

Between Vulnerability and Hope Governance Conflicts in the Tenure Legalization of State-Owned Land

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ABSTRACT: *This paper is a result of considerations of a Land Tenure Legalization Project performed by Universidade Federal de Pernambuco (Federal University of Pernambuco), by request of Secretaria do Patrimônio da União - SPU (Federal Land Administration), aiming the legalizing of the informal settlements situated at some State-owned land, located at the Parque Histórico Nacional dos Guararapes (National Historical Park of Guararapes) at the metropolitan region of Recife-Brazil. The present work highlights the precarious living conditions of the low-income population, inhabiting historical places ruled by IPHAN (National Institute for Artistic and Historical Assets), as well as illustrates the conflicts of governance among the characters involved in the legalization plan and its interests: Secretaria do Patrimônio da União, IPHAN, Prefeitura do Jaboatão dos Guararapes (Jaboatão dos Guararapes City Hall) and civil society. It is noticed that, despite the legitimacy of the legal instruments for land legalization institutionalized by the National Urban Policy - Statute of the Cities, there is still a long path to overcome, regarding the management and governance processes of land tenure legalization. Although the difficulties and conflicts which surround the installation, in its fullness, from the experienced events in Brazil of land tenure legalization, in the case of settlements situated at the Parque Histórico Nacional dos Guararapes, there are countless advances that have been seen to achieve the necessary steps towards the full land tenure legalization. One of this places, subject of study of the Land Tenure Legalization Project: "Land Tenure Legalization Plan of the Housing Settlement at the State-owned land of the National Historical Park of Guararapes - PE", named "Córrego do Balaio settlement", has recently gone through the institutionalization of its Special Zone of Social Interest, definitely an important step made by the government of the city along with the community, in order to provide the population one of their essential rights: the right of ownership.*

KEYWORDS -Federal State-Owned Land, Governance, Historical Heritage, Land Tenure Legalization

I. INTRODUCTION

The situation that we intend to expose and analyze in this article relates to the experience exercised by this author in coordinating Extension Project: "Plan of Land Regularization of the Settlement Housing Area Domain Union Guararapes National History Park - PE" run through a Covenant established between the Secretariat of the Union Assets-SPU and the Dean of Extension, Federal University of Pernambuco, under the purview of the Department of Architecture and Urbanism, aiming to respond to a demand for 'regularization' of two popular settlements located in the Union area, the stream and the stream Balaio Battle, whose occupation is confined within the perimeter of the fallen Guararapes National Historical Park area, located in the municipality of Jaboatão Guararapes in RMR[1]. Fig. 1 (PHNG-Location) and Fig. 2 (Aerial view of the PHNG).

It is important to highlight the various aspects that encompasses such demand, is being able to point out here some of them: (1) the legal - on the legalization of the occupation of the property by its inhabitants; (2) the urban - relating to the adequacy of the informal settlement to the minimum parameters required for the approval of the division of land by the municipality; (3) the environment - taking into account the compatibility between existing uses and the preservation (and recovery when possible) the quality of the environment in and around the area, eliminating the risk situations that may exist; (4) social - with reference to the promotion of citizenship, the recognition of the rights of low-income population in ensuring access to decent housing and their active inclusion

in the intervention process over the area and it occupies; (5) the cultural and participatory - which includes respect for the relationships established between people residing in the area between themselves and the environment they live in, ie, the way of life there and established forms of community organization and as respect to the memory and preservation of historic values represented by the park.



Fig. 1: PHNG-Location.
Source: Authors, UFPE Data, 2013.



Fig. 2: Aerial view of the PHNG.
Source: Authors, UFPE Data, 2013.

The project was initiated in December 2012, consisting of the phases of field with topographic and cartographic survey, socioeconomic and community mobilization, culminating in the preparation of the Urban Plan which included guidelines and objectives for land regularization and nesting titled, stream Balaio. In the case of an action extension project involved 54 undergraduates and six graduates, plus ten teachers and researchers of the departments of Architecture, Cartography, Social Work and Political Science.

One of the major brands of the project was the mobilization and community participation, with intense involvement of the population through the election of representatives of courts and workshops and community meetings, in addition to the daily door to door asked by socioeconomic and topographic surveys.

The results of the socioeconomic analysis, statistical, cartographic, consisting of preparation of thematic maps and sketches, came to support the development of the Urban Plan for the Regularization stream Balaio - National Park Guararapes. According to the document, the guidelines of the Urban Plan is 'to maintain the characteristics of the occupation and the population in the settlement at the site; improve the environmental quality of the area; enhance public spaces; respect areas of risk, giving appropriate treatment; occupation to suit potential infrastructure` [1].

As also shown in Urban Plan goals that guide the proposal are:

"Set and retrieve the green area of transition between the settlement and the National Park Guararapes; reclassify public circulation spaces; create areas of softening and living areas; ensure healthy conditions for housing; create new lots for families to be relocated; define guidelines for the deployment of infrastructure; guide land cover in relation to the typology; point lots for the purpose of granting costly" [1].

For the preparation of the Plan stage joined to building a Cadastral Information System, titled SIAPA - Simulation as a basis for identifying individual lots and the later stages of notarial records with a view to regularization off the settlement.

These steps summarize and close participation of UFPE, it is now up to the contracting agency (SPU) and the other members of the management of the Project, (IPHAN PMJG and Community) give the following procedures for implementation of Urban Planning and Land Regularization of the Settlement.

II. EVICTION 'COME AND GO'

Guararapes Mount is in the city of Jaboatão dos Guararapes, Prazeres district, 14km south from the city center of the state capital, Recife. It is composed by three hills: Monte do Telégrafo, Monte dos Oitizeiros and Monte do Outeiro dos Guararapes, also known as Morro da Ferradura, on which is stands the church Nossa Senhora dos Prazeres. In 1948 the church and the hills were recognized as National Monuments and in October 30th of 1961, the Guararapes Mount was officially registered in the Historical Book Tumbles N°334, according to IPHAN in 2002 [2].

On this site was held the battle for freeing the country from the Dutch mandate known as the Battle of Guararapes, named after the Mount. The recognition of the site's historical and cultural value came with a national Tipping in 1965 and in 1971 the National Historical Park of Guararapes (NHPG) was created by the law N°68.257, both under military presidential administrations [2]. The Fig. 3 (Preservation Areas) below shows the limits within the park where the special parameters related to the national Tipping applies, safeguarding the site's historical, cultural and environmental characteristics, and the areas turned into state land.

According to the National Historical Park of Guararapes Master Plan in 2002 [2] the area started being occupied by informal housing settlements in the early 1970s. It was estimated that in the state land within the park were 3,000 housing units. This number increased throughout the years due mainly to the lack of available land in the city centers to house the urban poor population and due to illegal donation of public land titles by politicians taking advantage of public land. Today, the IPAHN estimates an overall population of 30,000 inhabitants in 7,500 housing units within the park. The Fig. 4 (Aerial view of the Córregos Balaio-Batalha) shows the Córrego do Balaio with its 3.73ha and 1,120 inhabitants and the Córrego da Batalha with 17.99ha e 4,400 inhabitants.



Fig. 3: Preservation Areas.
Source: Authors, IPHAN/UFPE Data, 2013.

Fig. 4: Aerial view of the Córregos Balaio-Batalha.
Source: Authors, UFPE Data, 2013.

The informal settlements within the park, with an increasing population, merged with the surrounding urban fabric. Meanwhile, and because of the intensifying occupations, since 1998 the Army rules the Park's strict preservation sector that corresponds to the non-occupied area, topographically defined and bounded with a concrete pile fence. From the 224ha original Park area, only around 80ha remained ruled by the Army.

Other than the housing, also commerce in a variety of business sizes can be found in the occupied area within the park, especially along the main roads such as Estrada da Batalha and the Barreto de Menezes avenue.

Against the threat that these informal settlements represented to the site's historical value, and due to its densification and verticalization causing environmental and urbanistic degradation (damage), the National Institute for Historical and Artistic Heritage (IPHAN) pursued many ways to evict the informal settlers. In fact,

the predominant vision of the park managers was based on removing the population while the concrete fence was a tool for restricting the expansion of the informal settlement, as seen in the Fig. 5 (Córrego Batalha Limit) and Fig. 6 (Córrego Balaio Limit) of Córrego da Batalha and Córrego do Balaio.

In 1992, a group of dwellers from Córrego do Balaio, lacking the legal apparatuses to remain in the area, mobilized themselves heading towards the Federal Land Administration in Brasília to call their right to remain in the area. That was one of the first manifestations of resistance from the local population against the threat of eviction.

The pressure to evict the informal settlers from the area doesn't end with the construction of the concrete fence. In 2000 the *Jornal do Comercio* Newspaper published in its section named *Cities* the article 'Informal Settlements threatens Historical Heritage', which came to emphasize the in stable condition of the dwellers and weaken their expectation to consolidate their settlement [3].

"The settlements Córrego da Batalha, Balaio e Alto do Cemitério will have to move from the National Historical Park of Guararapes, located in the city of Jaboatão dos Guararapes. It is being demanded by the Federal Attorneyship in the State of Pernambuco through a public civil inquiry reclaiming the site where two battles against the dutch were held in Pernambuco territory, in 1648 and 1649" [3].



Fig. 5: Córrego Batalha Limit.
Source: Authors, UFPE Data, 2013.



Fig. 6: Córrego Balaio Limit.
Source: Authors, UFPE Data, 2013.

Further in the same article an explanation from the state attorney in charge:

"There are 7,500 estates within the borders of the Park, but only the families from these three settlements (Batalha, Balaio and Alto do Cemitério) because they are occupying an area of greater historical interest. The Park of Guararapes was created in 19 April 1971 covering an area of 224ha, owned by the federal government. Due to the invasions, today it covers only 79ha, bounded by the Army with concrete fences to avoid new invasions". (Mr. Paulo Gustavo Guedes – state attorney in Pernambuco).

In order to minimize the unplanned growth and the ever increasing informal constructions in and around the Park of Guararapes, that would represent a threat to its preservation, in 2011 the Federal Public Ministry (FPM) recommends the Municipality of Jaboatão dos Guararapes that any action in the preservation area should be submitted to IPHAN, according to the quotations below [4]:

"It is not new to consult IPHAN before any public or private intervention within the National Historical Park of Guararapes and its surrounding settlements, as a way to safeguard the officially protected the asset, explains the local director of IPHAN, Frederico Almeida. But as it was not happening constantly, the FPM recommended the city, requiring the reinforcement of the law" [4].

Since 2009, according to Brazilian law, illegal occupation consolidated area on federal property, the low-income population are eligible for regularization. However, to be recognized skinning area historical value on which aimed focus focus special safeguard your settings, up evidence the dilemma between preserving cultural and environmental heritage and / or maintain the poor in place of high symbolic and historical value.

The Extension Project: "Plan of Land Regularization of the Settlement Housing Area Domain Union Guararapes National History Park - PE" illustrates the above situation as problematic, in that there is evidence of the dilemma between historic preservation and the promotion of function social ownership of land from the union.

The threatening 'come and go' between eviction and security would only cease when in 2013 the Federal Land Administration, in agreement with the Municipality of Jaboatão dos Guararapes and the IPHAN, decides to legalize the informal settlements Córrego do Balaio and Córrego da Batalha, placed within the borders of state land. The announcement surprised the population and lead to excitement testimonial such as follow [5]:

"We expected this moment to years, it was a time of agony, uncertainty and fear that one day our right to housing wouldn't be recognized. But now I see the ability of the people involved in this project and the will of IPHAN together with the federal government. I believe now we will see our dream come true, our land title" said Zinaldo Manoel da Silva, living in the site for 40 years [5].

For over 40 years a remarkable feature of these communities trajectory was endless hope of having their land tenure legalized.

This process should ensure the security of tenure for the Batalha and Balaio dwellers and, adding to the Urban Plan, will improve the social environmental and the land use and occupancy planning.

However, other threatening situations are arising, not from attempted eviction anymore, but from a joint action by the Army, the IPHAN and the Municipality, seeking the Park's restoration, rehabilitation and reforestation, due within 4 years and using resources from PAC - Historical Cities from the Federal Government - The PAC (Growth Acceleration Program) was created in 2007 by Federal Government to implement major works of social infrastructure, urban, logistics and energy of the country [6]. The Historic Cities PAC is an articulated intergovernmental action with society which aims to preserve the Brazilian heritage, valuing the national culture and to promote economic and social development with sustainability and quality of life for citizens. The PAC is estimated with allocation around R\$390million [6]. According to Army Center of Social Communication in 2010the project includes building headquarters to the environmental police, ecological and historical trails, new viewpoints, a sculpture park, a Brazil-Holland Memorial, restaurant and museum, an amphitheater, a sanctuary for Nossa Senhora dos Prazeres, candy factory and stone museum, an internal road system of the Park, courts and squares and sports court, nurseriesand seedlings, upgrading the Pitomba, Cannons and the Masts Courtyard, restoring the slope and hillsides and overall environmental upgrade, including free space and green area, restoring devastated vegetation plus environmental educational programs. Fig. 7 and Fig. 8.

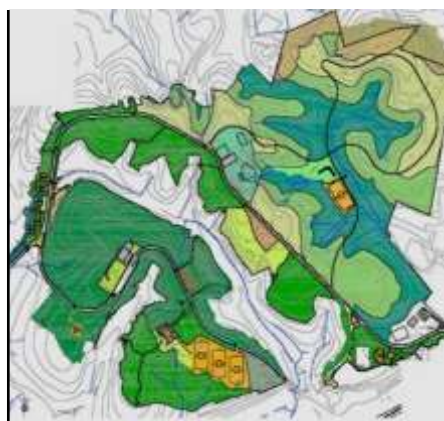


Fig. 7: Landscape Plan PHNG.

Source: Authors, Cardus/UFPE Data, 2013.



Fig. 8: Landscape Plan PHNG.

Source: Authors, Cardus/UFPE Data, 2013.

We believe this project represents a new format that threatens the historical heritage as it is founded on an entrepreneurial ideal, bringing risks of touristic entrepreneurialism of the area. By doing so, it dissociates from the territory the space of the poor and the democratic principles and gives place to ornamental tools or ordering territory in which become present the urban “lift” and the marketing of space [7].

The first step of the Park’s rehabilitation construction site will be executed with resources from IPHAN, being 12 months a deadline, costing R\$ 2.537.683,84 [7].

III. POTENCIAL FOR COOPERATION BETWEEN TECHNICAL AND ACADEMIC ENVIRONMENTS

The Brazilian Federal Land Administration (FLA) is responsible for the identification, delimitation, characterization, register, allocation, cadaster, supervision and legalization of Federal State-owned land. The land owned by National Government is defined in the 20th article of the Brazilian Constitution, and the duties of the Federal Land Administration was established in the 1st article of Law 9.636/1998 [8]. Considering the great area throughout the country owned by the state, and the lack of human and technical resources to manage it, the establishment of partnerships with educational institutions, through the decentralization of credits among federal public administration units, has become increasingly promising, especially for projects of great social relevance. This is the case, for example, with the land tenure regularization of the settlements occupying the National Historical Park of Guararapes.

The goal of this project is to provide the FLA the technical instrumental for the land tenure regularization of the settlements in the park, occupying state-owned land. In a broader framework, the project includes community mobilization and participation, contributing to democratic management of the whole regularization process, with a sustainable perspective.

Therefore, there are other goals such as:

- . Integrate the academic field and the several institutions responsible for the implementation of public actions that interfere with this regularization process, namely the FLA, the IPHAN, Municipality of Jaboatão dos Guararapes, the Brazilian Army, among other;

- . Promote a practical learning opportunity for the enrolled students, allowing them to experience situations probably forthcoming in their career, in addition to a hands-on relation with the beneficiaries of this specific type of project;

- . Provide the academic environment (middle) with actual evidences and information from a real case, to strengthen investigation on the same theme and alike;

- . Develop and apply a planning process aimed at land tenure regularization of informal urban settlements, in attention to the principles of sustainable and democratic management, to enlighten and seek effectiveness for the issues raised by the academic field.

The relevance if this work relies on the opportunity to combine meeting demands from the public interest, related to the responsibilities (competence) of the related institutions, with shortening the distance between University and Society, then strengthening the learning process within the academic environment.

The advantage of a partnership with universities for conducting such a project, compared to a private contract framework, relates to the rigorous way their work is conducted, as well as its aimed social concern in its actions. On the other hand, such a partnership requires longer timeframes, considering only professor and students are involved in the project and, therefore, also committed to their academic duties.

At the bureaucratic level, the partnership project like this is formalized through a Cooperation Agreement. In the case of the land tenure regularization plan of informal settlement on state-owned land within the PHNG the Cooperation Agreement was signed by the FLA and the Federal University of Pernambuco. According to the Decree N°6.619 from 2008 [9] that defines “cooperation agreement” as a “tool through which is set the credit transfer from the direct public federal administration, autarchy, public foundation or state-owned agency, to other federal agencies or bodies of the same kind”. This procedure is known as “external credit decentralization” (external because it is held between different administrative structures), towards the “budget decentralization” established by the Decree N° 825-1993 [10].

Despite numerous practical advantages that such a procedure is for the decentralized body, which is the case in reference to SPU, one cannot lose sight of the fundamental principle governing the formation of these partnerships is the interest of both parties in developing certain projects. That is, the purpose is not solely in the implementation of technical work by the team composed of members of the university, but in constructing the teaching and research of knowledge of reality addressed through the broader concern of how the process is underway.

The specificity of the situation that takes crafted in Guararapes National Historical Park, in turn, provides elements of great wealth for an integrated urban, physical, socioeconomic, environmental, historical and land aspects study should subsidize the project to regularize the area.

Considering also that the promotion of regularization of urban settlements is a playing field that requires a perspective of interdisciplinary approach and whose legal contours were defined only recently, with the enactment of Federal Law N° 11,977 of 07 July 2009 [11], means that practical experience in this field holds great potential to enrich both the training of staff involved, by the related institutions, and for the training of university students, but also for the development of academic studies and theoretical reflection in this area.

IV. A PACT TO REGULARIZATION

The National Historical Park Guararapes integrates in your area tip-over consolidated around federal property in low income and therefore subject to regularize illegal occupation [12].

This led the management of the park, by the IPHAN, facing the dilemma between preserving cultural and environmental heritage and / or maintain the poor in place of high symbolic and historical value.

The resistances of the managing agency for the maintenance of the population were numerous, and the residents of the area communities, experienced serious constraints, the constant threats of expulsion. In fact, the preservationist culture focused on heritage assets, prevailing ideology in Brazilian public, prevents the acceptance of any threat to its destruction, which somehow justified, given the importance of maintaining the cultural heritage of the nation. However, the dilemma between the dimensions of preserving and maintaining the social function of property is no easy solution, even considering the possibilities introduced with the Law of Land Regularization.

Shares urban in character as is the case of regularization with the practices of cultural preservation in Guararapes National Historical Park are highly complex and differentiated solutions requiring proposals for regularization.

Normally the regularization is promoted in urban or rural areas which are not characterized by this kind of dichotomy, i.e., in urban areas devoid of this type of regulation of the use and occupation of preservation bias.

As mark Ribeiro and Guia [13], the Law N° 11.977/09 which sets out the policy of urban land regularization came to recognize informal settlements as the result of a historical process of unequal occupation

of the territory, which secretes the poorest excluding them the prime areas of cities where conditions of urbanization and location are privileged. This law defines land tenure as,

"Set of legal, urban, environmental and social measures aimed at regularizing informal settlements and the titration of its occupants, to ensure the social right to housing, the full development of the social functions of urban property and the right to environment socially balanced (Art. 46)" [13].

The Act also establishes the principles,

"Increasing access to land by the urban low-income population, with priority for their stay in the occupied area, provided the appropriate level of habitability and the improvement of urban, social and environmental sustainability (I, Art. 48)" [13].

That said, it is established according to the Law, that settlements consisting of irregular settlements can be regularized, subject to urbanization through the provision of infrastructure and public services through its residents to have guarantee of the right to housing. In these terms the Urban Plan for these settlements should have guidelines as the quality of the physical, environmental and cultural spaces, providing for the establishment of facilities likeschools, health centers, crèches, etc. to enable the object regularization communities living conditions so that these neighborhoods can actually be included into the formal city.

This law also determines the regularization of social interest as that intended to "occupied squatter settlements, predominantly low-income population, where": c) "areas of the Union, States, Federal District and municipalities declared interest for implementation of projects for regularization of social interest" (Paragraph VII, Article 47) [13].

Even with these favorable assumptions, the legislation governing land use regulation is silent when it comes to historical assets and the juxtaposition of their instruments does not account their specificities when treating the limits of preservation.

Thus, it can refer the issue of conflicts of governance in the management of heritage property, whether in the case of land in the EU, is when you put on the agenda of democratization areas of historic preservation for the purpose of regularization.

It's about this dilemma experienced when Extension Project: "Plan of Land Regularization of the Settlement Housing Area Domain Union National Historical Park Guararapes - EP", which we intend to address in below.

V. CONFLICT GOVERNANCE: LIMITS FOR DEMOCRATIC MANAGEMENT

The (social and political) institutional governance arrangements that guided the relationship between the actors in the Extension Project: "Plan of Land Regularization of the Settlement Housing Area Domain Union Guararapes National History Park - PE" involved, as well SPU, IPHAN, the City of Jabotão Guararapes, the Community and UFPE.

Although cordial relations have been a hallmark of interaction between the actors mentioned, in practice some conflicts must be disclosed, in view of a better understanding of the difficulties that accompany the management processes and procedures for regularization.

Reports highlight the fact that the structures of the administrative machine that characterize the institutional spaces of these organs in the broadest sense. The level of complexity of the relationships between professionals and managers, disability agility in dealing with anything published on behalf of the bureaucracy, the poor level of training for the purpose it was intended design, centralization of decisions, coupled with a lack of articulation among its constituent spheres.

The aforementioned factors directly affect the execution of the project and continue jamming its implementation, after completion of the procedures of an academic nature that served as a guide for preparation

of the Urban Plan of the stream Balaio, the example of the cartographic, socioeconomic survey and the completion of the mobilization social.

Conflicts of governance see permeating the interests of managers who lead isolated the direction of institutions, making the process of regularization of the said locality, has not happened yet. The need for authorization from IPHAN non-approval by the municipal legislature, the decree will establish the area as ZEIS, lack initiative of the City to expedite the allocation of resources, which will enable interventions in the area, and low community mobilization, are among other factors that have stalled the completion of the regularization process.

The part of the contractor agency monitoring the development of the project was done satisfactorily, through participation in technical meetings with the staff and the community UFPE, seminars and national meetings attended SPU Brasilia. The same cannot be said for the City Hall and IPHAN, whose degree of involvement was limited to attendance at meetings and seminars. Technical visits to the area, in moments where community contact was essential, the majority were restricted so UFPE team, with whom the community had a very positive level of interaction.

On the other hand, self-criticism should be taken by the staff who coordinated the fieldwork and the preparation of final products delivered to SPU. A deficiency felt concerns the fragmented way the project was designed in a way, each team led automata way of preparation of the result of the work, despite efforts to seek the joint field work.

By the Community fragile level of mobilization and participation of the population can be appointed. The few associations present in the two areas are configured by the presence of pelages representations which maintains links with councilors and has low activity in the locality.

Even considering those weaknesses Community interest around the project was quite intense, representations of residents having been elected at the level of blocks that formed the basis for the registration and socioeconomic surveys. This awakening occurred participatory taking into account the role played by design in the mobilization process, which occurred on a frequent basis at times when the project was being run, culminating with the delivery of the community Balaio the Urban Plan.

From the above we can conclude that the procedures for regularization require mediation of different interests ranging from agreement among the actors to initiatives that directly relate to the regularization of housing for low-income population; the management of federal property as a public resource and, in addition to those that underlie the need for integration of irregular areas, and sometimes degraded, the urban fabric of the city as well as its residents with the benefits that will guarantee them their rights as citizens.

VI. CONCLUSION: CHALLENGES FOR LAND REGULARIZATION OF SOCIAL CONFLICTS OF INTEREST FACING ORDER HERITAGE

Table captions appear centered above the table in upper- and lower-case letters. When referring to a table in the text, no abbreviation is used and Table is capitalized. In ancient times the area that now houses the National History Park Guararapes became the scene of a great battle that would have unified the people who constituted the origins of Brazilian nation (Portuguese, African descent and indigenous) for the restoration of threatened national sovereignty the Dutch occupation, it can be stated that in more recent times, this area became the stage for new battles, with more evidence of the battle for the right to housing. Long, were on opposite sides of this battle Those Who Defended the permanence and consolidation of dwellings on site, on one side, and on the other, those who claim the necessity of preserving the attributes que Carried historic and scenic values of the park, the understanding que such intentions were incompatible. The que perspective we have today, However, with the implementation of the regularization of existing settlements in the park process is the reconciliation of interests. That assets owned by Union (public resource, therefore belongs to everyone), to be shared between its current owners, who are the de facto occupants of the area, consistent with the integrity, preservation and enhancement of the heritage culture of the nation, Represented by the Park.

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