judicial decision, can serve as a title for purposes of registration at the relevant real estate registry.

9. The fifteen-year possession period may be reduced to ten years if the possessor uses the property for habitual housing, or if he has undertaken any productive work or services on the land. The period may also vary in accordance with applicable law. Such law is grounded on the requirement that the real property should be benefited from, as guaranteed by the Federal Constitution, Article 5, XIII. Many studies of housing rights point to adverse possession as a solution for the communities that make up *favelas*.

10. Nonetheless, public real estate may not be acquired by adverse possession. *Favela* residents across Rio de Janeiro may thus have different rights depending on the length of their possession, and whether they were built on public or private land.

11. Titling reforms, such as those already underway in Rio de Janeiro, achieve more than the immediate goal of securing legal housing. They are equally important to facilitate access to credit for low-income citizens. Titling allows the new title-holders to offer their property as collateral thereby unleashing more productive uses of otherwise “dead capital”. This serves to integrate *favela* residents into the formal economy of the city.



12. One of the most representative examples of such titling reforms took place, with mixed results, in Peru in the mid 1980s to late 1990s. Empirical studies of the Peruvian case indicate that the reforms met their basic goal of increasing the number of titles held by poor applicants. However, the evidence did not support the conclusion that new title-holders in urban areas enjoyed extended access to formal sources of credit. While there was no correlation between titling and access to formal credit, a strong correlation was observed between access to credit and poverty of the household.

13. Titling has also been contested on other practical grounds. Some argue that, to be effective, titling should be accompanied by simultaneous reforms so as to ensure adequate enforcement of property rights. Developing countries are often unable to adequately fund and implement such large-scale reforms. New home owners can potentially become more impoverished as a result of information gaps. For some communities, the novelty and complexity of the loan and mortgage market may leave them vulnerable to unscrupulous lenders. In particular, homeowners should be adequately informed about the consequences of agreeing to financial obligations which they cannot realistically take on.

## **B. Overview of Community Land Trusts**

14. A Community Land Trust (CLT)'s overarching goal is to preserve access to land and housing for marginalized populations. The CLTs mechanism for leasing land and capturing socially-constructed real estate gains for community benefit has multiple origins, including: the communal theories of Henry George; the social experiments of the Garden Cities Movement in England; and the Jewish National Fund in Israel.

15. CLTs acquire and manage land and other assets for the benefit of the local community. Often times the CLT will own the land and will sell the structures on the land to residents at a reduced price. The value of the land serves as an equity stake in the property that is controlled by the trust and used to ensure perpetual affordability of the housing built upon it. CLT models are diverse and can be tailored to suit different circumstances. CLTs may develop as “greenfield projects”,<sup>2</sup> or projects where no development yet exists. Alternatively, CLTs can be a vehicle to breathe new life into otherwise abandoned properties.

16. A CLT acquires land from various sources. Often, trusts are formed on public land at little or no cost. A CLT can secure a site at open-market value, through access to grant funding or community share issues. Alternatively, a CLT may already own a site that is permitted for development.

---

<sup>2</sup> A “greenfield project” refers to a new development, such as the creation of a new residential neighborhood.



17. To create affordability, a CLT must receive an initial subsidy. An important source of development finance is a local authority that has the ability and willingness to provide for the project, via a capital grant. Ethical lenders also can provide revolving loan or deferred-interest payment upon completion of the projects. Other important subsidy sources include free land, financial grants from government, charities, and private benefactors. Once properties are built, the land is protected from fluctuation in land market valuations through a legal “asset lock”.

18. CLT membership is generally open to all who live or work in the designated community, including occupiers of the properties that the trust owns. The members elect a volunteer board to manage the day-to-day affairs of the trust on their behalf. The board is normally comprised of a mix of supportive local residents, tenants and employers, people from the wider area with useful skills to offer, and additional stakeholders that seek to preserve the integrity of the trust (perhaps local authority representatives, or those who endow land or property to the trust).

19. The CLT model has also received criticism. Usage rights, as opposed to full property rights, can offer comparably weaker protections against displacement. As a trade-off to affordable housing, CLT members must forcefully give up some of their autonomy, since decisions on how to run and administer individual housing are often taken at a collective level. Finally, CLT members’ use of property can be considerably restricted, through provisions prohibiting certain types or transactions or limiting uses and value that home owners would normally enjoy with full land ownership rights.

## **II. EXAMPLES OF COMMUNITY LAND TRUST SYSTEMS**

### **A. United States**

20. Beyond the familiar forms of affordable housing promoted by US government agencies, such as Section 8 public housing, a robust “third sector” of private nonmarket housing has grown during the past thirty years. Many types and tenures of housing characterize this third sector, including: non-profit rentals; mutual housing associations; limited-equity (and zero-equity) cooperatives; CLTs; and resale-restricted houses, and condominiums with affordability covenants lasting many years.

21. The CLT sector in the US has been met with consistent resistance due to a perception that the model can ‘trap’ people by limiting the extent of equity return to the individual. Historically marginalized populations are sometimes skeptical about the housing terms. Studies conducted regarding the US sector, however, indicate that households can and do move out of CLT housing if family circumstances change (i.e. change in job, change in household size, marriage, and divorce). A CLT owner can take the equity accrued from their CLT home and invest in a new dwelling. In that respect, CLTs encourage “forced savings”. Objections to a “ceiling” imposed on wealth creation via CLT arrangements do not apply to residents where



there is no other “wealth-creating alternative” such as market-based home ownership available to them.

### 1. Champlain Housing Trust

22. One of the most notable and successful CLTs is the Champlain Housing Trust (CHT). The CHT is the largest CLT in the United States. In Vermont, throughout the counties of Chittenden, Franklin and Grand Isle, CHT manages 1,500 apartments, stewards over 500 owner-occupied homes and provides home purchase education and financial counseling. CHT also provides services to five housing cooperatives, and offers affordable energy efficiency and rehab loans. Owners are entitled to full rights to the land but upon resale they receive only 25 percent of the appreciation in property value.

23. The CHT began in 1984, when municipal officials, neighborhood activists, and tenant advocates together created the Burlington Community Land Trust. A \$200,000 grant, proposed by Burlington’s mayor and awarded by the city council, was used to seed this new organization. The founding purposes of the trust were to: (1) increase the number of affordable homeownership opportunities for low income families; (2) provide access to land and decent housing for low and moderate-income persons; and (3) promote neighborhood preservation and improvement through the responsible use and management of land.

24. In the United States most CLTs, including the CHT, receive a 501(c)(3) tax exemption from the federal government of the United States because their activities and resources are targeted toward charitable activities. In CHT’s case, all of its housing is priced to serve households earning no more than 80% of Area Median Income (AMI), although CHT occasionally serves homebuyers with incomes between 80% and 100% of AMI. The majority of CHT’s homeowners and renters earn much less.

25. The 15-person board of CHT is divided into three parts. One third of the board represents the interests of people who lease land or reside in housing that is managed by CHT. One third represents the interests of people who live in the surrounding “community” who do not reside on CHT’s land or in CHT’s housing. And the final third is made up of municipal officials and a regional representative who are presumed to speak for the public interest.

26. Every single-family house, duplex unit, or condominium located on land acquired by CHT has been sold off to an individual homeowner, with CHT retaining ownership of the underlying land. This dual ownership is a feature of all of CHT’s cooperative housing and most of its rental housing. CHT holds title to the land and another corporate entity holds title to the buildings. There are a few projects, however, where CHT has retained ownership of both the land and the buildings. These exceptions have occurred for some of CHT’s rental housing and for most of the nonresidential buildings developed by CHT for other nonprofit organizations.



27. Although CHT intends never to resell its land, it provides for the exclusive use of particular parcels of land by the owners of any buildings located thereon. Parcels of land are conveyed to individual homeowners (or to the owners of other types of residential or commercial structures) through long-term ground leases. CHT's ground lease has a duration of twenty years, but is renewable at the sole discretion of the lessee.

28. The CHT retains a preemptive option to repurchase any residential (or commercial) structures located on its land and any condominium units for which it holds a covenant, should their owners ever choose to sell. The resale price, set by a formula contained in the ground lease or the covenant, is designed to give present homeowners a fair return on their investment, while giving future homebuyers fair access to housing at an affordable price. The resale formula used by CHT allows homeowners to recoup their original down payment, any equity earned by paying off their mortgage, and the value of pre-approved capital improvements made by homeowners. In addition, if homes appreciate in value between the time of purchase and the time of resale, their owners are granted 25% of that appreciation. CHT may choose not to exercise its option to repurchase homes put up for resale, if no income-eligible households are ready and willing to buy them.

## **B. United Kingdom**

### **1. East London Community Land Trust (ELCLT)**

29. The East London Community Land Trust was created for the redevelopment of the derelict St Clements Hospital in Bow, East London. This will become the UK's first ever urban CLT. Acquiring the site involved a long tender process, administered by City Hall, which saw a number of developers compete for the 4.5-acre site. In order to put this project into place the trust mobilized public political support for their plans from the Mayor of London which helped put the organization in a powerful position when negotiating with developers.

30. ELCLT is a not-for-profit Industrial and Provident Society, with membership open to anyone who lives and works in East London. ELCLT has over 1,000 members, all with an equal vote on trust activities. The next project by ELCLT will involve the Olympic Park created for the London 2012 Olympic Games.

31. The partnership agreement is to be signed by the Mayor on behalf of the Greater London Authority, the developer, and the ELCLT. It commits the partnership to the following arrangements and conditions:

- (i) The freehold of the entire St Clements Hospital site will be transferred to a new community foundation set up by ELCLT. The CLT Foundation will then use rent





proceeds raised every year to reinvest capital into the local population and the surrounding area and for the improvement of this particular part of east London;

- (ii) All homes built on the site will be owned by the CLT so that they remain permanently affordable, despite any land value increase;
- (iii) The CLT homes will be available to local residents and their price will be based on their local incomes as opposed to an open-market rate;
- (iv) Previous work and ideas contributed by local residents through the community-led design sessions should be reviewed and integrated into the new plans for the site where possible. In addition, a further series of community-led design sessions is to be run with architects, John Thompson & Partners, for local residents so they further shape the design of the site; and
- (v) The buildings at St Clements will be opened to the local community as soon as possible, with the CLT working with the developer to provide “interim use” facilities on the site, for use by local groups while the homes are being constructed.

32. A Registered Provider will also ensure the site delivers a fully mixed community by managing a significant number of social-rented homes, which will be charged at “target rents”, which are below the new “affordable rent” level (which could be up to 80% of the market rate).

33. The CLT retains an option to repurchase any structures located on its land, should their owners ever choose to sell. The resale price is set by a formula contained in the ground lease that is designed to give present homeowners a fair return on their investment, while giving future homebuyers fair access to housing at an affordable price.

### **C. Switzerland**

34. Zurich does not have any regulated land prices or any generally applicable rent controls. The city facilitates affordable living space by either constructing and owning apartments itself (approximately 9,700 apartments presently), or by subsidizing the construction of affordable living space (about 6,700 presently) held by nonprofit organizations through loans or participation in the organization’s capital. Both subsidized apartments and city-owned apartments are rented out at cost.

35. The majority of affordable living space is owned through cooperatives. Presently about 40,000 apartments in Switzerland fall under this category. Under Swiss law, a cooperative is defined as “a corporate entity consisting of an unlimited number of persons or commercial enterprises who join together for the primary purpose of promoting or safeguarding the specific





economic interests of the society's members by way of collective self-help" (Art. 828 of the Swiss Code of Obligations; unofficial translation). They must be non-profit, for residential purposes, and cannot be commercial developments. The local state must approve the rents and have one representative on cooperative boards. Also the local state must approve coop accounts annually, and be responsible for resolving any major individual tenant / coop conflicts.

36. At a national level, the Federal Department of Housing provides funding, sets down minimum space standards for family housing, and produces statistics and research. The National Association of Cooperatives allocates Federal money to cooperatives, in the form of 10-year loans at a low interest rate, or acts as a debt guarantor. In recent years, the program has given more emphasis to ecological housing and energy conservation, i.e. cooperatives receive greater financial support if they comply with certain ecological standards. Once a cooperative scheme has been approved at the Federal level, it must seek approval at a canton level. If 10% of the units are declared social housing, the local state social system will subsidize those rents.

37. In order for the city to be able to facilitate affordable living space, an entity benefiting from such government support must meet conditions including: (1) funds required for a project beyond what is provided by the city must be covered by equity; (2) premises built with the support of the city may not be sold except under strictly defined conditions; (3) if the entity is dissolved, the city has the right to take over premises it subsidized against appropriate compensation; (4) the bylaws of any entity applying for subsidies from the city have to be approved by the city; and (5) the city has the right to be represented in the corporate bodies of the subsidized entity.

38. Some examples of coops in Zurich are listed below:

**1. Kraftwerk**

39. This project comprises conversion and new construction at a former, privately-owned industrial site. The idea of the Kraftwerk cooperative was born in 1993, led by student activists. The cooperative was founded in 1995 and eventually purchased the site through a bank loan, with the cooperative raising and offering 20% of the capital. The completed scheme comprises 91 housing units, office units, two shops and a café. As a result of this successful initiative, Kraftwerk is developing three other sites. It has designed schemes funded in part by a 10% rent increase on Kraftwerk residents. In other words, with the agreement of its tenants, Kraftwerk has introduced a rent increase to help subsidize prospective tenants who cannot afford at-cost rents.

**2. Dreiecke**

40. Dreiecke is a triangular city block comprising a number of old houses/apartments which the city bought in 1970s to construct an urban highway. The highway proposal was eventually



dropped and the houses fell into disrepair. In the 1980s the City Council prepared a new project involving demolition and several new buildings. There was strong local opposition to the demolition of an attractive row of houses and the displacement of existing residents, some of whom had been squatting on the land. As a result, an association comprised of residents, squatters, and other members of the local community developed an alternative plan which would retain and improve the buildings. In 1993, the Council approved the alternative plan and granted a leasehold for the whole site to the association. A cooperative was formed and, between 1997-2000, 11 buildings were renovated. More than 50% of the 1996 residents still live in the Dreieck.

### **3. Karthago**

41. Karthago is the name of the cooperative on the site of a former Toyota showroom and offices belonging to a speculator who was unable to redevelop the building. A local group led by former activists set up a cooperative and approached the national association of cooperatives with a proposal to buy and convert the building into housing. The Karthago Cooperative was able to obtain a loan of £2m to buy the site and undertake a conversion into 25 units, including a shared kitchen and dining area space.

### **D. Kenya**

42. Land tenure reform has been a long standing issue on the Kenyan government's agenda. Pre-colonial land ownership concepts were community-based and in the aftermath of colonialism a large part of the population was left landless. This has had the largest impact on cities, where increasing urbanization has produced squatter settlements.

43. Several initiatives to "upgrade" these communities have been attempted by the central government with donor funding. Unfortunately, these attempts have had very limited long term impact. Poor communities continue to be marginalized and bought out of the now "improved" neighborhoods—thus pushing them into more unplanned settlements.

### **1. Bondeni Community Land Trust**

44. Tanzania-Bondeni Settlement is located in the southern part of Voi, a small town of about 15,000 residents in Taita Taveta District in Kenya. The German Agency for Technical Cooperation (**GTZ**), through its Small Towns Development Project, brought together the various stakeholders to address the complex question of urban settlements within smaller towns in Kenya in the early 1980s. Working in conjunction with the Ministry of Local Government, the Voi Municipal Council and the Commoner of Lands, the staff of Kituo Cha Sheria (Legal Advice Center), a NGO, and the people of the Tanzania-Bondeni squatter settlements within Voi



Township, have attempted to jointly provide access and security of tenure to the residents of the Tanzania-Bondeni villages.

45. This plan involved continual input from the community. First, an intensive mobilization phase helped inform the community about the process. Residents were identified and registered, their needs discussed and prioritized, and eventually a residents' committee formed to represent them. Residents carried out improvements to their own homes, with the assistance of technical advisers and block-making equipment. Sixty percent of the households in the settlements own the structures (although temporary), thirty percent are tenants, and ten percent are tenants living with structure owners.

46. The Voi Municipal Council provided the land to the community on a free leasehold basis. Land tenure is held by the community as opposed to the individual. It also agreed to provide training, technical support in terms of laying out water and sewerage pipes, and an office for the residents' committee of the community to hold their meetings and plan the development of the area.

47. Beneficiaries own the developments on their plots. They can bequeath or inherit these developments, and they can sell them according to a specific resale formula, with a prerogative acquisition right by the CLT to ensure that land remains with the community. The resale formula which determines the purchase price for the houses is to compensate the seller while keeping housing and access to land affordable for the poor.

48. To ensure that target groups are not forced out due to high building standards, the existing standard of houses is accepted by the local authority and by the Government. House owners are expected to gradually improve their structures to conform with local authority building by-laws.

49. Multiple sources of funding enabled this project. Land was donated by the Municipal Council on a free leasehold basis. In addition, loans were provided by the central government for house construction. GTZ was the donor agency which provided funding for construction of the infrastructure and public utilities and consultancy fees. The community also contributed, pooling its resources for the expenditure on the initial surveys undertaken and completing infrastructure improvements at its own cost.

50. To date two legal bodies have been constituted as the Tanzania-Bondeni Community Land Trust. A society, registered under the *Societies Act* is responsible for the day-to-day workings of the community-based organization. A trust is registered under the *Trustees (Perpetual Succession) Act*. The trust is solely concerned with the administration of land matters. The trust will hold the title deed of the land for the society. The trust's other duties include issuing leases to society members, determining fees for land rental, making decisions on land uses (in conjunction with the society), providing oversight of sale of improvements, and



controlling any proposed encumbrance, alienation or purchase of land. In addition, four housing cooperatives have been organized due to limitations on total disbursements available for individual coops through the rehabilitation fund of National Cooperative Housing Union (NACHU).

51. The institutional arrangements to steer the process provide for three committees at the community, local authority and national level:

- (i) The residents' committee: consists of 12 elected resident members (structure owners, four of which are women, tenants and youths, plus the area councilor, the chief and the council representatives).
- (ii) Local authority committee: a technical task force chaired by the town clerk coordinates all project activities. Other members are council chief officers, district officials, NGOs operating in the town and a Small Towns Development Project (STDP) representative.
- (iii) National project promotion committee: follows up policy matters related to the upgrading process; chaired by the Commissioner of Lands and attended by representatives from other pertinent ministries (Planning, Housing, Local Government) and NGOs. Partnerships have been established for various purposes with, among others, the Kenya Wildlife Services, the NACHU, the National Water Conservation and Pipeline Corporation, the Housing and Building Research Institute, and Kenya Railways. The banking sector helps by administering the special account into which the small installments of the residents have been flowing over time.

52. The design of the legal framework for the CLT model is based on five documents: (1) The Constitution and the Rules of the Society, (2) The Trust Deed, (3) The Headlease, (4) The prototype Sublease, and (5) The Approved Subdivision plan.

53. Unfortunately, participation has not been even among the actors. Female participation was not adequately assured through “reserved seats” for women. Leadership training is essential to ensure participation. Furthermore, language and literacy barriers have emerged in the context of this process.

54. This program also demonstrated that “poverty” on the basis of formal income alone should not be used as an indicator of assessing one’s creditworthiness as there may be other resources which the poor have access to which could be utilized. Also, the provision of land alone does not ensure building as the resources might not be forthcoming. A “package” which takes care of the land and construction should be planned before any project is set up to ensure sustainability of the program.



## E. Uruguay

55. The Uruguayan cooperative housing structure was born in 1968, when a Housing Act was passed in the context of a widespread housing crisis. The Act featured a specific chapter that created and regulated housing cooperatives in detail, introducing a novel type of housing cooperative: the mutual aid cooperative. These regulations became the basis of a model that has spread fast, partly due to the availability of low or preferential interest rate loans and to the efforts of FUCVAM, the largest and oldest federation of housing cooperatives dedicated to supporting, promoting and disseminating the model both domestically and in Latin America.<sup>3</sup>

56. The mutual aid cooperative is the most widespread form of housing cooperative in Uruguay. It is distinctive in that it relies on the joint physical labor of its members to build all of the cooperative's structures. All cooperative members and their families, including children, are obliged to pool their efforts in the construction of other members' housing and of common-use facilities. The law regards such activities as capital contributions, not as a form of labor subject to general labor laws, and must represent at least 10% of the value of the housing built. Mutual aid cooperative members enter into a usufruct agreement that can be registered and which grants them indefinite usage rights, subject to a number of restrictions (for example, members cannot lease or otherwise assign their usage rights other than for strict housing purposes). In turn, the cooperative retains title over the land and all housing built on it.

57. Recent legislation passed in 2012 introduced a new form of cooperative that enables members to become owners, once they have covered the cost of housing through their monthly contributions. However, the rights secured by this means are not full-fledged property rights and remain restricted in scope.

### 1. Nuevo Amanecer (NA)

58. NA is located on the northeastern outskirts of Montevideo and consists of 423 households. Members of NA do not own their own homes; all land and buildings are collectively owned by the coop itself. Should a home become vacant it is the coop that decides who can move in.

59. NA purchased its land cheaply on the outskirts of Montevideo in an area where several industries had closed down. Once this land had been acquired, members of the coop proceeded to build an entire neighborhood using their own skills and labor. During the construction phase,

---

<sup>3</sup> FUCVAM comprises over 500 housing cooperatives. It has exported the Uruguayan housing cooperative model to Bolivia, El Salvador, Nicaragua, Honduras, Guatemala, Venezuela, Argentina, Chile, Ecuador, Peru, Costa Rica, Haiti, Paraguay and Brazil, where the model is being implemented on a national scale by the União Nacional de Moradia Popular movement.



each household was obliged to provide a minimum of 21 hours of labor per week. Both men and women participated in heavy labor.

60. NA took responsibility for the construction of internal infrastructure items in the 1970s. These include items such as the installation of water mains and electrical lines. Subsequently, the state agreed to distribute water and electricity to the coop and the municipality agreed to collect its garbage.

61. Various types of homes were built to meet the needs of different kinds of households. The eventual allocation of homes was determined by a raffle held within each category. Members of NA pooled their resources and in February 1972 acquired a bank loan. NA members do not pay rent. Rather, each household pays a monthly fee to NA and to one of its member coops.

## **2. Housing and Family Cooperative (COVIFAM)**

62. COVIFAM is a member of the umbrella organization *Federación Uruguay de Cooperativas de Viviendas por Ayuda Mutua* which is a nationally-based federation of over 300 housing cooperatives.

63. Much like NA, COVIFAM's housing and family cooperative homes are built by the community with each family laboring over 20 hours a week on construction. Similar to the NA model, the COVIFAM homes are owned by the cooperative, not by individuals or families, but each family has the legal right to use their home. While that right can be passed down to future generations, or exchanged for the money and work hours they put into the community, it cannot be sold. Allocation of homes is decided by lottery after construction of all houses to ensure that everyone works equally hard on every house.

64. COVIFAM members are not simply workers and residents – they are also administrators and organizers. All decisions are made in democratic weekly meetings that continue even after construction has finished.

## **3. Cooperative Ufama al Sur, Montevideo (UAS)**

65. UAS was initiated in 1998 by *Mundo Afro*, a local community-based organization. *Mundo Afro* formed the UFAMA al Sur housing cooperative and contacted the Uruguayan NGO Ciudad y Región, which would provide technical assistance to the group. The cooperative is made up of Afro-Uruguayan women-headed households.

66. An abandoned warehouse building was sold to the cooperative by the Municipality at a subsidized rate. Residents contributed with their labor. UAS is a mutual aid and self-



management housing project. The project involves the conversion of a derelict building in the Barrio Sur neighborhood in central Montevideo into 36 apartments.

67. Funding was provided by the Ministry of Housing in the form of a housing subsidy. A percentage of this subsidy is to be repaid over a five-year period, after which ownership will be transferred to each family. The British Embassy has also supported the program through the provision of machines for construction, tiles and sanitary-ware for toilets and kitchens.

## F. Bolivia

### 1. Maria Auxiliadora, “*Habitat para la Mujer*”

68. *Habitat para la Mujer* is a community initiated and managed project in Cochabamba. It involves a CLT-style model of collective land ownership and housing construction for low-income families. The organization emphasizes the role of women in community leadership, land ownership, housing construction, activism and negotiation with public authorities. The role of community leader is also reserved for a woman and is carried out in two-year terms. In this way, the abuse of power is avoided and all women are encouraged to take on leadership responsibilities.

69. *Habitat para la Mujer* was initiated in 1999 by a group of homeless female heads of household. A loan was obtained by one of the women in the group, who then purchased a large piece of land (16.8 hectares) on the outskirts of Cochabamba. The cost of the 16.8 hectare plot of land was US\$276,000. This was purchased with an initial deposit of US\$36,000, obtained via a bank loan and a loan from a friend. The land was then subdivided and the proportional costs were passed on to the other members of the group.

70. Land titles remain in the initial purchaser’s name. Land and housing in the Maria Auxiliadora Community cannot be rented out or sublet. Those who have purchased the land and have not yet built their house cannot remain absentee owners. Residents must either build their house and move into the community or withdraw from the community and be reimbursed for the land. Property can be passed on to others in the community at the initial price of the plot of land plus the value of the house.

71. An arrangement was made with the former owner whereby the debt would be repaid gradually through the payments received from residents for the individual plots of land. Families can enter the project with an initial payment as low as US\$10 and minimum monthly repayments of US\$10.

72. The land was divided into 200m<sup>2</sup> and 300m<sup>2</sup> plots and the proportional costs were passed on to the other members of the group at a rate of US\$3/m<sup>2</sup>. All homes have been built by the





community through a mutual help process based on the Uruguayan cooperative housing model, with technical assistance provided by partner NGOs. Mutual help construction takes place on Sundays and each household must contribute a minimum of three to four hours of labor per week.

73. A total of 152 houses have been built to date, as well as a range of community facilities. This community-initiated and managed project has gained recognition and credibility over the years, developing partnerships with a range of NGOs and government agencies.

74. Low-income families with children and particularly women-headed households who are homeless are given priority in the selection process. 250 low-income families have acquired land in the Maria Auxiliadora Community.

75. This program demonstrated that living conditions of low-income families can be greatly improved with little external funding, provided that the families' own resources are mobilized and channeled through savings schemes, traditional forms of solidarity and mutual help, collective action and access to credit.

76. Whilst it is important for the community to maintain autonomy and control of the process, the support of NGOs has been crucial to the success of the Maria Auxiliadora Community. The community's ability to mobilize residents' own resources has been an important factor in drawing additional funding and support.

### III. COMMON THEMES AND CONCLUSIONS

77. CLTs range in size, can be rural or urban, and provide a variety of housing tenures as well as other community facilities, including workspaces, energy generation, community food and farming. Despite the diversity in the sector, there are five key features of a CLT:

- (i) **Community-controlled and community-owned:** A CLT is set up by the community and for the community. The members of the CLT control the trust, and the assets can only be sold or developed in a manner that benefits the local community. If the CLT decides to sell the asset, the funds realized are protected by an asset lock and are re-invested into something which the trust's members think will benefit the local community.
- (ii) **Open democratic structure:** People who live and work in the defined local community, including occupiers of the properties that the CLT owns, must have the opportunity to become members of the CLT. The CLT should actively engage members of the community in its work and ensure that they remain engaged in the development and operation of the CLT.



- (iii) **Permanently affordable housing or other assets:** This is a crucial defining feature of a CLT. A CLT will endeavor to keep the homes or assets permanently affordable.
- (iv) **Not for profit:** All CLTs are not for profit and any profits generated by the CLT cannot be paid by way of dividend or otherwise to its members, but must be used to further the community's interests.
- (v) **Long-term stewardship:** A CLT does not disappear when a home is sold or rented but has a long-term role in stewarding the homes. In some cases they will remain the landlord of the rental homes or will retain an element of unsold equity in the homes. At the least, the CLT will retain the freehold.

78. CLTs have a proven track record of providing a long-term affordable housing option. While many of the examples considered in this memorandum relate to new builds or to the transformation of existing derelict structures, with adequate funding the model could potentially be applied to existing developments and communities.

79. Rio de Janeiro's *favelas* differ from many of the above-mentioned examples in that they are long standing impoverished communities where there is little room for new development. Furthermore, the residents of Rio's *favelas*, though they informally occupied their land, are now in the process of being given titles and may have rights through adverse possession. Though some individuals do not have titles to the land they have been living on, those that do cannot be given community land titles to create a CLT nor can they be deprived of their individual property rights without compensation.

80. Given the democratic nature of CLTs, it is essential that the community voluntarily accept such an arrangement and that members are not forced into non-market structures. Given adequate financing, a CLT could purchase land from residents of the *favelas* and establish some pilot programs to gauge the success of such arrangements. For *favela* residents that are currently being granted land titles, these will have to be purchased from the current residents at a fair market value price in order to create a CLT.

81. Sources of development finance should include local authorities that have the power and may be willing to provide development finance. This can be through a capital grant, revolving loan or deferred interest payment upon completion. In addition ethical lenders may be sympathetic to providing loans to CLTs.

\* \* \*

We look forward to discussing the foregoing with you at your convenience.

