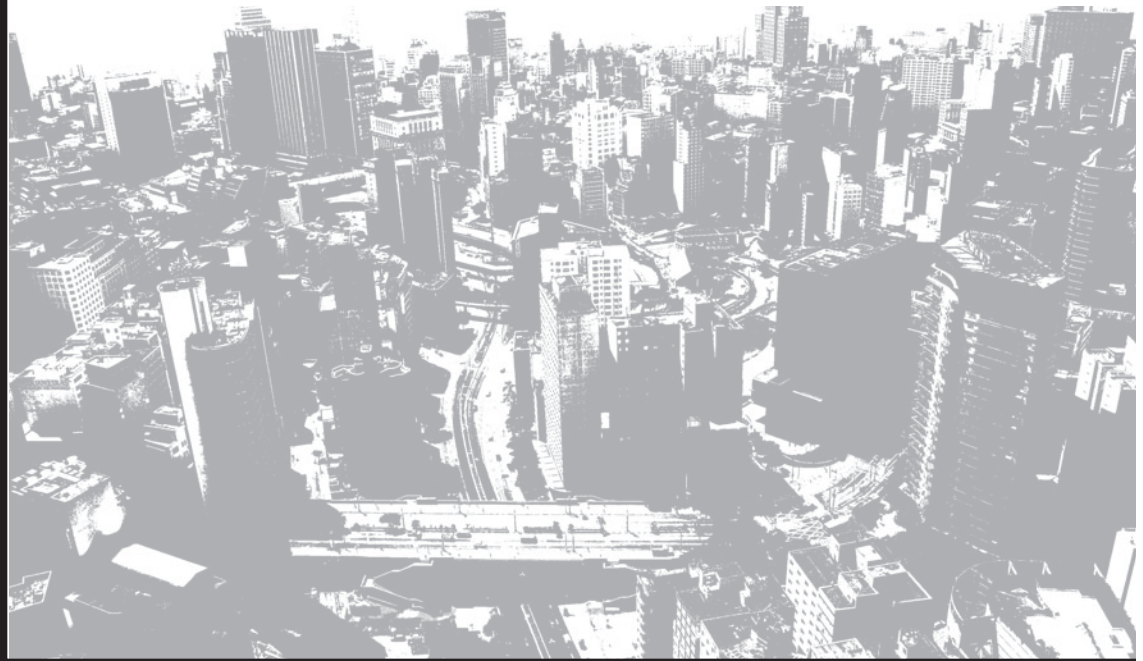




The City Statute of Brazil

A commentary



Cities Alliance
Cities Without Slums

Nacional Secretariat
for Urban Programmes

Brazil
Ministry of Cities

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Foreword

With their urbanisation transition virtually complete, many Latin American cities have been increasingly responding to the challenge of overcoming a legacy of decades of social exclusion.

In Brazil, years of pressure by social movements have pushed the issue of urban access and equity to the top of the political and developmental agendas. Confronted with the divisions created by one of the most unequal societies in the world, Brazil's response was to change the Constitution in order to bring about long-term fundamental reform of the urban dynamic. As a result, the key frameworks of this new legal-urban order are now enshrined in the 1988 Federal Constitution and Law No. 10.257 of 2001, known as the City Statute.

National and city governments are now responding to the deep social and spatial divisions that characterise Brazilian cities and, indeed, cities of all sizes in many parts of the world. Wealthy neighbourhoods benefiting from modern infrastructure, open spaces, cultural and sporting amenities, coexist with marginal settlements and vast slums, with little or no infrastructure, insecure tenure, and with their inhabitants exposed to the disastrous effects of extreme weather.

For many years, only parts of Brazilian cities attracted the attention of planners, services provided by the city authorities and an unfair share of local budgets.

The Brazilian Government signalled its intentions by creating the Ministry of Cities in 2003. The new Ministry was given the responsibility of helping states and municipalities to consolidate a new urban development model embracing housing, sanitation and urban transport. Within the Ministry, the National Secretariat for Urban Programmes was charged with supporting the implementation of the City Statute.

2003 was also the year that the Ministry of Cities led the way for Brazil to become the first developing country to join the Cities Alliance. The present publication, prepared jointly by the Ministry of Cities and the Cities Alliance, is a first attempt to provide an account of the experiences and concepts guiding Brazil's effort to overcome urban inequality. The centrepiece of these efforts is the City Statute, a unique ground-breaking legal instrument conceived by the widespread urban reform movement in Brazil.

We hope that this publication will make a positive contribution to the debate concerned with achieving balanced, fair and wholesome cities for all.



Marcio Fortes

Ministry
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Billy Cobbett

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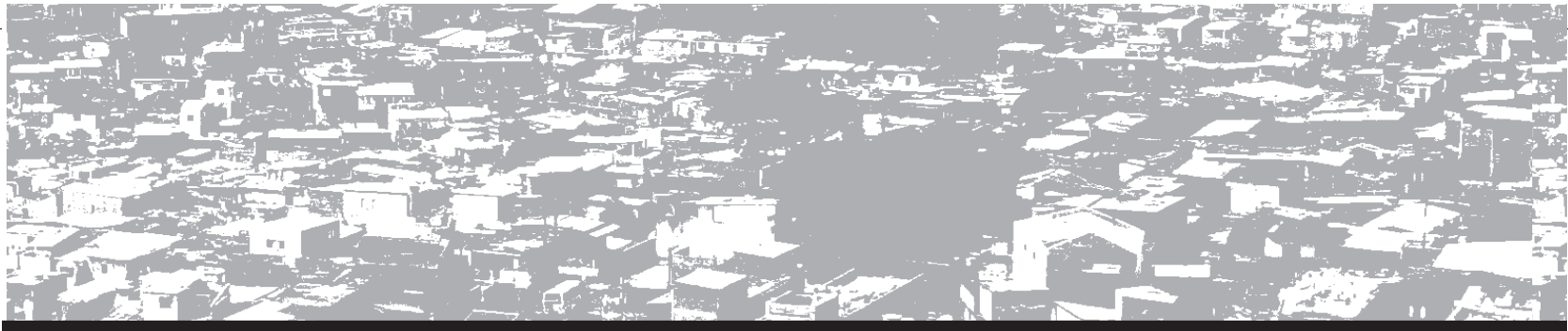
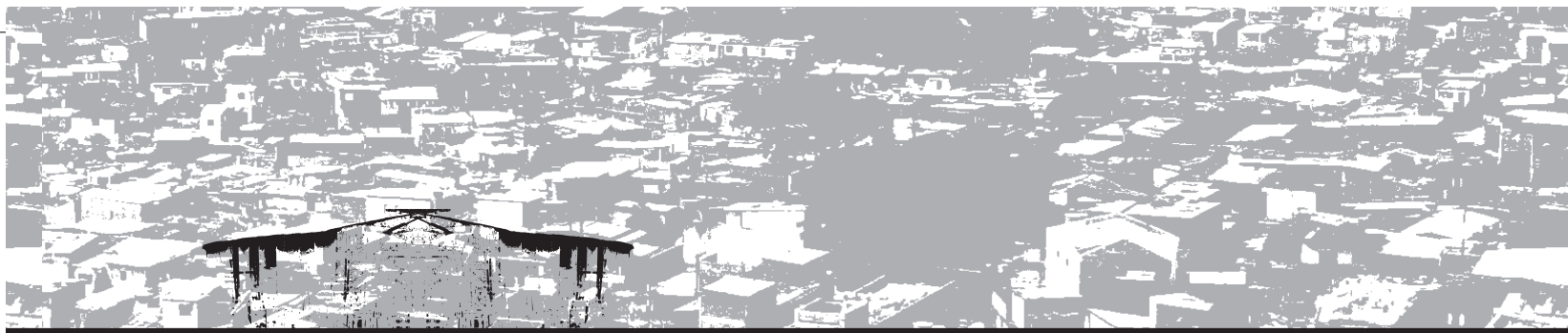


Table of contents

The Statute of the Peripheral City	5
Ermínia Maricato	
Popular movements and the City Statute	23
Evaniza Rodrigues	
Benedito Roberto Barbosa	
The City of Diadema and the City Statute	35
Mário Reali	
Sérgio Alli	
The City Statute and the legal-urban order	55
Edesio Fernandes	
City Statute: Building a Law	71
José Roberto Bassul	
Commentary on the City Statute	91
(Law N° 10. 257 of 10 July 2001)	
Ana Maria Furbino Bretas Barros	
Celso Santos Carvalho	
Daniel Todtmann Montandon	
Authors	119





The Statute of the Peripheral City

Erminia Maricato

The City Statute (Federal Law Number 10.257), approved in 2001, is justifiably highly regarded in many countries throughout the world. The unique qualities of the Statute are not confined to the high quality of its legal and technical drafting. It is widely regarded as a crowning social achievement which took shape gradually in Brazil over a number of decades. The history of the City Statute is basically an example of how a large number of stakeholders from different sectors of society—citizens' movements, professional bodies, academic institutions, trade unions, researchers, NGOs, parliamentary representatives and progressive town mayors—pursued a concept of this type for many years and saw it come to fruition in the face of adverse circumstances. The Statute seeks to bring together, in a single text, a series of key themes related to democratic government, urban justice and environmental equilibrium in cities. It also highlights the gravity of the urban question, ensuring that urban issues occupy a prominent position on the national political agenda of Brazil—now a predominantly urbanised country that was essentially rural until relatively recent times.

The present paper makes no attempt to focus solely on the excellent qualities of the text of the law while disregarding the constraints and drawbacks that are part and parcel of its practical application. While many cities in the developing world share problems similar to those experienced by Brazil, the City Statute is far from being a universal panacea applicable to every situation. On the contrary, the primary goal of the paper is to draw attention to the complexity and many contradictions germane to the application of the law in Brazil.

The essential legal provisions contained in the Statute's text are not sufficient to resolve the structural problems of a historically unequal society in which people's rights, such as their 'right to the city' or to legally sanctioned housing, are not yet assured for the majority of the population. In some of Brazil's largest cities, the majority of the population still lives in informal housing that is not subject to urban planning rules or laws, in neighbourhoods that have been built with no formal intervention by architects and engineers, and without access to housing finance. The net result has been a takeover of urban spaces by people whose only option has been to construct and inhabit substandard dwellings that are by their very nature highly precarious. It is widely known that Brazil is not the only country in which such conditions are prevalent, as indicated in reports issued by UN-HABITAT¹. It is indeed possible that the situation of the majority of households in urban areas throughout the world follows the same pattern: large numbers of poorer people crowded together in what amount to 'non-cities' that lack the kind of infrastructure found in conventional cities and, in many cases, much-needed urban services, equipment and public amenities.



1. See the following UN-HABITAT publications: *Cities Without Slums* (Global Report on Human Settlements, 2002); *Cities in a Globalising world* (Global Report on Human Settlements, 2001). www.unhabitat.org

Applying the City Statute in this kind of culturally excluding, traditionally conservative context is no simple task, particularly in societies that are generally known as emerging, undeveloped, developing or peripheral, where political and social power is firmly associated with property ownership.

Throughout the history of humanity, access to urban or rural land has been an important topic. Access to land in poor societies that are undergoing the process of urbanisation is particularly crucial. This is the key question addressed in the City Statute. We shall attempt below to explain the importance of the City Statute in the construction of more just and environmentally balanced cities, while at the same time giving an unbiased account of the conflicts arising from its application in Brazil. We recognise that it would be ingenuous and pretentious to expect any law or plan to provide complete solutions to problems that are deeply historical and structural.

The City Statute deals with much more than urban land. With its holistic approach, the law covers the following areas: guidelines and precepts concerned with urban planning and plans; urban management; state, fiscal and legal regulation (particularly referring to landed property and real estate); tenure regularisation of informal properties; and social participation in the elaboration of plans, budgets, complementary laws and urban management, PPPs, etc. Bringing previously existing piecemeal laws together under the aegis of the City Statute, with the addition of new instruments and concepts, helps to facilitate a better understanding of the urban question. Most importantly, the Statute has led to the introduction of a genuinely national approach to dealing with the problems of cities. While more than eight years after its promulgation certain judges continue to ignore the Statute—still considering private property as an absolute right with no regard whatsoever for its social function—such attitudes are less common, given that the presentation of the law in the form of an all-embracing Statute has made it easier to disseminate and be understood.

The 1988 Constitution, promulgated at a time when the social forces were engaged in Brazil's re-democratisation process, makes municipal authorities responsible for defining the use and occupation of urban land. The City Statute reinforces the autonomous and decentralising thrust of the Constitution. The concept of boosting the autonomy of local authorities resulted from the authoritarian overcentralisation of urban policy exercised by the military government in the dictatorial period between 1964 and 1985. Mandated by federal guidelines related to urban development and private land and real estate ownership, the municipalities were charged under the Constitution with the responsibility for urban planning and management as well as for settling the bulk of local land and property disputes.² Under the law referencing the need for municipal authorities to prepare and adopt Master Plans and formulate complementary legislation, the municipalities were also made responsible for earmarking underused or underutilised properties and for identifying and recording cartographically all properties in their areas liable to be subjected to the sanctions foreshadowed in the instruments introduced by the City Statute. Furthermore, municipal authorities would henceforth be in charge of, inter alia, deciding on public private partnerships and urban development operations as well as deploying a substantial number of the newly available fiscal and legal instruments. While municipal autonomy in this regard mirrors the relevant Brazilian legislation, it is obvious that effective application (or not) of the City Statute depends to a great extent on the correlation of forces within particular municipalities.³



2 The definition of the model of metropolitan management, a subject not well-regarded in Brazil, was included in the State Constitutions. On the other hand, the environmental area remained under the complementary and competitive aegis of the three federative levels.

3. Critics of this major decentralisation process should be reminded that in countries as large and geographically diverse as Brazil, cities have very different characteristics in terms of climate, society, culture, etc, and these local conditions need to be taken carefully into account. The rules regulating the right to property are established at the federal level, and their application is to a greater or lesser degree 'progressive' depending on the correlation of local forces.

Notwithstanding the holistic approach of the City Statute, the central theme of the law is the 'social function of property'. The law contains, among other things, provisions determining how urban property should be regulated, with a view towards preventing various commercial and other pressures from becoming obstacles to the right to housing for the majority of the population. The overall thrust of the law involves combating segregation, territorial exclusion and the prevalence of inhumane, unequal and environmentally predatory cities. Of course, the City Statute can be regarded as a 'universal utopia': control over urban land ownership and encouragement of the democratic management of cities to guarantee the right to the city and housing for everyone. While the French Revolution in the late 18th century predicated the utopian idea of breaking down the conflictive relationship between elite land ownership and serfdom to ensure widespread access to land rooted in individual private property holdings, in the 21st century the predominant utopian idea is to restrict individual rights to property in favour of the collective interest.⁴ In an increasingly urbanised world and with the rapid urbanisation process now happening mainly in poorer countries, the approach to land set forth in Brazil's City Statute merits close examination.

A number of questions must be answered in order to better understand this complex and controversial subject:

How does the City Statute consider and restrict the right to private property? How does the City Statute intend to regulate urban properties? What are the proposals for correcting injustice and environmental imbalances? How does the law ensure social participation in the management of cities? What role does the City Statute attribute to the different governmental levels of Brazil's federative structure?

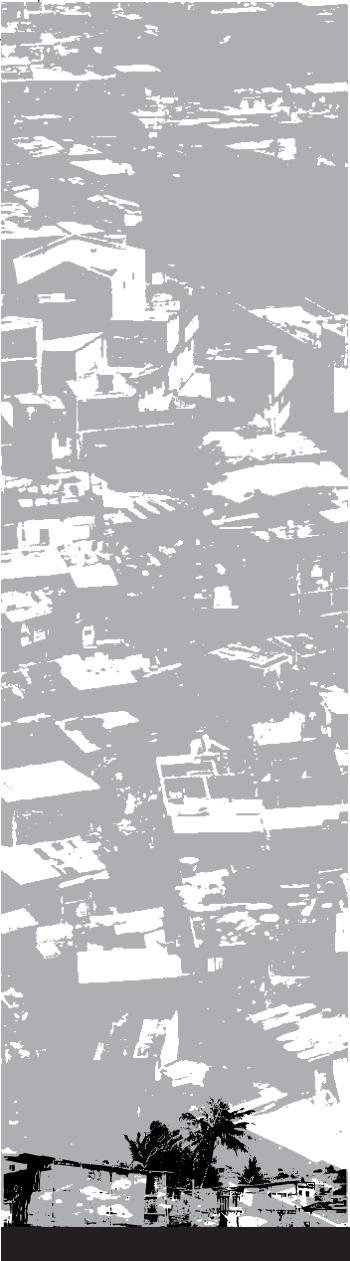
How was the idea formulated socially for limiting the right to property with a view towards subordinating it to a social role?

How was it possible that the historically conservative National Congress was enjoined to approve the City Statute in a socially unequal country such as Brazil? How was it possible that a patrimonial society in which political and social power is closely associated with inheritance, especially ownership of land and real estate, allowed such an advanced law to be approved?

How is the City Statute actually applied? What are the obstacles and drawbacks in its application? What has the impact of the City Statute been on Brazilian cities?



4.The French Constitution of 1791, preceded by the Declaration of the Rights of Man, refers to property as one of the "natural and imprescriptible rights of man" and as "an inviolable and sacred right". The U.S. Constitution of 1776 considers private property as one of the "essential and inalienable rights".



Specific characteristics of peripheral cities⁵

While some of these questions are answered in the following text, it is first necessary to examine a number of conceptual factors that are peculiar to the urban reality of countries expounding what we can call 'peripheral capitalism'.⁶ It is interesting to dwell on this aspect because a profound difference exists between cities in the developed world (predominantly the G-7 countries) and those in the developing world with regard to the regulation of urban space by the State as well as the size and influence of the private residential market. For this reason London, Paris, New York, Boston, Toronto and Tokyo are worlds apart from Mexico City, São Paulo, Rio de Janeiro, Mumbai and Johannesburg, for example. In the former group, the State exercises de facto regulation over the entire urban space in accordance with existing legislation (with some minor exceptions). In the developing world, the majority of the population invariably inhabits informal urban spaces that are segregated from the official, conventional or legal city and where urban laws and planning are not generally applied. Exceptions to this rule are extremely rare.⁷

In developed countries, the private property market satisfies the housing needs of the greater part of the population while a minority, depending on the country, requires government housing subsidies or some form of accommodation support. In Canada, for example, 30 per cent of the population is classified as living in non-market housing and require financial support from the government to resolve their housing problems. In Brazil and the peripheral countries, however, the exact opposite tends to be the case: 70 per cent of the population, including part of the middle-class, has to survive outside the legal private property market and requires subsidising.⁸

One of the features of peripheral cities is the existence of a limited 'formal' or 'legal' market frequently offering luxury housing products to a small minority of the population. The profits engendered by speculative property activities occupy an extremely important place in this market. They tend to not only drive up the prices for the more desirable types of property, but also unleash a competitive stampede for available land. Holding back vacant land is a built-in feature of this model that combines luxury property, speculation, high profits, an absence of social policies on a significant scale (i.e. going beyond the much fêted 'best practices'), a severe housing scarcity for the majority, segregation and widespread occupation and construction informality.⁹

5. Cities throughout the world undoubtedly need to be categorised by taking into account their differences. In the present text, cities will be described as either "peripheral" or "developed" (the latter belonging to so-called "central" economies).

6. In this text we employ the denominations generally applied by international institutions roughly to denote the level of development of different countries throughout the world. Our approach to this is not academically rigorous. We acknowledge that the following classifications are in no sense neutral: 'developed' or 'developing countries'; 'central' countries, 'semi-peripheral' or 'peripheral' countries; 'emerging' or 'poor' countries; and countries of the "Southern/Northern" hemispheres.

7. Many of the statements here are based upon empirical observation and bibliographical research, as well as the result of consultancies and research activities undertaken by the author in cities around the world. However, most of this information refers to the Brazilian urban universe, and generalisations should be regarded with caution.

8. The renewal of housing investment by the Federal Government in Brazil from 2004 onwards (relatively stagnant since the 1980s) introduces important changes, e.g. a new programme has been launched aimed at constructing a million homes (the Minha Casa, Minha Vida programme). This reinforces the quest for an anticyclical approach in response to the economic crisis which commenced in September 2008. Present indications are that the legal private property market is expanding in order to satisfy the needs of what can be termed the 'middle' and 'lower middle' classes. In Latin America massive housing production has taken place in, for example, Chile (in the 1990s) and, more recently, in Mexico.

9. We argue that 'segregation' and 'informality' are not spontaneous but are the product of a traditional process of production which mirrors and reproduces the characteristics of an unequal society. It is worth remembering, however, that the State often takes it upon itself directly to generate segregation or urban exclusion either by employing legal regulation as in South Africa (with apartheid) or by removing favelas from commercially valuable areas in the cities to more distant outlying districts on the fringes of the "formal" city, as in Brazil.

Housing shortages, fragile land, illegality and crime

One of the main results of the lack of legal housing alternatives (i.e., housing regulated by urban legislation that forms a genuine part of the conventional city) is the occupation of environmentally fragile land. Those excluded from the formal property market and the few existing public housing programmes often have no alternative but to occupy environmentally fragile areas such as river banks, steep and unstable hillsides, floodplains, mangrove swamps and headwaters protection areas. These areas are occupied not as the result of a shortage of plans or laws, but as the outcome of a lack of other housing alternatives for the low-income population. In some large Brazilian cities such as São Paulo and Curitiba, the areas that have spawned the most illegal housing occupation over the last 10 years have been the Headwaters Protection Areas, which supply potable water for the cities and where human occupation is outlawed but nevertheless continues. These vulnerable areas, protected by environmental legislation, are of no interest to the legal private property market and are effectively left over for occupation by the poorer segments of society.

The main forms of precarious housing result from clandestine and illegal subdivisions or from land invasions which eventually give rise to favelas. While the proliferation of tenements (cortiços) and dilapidated rented rooms in central areas of the cities or elsewhere (varying in number from city to city) tend, in contrast to the favelas, not to house the same very large numbers of people, they certainly need to be taken into account when downtown areas of cities are being rehabilitated. A special concern is to avoid their low-income inhabitants from being expelled during major urban upgrading programmes.

Considering the number of favelas—and their occupants who are obliged to invade land to satisfy their accommodation needs—it is obvious that the massive invasion of urban land has been widely consented to by the State in developing countries, with blatant disregard for planning laws and environmental protection considerations. Such invasions are not particularly instituted by ‘reformist’ movements, but are driven by the lack of housing alternatives for the people concerned. Since everyone needs a place to live (given that is impossible to reproduce and raise a family without a roof over one’s head) this conformity with the illegal occupation of land—of course not admitted officially—operates as a safety valve which in reality aids flexibilisation of the rules. It should be added that this effective consent and rule-bending only occurs in areas that command low commercial value in property market terms. Thus it is the market, rather than the law and the various associated judicial norms, which defines where poor people can live or invade land for housing purposes. In short, a perverse relationship exists between the market and application of the law.

In the large and medium-sized cities, rivers, streams, lakes, mangrove swamps and beaches have increasingly become the channels or depositories for domestic sewage. In Brazil, 34.5 million people in the cities have no access to formal sewage networks. If the households who must rely on septic tanks to dispose of sewage are also taken into account, half of Brazil’s population is without access to proper sewage disposal. Furthermore, 80 per cent of the sewage that is collected is untreated and finds its way into the watercourses. At present, there is more domestic sewage responsible for polluting the country’s water resources than industrial effluents.¹⁰

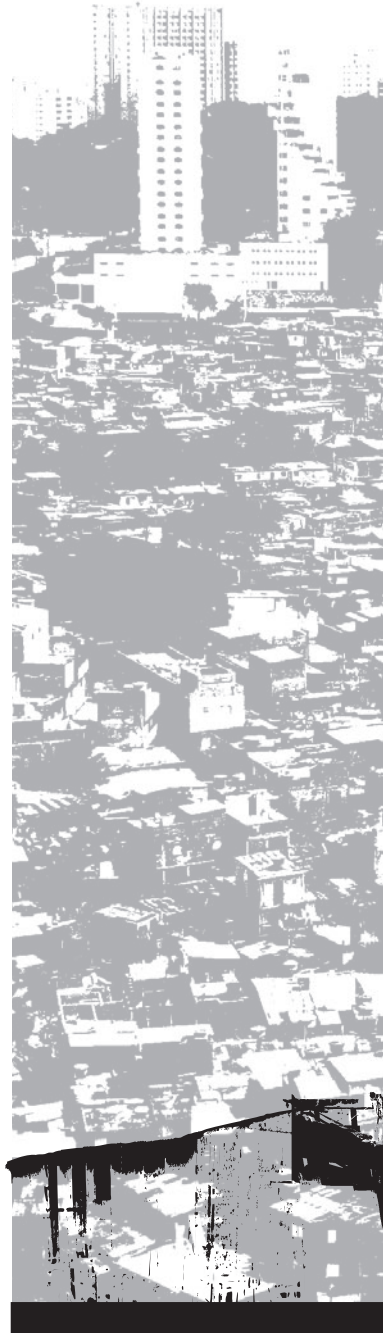
10. This data was produced by the Institute for Applied Economic Research (IPEA) for 2009 based upon sources from the Brazilian Institute of Geography and Statistics (IBGE), both bodies funded by the Brazilian Federal Government.



The dearth of planning laws would appear to go hand-in-hand with a generalised absence of interest in the subject by tribunals, courts, lawyers, etc.—all of which could be deployed to resolve disputes and guarantee social, civic and human rights. Lax public authority controls and the non-existence of a social contract forces uniformly poor neighbourhoods into accepting their status as ‘no man’s land’ where the concept of ‘survival of the fittest’ predominates. In this respect, the increasing number of homicides and the proliferation of organised crime in large cities in the developing world over the last 30 years are understandable. Some neighbourhoods dominated by parallel powers suffer from a concentrated mass of social afflictions which give the impression that everybody and everything is excluded. In such socially and environmentally vulnerable neighbourhoods we see, apart from illegally occupied urban land and high levels of crime, a disproportionate number of female heads of household, a very high level of unemployment, a substantial proportion of black people, educational levels and average incomes well below the urban average, high rates of infant mortality and the frequent occurrence of disease. These areas are in reality socio-ecological time bombs, where the inhabitants are subject to no type of ‘social contract’ and where it is difficult for the public authorities, including the police, to enter without hindrance.

Roots of the peripheral society

It is a frequent error to assume that these peripheral cities are simply lagging behind cities in the developed world and that substantial administrative efforts and favourable governability conditions are the answer to closing the gap between them. There is no shortage of recipes proffered by international agencies and consultants from the northern hemisphere countries in a bid to help solve this problem. While certain city governments can, under specific political and economic conditions, ameliorate the disadvantages suffered by poorer cities, it is clear that it will never be possible to put them on an equal footing with cities in the developed world by employing first-world recommendations and thus confirming their subordinate, dependent status. The underlying reason is that cities in the developing world are ‘structurally’ different—they are not simply at a different stage of development. The contrast between the ‘traditional’ and the ‘modern’ in such places is glaring. In the peripheral cities, the lack of proper sewage facilities (and frequently even food) contrasts sharply with the plethora of electronic gadgets, cable TV and upmarket training shoes owned by many slum inhabitants, as can be seen in the favelas of Rio de Janeiro and São Paulo. A type of ‘pre-modern’ lifestyle (e.g., self-built housing surrounded by overflowing domestic and other waste) continues to exist cheek-by-jowl with a ‘post-modern’ lifestyle benefiting from the spread of modern communications. In 2005, for example, 163 million people in Brazil had access to colour television while 123 million (32 per cent less) had zero access to a sewage collection network or even a simple septic tank (IBGE/UNDP, 2005).



The features of a consumer model prevalent in the hegemonic nucleus of countries have indeed penetrated the hearts and minds of the greater part of humanity living in poverty, thereby undermining the prospect of forming a society as an endogenous construction.

As mentioned above, contrasting technological standards are a marked feature of urban peripheral society in our cities, where the process of incomplete modernisation embraces 'modernising' elements, while at the same time signs of backwardness are everywhere. This is a manifestation of the type of capitalism during the period of 'late industrialisation' that was characterised by low salaries and predominantly informal labour relations. While there is no guarantee that minimum standards of living will emerge from the advent of modernity (social welfare, housing, education for all, basic sanitation, etc.), it is clear that the already precarious living conditions in peripheral areas are under pressure from market forces in terms of guided consumption of high-tech products which could be termed non-priority and superfluous. The power of designer labels and the impact of relentless publicity stimulate new needs, with the values associated with conspicuous consumption penetrating the empty lives of poor adolescents. Meanwhile, the work ethic has not been sustained given that the supply of jobs (even in the informal sector) has failed to keep pace with the expansion of the so-called economically active population, especially during the final decades of the 20th century and at the beginning of the 21st.

These years have been marked by the spin-off effects of neoliberal globalisation that have failed to eradicate poverty; on the contrary, they have given rise to deepening inequalities in the peripheral cities. With the term globalisation, we are referring to the international expansion of markets boosted by major technological change (a structural movement) fuelled by a host of concepts that can be traced back to neoliberal ideology: primacy of the market, a weakening of nation states, the retreat of social policies, increased privatisation and outsourcing of public services—all leading to a surge in unemployment and crime.

The root causes of this situation can be traced back to the time of the colony and later to the yoke of imperialism: international capital linked to local elites with self-serving, mutually-beneficial interests which over centuries resulted in the exportation of the wealth produced in the dependent countries, the utilisation of cheap or slave labour (thereby inculcating a culture of disdain for work and workers), the economic power wielded by large landed estates, and the stifling of internal markets. Whether through dependence on exporting primary products, the process of late industrialisation or the recent lacklustre adhesion to the globalised financial system, history has highlighted the persistent lack of political autonomy and the fragility of internal markets—which, if corrected, could have produced a pattern of more inclusive social and economic development.

This theme will not be developed here. The aim above has been simply to show that some countries around the world have much in common. This commonality could lead them to engage in a fertile dialogue, although it is obvious that the specific characteristics of cities and local social circumstances are unique and need to be addressed accordingly.



Reasons for hope: proposals in tune with reality

The purpose of these critical observations is not to undermine the confidence of readers with a message of utter despair. On the contrary; the idea is to show that only by analysing the situation scientifically can we arrive at specific and suitable proposals for dealing with it. For example, knowledge of the real situation of each individual city (facing up to so-called 'urbanistic illiteracy') can indeed serve as a kind of vaccine to cure ideas that fail to reflect local realities¹¹. The influence of the kind of urban thinking peddled by northern hemisphere countries and the importation of urban planning and management models has only served to divide our cities into 'included' and 'excluded' segments, where the existence of veritable first world ghettos benefiting from detailed zoning arrangements and displaying fashionable architecture produced by the local formal property market is evident. At the same time, we are faced with the 'informal' city constructed predominantly by its occupants with their scarce financial resources. The existence of these areas is not freely admitted by city authorities, and the majority of the informal neighbourhoods are not even marked on local maps or registered in official cadastres and other documents. Naturally, most cities make an attempt to highlight to outsiders the attractions of the areas that display first world standards rather than drawing attention to the favelas.

The peripheral city is characterised by cultural imitation strongly influenced by the hegemony exercised by the developed countries based on the power of the various communication vehicles, the academic output of universities, and principally as a result of international market expansionism. Peripheral cities are highly unlikely to be nerve centres for developing knowledge, and it has proved difficult for people living in them to gradually accumulate and use knowledge based on their own experiences, given that these have suffered frequent interference from external sources. Urban management tools copied from abroad do not take into account the reality of the cities where a large part of the population—often the majority—finds itself excluded from the private property market and the benefits of legal housing occupation, in addition to lacking even the minimum acceptable urban amenities. The Master Plans, and especially the zoning laws, fail to take into account that in the peripheral city, the private residential market only meets the needs of a small percentage of the population, and that problems exist which do not attract, for example, the attention of urbanists and architects employed by prestigious American universities. The absence of endogenous development and proper planning means that existing social realities need to be focused with a view towards strengthening the internal market. This is one of the major problems that can be brought under a degree of control, although it is evident that such problems cannot be totally overcome locally or nationally since market expansionism has become a global phenomenon. Our suggestion here is to not only develop proposals that are not only in tune with the in loco situations encountered in the peripheral city but to put forward those that can help to prevent cultural and technical dominance from outside. This idea tends towards the utopian; we are aware that the many conflicts existing in such areas will not disappear overnight, since it is increasingly impossible to sever the link between endogenous and exogenous social structures. However, working towards concrete solutions of a social, economic, political, cultural, urban and environmental nature constitutes a step in the right direction and permits us to separate the 'real' from the 'ideological' situation with regard to the characteristics of different societies.

11. "Ideas from outside" is the expression used by the Brazilian writer Roberto Schwarz to describe ideas generated on the basis of the production methods of developed countries which are transferred indiscriminately for application to situations in the peripheral countries. Example of this was the introduction of liberal European ideology to slave-owning Brazil in the 19th century. The cultural, political and artistic world to which the élite were accustomed was theoretically rooted in liberalism, but the basis of the real economy was in fact slavery.

One example which has proved that these drawbacks can indeed be overcome has been the introduction of favela upgrading. Urbanisation or urban/social upgrading in the favelas can be beneficial for favelas that are well established in the city and where their occupants have access to jobs as well as to services and public community amenities in the surrounding neighbourhoods. The methods and techniques of favela improvement have developed satisfactorily and have been increasingly fine-tuned over the years in the peripheral countries. Contrary to popular belief, this practice can be seen as a major environmental as well as social rehabilitation intervention, since most favelas are located in environmentally fragile areas. Favela upgrading is an example of urban planning that follows the pattern of endogenous development despite having been recommended by international development agencies over the final quarter of the 20th century. Allowing favela inhabitants to remain in situ in well-located areas in the cities rather than removing them to remoter places was certainly a social achievement in Brazil and the result of a great deal of struggle on the part of the favela communities—not simply a response to external recommendations. Until the beginning of the 1980s, favelas were officially treated as a public order problem rather acknowledged by the authorities as homes in which the majority of their inhabitants were in fact working people (in many cases, such as in São Paulo, they worked in the motor vehicle plants). The low salaries paid to Brazilian industrial workers explain why workers in industries that were considered to be advanced up to the 1980s lived in favelas. The predominant motif at the time, as it is now, was ‘industrialisation based on low salaries’. This motif effectively generated a concomitant process of ‘low salary-based urbanisation’, in which workers who were excluded from the formal housing market were forced to construct their own homes and even their own neighbourhoods. The setbacks of the welfare state, even in its peripheral version, and the increase in unemployment simply radicalised this situation in the 1980s and 1990s.

The great difficulty encountered at the present stage of favela policy is to guarantee tenure regularisation in such places as well their proper integration into the conventional city as a way of ensuring adequate road surface maintenance, garbage collection, street and public area cleansing, provision of public lighting, and to set construction standards with a view to avoiding the spread of insalubrious conditions and excessive densification.¹²

It can now be accepted that some progress has been made in the area of favela policy. At the same time, we need to acknowledge that transferring favelas from high-value urban areas to the fringes of cities in undeveloped countries has been a more frequent practice than consolidating these areas in central (or relatively central) urban spaces. In our opinion, based on empirical observation and personal information, a degree of ‘social cleansing’ is taking place as a result of property appreciation prices. Observing the reality of a number of Latin American countries, as well as India and South Africa, we are inclined to put forward the following hypothesis: while federal governments are keen to draw attention to their upgrading policies—which include the non-removal of favelas—other federative authorities continue to undertake activities which blatantly favour the private property market by, for example, removing favelas from high-value localities. In a number of cases such removals have incited violence

12. The consolidation of favela dwellers in specific urban spaces must also take into consideration geotechnical and environmental conditions in addition to the wishes of occupants. A large number of publications deal with the subject, particularly since the introduction of the Millennium Development Targets. In addition to GRHS – UN HABITAT 2002, see GARAU, P.; SCLAR, E. D.; and CAROLINI, G. Y. *A home in the City*. London, Earthscan, 2005. Brazil possesses a large number of bibliographical resources on this subject.



from the occupiers (as in Durban) and in others the land from which the favelas have been removed has been simply transferred to the private real estate sector (as in the case of New Delhi).¹³ There are plenty of cases where governments that have upgraded a few favelas as a political marketing ploy have resorted to wholesale removal when such areas acquire real market value (e.g. in São Paulo). Vicious competition for urbanised land or for prime city sites is common everywhere.

The struggle for urban land: a key topic for cities

More than ever, land ownership continues to be a contentious subject involving social conflict both in the cities and further afield. In patrimonial or oligarchic societies, land ownership tends to acquire great importance since political, economic and social power is closely involved at every level. With the advent of globalisation, the land question has tended to become more problematic throughout the world. Commodities such as mining products, cellulose, grains, meat, petroleum and ethanol have taken on a strategic importance in global markets, and as a result many millions of former country dwellers have migrated to the cities.¹⁴ This migrant (or in certain cases immigrant) population usually ends up in crowded favelas, since urbanised land is a scarce and precious commodity in the peripheral cities.

Land can possess a set of characteristics—such as urban infrastructure, accessible public and private amenities, a sea view, etc.—which are not reproducible, or not easily reproducible, and can to an extent be regarded as monopoly-inducing features. Attributes such as the urban legislation applied to a specific property influence to a greater or lesser degree the value of given areas of land. The advent of public or private investments made to a particular property can increase its price, and legislation which may or may not restrict occupation of a particular piece of land also influences its value. Meanwhile, the proximity of a favela obviously tends to undermine the price of nearby property. All of these examples demonstrate that when private property or land owners require an income from such properties, a bitter but silent struggle over the acquisition of urban space is common. Some fight for the ‘right to the city’ and others struggle for extra profit from largely speculative property-based activities. This situation is so predominant in the urban social context that poor property owners often object to favela dwellers occupying nearby land because they are aware of the negative impact that these can have on the prices of their own properties. Such property owners, albeit belonging to the same income bracket as the favela newcomers, take an antagonistic stand against the latter.



14

13. For an account of the violence used to remove the slums in Durban, see *Jornal do Brasil Online* of 12 October 2009 (statements by the NGO comprising occupants of the Kennedy Road Community). The information on Delhi was supplied to the author by a local government employee. In the case of São Paulo, the City Hall draws attention to its slum upgrading programmes, particularly for the benefit of visitors from abroad. But it also employs other tactics, including violence, to uproot and remove favelas (according to a number of different sources: the: Defensoria Pública do Estado de São Paulo, the Fórum Centro Vivo, etc).

14. The quest for arable land for growing food has become a highly profitable international business which threatens to expel millions of small farmers from their land in poor countries. According to the International Institute for Food Research, between 15 and 20 million hectares of land are being purchased in international transactions by countries or large commercial combines. The countries that have sold most land include Ethiopia, Ghana and Madagascar. See in this respect the Report of the International Institute for the Environment and Development (IIED), June 2009.

These disputes over the actual usage or exchange value of existing properties, and the efforts of land and property owners to ensure rapid price appreciation and profit from existing properties, are more contentious in the peripheral city with its scarcity of properly urbanised land (namely, land that is developed or serviced) and shortage of housing. Meanwhile, in cities in developed countries, regulation of urban land and property has traditionally been seen as more effective. Democratisation of access to housing and to the city, fostered particularly during the era of the welfare state, has made it possible to exert better control over both land and rent seekers. This has led to greater homebuilding and to an increase in access to land and property by social and trade union related movements.

The existence of idle urbanised land and the consequent horizontal extension of the peripheral areas occupied by a mass of poor dwellings has led to the rising costs involved in urbanisation and hence to its longer term unsustainability. The so-called ‘dispersed city’ has been the butt of criticism by urban planners the world over because of its dependence on motor vehicle transport (one of the main factors responsible for the greenhouse effect), soil impermeability, etc. On the fringes of the peripheral city we find a mixed and unequal ‘third world’ type of dispersion illustrated by the presence of very poor non-urbanised neighbourhoods sharing space with gated (or walled) communities built on predominantly American lines. This type of horizontal development, punctuated by vacant plots awaiting price appreciation, increases the costs of urbanisation in cities where budgets are constrained by the sheer weight and size of social needs.

In some cases, as in the cities of Brazil’s centre-west (Campo Grande, Goiânia and Palmas), vacant land possessing infrastructure (water, sewage collection, paving, public lighting) could accommodate more than double the population of the cities and would avoid forcing the larger part of the low-income population to live outside the established urban fabric. On the other hand, in the large metropolises—particularly Rio de Janeiro and São Paulo—the main problem is the large number of empty built properties. In both cities, making better use of such buildings could virtually solve the housing deficit. These properties tend to be concentrated in more central areas and benefit from proper infrastructure and the availability of customary urban amenities. The table below shows the substantial number of empty properties in some of Brazil’s largest cities (mainly concentrated in the older downtown areas).



Brazilian municipalities with the largest number of idle (empty and closed) domestic properties)

Municipalities	Total censused municipalities	Total idle and closed lots	% of total stock
São Paulo (SP)	3,554,820	515,030	14.5
Rio de Janeiro (RJ)	2,129,131	266,074	12.5
Salvador (BA)	768,010	98,326	12.8
Belo Horizonte (MG)	735,280	91,983	12.5
Fortaleza (CE)	617,881	81,930	13.3
Brasília (DF)	631,191	72,404	11.5
Curitiba (PR)	542,310	58,880	10.9
Manuaus (AM)	386,511	51,988	13.5
Porto Alegre (RS)	503,536	46,214	9.2
Guarulhos (SP)	336,440	43,087	12.8

Source: IBGE/ 2000 Census – Preliminary Synopsis

The social aspects of land and property in urban areas are of crucial importance in the quest for fairer and less environmentally predatory cities. The social function of property refers to the extent to which a property holder should be able to enjoy his property regardless of social deprivation and environmental degradation.

Placing restrictions on the right of private land and property ownership with a view to constructing fairer and less environmentally predatory cities is not a radical left-wing or even socialist proposal. In fact, we could say that it is a 'progressive' proposal given that it aims to eliminate the constraints imposed on increased housing production, either by the private real estate market or by the State itself employing forward-looking public policies. Retaining vacant idle land creates severe difficulties for a wide-ranging housing policy, since the State itself is often unable to acquire land easily for undertaking public programmes. These problems are not confined to housing. The high cost of land also has a negative effect on different public policy initiatives such as building green public areas, extending road networks, constructing social amenities such as schools, hospitals, crèches, community centres, etc.

Studies undertaken in São Paulo and Mexico City have revealed that the city authorities face enormous problems with the payment of judicial debts (and the large amounts of interest due thereon) resulting from past official expropriation of land needed for implementing public policies. Meanwhile, the restrictions placed on speculative profits tend to affect oligarchic and patrimonial interests much more than capitalist interests in the strictest sense of the word. At the same time, we need to acknowledge that the private residential market in the peripheral cities is rooted in a patrimonial approach to property.¹⁵

Introduction of the City Statute: the urban reform movement

The history of the City Statute goes back to the first half of the 20th century, as described in the paper by José Roberto Bassul. It was, however, many decades of contentious and hard-hitting debate involving clashes of divergent interests before the statute was to take shape. It is worth drawing attention to the establishment of the National Urban Reform Movement which succeeded in bringing together a series of social movements (housing, transport, sanitation), professional associations (architects, lawyers, public health specialists, social workers, engineers, etc.), trade union bodies, academic research entities, NGOs, members of the Catholic Church (emerging from the religious movement known as Liberation Theology), civil servants, progressive town mayors and parliamentarians. The year prior to the introduction of the new Brazilian Constitution in 1988 saw the creation of the Urban Reform Forum, which aimed to unify all the specific initiatives proposed by the urban movements which until then had been disorganised and fragmentary. The National Urban Reform Movement was in effect a rare example of a social movement that was able to assemble, and to gain the unanimous approval of, different sectors regarding priority issues concerned with urban policy. These issues were set out in an agenda that formed the basis of a proposal for a Popular Initiative Constitutional Amendment signed by 131,000 members of the electorate and submitted to the National Constituent Assembly. For the first time in Brazil's history, the Federal Constitution contained a chapter dedicated to the subject of cities, incorporating the social function of both the city and property.¹⁶



15. See the research done by the Housing Laboratory of the Faculty of Architecture and Urbanism (LABHAB) of the University of São Paulo: *The Price of Land Expropriations-Constraints on Public Policies*. 2001. www.fau.usp/labhab

16. The Popular Initiative for Urban Reform was presented by this author in the plenary of the National Constituent Assembly in 1987.

The housing movements, always in the majority in the Urban Reform Forum, began to concern themselves with the question of housing located in cities and to pay attention to the need for discussion of longer term requirements such as changing the parameters governing land and property in Brazil. Meanwhile historic awareness of the illegitimacy of 'idle property' was given prominence by the agricultural workers' movements which throughout Brazil's history had been opposed by large landowners (the so-called 'colonels'). The latter, with their private militias, had formerly held the power of life and death over their slaves, who were the majority of the labour force up to the end of the 19th century. Once the slaves had been freed, the poor white population that replaced them was obliged to depend on these same landowners for their survival.

The first proposal for urban reform in Brazil, defined in the 1963 Architects Congress, incorporated the concept of idle property as being unlawful in accordance with the stipulations of the Agrarian Reform movement. This proposal was essentially at the root of the City Statute insofar as it focused on the land ownership question as being the key to the radical changes needed by the country. The proposal also contained the seeds of a national body to direct urban and housing policy. Prior to the military coup of 1964, Brazilian society was mobilised around the 'Base Reforms', a set of proposals with a substantial popular bias that were drawn up by intellectuals, professional practitioners, academics, social and trade union leaders etc., dealing with key themes such as education, health, public administration and culture, as well as agrarian and urban reform.

The first stage (from 1964) of the military administration was marked by dictatorial repression of social and trade union movements, with a negative outcome for the 'popular sectors'. The second phase (1969) was directed towards recalcitrant opponents from the middle classes: students, journalists, intellectuals, teachers, deputies, senators, mayors, governors, etc. Exclusion from public office, torture, censorship and assassinations undertaken by the military regime had the effect of quashing reformist proposals not only from the agenda, but also from people's minds. Meanwhile the above-mentioned proposal by the Architects' Congress was incorporated by the military government, which transformed it into a technocratic, institutional and highly-centralised apparatus covering housing policy, transport and sanitation with no regard for the question of land and property ownership. Given the upsurge in construction of housing and sanitation systems resulting from this policy, we admit that it met its main aim successfully, which was to generate jobs. On the downside, however, the policy favoured the middle classes to the detriment of the majority of Brazil's population.

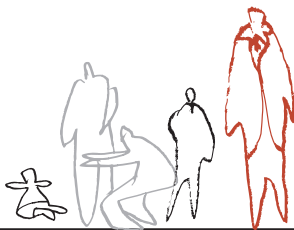
In the mid-1970s, the emergence of urban social movements clamouring for better living conditions took place at a time when political participation by society was still relatively restricted. The growth of these movements went hand-in-hand with the generalised call for political freedoms. It was against this background that the concepts of 'new style prefectures' and a 'new school of urbanism' eventually emerged.



Democratic prefectures and the new school of urbanism

With the return of the social movements to the political scene in Brazil (although still under the dictatorship), democratic experiences in municipal administration commenced with the election of progressive town mayors, with the exception of the capital cities where mayors were installed by governors who were in turn nominated by the military regime. A new era opened up in which many proposals prepared by the popular organisations and movements were put into practice. Architects, engineers, lawyers, social workers and geographers made it their business to draw up new programmes and new ways of managing cities on a democratic basis. These included sets of programmes aimed at upgrading and providing tenure regularisation of favelas, including new ways of ensuring security of possession of the properties therein; women's health programmes; urbanisation of outlying peripheral neighbourhoods; free legal assistance for poorer people; technical assistance provided by architects and engineers for resolving problems of individual or community housing; prevention and rehabilitation of geotechnical risk areas; provision of condominial sewage facilities; furnishing prefabricated reinforced concrete components for infrastructure or community facilities; introducing new techniques for channelling water courses in the open air (avoiding covering them with concrete), etc. All these initiatives began to benefit from citizen participation in decisions made by the public authorities. When direct elections for the mayors of the capital cities was introduced in 1985 this dynamic was given renewed impetus with the appointment of a series of progressive mayors in large cities such as São Paulo and Porto Alegre.¹⁷ In this respect, the participatory budget process introduced in Porto Alegre was probably the most important manifestation of social control over municipal public funds during this period.

A series of key developments produced an atmosphere of euphoria and hope among the increasingly widespread militant popular movements which, after 24 years of severe repression, succeeded in raising once again the flagship theme of urban reform. These movements began to be deeply involved in discussing local policies in a bid to improve the responses to demands for better living conditions, to undertake unprecedented experiments involving social participation in a number of municipalities by contesting the ways in which public funds were applied, and generally to broaden the space for democratic freedoms by occupying urban land despite the authoritarian dictates that had been applied thus far. At a time when neo-liberal globalisation was beginning to lead to dismantlement of the welfare state in developed countries, Brazil experienced an atmosphere of great excitement and expectation.



17. See MARICATO, E. Fighting for Just Cities in Peripheral Capitalism. In MARCUSE, P. and others (org.) Searching for the Just City. London/NY: Routledge, 2009.

Despite ongoing pressure by the Urban Reform Forum, Chapters 182 and 183 of the Federal Constitution were given regulatory force by the National Congress only 13 years later in the shape of Federal Law No.10.257/2001, known as the City Statute. This provided a new legal basis for addressing the problem of urban property. From a formal point of view this new departure was not inconsiderable given that the 'right to property' in Brazil had previously been heavily constrained.

Following the election of Luis Inácio Lula da Silva in 2003 and the creation of the Ministry of Cities—which also formed part of the agenda prepared by the urban social movements—the stage was set for further progress in terms of responses to social demands.

In 2004 investment in housing and sanitation was renegotiated after almost 24 years of erratic development marked by the absence of investment and the suppression of public bodies that had possessed the skills needed to execute relevant public works. One of the rare exceptions was the State of São Paulo Sanitation Company (SABESP). In the same year, the Cities Council was created as a consultative body formed by social, trade union, business, academic, professional leaders, etc. Two federal laws were also approved which embraced the urban reform movement agenda: the Federal Law introducing the regulatory framework for Environmental Sanitation (overturning the prospect of privatisation in dispute for the previous 13 years) and the Federal Law establishing the National Fund for Social Housing. The latter conditioned release of federal resources to the existence of housing plans, councils and state/municipal funds.

These and other achievements showed that the correct road had been taken. Establishment of the Ministry of Cities, which the aforementioned Architects' Congress had called for in 1963, was given concrete expression 40 years later. This can be considered to be a significant victory and a sign that the old struggle is once again on track.



An urban policy for Brazil: achievements of the social movement

The first experiences with democratic local municipal authorities (prefectures) initiated in the 1980s were followed by the growth and organisation of urban social movements, as can be seen from the list below which contains the main social achievements over the past 25 years.

- 1987** Popular Initiative Constitutional Amendment subscribed to by six civil society bodies. Establishment of the Urban Reform National Forum comprising civil society entities.
- 1988** Promulgation of the new Federal Constitution with two chapters focused on the urban theme for the first time in Brazil's history.
- 1991** Promulgation of the City Statute Federal Law regulating the provisions of the 1988 Federal Constitution, especially the Social Function of Property.
- 2001** Promulgation of the City Statute Federal Law regulating the provisions of the 1988 Federal Constitution, especially the Social Function of Property.
- 2003** Creation of the Ministry of Cities. The National Conference of Cities ('ConCidades') was the result of a participatory process involving 3,400 municipalities, from all states of the Federation, with over 2,500 delegates elected to debate the National Urban Development Policy. Other conferences took place in 2005 and 2007.
- 2004** Establishment of the National Council of Cities as a consultative organ of the Ministry of Cities. Creation of the National Programme for Urban Land and Property Regularisation.
- 2005** Approval of the Federal Law which provided the regulatory framework for Environmental Sanitation, overturning the privatisation proposal in dispute over the previous 13 years.
- 2005** Approval of the Federal Law governing the National Fund for Social Housing under which a fund and a specific Council were established involving social participation as well as making the release of federal funding dependent on the existence of housing plans, state/municipal funds and the establishment of Councils. In the same year the National Campaign for the Participatory Master Plans was launched, requiring the elaboration of Master Plans for all cities with over 20,000 inhabitants



In 2007, during the second mandate of President Lula, the Growth Acceleration Programme (PAC) was introduced with a view to restoring investment in the housing and public sanitation areas, which had been abandoned for almost 25 years. The PAC is essentially a Keynesian plan or can be regarded simply as a set of public works designed to recover part of the country's infrastructure focused on productive activities (ports, railways, roads, and power generation plants) and part of the social and housing infrastructure. Under the PAC, investments of R\$106 billion were earmarked for housing¹⁸ and R\$40 billion for the provision of sanitation facilities (water and sewage) between 2007 and 2010. The programme for upgrading favelas continues to be a priority involving the investment of federal resources within the context of the PAC.

In 2009, in response to the international crisis which began in September 2008, the Federal Government launched its Minha Casa, Minha Vida programme, which proposes to finance the construction of a million homes with substantial input from the private sector. For the first time in the history of Brazil a large sum (R\$16 billion) was been earmarked for financing social housing.

Need to reflect and face new challenges

Despite the euphoria accompanying the social movements, the so-called 'popular-democratic' administrations, and the new urban policies and substantial progress on the legislative front, cities throughout Brazil have in general deteriorated worse. This has been a worldwide phenomenon, where increased poverty, burgeoning unemployment, the growth of favelas, street dwellers, abandoned children and rising crime are features of the urban environment. In Brazil this has been due in part to the explosive expansion of the public debt with interest payments draining off substantial public resources to the benefit of the financial markets.¹⁹ The inheritance from 25 years of neoliberalism will not be easily overcome. The main conclusion of the present text is to warn against a return to the years in which subsidies were outlawed, universal rights trampled upon, and solidarity, fraternity, community and social projects set aside. In short, it is obvious that at a time when the market reigns supreme, everything has to be paid for at the going market price.



18. The financial resources of the PAC Habitação come from a variety of sources: the private market– SBPE or private savings (39 per cent), a semi-official fund called the Fundo de Garantia por Tempo de Serviço (FGTS) which is a contribution-based device to provide workers with unemployment benefits when required (35 per cent), counterpart funds from the states and municipalities (17 per cent) and from the Federal Budget (9 per cent). Source: www.brasil.gov.br/pac

19. See among other studies that by TOUSSAINT, E. *Bolsa ou a vida: a dívida externa do terceiro mundo*. São Paulo, Fundação Perseu Abramo, 2002.



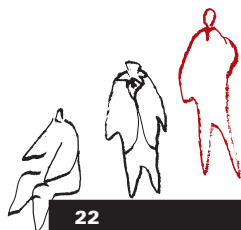
It is not only in Brazil that a veritable 'participatory fever' has taken root, spurred on by government bodies, NGOs, political parties, social movements etc. All the way from the World Bank to the Via Campesina, the order has come down to 'participate'. The Lula Government has been responsible for 40 national conferences at the federal level—the product of a plethora of conferences organised at municipal and state levels. The themes of these conferences have all been targeted at social themes: youth, racial equality, senior citizens' rights, cultural policy, women's rights, the rights of the disabled, children's rights, adolescents' rights, health, environment, public security, etc. Since 2003, two million people have participated in such conferences. The three National Cities Conferences (2003, 2005 and 2007) involved over 1,500 elected delegates each. Nevertheless, the truth is that this wide-ranging and broad-based participatory effort does not appear to have significantly transformed the quality of democracy or the level of exclusion in our cities.²⁰

Implementation of the City Statute has left a great deal to be desired since its promulgation in 2001 (see the contribution in this publication by Edésio Fernandes). The unfair and unsustainable pattern of urban land occupation prevalent for centuries has undergone little change.

The forces ranged against implementation of the social function of property—whether in civil society or whether in the bowels of the Judiciary, the Executive or the Legislature—have employed various artifices to delay its application. The 1988 Federal Constitution laid the basis for a complementary law (the City Statute) which was only approved 13 years later. The Constitution and the City Statute have both ruled that the social function of property and other precepts should be subordinated to the Master Plans. The majority of municipalities refer the relevant instruments regulating the social function of property for execution under complementary municipal law. In practice, many Brazilian municipalities have not yet approved these complementary laws, while others have prepared generic Master Plans full of good intentions but essentially ineffective.

On the other hand, a large number of municipal governments and progressive councillors rely on the City Statute to transform situations prevalent in different parts of the country. The Ministry of Cities itself runs a land tenure regularisation programme, unprecedented at federal level, which has begun to produce its first results, overcoming conservative resistance. Regardless of the difficulty of implementing the City Statute, we believe that it is nevertheless the harbinger of a new and different future. We can say that part of the road has been traversed. But approving the law is only a first step. The task of putting it into practice needs to continue. This task does not fall to the state alone or exclusively to the various governmental and technical staff involved. It is also principally a task to be undertaken by the whole of society.

20. Note that the Federal Government has made valiant efforts to distribute income more fairly since 2003. The Bolsa Família programme aims to provide a minimum income to the 40 per cent poorest people in the population. This programme now reaches 11 million families (2009). It is directed to people officially classified as living below the poverty line (i.e. per capita income of between R\$60 and R\$120) or those living in extreme poverty (up to R\$60 per capita per month). The programme is subject to a range of conditionalities: the family is obliged to keep young children and adolescents of up to 17 years old in school and ensure that they are vaccinated on schedule. The programme also provides for prenatal care for pregnant women. Between 2002 and 2007 around 20 million people emerged from classes E and D into class C (according to IBGE criteria). 9.7 million Brazilians emerged from total poverty between 2003 and 2007. The minimum salary increased in real terms by 32% over the same period. The National Family Agricultural Programme (PRONAF) received R\$8.4 billion in the 2006/2007 agricultural year and a consigned credit programme now provides the opportunity for people with medium to low incomes to obtain small loans (Federal Government, 2008).



Popular movements and the City Statute

Evaniza Rodrigues and Benedito Roberto Barbosa

With Brazil's return to democracy in the 1980s popular housing movements emerged, within a context of broader social struggle, to constitute a key component for confronting the urban question. The movements were basically concerned with elaborating proposals and demands for submission to the public authorities, stimulating direct action leading to land occupation by poorer people, and encouraging resistance to eviction and repossession. They were also increasingly important interlocutors during the formulation of new housing programmes.

Today, introducing effective housing programmes and policies calls for citizens' participation in the decision-making process at the design and implementation stages. This approach, probably the housing movements' greatest achievement over the years, reflected the urgent need to find practical solutions to the burgeoning housing crisis in the latter part of the 20th century.

Regardless of the repression of the social movements during the worst years of the military dictatorship, the groupings forged by the occupants of irregular settlements under the aegis of the nationwide Movement for the Defence of Favela Dwellers gained prominence from the mid-1970s onwards. With Brazil undergoing a process of rapid urban expansion on the outer fringes of the cities—accompanied by an upsurge of social problems—many groups spontaneously emerged which, with the support of the Catholic Church, professional groups, pro-active organisations and a variety of supportive popular movements, began to focus on favelas, poor neighbourhoods and other parts of our cities in a bid to achieve better living conditions for inhabitants.

The large and rapidly growing substandard settlements spawned on the periphery of the larger cities were the driving force behind organisations which over time succeeded in linking ad hoc, specific demands to broader agendas. The latter included, for example, the concept of the 'right to the city'. Meanwhile, these activities went hand-in-hand with deepening criticism, at the national level, of the Federal Government's official housing policy, which had signally failed to respond to the problems of access to the city and its resources by the excluded urban poor.



The events known as Caravanas á Brasília (Marches to Brasília), which took place from 1988 onwards, provided the incentive for the disparate groups to plan joint activities as well as an opportunity to press their demands in the nation's capital. In 1990 the 1st National Popular Housing Seminar, organised by the Brazilian National Bishops' Council (CNBB) in São Paulo (with groups representing all parts of Brazil), saw the beginning of a coherent national movement and sowed the seeds for the 'popular initiative' parliamentary bill of law leading to the creation of the National Social Housing Fund, with social control and sufficient resource allocation and clear criteria for allocation and distribution of funds to municipal and state governments.



The end of the 1980s also witnessed the election of popular democratic municipal governments in various parts of the country. This development, together with changes in the role of the municipalities posited by the 1988 Constitution, began to have an important effect on the conduct of social policies, especially those concerned with housing, as the movements began to liaise more closely with the local authorities on urban processes and procedures. While this new approach failed to stifle disputes surrounding the housing issue, it nevertheless introduced a new dimension to the social struggle. At the same time, the housing movements joined forces with the urban reform movement which had prepared, mobilised and lobbied for the Urban Reform Popular Amendment during the run-up to the new Constitution. While keeping up the pressure on local governments, the movements also began to take a closer interest in house-building programmes.

All this activity led in the 1990s to the establishment of the National Struggle for Housing Movement (MLNM) and the National Union for Popular Housing (UNMP), both of which helped to highlight the question of popular housing. Furthermore, the agenda of the community-based movements was given a systematic framework by the formation in January 1982 of the National Confederation of Inhabitants' Associations (CONAM), which brought together a large number of affiliated bodies such as mortgage holders, associations of families living in peripheral neighbourhoods and a variety of homeless movements. In 1993 the Popular Movements Confederation (CMP) was founded with a view to further firming up links between the different urban movements.

The abovementioned four movements (CMP, CONAM, MNLM and UNMP), with a major role in the National Urban Reform Forum targeted at fighting for the right to the city and housing, were joined by a substantial number of local and regional groupings engaged in the daily struggle for more and better housing. The national bodies possess a number of common mandates although they operate different forms of organisation and have a variety of remits. Together they presented the first ever 'popular initiative bill' leading to the creation of the National Fund and Council for Social Housing. For this they succeeded in obtaining one million signatures and the bill was finally given approval in 2005 by the National Congress, sanctioned the following year by President Lula. The positive impact of this development was such that it was imitated by social movements in a number of other countries in Latin America.

From 2001 onwards the various bodies assumed a greater degree of cohesion which enabled them to participate as key actors in the main urban reform agendas. This cohesion was manifested in the National Cities Conferences organised every two years beginning in 2003. By elaborating a joint strategy and agenda, the national pro-housing entities have succeeded in electing councillors to represent the popular movements on the National Cities Council.

The City Statute

One of the main impediments to progress towards urban reform in Brazil is the enormous concentration of urban land and the power wielded by the private property sector—a model where wealth and goods are heavily concentrated but from which poorer people are effectively excluded.

The 1988 Constitution contained an entire chapter on urban policy (Articles 182 and 183) in an attempt to establish certain limits to the right to property.

In our opinion the dilemma arising from the clash between the absolute right to property and the need for property to fulfil its social role has never been truly resolved, as can be seen in cities where conflicts over the issue are a daily and growing occurrence.

Proof of this is that Constitutional Articles 182 and 183 were only given regulatory force in 2001 with the introduction of the City Statute, following over 13 years of demonstrations and struggle by the National Urban Reform Forum and the efforts of a substantial group of related organisations throughout Brazil.

The struggle to implement the City Statute

Following its approval, the process of absorbing and disseminating the content of the City Statute by the various popular movements and other social sectors intensified. Regardless of the level of knowledge and comprehension required to understand the complexity of the Statute, the law was nevertheless immediately hailed as a victory for the urban reform struggle after years of pressure and popular mobilisation.

The Statute still needed to be fully understood as a prerequisite to its implementation. In order to do this the National Urban Reform Forum, universities, NGOs, etc. have over the years run numerous training courses focussed around three specific approaches: urban reform, the right to the city and democratisation of access to urban land and property. These courses responded to the need for training and also served to boost familiarisation with the Statute as a policy device not removed from concrete reality but which could be applied to the day-to-day lives of communities as a key instrument of social transformation.

The City Statute, over and above its detailed provisions, is endowed with three guiding principles:

- The concept of the social function of the city and property;
- The fair distribution of the costs and benefits of urbanisation; and
- Democratic management of the city.

These three principles are the key channels through which the housing movements can justify pressure on the municipal authorities to implement the law.

Another point worth mentioning is that since its approval, implementation of the City Statute has become a benchmark around which national movements and their local bases have been able to rally. Whether in its widest sense or employing the City Statute to justify one-off demands, people now use this law in order to pressure, and demand responses from, public authorities at all levels of government.

The Charter to Implement the City Statute approved at the National Meeting for the Right to the City, held in Rio de Janeiro (July 2002) in which different popular movements and other social actors participated, was intended to be a single document containing guidance on the law and the same time a political manifesto outlining the principles of the urban reform movement.



Elaboration and implementation of Master Plans

The requirement under the City Statute for municipal authorities to prepare Master Plans within a given timeframe engendered a widespread mobilisation process within the citizens' movements. The concept of the "Participatory Master Plan" was henceforth the leitmotif for the movements to pressure municipal executive authorities.

In most cities the first battle to be joined was precisely the question of participation by society in decision-making. For years the authoritarian or technocratic approach by the authorities paid scant attention to the ability of the population to participate in designing urban planning initiatives. The tradition of Master Plans being drawn up by specialists —often consultancy firms with no connective dialogue with the city's inhabitants— permeates official planning practices to this day. At the same time no consensus or norm had been formulated to assess what could or not qualify as 'participatory'. The publication of Resolution 25 by the Cities Council¹ in March 2005 nevertheless did provide a better definition of the participatory process as well as guidance about how it could be effectively employed.

Numerous disputes on the issue of popular participation continued in the municipalities. However, by exerting pressure, publishing manifestoes and making their demands known to the Public Ministry and the Judiciary, the housing movements, in unison with other social sectors, began to demand participation not only in public consultative meetings but also in the whole process of urban design and planning from beginning to end. These battles often took months and a number of them succeeded in interrupting or altering the process and guaranteeing outcomes in society's favour. In some cities civil suits were submitted to the Public Ministry and Public Defenders and public demonstrations in the municipal legislative chambers and prefectures began to question the way in which Master Plans were drawn up, as well as efforts to review their content even after they had been approved.

This was the case of Salvador (Bahia) where the entire Master Plan process was obstructed and questioned during and after its approval. In the event, the Public Ministry suspended passage of the municipal plan, which was only revisited at a later date. Other large regional capital cities such as Fortaleza (Ceará), Rio de Janeiro, Curitiba (Paraná), and São Luis (Maranhão), had their plans questioned in the courts because of failure to comply with the rules on popular participation. This was also the case in São Paulo, where the Strategic Master Plan had to be revised: the Front for the Defence of the Strategic Master Plan tried every way to bar the initiative of Mayor Gilberto Kassab (DEM) and the Municipal Chamber from altering a plan originally designed to benefit the city's capitalist real estate sector.

Having gained a channel for participation, it was then the time to put forward proposals of interest to the popular movements. The struggle to occupy participatory space was frequently more difficult than the struggle to get concrete proposals approved.

A further problem in many municipalities concerned the language used in the discussions on the Master Plans. Any participatory process requires the use of understandable procedures and appropriate language. In this respect, while leaders of the groups made great efforts to translate the plans into more accessible language and to draw attention to the most important aspects of them, they were also required to absorb technical concepts without losing sight of the plans' policy content.



One of the themes which most interested the movements with regard to the elaboration of Master Plans was without doubt the subject of conceptualisation and demarcation of Special Social Interest Zones (ZEIS), where community efforts involved identifying and demarcating the definitive urban parameters for substandard settlements targeted by this zoning tool. In the case of the ZEIS already occupied by favelas and other types of precarious settlements, the main concern was “not to leave anyone out” since demarcation of an area as a ZEIS brought with it the notion of secure tenure, although not guaranteeing it explicitly. In the case of definition and demarcation of the ZEIS in vacant areas, with the purpose of earmarking those available for popular housing, greater difficulties arose. The first problem was how to define parameters according to which people in specific income brackets were eligible to be housed, the potential uses for the area, plot and individual dwelling sizes, etc. Other problems involved demarcation of the various plots on the actual plans. Cases often arose where Master Plans contained indications that the ZEIS instrument would be used but failed to identify areas appropriate for its installation, thereby undermining the spirit and letter of this device.

In other situations the public authorities underestimated the number of ZEIS that were needed and failed to demarcate areas where economic interests were at stake (and likely to cause conflict). A good example of a case to the contrary was in the municipality of Taboão da Serra in São Paulo state, where the number of square metres demarcated as ZEIS was exactly proportionate to the size of the total housing deficit in the city.

Overturning the idea of removing poorer people to the fringes of the cities, certain municipalities demarcated ZEIS in central city areas. This was the result of the efforts of housing movements in the city centres and a response to the large number of occupations of vacant downtown public and private buildings.

A particular source of conflict occurred when major urban projects needed to be undertaken such as road widening, large scale public works, rehabilitation projects interfering with or near to popular settlements, etc. The perverse logic of exclusion in such cases was manifest, where the public authorities “permitted” the occupation (either by omission or commission) when a specific area was considered degraded or of little interest to the formal property market. Conversely, in cases where settlements had undergone ‘improvements’, the population was expelled either violently as a result of the enactment of repossession orders or tacitly as a result of higher rents and rising living costs. In a few noteworthy cases the population secured the right to continue living in such places. It was apparent in these circumstances that the mobilisation and organisation of the local community were essential factors to ensure that the correct legal instruments were applied effectively.

Popular movements have also lent support to issues that at first glance have little direct connection with the struggle for housing, but concern access to the city as a whole or to a specific part of it. This has been the case, for example, of the battles fought against the proliferation of high-rise buildings along the seafronts of coastal cities. These activities have become a source of conflict between large construction firms, property speculators and urban social movements. Similar problems have also often been encountered throughout the processes related to zoning definition, construction potential, building standards, etc., where popular movements have been engaged in endorsing the concept of democratisation of the city.



In these and other cases popular movements have often joined forces with professional bodies, urban-oriented NGOs, environmentalist interests, churches and middle class organisations in a bid to ensure proper discussion of Master Plans, formulating proposals and acting as valuable interlocutors with the municipal authorities during the entire process of preparation and approval of the plans.

The relationships between the pressure groups and the municipal legislatures have been even more controversial. Master Plans which have been discussed and agreed with the local authorities are often subject to amendments and legal constraints which, while they do not alter the basic concepts of the plans, nevertheless introduce piecemeal modifications that negatively affect their implementation and can generate considerable conflict at final approval stage.

It is worth drawing attention to the establishment in September 2004 by the Ministry of Cities and the National Cities Council, on the basis of Resolution No.15, of a "National Awareness and Mobilisation Campaign focused on the elaboration and implementation of participatory Master Plans with the aim of constructing inclusive, democratic and sustainable cities". This campaign underscored the following priorities:

Territorial inclusion: to ensure access to urbanised and well-located land for poorer people and to guarantee secure and unequivocal tenure of housing in the areas occupied by the low-income population;

Democratic management: to provide instruments to ensure effective participation of those who live and construct the city in the decisions and implementation of the Master Plan; and

Social justice: fairer distribution of the costs and benefits of urban development.

This campaign, launched in 2005, was coordinated by institutions comprising the Cities Council and appropriate state-based nuclei. The latter, which also included sectors belonging to the Cities Council, undertook the task of mobilisation, training, follow-up, multiplier training and dissemination. One of the major objectives of the campaign was to extend debate on the City Statute to the municipalities which still remained outside the traditional discussion circuits of the metropolitan regions.

The members of the housing movements participated vigorously in this campaign, in the National Coordination Unit and in the state nuclei, and took leading roles at all levels. The aim of the movements was to break down the approach to plans as something technical and remote from day-to-day life and to oblige municipal executive and legislative authorities to comply with their obligation to allow participation in the planning processes.

Implementation of the plans has been highly complex. Rather than Master Plans being accepted as devices for guiding the allocation and implementation of investments in the cities, many of them have been subsequently abandoned following approval. In many cases the plans call for the regulation, through specific laws, of instruments that have already been approved, thereby leading to new problems with the legislative authorities. In other cases, even when the instruments had been approved and were ready to be implemented, the municipal executive authorities often simply failed to employ them. Administrative staff turnover has also had a negative effect on their application as well as the preponderance of different interests and pressure for ad hoc changes to be made (such as extensions to urban zones), which often completely undermine the approved goals of such plans.





The difficulty of implementing the Master Plans often leads to frustration and disappointment among the leaders of the movements that have participated in the strenuous efforts to approve the proposals. Cases are recorded where no concrete results at all have been achieved, leading to serious questioning by the movements about the usefulness and effectiveness of the whole process.

The previous paragraphs show that it is important to devise participatory mechanisms that embrace mechanisms for monitoring the progress and execution of the plans. The housing movements have struggled to establish 'municipal city councils' but have often encountered much resistance to such initiatives and, crucially, fragmentation and an absence of specific legal frameworks governing their implementation. Some municipalities have created 'housing councils' in accordance with to Law 11.124 of 2005², urban policy councils, transport councils, environment councils, etc., but these have generally failed to liaise properly with one another, detracting from the need to take a more overarching and integrated view of the city as a whole. All in all, the fragmentary nature of the 'participatory' bodies reflects the piecemeal nature of the relevant policies as well as the conflict of the different interests involved in the construction of cities.

Tenure regularisation

Any picture of an unnamed slum on the fringes of one of our large cities calls to mind similar places all over Brazil. The bitter manifestation of segregation on the periphery of the metropolitan areas and cities is a common sight: unfinished brick or wooden houses exhibiting a brownish-coloured mosaic of houses and shacks jumbled together on the banks of rivers, clinging to steep hillsides or sprawling endlessly over vast tracts of land.

These are the 'left-overs' from the city proper: pieces of land abandoned by the authorities, with their inhabitants trying to survive, victims of powerful clientelist forces that deliver services only after substantial social pressure. Schools, crèches, good quality transport, sporting and leisure areas are generally non-existent. Agepê, a popular singer in Brazil, described the harsh reality of such places in his music: "I live where nobody lives, where nobody goes by, where nobody truly has a life ...".



With its tenure regularisation instruments, the City Statute and Provisional Measure 2220/2001 are landmarks in the struggle against this reality. The instruments by themselves are unlikely to induce any paradigmatic change but they nevertheless open up the previously non-existent possibility of guaranteed security of tenure.

2. Law 11.124/05, which established the National System for Social Interest Housing, stipulates the formation of a Municipal Housing Council or similar prior to a municipal authority being eligible to receive resources from the National Social Interest Housing Fund. Implementation of this system is still underway.

Article 9 of the City Statute sets forth that: “an individual possessing an area or urban construction measuring up to 250 square metres for a period of five years, uninterruptedly and unopposed, using it as a place for him and his family to live, acquires dominion of such a place providing the individual does not own another urban or rural property”. Provisional Measure 2220/01 sets forth in its first article: “An individual who prior to 30 June 2001 was in uninterrupted and unopposed possession for a period of five years of an area measuring 250 square metres of public property located in an urban area, and uses it to house himself and his family, is entitled to a real right of use concession for housing purposes restricted to possession of the property, providing the individual is not the owner with a verifiable title deed or the holder of a concessionary benefit or of another urban or rural property”.

These legal instruments, *usucapiao* (collective adverse possession) and the Special Right Concession for Housing Purposes, refer to citizens’ rights that can be applied collectively or individually and are awarded following a submission by the occupants themselves, by a residents association or by the appropriate public authority. All this requires organisation, pressure, social, technical and legal support and, frequently, an input of financial resources. Despite the success of a number of such initiatives, efforts made to access housing and security of tenure through the official land and property tenure regularisation instruments are still relatively inconsequential, particularly when account is taken of the millions of people still living in favelas and informal settlements scattered throughout the country.

Depressing as the situation may appear, the fact is that progress has undeniably been made and the relevant regulatory frameworks are gradually being put in place despite the many difficulties. It is also clear that since regulation of the City Statute the top-down requirement to overcome this huge challenge is increasingly part of every urban agenda.

The 4th National Cities Conference refers to this in its major Theme Number 2 entitled “The application of the City Statute and Master Plans and of the social function of urban property” (from the baseline text of the 4th NCC).

The National Cities Council, by approving the abovementioned theme, proposes to instigate a broad national debate about the efficacy of the instruments, to discuss the way forward for the current regulatory framework and its capacity (or not) to guarantee the social function of property, and to genuinely improve the life of poor people living in cities.

From this perspective it is not simply a question of guaranteeing property title or possession but effectively of transforming the precarious living conditions experienced by people condemned to live in such areas. An official “document” issued to people who are afraid of being evicted from their homes at any moment is important, but the City Statute in Article 39 goes further than this, stipulating that: “Urban property fulfils its social function when it meets the fundamental requirements of organising urban city growth (*ordenamento*) which are set forth in the Master Plan, ensuring that the needs of citizens are met with regard to quality of life, social justice and the development of economic activities, under the aegis of the guidelines foreshadowed in Article 2 of this law”.



The struggle against eviction

Regardless of the progress made in the area of regulatory frameworks, the question remains as to whether the extent and power of private property interests are impregnable.

While the judicial authorities make laudable efforts to guarantee and police property rights, it is clear from the large number of urban disputes over land and property throughout Brazil that property speculators, concerned only with their own financial interests, continue to act in a predatory and arrogant manner. It would appear that the constraints on the right to property have proved to be insufficient to halt the onward march of property-related capital.

Who the re-emergence in Brazil of the cycle of public investments in cities, we are now witnessing the overvaluation of urban land which is bound to cause increased controversy. Some of these often-questionable investments are received with open arms by real estate operators which seek directly or indirectly to benefit from the rising values of urban land.

The City Statute establishes a set of assurances with the aim of protecting or preventing speculative capital from negatively affecting the poorer communities under threat. However in such a conflictive situation it has been difficult for the forces of law and order to support excluded and weaker groups living in precarious areas, and some public authorities and capitalist practitioners have even gone so far as to seek to criminalise such communities. By the time disputes become public the occupants have often already lost their homes or have been violently evicted with the connivance, agreement or even participation of the public authorities.

Brazil, in addition to the guarantees and guidelines set forth in the City Statute (Article 2), is signatory to a number of international treaties concerning right to housing:

- The Universal Declaration of Human Rights establishing that every individual has a right to an adequate living standard that ensures well-being and health, especially with regard to housing.
- International Agreement on Economic, Social and Cultural Rights which recognises the fundamental rights of everyone to live in adequate housing and to be protected against forced eviction;
- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- International Convention on the Elimination of All Forms of Discrimination against Women (1979);
- International Convention on Children's Rights (1989).

As a signatory state to all these international legal instruments Brazil has incorporated them into its national normative framework.



The National Urban Reform Forum, in its Declaration at the conclusion of the Meeting on the Prevention of Eviction held in Recife, states that eviction is a practice representing “a growing problem which unleashes a series of violations which undermine dignity and human rights. These violations can be traced to the neoliberal model of economic development which produces a high concentration of land and income benefiting property owners both in the city and the countryside while excluding access by poorer people. Instead of fulfilling its social function, land is subservient to market forces and a prime target for speculation, as well as a means of perpetuating the power of large landowners in their estates and in the execution of major developments” (FNRU Recife Manifesto of 14/06/2006).

Similarly, the National Cities Council accepted the results of the 3rd National Cities Conference and approved the creation of a Dispute Working Group with the aim of preparing a national policy to deal with land disputes which, together with the instruments already established under the City Statute, would serve to reinforce the safeguards for threatened communities.

The impact of the City Statute on popular movements is evident in urban property disputes. In situations where areas occupied by low income families are threatened with repossession, the effect of the City Statute has helped strengthen the case against eviction by influencing legal petitions, manifestoes, issuing letters and the statements by community leaders³.

National Cities Council and Conference - spaces for collective construction

In 2009 the concept of democratic management, involving the creation of permanent institutionalised spaces for participation and social control, became one of the main items on the agenda of popular movements at the three levels of government. As foreshadowed by Provisional Measure 2220/01 (which was not implemented until 2003), the National Urban Policy Council, later called the National Cities Council, is now the most important social control and participation instrument resulting from the struggle to introduce democratic management during the run-up to the enactment of the City Statute.

The popular movements lobbied strongly for the formation of the Council and the National Cities Conferences⁴ as institutional spaces for debate and now play a leading role in the Council, where they have been able to substantially influence proposals as a result of positive liaison with other civil society sectors. However direct negotiation with governmental authorities, bringing pressure to bear on them to respond to demands and use the available instruments, still plays an important role.



3. Examples: (i) “The City Statute, Law 10.257/01, provided the institutional means for the public authorities to become involved in conflictive areas and to foster land regularisation efficiently and to resolve old problems such as the lack of money for expropriation or the regularisation of consolidated settlements” (Manifesto for Curitiba and Paraná to be free from forced eviction, dated 13/11/2005, signed by 30 popular movements and NGOs); (ii) “The State is responsible for protecting the right to housing and guaranteeing that evictions do not take place. Furthermore, that the social function of property should be assured”. (Letter referring to the violation of the right to housing of 400 Families in the Favela do Sapo, São Paulo, submitted by COHRE to the Mayor of the City of São Paulo, July 2009).

4. The National Cities Conferences were set up by Presidential Decree in 2003. The national conference is preceded by conferences at state and municipal levels and is responsible for the election of the members of the National Cities Council. The 4th National Cities Conference will take place in May 2010.

Over 4,000 representatives of municipalities from all the states of the Federation and the Federal District participated in the 1st National Cities Conference, after which pressure has increased on state and municipal authorities to permit greater participation by interested groups.

The National Cities Conferences have proved useful in constructing and reaffirming the urban reform agenda. A problem remains however in that no institutional mechanism yet exists to ensure that the decisions taken by these conferences or the Council will be accepted by the Federal Government when policies are being elaborated at the top level.

Furthermore, the dilemma between creating local sectorial councils (housing, sanitation, transport, urban policy) or Cities Councils to address this set of issues has still to be resolved. Regardless of the fact that the National Cities Conferences that have been held to date have reaffirmed the need to establish Cities Councils at all three levels of government, very few of the federative entities have proceeded to establish councils with a remit to embrace sectorial policies. This situation was rendered even more contentious when Law 11.124/2007 establishing the National System for Social Interest Housing ordered that in order to belong to the system states and municipalities were responsible for firstly creating Housing Councils as a precondition of membership.

This problem is exacerbated by the fact that the Council and Conference instruments do not yet possess the legal framework proposed by the National Urban Reform Forum: essentially involving the establishment of a National System for Cities responsible for defining organs and competences at the three levels of government with a view to endowing the housing councils with decision-making attributes, as well as defining the role to be played by the Conferences in the definition of urban housing policy.





An ongoing agenda

The influence of the efforts to implement the City Statute and in the construction and broadening of the struggle for the rights of the city, both at national and international level, is undeniable. The dissemination of the City Statute serves to focus discussion. For example, parts of the content of the Statute have already been included in or have inspired national legislation in a number of countries, especially in Latin America, following its presentation to governments and key social organisations such as the Habitat International Coalition (HIC), the Latin American Secretariat for Popular Housing (SELVIP), the Inhabitants' International Alliance (IAI) etc.

The 1st World Social Forum saw the beginning of the formulation of a World Charter for the Right to the City, which resulted from an initiative by the National Urban Reform Forum and the efforts of many international networks.

More recently UN-Habitat, in partnership with the Ministry of Cities and ConCidades, adopted the slogan "Right to the City: uniting divided urban areas" to be used at the next World Urban Forum, the world's premier conference on cities, in March 2010 in Rio de Janeiro. Although this concept is still in dispute, the principles that guide the struggle can nevertheless be observed in discussions which have taken place in broader circles.

A great deal remains to be done to implement the City Statute in our cities. The Statute needs to be absorbed and utilised by a greater number of organisations. It is vital to call on the provisions of this law in order to ensure what has been achieved to date with regard to elaboration of Master Plans, vigilance over occupied areas and facing up to the powerful speculative interests of large corporations, are not undermined.

It is vital to remain aware of the fact that the City Statute is not an instrument that will work autonomously. It is one more key institutional tool in the hands of organised society that we can deploy to exert effective political pressure and mobilise more popular support for achieving the necessary changes. Structural changes in our cities cannot be seen as separate from the changes in the basic model of the society in which we live. Our goal is to construct cities on the basis of fairness and increased popular solidarity, and the City Statute forms part of this overarching process of transformation. The popular movements will continue day after day to struggle to form this new society and bring hope to its members.





The City of Diadema and the City Statute

Mário Realí and Sérgio Alli

The purpose of this paper is to highlight the main repercussions of the City Statute on the management of urban development policy in Brazil at the local (municipal) level. While the 1988 Constitution represented the first important step towards defining the social function of the city and urban land, the City Statute marked the end of a long period of popular struggle and mobilisation targeted at democratising city and urban land administration. The principal aim of the law was, and remains, to ensure that municipal authorities make effective use of the planning tools at their disposal in order to implement a sustainable urban development policy focused on correcting the serious injustices encountered in the human occupation of land under their control.

The long and tortuous route taken by the City Statute in Brazil's National Congress made it possible during the 1990s for a number of cities such as Recife, Belo Horizonte, São Paulo, Curitiba, Rio de Janeiro and Porto Alegre to develop and experiment with a number of the Statute's instruments that were finally enacted in law in 2001. These were cities where local governments had mobilised both political commitment and interest among the inhabitants in efforts to broaden and deepen the scope of urban reform since the first introduction of the constitutional norm in 1988. These municipal authorities had been instrumental in formulating the City Statute and were therefore in an advantageous position to apply the various planning and other tools introduced under the law.

Tracing this historic process in a specific city can serve to highlight the importance of, and need for, the City Statute by demonstrating how it presented local authorities and social movements with vital new challenges. The city of Diadema referred to in the present text is a prime example of the chaotic growth of cities in Brazil's major metropolitan regions over the last 50 years.

The military dictatorship, which seized power in March 1964, interrupted a period of major social mobilisation demanding basic social reforms, including urban reform. Under this government Brazil was subjected to developmentalist economic policies that maintained a heavy concentration of wealth and income in few hands. Meanwhile, the advent of industrialisation was accompanied by a low wage environment combined with repression of political and trade union-related activities.



The authoritarian and technocratic urban planning approach by the various military governments proved to be ineffective from the point of view of satisfying the many demands generated in the cities by developmentalist economics. During this period a significant part of the country's population migrated to the cities, to the extent that almost 80 per cent of all Brazilians currently live in urban areas. Meanwhile the cities tended to expand towards the periphery either as a result of large public housing developments in such places or because of illegal lots being occupied by people building their own homes. This led to a proliferation of favelas either on the fringes of the cities or in vacant parts of the city fabric rife with property speculation. The expansion of the peripheral area of our cities meant that services had to be provided over longer distances, requiring major public investment despite low resource availability. Much of this investment was eventually appropriated by the speculative private property sector as a result of price appreciation of land. Low income families, with no possibility of gaining access to legitimate urban space, were condemned to live in favelas and other precariously-built settlements remote from the city centres and lacking all normal urban amenities. These areas became classic symbols of social exclusion, with local authorities becoming either hostages to, or partners in, this vicious circle. For example, public transport policy emerged as a determining factor for guaranteeing people's access to the city: as the distances between people's homes and their places of employment increased, so did the need for an ever-expanding and costly transport network.

Diadema at 50

The autonomous Municipality of Diadema is now 50 years old, having experienced rapid population growth during its first three decades of existence. In 1960 the city had 12,000 inhabitants; 79,000 in 1970; 228,000 in 1980; and 300,000 in 1990. Located in the metropolitan region of São Paulo between the cities of São Paulo and São Bernardo do Campo (the main hub of Brazil's vehicle industry), Diadema's population was primarily formed by the families of poorly-qualified migrant workers on low pay and subject to high manpower turnover. These people came to the area in search of jobs in the factories of the region, setting up home in Diadema because land was cheap and accessible there although it lacked any kind of urban infrastructure.



At present Diadema has 386,779 inhabitants (IBGE, 2007). With an area of 30.7 km², of which 7 km² are in a headwaters protection area, Diadema is the second most densely populated city in Brazil and the densest in São Paulo state, with 12,600 inhabitants per km². It is estimated that 13.3 per cent of all households (14,000 families or approximately 60,000 inhabitants) live in poverty, with a per capita income of between zero and half of one minimum wage. The 207 favelas and similar settlements cover 4.62 per cent of the city's area and house around 25 per cent (100,000) of the total population. Of these areas, 161 are now totally urbanised, 32 are undergoing urbanisation, 6 have already benefited from targeted local authority interventions, and 8 are located in risk areas and are subject to relocation. In the 1960s and 70s, the city saw its farmland increasingly taken over by informal plots and the occupation of both private and public land by large numbers of favelas. At the same time many industrial buildings were constructed in the city as a result of tax exemptions and other benefits provided by the local authority.

At the beginning of the 1980s Diadema had effectively become a dormitory town, with the overwhelming majority of its inhabitants living in precarious conditions. As far as public services were concerned, only 22 per cent of the road and street network was urbanised, with the remainder lacking drainage, surfacing, water and sewage networks, etc. Around 30 per cent of the population lived in favelas occupying 3.5 per cent of the city's area, totally abandoned by the local public authorities. Education, health, cultural and leisure services were in very short supply; in 1980, child mortality was one of the highest in Brazil, with 83 babies out of every 1,000 live births dying.

The first Master Plan of Diadema was published in 1973 with virtually no mention of the existence of favelas and the so-called 'illegal city'. However from the mid-1970s the voices of the excluded members of the population began to be raised. While popular social movements began to emerge all over Brazil, the metalworking workers' associations around São Paulo called a series of strikes which eventually led to the emergence of powerful trade union leaders, including Luis Inácio Lula da Silva (elected President of Brazil in 2002). A number of movements specifically concerned with urban issues began to emerge demanding proper housing, the regularisation of clandestine lots, and the installation of urban infrastructure in the favelas. In Diadema the housing movements achieved a high level of organisation and mobilisation, and as a result a number of still-vacant areas of land were invaded and quickly occupied by squatters.



In 1979, in response to the emergence of the social movements, the Federal Government under General João Figueiredo introduced Law 6.766, which regulated land parcelling and made incitement to land 'invasion' a criminal offence. This legislation established which settlements could be located in public areas and determined the minimum size of lots (125m²). However, despite providing an exception for sub-divided lots earmarked for social housing, this law in fact ended up forcing the majority of the areas occupied by poorer people into clandestinity, thereby increasing their social exclusion.

In 1982 Diadema elected Brazil's first Workers' Party (PT) mayor. The social basis of the PT, founded in 1980, drew strength from popular social movements, including the burgeoning pro-housing movements. From 1983 to 1996 the PT held power in the Diadema municipal administration, undertaking major transformations in the city, acknowledging the existence of favelas and irregular settlements and providing funds to improve the poorest areas while encouraging increased popular participation in local decisions involving local urban development policy.

The Diadema local authority targeted its investments at urban infrastructure: surfacing the road and street system, installing public street lighting and sanitation, providing stormwater and watercourse drainage, as well as upgrading health, education, culture and sports amenities—all to the benefit of the lower income sectors. At the same time, the authorities resorted to the legal expropriation of land in order to construct community facilities. Meanwhile, the neighbourhood associations and housing movements continued to call for further interventions in the favelas to provide even more services and the release of public land for building new homes.

In 1985 the law introducing the Real Right of Land Use Concession was approved by the Diadema Municipal Chamber, basically giving the right to people living in favelas and housing nuclei constructed in public areas to continue living there for 90 years. Interventions in these areas began with plot delimitation and rearranging the street grid to facilitate infrastructure implementation. With regard to favela upgrading, the municipal government's response to its pressing shortage of resources was to fragment investment by providing improvements in the largest possible number of favelas rather than concentrating efforts on large projects in fewer places.

The housing budget gradually increased from 2.3 per cent of total municipal revenue in 1983 to 5.6 per cent in 1995. With growing investment, Diadema began to attract a large number of small and medium-sized industries, many of them suppliers of parts to the vehicle manufacturing plants in neighbouring municipalities. As a result the profile of the city changed over the years and residential areas began to be interspersed with industrial plants. Space, particularly in the central area, was increasingly occupied by commercial and service establishments, which generated a cycle of property appreciation in the city, creating new obstacles to efforts to improve the housing situation.



The 1988 Constitution

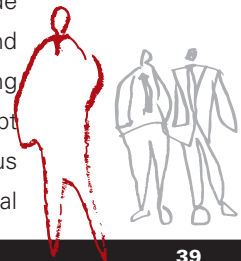
The restoration of democracy during the 1980s culminated in the promulgation of the 1988 Federal Constitution, which strengthened the role of the municipalities in the management of urban development policy in addition to establishing the concept of the social function of the city and urban property. However, the Constitution disappointingly made no provision for formally regulating these rights.

The necessary instruments for executing the policy set forth in the Constitution—the Master Plan, compulsory parcelling and building, progressive urban property and land taxes (IPTU), expropriation set against public debt bonds, Special Urban *Usucapiao* and the Special Use Concession—were not specifically regulated.

On the other hand, the reinforced role of municipalities to undertake urban development underpinned by the Constitution was important to Diadema, since it provided institutional recognition of the fact that urban disputes and the demand for land and housing would henceforth be targeted at the local authority. It was also acknowledged that the local administration would from this point on undertake a mediating role in urban land disputes and, importantly, prepare its Master Plan and management follow-up with the participation and involvement of local people in the detailed decision-making process.

A new symbolic achievement in early 2000 was the introduction of a Constitutional Amendment that confirmed housing as a social right, conferring upon it the same status as education, health, employment, leisure, security, social welfare, maternal and child protection and assistance to the homeless. Incorporation of the right to housing and urban development policy principles outlined in the Constitution led the Diadema authorities to press ahead more decisively with fresh actions on slum upgrading and territorial organisation of the city. When the municipal government undertook energetic initiatives in a bid to create urban policy administrative instruments based on the Constitutional text, it was met with opposition from conservative and 'patrimonialist' sectors which rejected the concept of an inclusive urban policy, arguing that the lack of a regulatory framework for these instruments rendered all the initiatives of the municipality unconstitutional.

It is interesting to note that Diadema built its urban development policy by encouraging different forms of popular participation in the process. In 1991 the Municipal Fund for Supporting Social Housing (FUMAPIS) was established with municipal budget resources, co-managed by an 11-member council: five representatives of the Executive, one representative of the Legislative Chamber, and five representatives from the community elected by direct vote in different parts of the city. In 1993 the 1st Diadema Housing Meeting provided a forum for local inhabitants and their associations to discuss municipal policy issues, of which the land tenure question was the most important at that particular moment. Throughout 1993 discussion meetings involving different social sectors, businessmen, trade unionists and the representatives of pro-housing movements were held all over the city to examine and debate the municipal government's proposal for a new Master Plan. The role played by the housing movements in this process was of special importance, supporting the local authority proposal to adopt democratisation instruments designed to provide better access by poorer inhabitants to land. Numerous public demonstrations were attended by hundreds of people in a bid to bring pressure to bear at municipal council meetings to consider and approve the 1994 Master Plan.



In 1994 Master Plan and the establishment of the AEIS

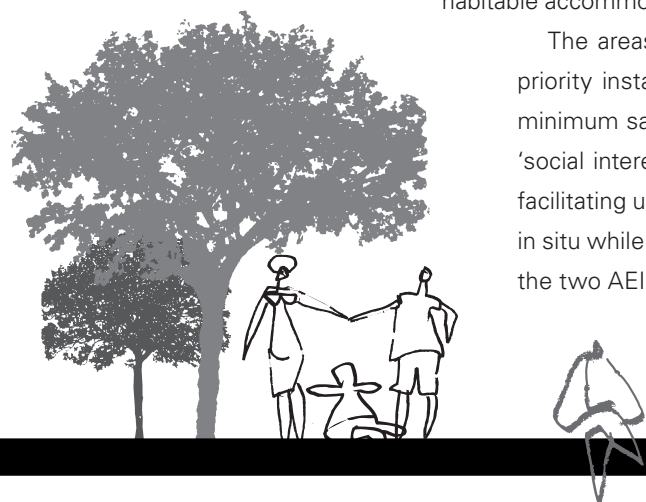
Promulgated in January 1994, the new Master Plan for Diadema embraced a series of urban planning instruments guaranteeing the social function of the city. In this way Diadema was legitimately able to press ahead with a number of initiatives that would later serve as a reference for other municipalities anxious to consolidate the instruments needed to underpin urban reform throughout the entire country.

The Master Plan defined its objectives as “to undertake the full development of the social functions of the city and property and to focus on the socially just and ecologically balanced use of the urban territory in order to assure the well-being of its inhabitants”. The major innovation of this Master Plan was the creation of the Special Areas of Social Interest (AEIS), a planning instrument which would later be called (in the City Statute) Special Social Interest Zones (ZEIS). In addition to the AEIS, the Master Plan also contained instruments such as compulsory parcelling and building, urban operations and the property consortia concept, under which property owners could enter into partnerships with the local municipal authority to secure urbanisation of their plots. These latter mechanisms, however, were practically unutilised given that the social movements found the AEIS process easier to understand and operationalise.

Together with the AEIS, the Master Plan also created the Special Environmental Preservation Areas (APA) with a view to ensuring that certain urban areas could be earmarked for occupation by low-income families while environmentally important areas were preserved.

Two types of AEIS were created by the Master Plan: AEIS-1 comprising vacant areas earmarked for building new housing nuclei and representing 2.8 per cent of the municipality’s territory (870,000 m²); and AEIS-2 referring to areas already occupied by favelas, covering 3.5 per cent of the territory (1.07km²) and containing around 25 per cent of Diadema’s inhabitants. Regulated by more flexible land use and occupation norms, the AEIS opened up the possibility for regularising the occupied areas and for maximising the use of both the land and the infrastructure installed in those areas. The AEIS-1 involved the demarcation of minimum lot sizes of 42m², minimum frontpage space of 3.5 m, maximum permitted square footage of habitable accommodation of three times the plot area and an occupancy rate of 80 per cent.

The areas defined as AEIS-1 constituted a stock of privately owned land for the priority installation of social housing for families with monthly incomes of up to 10 minimum salaries. Meanwhile, the AEIS-2 transformed land occupied by favelas into ‘social interest areas’ by adopting different urban planning standards with a view to facilitating urbanisation and upgrading and, above all, to ensure that families remained in situ while investments were channelled into improving their quality of life. Together, the two AEIS modalities encompassed a total area of 1.9km².



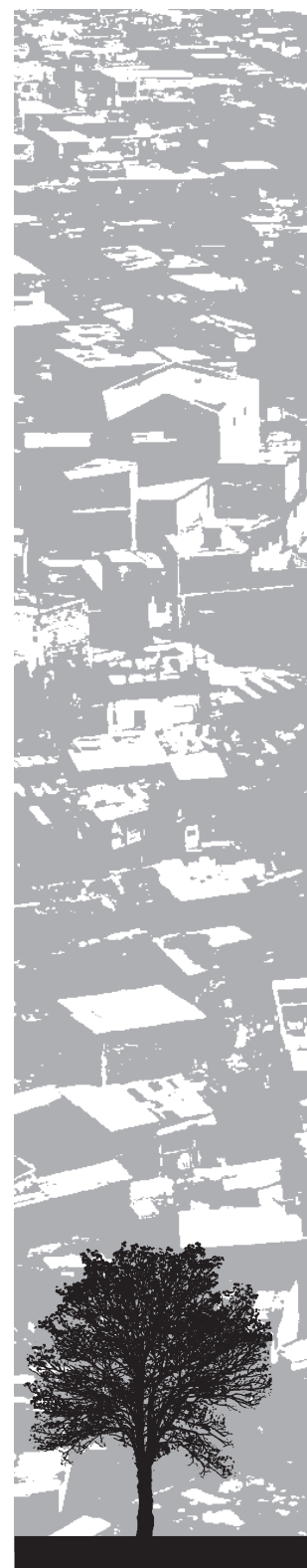
The goal of the Diadema local municipal authority was to put into practice other constitutionally approved urban policy management instruments in addition to the AEIS, such as compulsory utilisation and the Progressive Property Tax (IPTU). However, these good intentions were barred by court decisions resulting from lawsuits by property owners and investors who argued that the instruments could not have practical effect without prior regulation by means of specific legislation. Even the establishment of the AEIS, which permitted lots to be smaller than the 125m² demanded under Law 6766, was challenged in the courts. In some cases, landowners claimed compensation from the authorities, alleging that the change of use of their land amounted to “indirect expropriation”. The fact that the courts looked favourably upon these claims by private owners made the need for approval of the City Statute increasingly urgent.

Together with the Master Plan the Diadema municipal authority also approved a new Law for Land Use and Occupation and a Works and Buildings Code with far less restrictive building standards than previously and more in line with the proposals contained in the Master Plan.

By 1996, after three successive PT administrations, Diadema had undergone significant change. The road and street network was almost totally paved, the public lighting, water and garbage collection services were up and running and covered virtually the entire municipal area. Meanwhile, 90 per cent of families living in favelas had received some sort of assistance from the local authority, and around 40 per cent of the population residing in squatted public areas had received the Real Right of Use Concession allowing them to stay put for 90 years. Dozens of public amenities had been constructed, involving a network of 41 municipal schools, 10 cultural centres, 12 municipal libraries, 15 primary health units and 2 municipal hospitals. Diadema effectively ceased being a dormitory city, given that around 60 per cent of the workers residing in the city were employed within the municipal boundaries.

Of the total of 192 favelas and housing nuclei, over 90 per cent benefited from interventions and betterments initiated by the public authorities. In 1996, 51 per cent of these areas were urbanised and 38 per cent were undergoing urbanisation. These interventions were characterised by new infrastructure and tenure regularisation as well as assistance provided to people who wished to build their own houses. The previously highly informal settlements became more thoroughly integrated in the surrounding neighbourhoods, and access to urban services was provided to all.

At the end of 1996 the municipal elections ended the first cycle of three consecutive administrations in Diadema, all of which had pursued the same urban development policies. This also provided an opportunity to evaluate the urban development policy results achieved during the 14 years. The first observation was that political and administrative continuity, involving interventions over the medium and long-term, was important for setting down an institutional basis for fulfilling the social function of property and the city. The creation and implementation of the AEIS was a particularly noteworthy example of this.



Progress was also made in other areas, such as the establishment of the Real Right of Use Concession for 90 years (applied to around 5,000 families by 1996); favela upgrading that provided access to water, electricity, sanitation, paved roads, public transport and other public services; and assistance for community and self-build activities, making it possible to replace precarious housing with better quality brick and concrete dwellings. In addition, an official cadastre of properties was drawn up to include homes located in hitherto unregulated areas. In 1995, 48,000 properties were officially numbered for the first time, occupying lots alongside the 1,005 'official' municipal streets and 50 on 'internal' streets within the favelas and other housing settlements.

In Diadema these upgrading actions were undertaken in a wide-ranging (although not entirely conclusive) manner: the city as a whole was involved in the process in an effort to avoid the perpetuation of substandard pockets (bolsões) of bad housing and ensuring better living conditions and the opportunity for occupants to remain in situ. Many families in Diadema evicted from other places (mainly from the city of São Paulo) were able to enjoy the benefits of public infrastructure investments and services offered by the network of amenities in the areas of municipal health, education, social welfare, culture, sport, etc. It was abundantly clear that favela upgrading, rather than removal or relocation, was more suitable from a social point of view.



The AEIS experience

During their first three years of operation, from 1994 to late 1996, the AEIS proved to be an effective and appropriate instrument in that they facilitated access to land for the poorer population.

Following its revision in 1996, the Master Plan earmarked a total area of 745,000 m² covering 36 large landed properties, as AIES-1 for building new social housing units (HIS). Of this total area, 415,000 m² had been acquired by the municipal authority and housing movements by the end of 1996. A further 55,000 m² (8 per cent) were being negotiated between housing associations and landowners and 275,000m² (37 per cent) were not yet at the negotiation stage. The areas acquired by the local authorities were earmarked as a top priority for families needing to be transferred from risk areas (land subject to flooding or landslides) or where removal was necessary for the authorities to carry out upgrading work on the favelas in AEIS-2.

The purchase of AEIS-1 by the municipality and housing movements was preceded by a large number of meetings and much negotiation aimed at (i) reducing the normal market price of the land prior to the issuance of the Master Plan by at least 35 per cent, (ii) obtaining longer repayment periods and (iii) coming to friendly agreements with the landowners, which would permit rapid utilisation of the land and the launch of financing processes to allow the authorities to proceed speedily with building new social housing.



When the AEIS were created Diadema suffered from a land shortage. While the areas earmarked for AEIS had previously been mainly for industrial or mixed use, the advent of the AEIS led to a rapid increase in the supply of land, leading to lower prices. At the same time, industrial land and land for middle-class housing became scarcer and more expensive. The behaviour of the market was also influenced by other factors, such as the general economic situation in Brazil during the first years of the stabilisation plan (the Plano Real) and the fact that Diadema continued to attract a significant number of new businesses and industries, all of which tended to increase competition for land for commercial purposes.

Between 1997 and 2000, the Diadema municipal government—controlled by a different political party than the one which had governed the city since 1983—reduced public investments in urban development. The Housing Secretariat was incorporated into the Public Works Secretariat, and the participatory organisations ceased to function. A new review of the Master Plan in 1998 was carried out exclusively by local government technical staff, thereby breaking with the participatory planning model that had been adopted up to 1996. During this period illegal settlements gradually returned to the scenario. Despite these problems, the local authority did undertake some investment in favela urbanisation and succeeded in retaining a partnership arrangement with housing associations in two AEIS-1 areas where housing units were being built.



In the late 1990s Brazil experienced a prolonged economic crisis. This had repercussions on Diadema where industrial activity contracted, with negative effects on the industrial property sector and the formal housing market. With the growth in the number of housing associations and the increasing number of potential buyers, land and house prices gradually rose in the AEIS from around 1997. Perhaps surprisingly, the AEIS areas began to excite a great deal of interest among real estate operators anxious to benefit from rising prices. Since the housing associations effectively underpinned the market in the AEIS areas and possessed the necessary expertise for purchasing and exploiting land for building purposes, property developers and agents, in league with the associations, found opportunities to profit from the new situation. An absurd situation emerged where the AEIS areas at one point became more valuable than non-AEIS land elsewhere in the city.

Many of the developments undertaken by the pro-housing associations in the AEIS, however, failed to comply fully with the urban planning requirements set forth in the municipal laws. For example, many of the projects failed to take account of good ventilation and lighting standards. They also failed to respect the existence of green areas, and some existing residents sought to encourage ('informally') their occupation by poorer families who were unable to defray self-build costs or legally occupy the developments being built in the AEIS. Since the municipal government had ceased to monitor the activities of the associations, the law on beneficiary registration was often disregarded, with the result that the accommodation constructed in the AEIS-1 began to be taken over by people from outside Diadema in higher income brackets than those for whom the social housing was built.

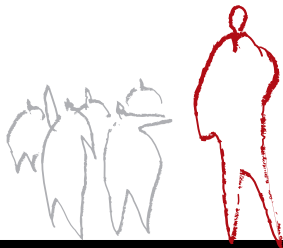
The City Statute (2001)

In 2001 the re-emergence of the process of urban reform in Diadema was marked at federal level by (i) the final approval in July 2001 of the City Statute and, at the local level, (ii) the re-formation of technical staff by the new municipal administration. The City Statute was a major advance that effectively regulated the instruments proposed in the 1988 Constitution and therefore legitimated the performance of local governments in this respect. Meanwhile, the Diadema administration was able to invest in recovering its urban development policy and took pains to encourage participation, once again, by society in the formulation and execution of relevant development plans.

The introduction of the City Statute symbolically consolidated urban development management and housing policy as public policies designed to ensure the right to the city and housing as universal rights. The City Statute served to underpin urban policy by enabling full development of the social functions of the city and of urban property and by ensuring the right to sustainable cities. By consolidating the means of collectively exercising this right, the Statute represented a significant advance in terms of urban planning legislation, as opposed to the traditional patrimonialist approach. In this way it proved to be an excellent device for overcoming the resistance of traditional forces (exploiting the lack of regulation and the backward-looking attitudes of the judiciary) to the application of the measures foreshadowed in the 1988 Constitution.

An overarching set of guidelines and urban planning instruments was established in the City Statute which, while calling for liaison between the three levels of government, awarded priority of action to the local municipal governments that were called upon to prepare and implement Master Plans based on popular participation and consultation. The long debate to which the City Statute was submitted resulted in the introduction of instruments which benefited from coherent regulation, conceptual clarity and transparent procedures—all of which would form a firm basis for application of the municipal Master Plans and the different regulations emerging from them. The City Statute placed a set of planning tools at the disposal of local governments which could choose to use them or not, depending on local situations, for elaborating their urban development policies in consultation with local people. The fundamental premise of the City Statute was to put an end to urban vacant areas traditionally a target for capitalist property speculators whereby private interests could capture value from infrastructural and other improvements brought about by public investments.

The City Statute reinforced the role of the municipality as regulator of the right to urban land ownership, minimising conflicts and legal problems arising from the use of urban planning instruments by local governments. This regulatory advance presupposes mediation between the different city stakeholders and political practitioners to ensure the pre-eminence of collective interests. At the same time, it breaks with the patrimonialist culture which in Brazil traditionally had taken advantage of government authorities and the legal system in order to preserve the privileges and interests of wealthy minority groups, thereby producing social and economic inequality. It is for this reason that participatory management is the key to fulfilling the objectives of the City Statute.



The instruments designed to guarantee access to land and housing are a fundamental part of the City Statute, and their effect in broader terms should facilitate genuine collective appropriation of urban land. It is not sufficient simply to demarcate settlements and build housing as a way of complying with the social function of the city. Rather, a sustainable city, in addition to creating the conditions for better access by all of its population, needs to possess commercial and services establishments, industries, public amenities, sports and leisure areas, etc.

In 2002, at the beginning of President Lula's first term of office, urban policy was once again thrust into the limelight and consolidated as a public policy throughout the entire country. For example, the new government created the Ministry of Cities, bringing together policies relevant to urban development, housing, public transport and sanitation. It also subsequently established the National Cities Conference and the Cities Council aimed at formulating Brazil's National Urban Development Policy.



The 2002 Master Plan

While the City Statute was approved in Brasília, the Diadema municipal government elected in early 2001 reinitiated its urban development policy and commenced a wide-ranging review process of the existing Master Plan. The Municipal Housing Secretariat was reorganised and began to postulate four main action lines: the provision of housing units; urbanisation and upgrading of favelas and other housing settlements; upgrading consolidated precarious areas; and land and property tenure regularisation. Also in 2001 the FUMAPIS council was reconstituted and required to meet on a monthly basis. At the same time, liaison between the municipal government and the housing movements and other sectors interested in municipal urban policy was re-established.

The review of the Master Plan in accordance with the City Statute guidelines was undertaken in two stages. The first, with the participation of technical staff from different sectors of the municipal authority, assessed the results of the 1994 Master Plan and drew up a list of the city's new requirements. The second stage involved public meetings and consultations to discuss and elaborate a series of new proposals to be incorporated in the new Master Plan. More than 70 meetings were organised in different parts of the city attended by representatives of the pro-housing movements, environmentalists, trade unionists and members of the municipal councils, together with representatives of real estate firms, the Commercial and Industrial Association of Diadema (ACID) and the local section of the São Paulo State Industrial Confederation (CIESP).

However, in spite of the tradition of popular participation in Diadema, difficulties were encountered in focusing the debate on the strategic instruments needed for dealing with the entire city. On many occasions the public meetings became platforms for activists to air ad hoc and emergency requirements. It was clear that the lack of understanding and detailed knowledge of the City Statute tended to distort and undermine discussion at these public events.



In an attempt to overcome this problem, training seminars designed to create planning agents were organised and attended by over 100 representatives of popular movements, trade unions, councils and local government officials. The idea of these seminars was to upgrade and deepen discussion about the new urban management instruments regulated by the City Statute in order to ensure compliance with the concept of the city and property as having a social function. Finally approved in 2002, the new Diadema Master Plan, in addition to incorporating the new City Statute instruments and revising those that had existed since 1994, contained a novel proposal to ensure that the urban development policy of the local government should be subject to an ongoing management process based on a participatory, shared and democratic approach. Among the new instruments incorporated in the Master Plan were the Right of Pre-emption and the Onerous Grant on the Right to Build.

The legal framework for land use was reformulated with the definition of four macro zones: (1) zones eligible for densification; (2) zones not eligible for densification; (3) strategic environmental preservation areas; and (4) industrial zones. The AEIS were retained, with new areas added, as well as the Environmental Protection Areas, and a number of areas were earmarked for Consortiated Urban Operations. Furthermore, the Master Plan incorporated the paradigms of sustainability and right to the city. The environmental question, despite being extremely relevant in view of the shortage of vacant spaces and the high population density of Diadema, was also covered by the Master Plan, but the application of its instruments proved to be slow-paced given the fact that the pro-environmental activists tended to take second place to the housing movements. It can be argued, however, that the urban policy of Diadema certainly contributed to restricting occupation of the Headwaters Preservation Areas—unlike in neighbouring municipalities where this practice grew apace.

Results of the City Statute instruments

Of all the urban planning instruments in the City Statute, the AEIS have proved to be the most effective consolidated element in Diadema's urban policy arsenal. The concept of the AEIS has been widely disseminated and incorporated by social movements and by the property sector in general. Current discussion centres on how to increase house building in these areas as a result of the new financing policies instituted by the Federal Government and the opportunities for subsidising families earning under six minimum wages.

A report issued by the Diadema local government in 2004 indicated that the municipality possesses 30 areas denominated as AEIS for social housing purposes since the introduction of the 1994 Master Plan. In this ten-year period 40 Social Housing Developments (EHIS) were established in Diadema, consisting of 8,862 units over an area of 1.02km². These EHIS provide housing for an estimated 35,448 people.

In his Master's thesis entitled *Diadema, Planning and Reality: Changes Resulting from the Master Plans*, the architect Wagner Membrides Bossi lists the results of the application of the City Statute instruments in the Diadema municipality between 1994 and 2008. He concludes that while some instruments were intensively applied, others had been allowed to fall into disuse by the public authorities and were disregarded by the wider community. The following summarises Membrides Bossi's conclusions:

AEIS-2 (Special Areas of Social Interest). These are areas occupied by favelas and low income housing settlements where urban and tenure regularisation programmes were implemented, supported by legal delimitation. The interventions that already existed in these places before the 1994 Master Plan were upgraded and produced effective results. The territory occupied by AEIS-2 increased from 3.5 per cent of the total area of the municipality (1.07 km²) in 1994 to 5.6 per cent (1.71 km²) in 2008.

AEIS-3 (Special Areas of Social Interest). A number of different social housing developments were undertaken outside the ambit of the AEIS-1, contributing to efforts to resolve the housing problem, but these were adversely affected by irregularities. Given the need to regularise such developments, the 2008 Master Plan incorporated them into what were known as AEIS-3, covering 3.5 per cent of the municipal territory (1.08 km²).

Special Environmental Preservation Areas (AP) and Environmental Preservation Zones (ZPA). These, covering 19.6 per cent of Diadema's municipal territory (6.02 km²) have played an important role in preventing the deterioration of protected areas by introducing licensing and strict control over building in such areas. A single middle-class residential development was approved and executed in an environmental preservation area in accordance with the legal norms. However, one social housing development was embargoed and only subsequently regularised. In addition, 2.89 km² of territory has been earmarked for the preservation of vegetation of environmental interest.

Compulsory Parcelling, Building and Utilisation (PEUC). The first six notifications regarding compulsory utilisation of underused properties occurred in 2007, a full six years after introduction of the City Statute. Despite acknowledgement by the local government authority of the importance of this instrument, a series of legal, political and administrative bottlenecks prevented them from proceeding. Given that the property tax (IPTU) and expropriation compensated with public debt bonds were conditional on notification, execution of these instruments is still at an embryonic stage. The same occurred with the Property Consortium, which has not been put to use to date.

Onerous Grant on the Right to Build ('Waiver of Building Rights'). This was used in nine cases between 2005 and 2008, resulting in a net receipt of R\$1.1 million accruing to the local government. This amount can be considered as of little consequence when compared with the housing and environmental needs of the municipality (housing and the environment are supposed to be beneficiaries of the revenue obtained from this arrangement).

Consortiated Urban Operation. This device was used to enable the construction of a shopping centre in the downtown area of Diadema with specific urban planning indices and parameters. In turn, the developer undertook to execute improvements in the surrounding road system, provide land in exchange for certain public areas affected by the works, undertake improvements to a variety of municipal amenities, and create a public park in the proximities of the development.

Neighbourhood Impact Report. This was completed in only five cases between 1999 and 2008. However, the majority of reports were of low technical quality.



Properties of Historic, Landscape, Artistic and Cultural Interest. Only one intervention under this category was undertaken by the municipal government, involving the restoration of a threatened property of historic value. The municipality is still negotiating to acquire a further historic building situated in the central area of the city.

Fiscal Exemption for Properties Possessing Vegetation of Environmental Interest. Up to 2008 only nine properties received IPTU reductions under this ruling. With the new rules under the Master Plan it is expected that the number of exempt beneficiaries will increase significantly.

Transfer of Development and Pre-emption Rights. These two instruments attracted a degree of ad hoc interest but have not yet produced concrete results.

The 2008 Master Plan

The most recent revision of the Diadema Master Plan, introduced in 2008 following discussion with the community and housing movements, resulted in the earmarking of new areas as AEIS-1. Furthermore, the housing nuclei resulting from the Real Right of Use Concession were defined as 'pre-emption' areas, i.e. the right of certain parties to acquire property in preference to others. As a result, FUMAPIS was given priority to purchase housing units in these nuclei with a view to creating a stock of housing to meet demand.

The 2008 Master Plan again modified the provisions related to land use and occupation, with the suppression of the 2002 macro-zones and the institution of a new system covering zones, special areas and structural axes. The AEIS were extended with the incorporation of 194,000 m² in the AEIS-1, together with the creation of the AEIS-3 aimed at the planning and tenure regularisation of the EHIS occupying 180,000 m². The new Master Plan, in common with the previous ones, set out general guidelines concerning the environment, public transport and socio-economic development. The Environmental Protection Zones (ZPA) were also defined, establishing a new series of objectives for the municipality in partnership with the state bodies with the aim of complying with environmental and headwaters protection legislation.

In 2009, given the possibility of fresh financial resources, the local government proposed to incorporate 42 new areas into AEIS-1. However, 11 tracts of land were withdrawn before the final vote on the proposal by the Municipal Chamber as a result of claims by commercial and workers' trade unions and associations, which argued jointly that such areas belonged to industrial zones and if they were occupied by housing would affect the activities and jobs availability in nearby companies. The exclusion of these areas was accepted by the pro-housing movements as the result of an agreement with the local government which undertook to put such areas back onto the agenda later in 2009. In October, the Municipal Chamber approved the incorporation of 17 more areas in the AEIS-1 amounting to a land area of 210,000m². According to the agreement, the municipal government will earmark 30 per cent of the approved areas to house families on incomes of between zero and three minimum wages under the Minha Casa, Minha Vida programme.



Financing and access to land

The City Statute and Master Plans have improved access to urban land but have failed to resolve all the problems involved. A financing system is needed to fund house building as a practical response to the persistently high housing deficit.

The funding of urban and housing policy in Diadema depended for many years almost exclusively on municipal resources. Between 1983 and 1988 the municipal government funded all the urbanisation works in the area from its own resources. However, as from 1989 the State and Federal governments began to provide limited (and insufficient) money for house-building in the area. The local government had been responsible for infrastructure works in the favelas up to 2003, i.e. before the volume of Federal and State funds was increased.

As for the construction of social housing, Diadema had no access to external funding for many years. From 1983-2000, only 100 social housing units were constructed in the municipality with federal funds and 1,300 with funds allocated by São Paulo State. Over the same period the municipal government financed the construction of 1756 housing units with own resources.

Between 2001 and 2008 the situation was significantly reversed, with the Federal Government under President Luis Inácio Lula da Silva introducing a different concept with regard to the relationship between the federative entities (union, states and municipalities). In the housing area, this involved introducing a financing system, accompanied by a set of programmes aimed at satisfying demand for housing from the lowest income segments of the population (families receiving between zero and three minimum salaries per month). These programmes included the Housing Subsidy Programme, the Better Living Programme (Programa Morar Melhor), the Brazil Habitar-IBD programme, the Growth Acceleration Programme (PAC) and the Minha Casa, Minha Vida programme. Over the past eight years the Federal Government has provided financing for new homes or upgraded urban facilities for 3,363 families; the São Paulo State government contributed funds for building a further 1,460 homes; and the local municipal government was able to reduce its share to providing funds for a mere 270 housing units.

On the one hand the significant growth in the volume of federal resources resulted from initiatives undertaken by the Lula government. On the other this process can be regarded as a result of the introduction of the City Statute. By providing urban land management with a solid legal framework the Statute established a good basis for participation by the housing associations while advancing public housing developments.

From 2001 to 2008 the Federal Government invested R\$56.9 million in housing in Diadema in projects that received R\$27.4 million counterpart funds provided by the municipality. A further R\$27 million was provided by the Residential Renting Programme (PA) run by the Federal Mortgage Bank (CAIXA) and R\$5.9 million in planning, urbanisation and tenure regularisation projects, giving an overall total of R\$89.8 million in federal resources. Over the same period the State Government of São Paulo invested over R\$39.9 million.

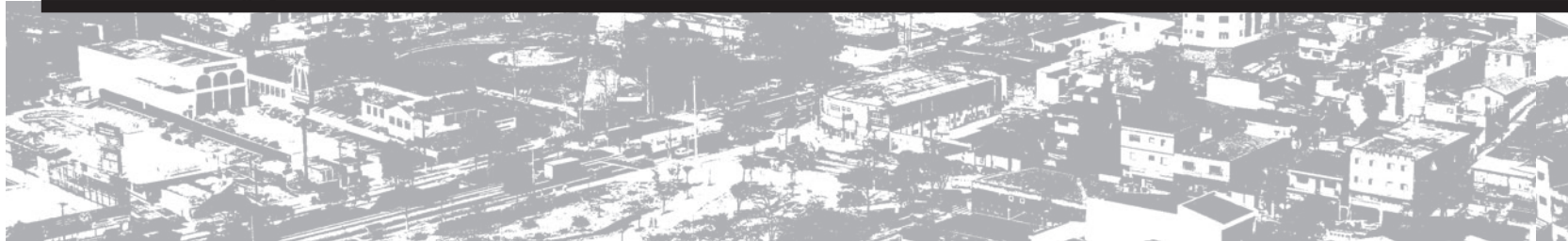
The norms established by the City Statute went hand-in-hand with housing financing. Since the issuing of the Diadema Master Plan, a Local Social Housing Plan containing programmes, targets and a modus operandi for dealing with housing problems is being drawn up. This plan will serve as a basis for the local government to design projects and capture funds from, for example, the National Social Housing Fund and the Minha Casa, Minha Vida programme.



Prospects for the urban situation in Diadema

In Diadema the application of the principles and guidelines for urban reform contained in the City Statute have made it possible to avoid the eviction of poorer people from the areas where they were living, in contrast to other municipalities where urbanisation and public investment in the poorer neighbourhoods have led to land price appreciation and the eviction of the original occupants. In Diadema it was necessary to proceed with basic changes throughout the city, particularly with regard to favela upgrading. Henceforth the favelas became known as 'housing nuclei'. At the same time efforts were made by the municipal authorities to put into effect social policies throughout the city aimed at providing access to the entire population to good quality services consistent with demand, with priority being given to health, education, security and social assistance.

In 1983 around 30 per cent of the population in Diadema lived in favelas. This figure was reduced to 3 per cent by 2009. According to municipal data, of a total of 225 housing nuclei in 2008, 155 were totally urbanised, 49 were partially urbanised, 4 were un-urbanised and 17 were awaiting total removal on account of being in risk or environmental protection areas. By 2009 all the housing nuclei in the city had received some form of intervention from the authorities although in certain cases, especially in those places subject to removal, such initiatives were taken on a provisional or emergency basis.



Since the introduction of the City Statute, participatory management in Diadema has involved the organisation of two Municipal Housing and Urban Development meetings (2001 and 2005) aimed at defining the long-term prospects for urban and housing policy in the city. Both meetings attracted around 400 representatives from the housing nuclei as well as leaders of social movements. Since 2003 Diadema has also hosted four local preliminary meetings of the Cities Conference, which was instituted by the Ministry of Cities as an instrument primarily designed to ensure better contact among the Federal Government, states and municipalities and to ensure participation by society in monitoring the National Urban Development Policy. Furthermore, regular elections have been held for the FUMAPIS council and a series of activities undertaken to support the organisation of housing associations, as well as the annual meetings of the Participatory Budget Plenaries charged with scrutinising future investment and expenditure plans.

According to estimates published in the Diadema Local Social Housing Plan, the housing deficit of the city estimated for 2008 was 9,499 new housing units. This study also identified a significant group of 22.45 per cent of urban households considered to be inadequate, with 60.47 per cent of them seriously overcrowded (affecting an estimated 17,623 households in 2008); 13.31 per cent with tenure problems (14.238 households in 2008); and 5.93 per cent lacking infrastructure or without toilet facilities (6.345 households). The local authority calculates that around 3,300 families currently live in risk areas or in environmental preservation zones and are considered to require priority treatment.

It is obvious from the above that many challenges remain to be overcome. The city nevertheless has good infrastructure, a dynamic economy and an excellent capacity for mobilising its population. The most pressing problem is the shortage of land and the city's very high population density. However, the decision by the local authorities to concentrate on the neediest areas throughout the whole municipal territory has led to a general improvement in urban facilities. For example, the replacement of wooden houses with no water or sewage disposal (or even a proper address) by homes built of brick and concrete with access to all the basic services represents a significant 'quality of life' leap for the population involved.

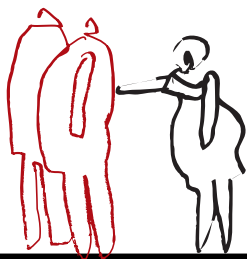


These changes have however generated new problems. Even with the advent of social policies and improved income distribution in recent years, the majority of the population suffers the extreme social inequality typical of other parts of Brazil. In Diadema this is particularly noticeable since ordinary incomes tend to be considerably lower than the average for the surrounding region. The rising price of land in the city has led to a gradual occupation of vacant lots as well as the verticalisation of housing units. According to Marta Cirera Sari Coelho (2008), "the main problem in Diadema is family cohabitation resulting in the proliferation of a large number of small lots on which houses of three or more floors are built by occupants who endure insalubrious conditions, including poor ventilation". This type of unsustainably dense housing is generally surrounded by low-grade urban space with few leisure areas.

In order to correct these distortions and address the existing housing deficit, the municipal government needs to possess a stock of land to substantially increase investment in housing and to use urban development management mechanisms more intensively. Despite the progress achieved in Diadema, abusive activities in the property market have barely altered. The prevailing shortage of land has led to artificial overpricing: the market price of land is between R\$400 and R\$600 per m² and occasionally over R\$800 per m²—unviable prices for the public authorities to purchase land in the quantities required to satisfy demand. The patrimonialist and rent-seeking culture has led to overvaluation of properties which often remain unoccupied for several years, depreciating surrounding properties and ruling out new developments. The need to use instruments such as compulsory parcelling, building and utilisation is clear. Before the City Statute was enacted, the absence of such instruments produced vast financial liabilities for the local authorities, which had to pay judicial debts related to properties that had undergone change of use, had restrictions on use or occupied areas that the municipal government had intervened in to avoid repossession, or even areas needed for constructing roads and streets. In many cases owners also profited from value capture of vacant lots.

Confronting the current urban situation in Diadema calls for the urgent and effective application of the instruments provided by the City Statute. The introduction of the AEIS process has been positive, but delays in applying the remaining instruments need to be tackled seriously. These result from the need to allow the instruments to ‘mature’ and from bureaucratic and legal impediments. However in a city such as Diadema—extremely well-located in a major metropolitan region and with substantial and continuing demand for urbanised land—it is vital now to notify the owners of all empty and underutilised properties in the city prior to enacting compulsory utilisation or to ensure that the relevant property taxes are collected by the authorities as a means of gathering resources for financing further housing developments and, once and for all, for confirming the social function of property. Another instrument that needs to be more intensively used is the Onerous Grant on the Right to Build. In this case, however, it is necessary to confirm planning indices for building and occupancy jointly with neighbouring cities in order to avoid disputes over location which could undermine the market and favour the private property sector. This is one of the aspects of urban development policy that, in any metropolitan region with its crowded cities, needs to be considered on a wider basis (i.e. beyond the municipal boundaries). Many of these problems can only be resolved by liaising regularly with neighbouring cities and by joint action undertaken by municipal governments to establish common guidelines that are regional or metropolitan in scope.

As with many other Brazilian cities, Diadema has made great strides in introducing a degree of fairness in its territory. However, much still needs to be done to balance the housing deficit, to improve the delivery of good quality public services with equity, to improve economic and environmental sustainability and, above all, to upgrade the quality of life of the city’s population. There is no doubt that while the City Statute is proving to be an important tool in this respect, it also needs to be fully deployed by different local stakeholders. Only at that stage will it become a truly meaningful law.





Bibliographical references

BALTRUSIS, Nelson; MOURAD, Laila N.; AKEMI, Yeda Maria Inoue. *A revisão do Plano Diretor de Diadema: a construção de um processo participativo*. [Revision of the Master Plan for Diadema: building a participatory process] In *Periferia Revisitada*, Revista de Estudos Regionais e Urbanos, São Paulo, 2001.

BISILLIAT, Jeanne. *Lá onde os rios refluem. Diadema: 20 anos de democracia e poder local*. [Diadema: 20 years of local democracy and power] Editora Fundação Perseu Abramo, São Paulo, 2004.

BOSSI, Wagner Membribes. *Diadema, planejamento e realidade: o que muda com os Planos Diretores*. [Diadema, planning and reality: changes due to the Master Plans] (Masters Dissertation in Architecture and Urbanism) – Universidade de São Paulo, São Paulo, 2009.

BRASIL. Chamber of Deputies. *Estatuto da Cidade: guia para implementação pelos municípios e cidadãos*. [City Statute: implementation manual for municipalities and citizens] 1st ed. Brasília: Câmara dos Deputados, 2001.

COELHO, Marta Cirera Sari. *Espaço de direitos é mais que direito a espaço: o processo de urbanização de favelas em Diadema (1983-2008)*. [Space for rights is more important than the right to space: the favela upgrading process in Diadema] (Masters dissertation in Social Service) – Pontifícia Universidade Católica de São Paulo, São Paulo, 2008.

DIADEMA, Prefeitura Municipal. *Sumário de Dados Socioeconômicos* [Social and economic data]. Diadema, 1995.

_____. *Habitação Cada Dia Melhor* [Housing improving by the day]. Revista Trimestral da Prefeitura de Diadema No.1. Diadema, May, 1996.

_____. *Desenvolvimento Econômico*. Secretaria de Habitação e Desenvolvimento Urbano. [‘Economic Development’. Housing and Urban Development Secretariat] Cadernos de Habitação No.1. Diadema, September, 1996.

_____. *A Cidade Vermelha* [The Red City]. Revista Trimestral da Prefeitura de Diadema No.3. Diadema, December, 1996.

_____. *Legislação Urbana: Plano Diretor / Lei de Uso e Ocupação do Solo*. [Master Plan/ Law on Land Use and Occupation]. Secretaria de Habitação e Desenvolvimento Urbano. Cadernos de Habitação No.2. Diadema, December, 1996

_____. *Código de Obras e Edificações* [Works and Buildings Code]. Cadernos de Habitação No.3. Diadema, December, 1996.

_____. *Diadema, Referências Históricas: 1501-2000*. [Historic References: 1501-2000] Centro de Memória de Diadema. Diadema, 2002.

_____. *Diadema, Cidade de Todos*. [Diadema: a city for all]. Revista de Prestação de Contas. Secretaria de Comunicação. Diadema, December, 2006.



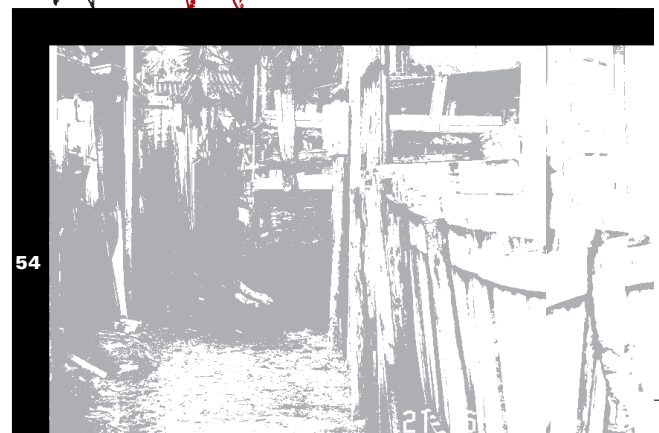
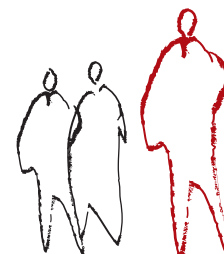
_____. Plano Local de Habitação de Interesse Social [Local Social Housing Plan], Secretaria de Habitação. Diadema, December, 2008.

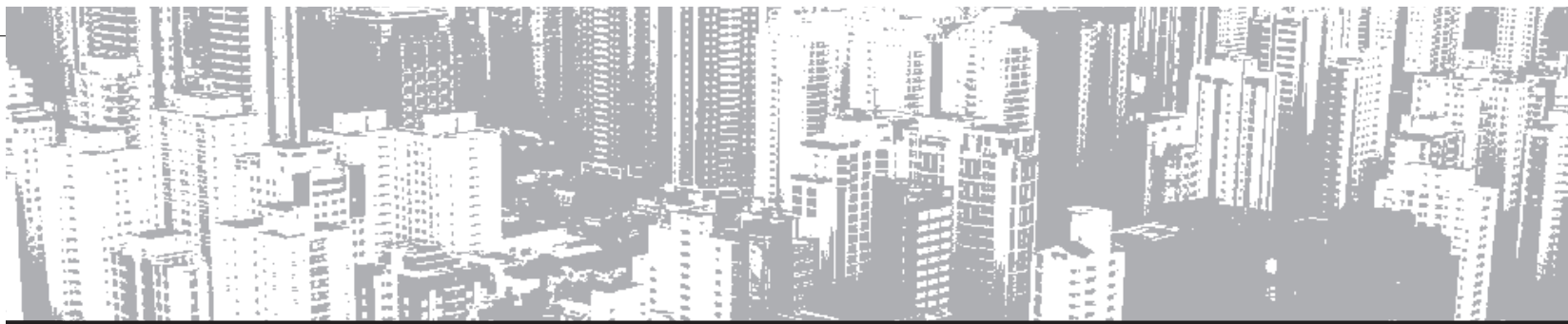
HEREDA, Jorge F.; NAGAI, S. K. Sônia; KLINK, Jerôen; BALTRUSIS, Nelson. *O Impacto das AEIS no Mercado Imobiliário de Diadema*. [Impacto of AEIS on Diadema real estate market]. In ROLNIK, Raquel and CYMBALISTA, Renato (orgs.), *Instrumentos Urbanísticos contra a Exclusão Social*, [Urban tools against social exclusion]. Pólis, São Paulo, 1997.

HEREDA, Jorge Fontes; ALONSO, Emílio. Política urbana e melhoria da qualidade de vida em Diadema. [Urban policy and improving quality of life in Diadema]. In BONDUKI, Nabil (org.), *Habitat: As práticas bem-sucedidas em habitação, meio ambiente e gestão urbana nas cidades brasileira*. [Habitat: Successful housing, environmental and urban management practices]. Studio Nobel, São Paulo, 1996.

HEREDA, Jorge Fontes. *Habitação popular, o discurso e a prática – o caso de Diadema*. [The case of Diadema: popular housing, discourse and practice]. In GORDILHO-SOUZA, Angela (org.), *Habitar contemporâneo – Novas questões no Brasil dos anos 90* [New questions for Brazil in the 1990s], FAU-UFBA, Salvador, 1997.

MARICATO, Erminia; FERREIRA, João Sette Whitaker. *Estatuto da Cidade: essa lei vai pegar?* [City Statute: will it work?]. In *Correio da Cidadania*, No. 252, July, 2001





The City Statute and the legal-urban order

Edesio Fernandes

Summary

This article describes the principal innovations of a legal-urban nature introduced in Brazil since the promulgation of the 1988 Federal Constitution and the approval of the City Statute in 2001. The article addresses the progress that has been made in legal aspects of the urban development process and seeks to identify the issues and problems that still need to be confronted in this respect. It also highlights the need for a precise (but invariably elusive) combination of legal reform, institutional change and renewed social mobilisation at all levels of government as a pre-condition for ensuring that the new and significant political spaces that have been created by the legal and urban order can be used to best advantage, with a view to reverting the pattern of socio-spatial exclusion which has tended to characterise urban development in Brazil.

Introduction

Since the 1980s, a significant process of urban reform has gradually and consistently taken shape in Brazil. Substantial legal and institutional changes have been introduced at the federal level since the approval of the first pioneering chapter on urban policy contained in the 1988 Federal Constitution (Articles 182 and 183), which established the basis for a new legal-urban order, subsequently consolidated with the approval on 10 July 2001 of Federal Law No. 10.257 (the 'City Statute'). Vigorously addressing the urban reform agenda, the City Statute sets out principally to provide consistent and unambiguous underpinning of a legal nature to actions undertaken by governments and organised society to control the processes of urban use, occupation, parcelling and development of land. The Statute focuses especially on providing support to municipal governments that have been under pressure to confront serious urban, social and environmental questions directly affecting the lives of a very substantial number of Brazilians currently living in cities. A new federal institutional order emerged from the creation of the Ministry of Cities and the National Cities Council in 2003.

This national legal-urban order has been systematically expanded with the approval of a raft of federal laws related to various aspects of the so-called 'urban question', as well as the introduction of a series of federal decrees, Provisional Measures and resolutions by the Cities Council and the presentation of other key parliamentary bills now being examined in the National Congress. Furthermore, the principles of urban policy espoused by the City Statute that form the basis of this new legal-urban order have been gradually adapted to the specific situations



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in the states and municipalities following the approval of thousands of municipal Master Plans and other urban planning and environmental laws. These have gradually led to the appearance of a set of programmes, projects and actions at all three levels of government, supported by a substantial number of judicial actions undertaken with the participation of the Ministerio Público, the Public Defender's Office and organised civil society.

The City Statute has been acclaimed internationally. Brazil was inscribed in the UN-Habitat 'Roll of Honour' in 2006 partly for having approved this framework law, which effectively consolidated a wide-ranging proposal for legal reform formulated and defended by many sectors and stakeholders over a number of decades against a background of social, political and legal conflict.

Background

All the existing statistics and other data point clearly to the scale and complex nature of the urbanisation process in Brazil, widely discussed for many years in interdisciplinary academic literature. Rapid urbanisation generated, and continues to generate, a massive urban crisis characterised by a combination of socio-spatial segregation, a substantial housing deficit, environmental problems and the difficulties arising from informal access to urban land and housing by the poor. Despite the lengthy tradition of political, legal and financial centralisation in Brazil during the greater part of this urbanisation process, the dearth of appropriate government responses at the federal level typified by the elitist and technocratic nature of limited governmental interventions prior to the creation of the Ministry of Cities, was one of the main factors determining the exclusionary nature of the land and urban development process in our country. This situation was aggravated by political exclusion as a bi-product of the legal system in force before the promulgation of the new Federal Constitution in 1988. Political exclusion tended to undermine not only the legal and political functions of municipal and state governments, but also to affect the quality of the system of democratic representation at all levels of government.

A further key factor in the creation and reproduction of this exclusionary process of urbanisation was the prevalence of an obsolete and prohibitive legal order overly concerned with property ownership rights which, disregarding the principle of the social function of property that had been set forth in all the Federal Constitutions since 1934, continued to affirm the anachronistic paradigm of the 1916 Civil Code that reinforced the long-held tradition of individual property rights. As a result, the scope for intervention by the public authorities in the property sector through planning and urban management initiatives was severely constrained over many years. This was particularly the case at the municipal level. Even today, the majority of Brazilian municipalities possess an inadequate set of basic urban planning laws for determining boundaries and approving codes for public works. In general, it was only from the mid-1960s onwards that Brazil's main city administrations began to generate new and ambitious planning laws. These were initially subject to much questioning, given that they were created by the municipal authorities themselves and were, in addition, perceived to usurp the civilista conception of property (i.e., embedded in the above-mentioned Civil Code).



From the mid-1970s, and especially from the 1980s, the military regime began to weaken as the result of a powerful combination of factors: (i) increasing social mobilisation by trade unions, civic organisations, social movements, residents' associations and groups belonging to the progressive wing of the Catholic Church; (ii) the reorganisation of traditional political parties and the creation of new ones pressuring for political and institutional change principally through democratic direct elections; (iii) the strengthening of municipal governments; and, finally, (iv) minor readjustments in respect of land and property capital. The first attempts to democratise urban management at the municipal level emerged in the mid-1970s when the seeds of the current participatory budget process were sowed.

Federal Law No. 6766, approved in 1979, was the result of growing social mobilisation and gradual political change. This law provided a conceptual framework for the social function of property with a view to regulating urban land parcelling on a national scale, as well as for providing for the regularisation of consolidated informal settlements in urban areas. Subsequently, a number of progressive environmental laws were also approved, including the unprecedented recognition under Federal Law No. 7347 in 1985 of the need for civil public action to defend different interests of an environmental nature and with the conferring of legitimacy and locus standi on the pro-environment NGOs emerging at the time. At the municipal level, the first comprehensive programmes for regularising informal settlements in urban areas were formulated in 1983 in Belo Horizonte and Recife.

The National Urban Reform Movement made its appearance during this period, involving some of the existing social movements, trade unions and academic organisations. This movement began to assume an important role in the process of political opening leading to the country's return to democracy in 1985. With the gradual strengthening of a new socio-political 'national pact', it was widely recognised that deep political and legal reforms needed to be undertaken in Brazil. This led to the constituent process in 1986-1988 aimed at drafting a new Constitution, promulgated in 1988.



The 1988 Federal Constitution

The urbanisation process began in Brazil in the 1930s and reached its apex in the 1970s. During this period, different constitutions were promulgated (1934, 1937, 1946, 1967 and Constitutional Amendment No.1 of 1969). However, it was not until the 1988 Federal Constitution entered into force that specific measures were introduced to guide the process of urban development and determine the conditions under which urban management should be organised. The 1988 Constitution contained a specific chapter on this issue, establishing the initial basic legal and political framework for proceeding with urban reform.

The actual process leading up to the 1988 Constitution involved an unprecedented level of popular participation and much of the relevant constitutional chapter was based on the Urban Reform Popular Amendment which had been formulated, discussed, disseminated and signed by over 100,000 social organisations and individuals involved in the National Urban Reform Movement. The amendment proposed that the following general principles should be taken into account in the new Constitution



Municipal government autonomy;



The democratic management of cities;



The social right to housing;



The right to regularisation of consolidated informal settlements;



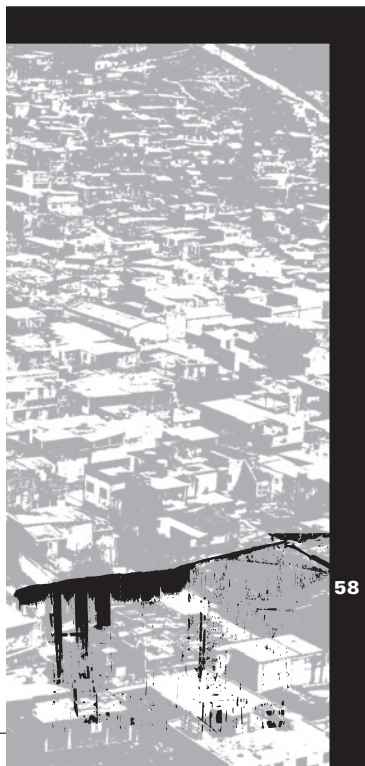
The social function of urban property; and



Combating property speculation in urban areas.

Meanwhile, a further Popular Amendment, also signed by thousands of people and organisations, proposed a series of constitutional measures acknowledging the collective rights to a balanced environment. Following fractious disputes in the Constituent Congress, a forward-looking chapter on environmental conservation was finally approved, together with the above-mentioned pioneering chapter on urban reform (limited to two articles).

While the environmental provisions virtually mirrored the largely undisputed terms of the Popular Amendment, the debate covering the urban policy chapter was much more contentious. In the event, however, almost all the social measures demanded under the Urban Reform Popular Amendment were approved. The right to the regularisation of consolidated informal settlements was confirmed with the approval of new legal instruments aimed at covering land tenure regularisation programmes both in the settlements occupying private land ('Special Urban Usucapiao', a form of adverse possession) and in those on public land ('Concession of the Right of Use'). The need to combat property speculation was explicitly acknowledged with the creation of a set of new legal instruments: compulsory land parcelling, utilisation and building, progressive property tax, and expropriation-sanction arrangements.



The principle of democratic management of cities was fully endorsed by the 1988 Federal Constitution in a series of legal-political instruments which upgraded the procedures for direct participation by members of the public in the wider decision-making process. The autonomy of municipal governments was also acknowledged in political and legal terms (as well, to a lesser extent, in fiscal terms) in such a way that Brazilian federalism is today considered by many as one of the most decentralised systems in the world. Unfortunately, the 1988 Constitution failed to deal adequately with the management of metropolitan regions: responsibility for formulating a legal framework for administration of the large metropolitan areas was transferred to the state governments.

Political conditions did not exist at the time to allow approval of the concept of social right to housing. Furthermore, regarding the question of recognition of the principle of the social function of urban property, rather than putting forward a list of formal criteria to be verified (as had been the case since 1964 with regard to the social function of rural property), the following constitutional formula was finally approved after extensive debate by opposing groups. From that point on, urban property would be explicitly recognised as a fundamental right, providing it fulfilled the social functions determined by the municipal Master Plans and other urban planning and environmental laws. Thus it can be argued that the 1988 Constitution, as a result, did not address the question of the right of property but rather the right to property.

By linking the principle of the social function of urban property (and the final acknowledgement of this fundamental individual right) directly to the approval of municipal land planning laws, the intention of the more conservative groups participating in the constituent process leading up to the 1988 Constitution appeared to be to accept the principle solely as a rhetorical device. After all, the limited experience in Brazil of urban planning until then had been marked by the inability of urban planners to make any positive impact on the traditional exclusionary urban development conditions of the time. Informal urban development had, on the other hand, surged since the 1970s, largely in opposition to the elitist and technocratic nature of urban planning that had been deployed for many years in different cities. Faced with the likelihood of being unable to approve a more progressive constitutional formula, the National Urban Reform Movement decided to secure best advantage from this situation and to subvert the use of the approved constitutional measures by encouraging action by the socio-political and institutional stakeholders involved in the formulation of participatory municipal Master Plans throughout the country. It is worth noting at this point that the 1988 Federal Constitution also contained provisions favouring the concept of the social function of the city, thereby opening up excellent opportunities from the legal angle—previously only vaguely understood and utilised—for adopting different ways of approaching the process of urbanisation, as well as the distribution of its inherent costs and benefits.





The new legal-urban order in the 1990s

In 1989 Senator Pompeu de Sousa presented Federal Bill No.181 aimed at regulating the new constitutional chapter on urban policy. However, before this bill could be discussed more widely, a totally new legal-urban order created by the municipalities came into being as a result of the promulgation of the 1988 Constitution. This new order generated a series of major local initiatives throughout the 1990s. Many municipal authorities succeeded in approving new urban planning and environmental laws, including the preparation of Master Plans. In this respect Brazil became an important reference symbol for urban planning and adherence by local administrations to new strategies and processes, engendering a new relationship between state, private, community and voluntary sectors with regard to urban planning control. New tenure regularisation programmes were formulated and began to be implemented in certain municipalities. Special emphasis was placed on the quality of the policies emerging from these new local planning decision-making processes in which popular participation was encouraged in different forms, including sharing definition of public policies during city conferences and the introduction of innovative participatory budget procedures. Since then, municipalities such as Porto Alegre, Santo André, Diadema, Recife and Belo Horizonte have acquired a degree of international recognition for their urban management strategies and commitment to the urban reform agenda.

The lack of legal regulation of the constitutional chapter on urban policy nevertheless generated a series of legal and political difficulties by groups opposing the new legal-urban order, particularly with regards to the application of the constitutional principles by municipal authorities. As a result, given that the reach and scope of these promising municipal experiments was to an extent threatened, the organisations involved in the National Urban Reform Movement in the early 1990s set about creating the National Urban Reform Forum (FNRU), comprising a broad front of national and local social organisations and movements.

The FNRU was instrumental in the promotion of the major goals and agenda of urban reform. Three of the Forum's key objectives at the time of its establishment were (i) incorporation of the social right of housing in the 1988 Federal Constitution; (ii) approval of a federal bill to regulate the constitutional chapter on urban policy; and (iii) approval of a federal bill proposing the creation of a National Social Housing Fund which originated with a popular initiative. At the same time, the FNRU called on the federal government to establish an appropriate institutional mechanism at national level to promote planning and urban policy.

A lengthy process of social mobilisation and political debate lasted throughout the 1990s and into the new century both within the National Congress and elsewhere. In 1999 Federal Law No. 9.790 was passed, regulating public interest civil society organisations and permitting them to receive public funding. The social right of housing was finally approved by Constitutional Amendment No. 26 in 2000 and Federal Law No. 11.124, leading to the establishment of the FNHIS, was approved in 2005. Especially important was the approval in 2001 of the City Statute.

The City Statute

The City Statute regulated and expanded the constitutional measures on urban policy, as well as explicitly acknowledging the right to the sustainable city in Brazil. This federal law, the result of an intensive process of negotiation for over ten years involving social and political forces, confirmed and broadened the fundamental legal-political role of the municipalities as formulators of urban planning guidelines, as well as bringing them into the mainstream of the development and urban management process.

The City Statute is based upon four main pillars: (i) a conceptual approach, which gives expression to the central constitutional principle of the social functions of property and the city and to other principles enshrined in urban policy; (ii) an instrumental approach involving the creation of instruments for giving concrete expression to the principles underlying urban management; (iii) an urban management approach establishing mechanisms for progressing urban policy principles and, finally, (iv) tenure regularisation to be applied to consolidated informal city settlements.

(a) The social functions of property and the city

The principle of the social function of property had been theoretically advanced in all Brazilian constitutions since 1934, but it was not until the 1988 Constitution that a definitive formula was finally reached. The concept remained at the rhetorical stage for many years given that effective action of the private sectors associated with the urban development processes in general continued to be based upon the concept of the right of individual property, considered by many to be an inviolable right. The legal basis of this concept throughout much of the 20th century owed much to the 1916 Civil Code (introduced at a time when only around 10 per cent of the Brazilian population lived in cities, with the remainder being rural dwellers) which remained in force until 2002. As a reflection of the ideology underlying traditional legal liberalism, the Civil Code defended the rights to individual property in a virtually absolute manner—or at least this was the interpretation given to it by the exponents of civilista principles. Throughout Brazil's turbulent urban growth period, during which far-reaching changes took place in society, the public authorities in charge of urban development encountered substantial obstacles to overcoming this interpretation. The long and hard-fought process of legal reform commencing in the 1930s eventually culminated in the 1988 Constitution and the City Statute, both of which conveyed a change of approach by substituting the individualist principle enshrined in the Civil Code with the principle governing the social functions of property and the city, and by establishing the basis for a new legal-political paradigm to ensure control over land use and urban development by public authorities and organised society.

This was possible as a result of the constitutional measure recognising the power and obligations of the public authorities, especially the municipalities, to control the urban development process by formulating land and land use policies in which individual interests of land and other property owners would henceforth be required to coexist with other social, cultural and environmental interests espoused by other socio-economic groups and inhabitants of cities as a whole. Thus the public authorities were at last given the power, based on a series of legal, urban and financial instruments and norms, to determine autonomously the balance between individual and collective interests regarding the proper utilisation of this essential non-renewable asset (urban land) that forms the basis of the sustainable development of life in cities.



(b) A “toolbox”

Now more than ever, the municipalities are responsible for giving concrete expression to the new paradigms concerning the social functions of property and the city by reforming the municipal legal-urban and environmental order. By confirming and broadening the guaranteed constitutional principle enabling municipalities—and to a lesser extent the states and the Union itself—to control the process of urban development, the City Statute not only serves to regulate the urban and financial instruments enacted by the 1988 Federal Constitution, but has led to the establishment of other instruments. A set of legal tools (a ‘toolbox’) now exists under Federal Law that can be used by municipal administrations to formulate Master Plans designed to regulate, stimulate and/or reverse the arrangements concerning urban land and property markets in accordance with the principles of social inclusion and environmental sustainability. All these instruments can, and should, be utilised with the aim of fostering not only normative regulation of land use processes, development and occupation of urban land, but also actively to guide these processes and intervene directly with, and occasionally reverse, the pattern and dynamic of formal, informal and above all speculative property activities which have expanded social exclusion and spatial segregation in Brazil’s cities. A combination of traditional planning mechanisms (zoning rules, plot incorporation/dismemberment, occupancy rates, settlement models, building coefficients, removals/relocations, etc) with the new instruments (compulsory parcelling/building/utilisation, progressive extra-fiscal taxation, expropriation-sanctions in exchange for payment with public debt bonds, surface rights, municipal preferential rights, building rights transfers, etc) presents new opportunities for the municipal authorities to introduce a new urban order that is economically more efficient, politically more just and more in tune with the grave social and environmental problems endured by the populations of cities.

The utilisation of these instruments by municipalities to exploit new opportunities depends fundamentally on the prior definition of a broad planning and action strategy geared to a city project that can be publicly explained and is in tune with municipal environmental and urban planning legislation, commencing for example with the establishment of the municipal Master Plan. In this context it is of fundamental importance for municipalities to undertake a widespread reform of their legal orders to conform to the new constitutional and legal principles. It is also vital for them to institute a framework of planning and environmental laws in accordance with the new paradigms governing the social and environmental function of property and the city. All municipalities with over 20,000 inhabitants (and certain other categories) were given a deadline of five years to formulate and approve their Master Plans. Approximately 1,500 municipal authorities (out of around 1,650 with a legal obligation to take such action) have approved and/or have reached the discussion stage regarding their Master Plans. The political and technical quality of these municipal plans has varied enormously, but the fact that never before has so much information been produced about Brazil’s cities certainly constitutes progress in itself.



(c) Planning, legislation, management and the financing of urban development

Another important aspect of the City Statute, consolidating and broadening the basic proposal set forth in the 1988 Federal Constitution, concerns the need for municipalities to encourage effective liaison between planning, legislation and urban/environmental management processes in order to democratise the decision-making process and fully legitimise the new socio-environmental legal-urban order. Acknowledgement by the municipalities of different socio-political processes and appropriate legal mechanisms to guarantee the effective participation by citizens and representative associations are in the process of formulation. Other advances include implementation of urban-environmental planning and public policies, public meetings, open consultative events, the creation of councils, the undertaking of studies and preparation of neighbourhood impact reports, the introduction of popular initiatives for planning laws, access to the judicial power to underpin the urban order and, above all, the advent of the participatory budget procedure. All these initiatives involving citizens' participation have proved to be essential for democratising local decision-making processes and for providing a basis for the municipality's socio-political legitimacy, in addition to underpinning the legality of all the norms, laws and urban policies involved.

Furthermore, the City Statute emphasised the importance of establishing a new relationship between the state, private and community-based sectors, especially with regard to PPPs, public and private property consortia and consortiated urban operations within a clear and previously defined legal-political framework, including transparent fiscal and social control mechanisms. The financing of urban development is approached in different ways but always in accordance with the principles of just distribution of the costs and benefits of urbanisation. The capture by the community of the urban value generated by public authority interventions, not only from public works and services but also flowing from the benefits of planning legislation, is also of prime importance. Above all, for the City Statute principles to have real effect, it is vital for municipalities to undertake a comprehensive reform of their laws and political-institutional, political-social and political-administrative management processes in order to broaden and give concrete expression to the provisions of the law.



(d) Tenure regularisation of consolidated informal settlements

The other important dimension of the Statute concerns the legal instruments to be used, especially by the municipal authorities, to launch programmes aimed at the tenure regularisation of informal settlements under the aegis of the 1988 Federal Constitution, which called on municipal authorities to introduce more democratic methods for people to access urban land and housing. In addition to regulating the already existing devices (Special Usucapiao and Concession of the Real Right of Use), to be employed preferentially by the municipalities to regularise occupied land in both private and public areas, the new law went a step further by determining that these instruments could be used collectively. Special emphasis was placed, for example, on the demarcation of Special Zones of Social Interest (ZEIS) for collective use. Furthermore, a range of measures was approved guaranteeing that informal areas would be registered in the public registration offices, which previously had stood in the way of regularisation procedures and policies. It is also important to note that the City Statute consistently refers to the need for such tenure regularisation programmes to adopt and adhere to environmental criteria.

The section of the Statute proposing the regulation of a third instrument (Concession of Special Use for Housing Purposes on Public Land) was initially vetoed by the President of the Republic for legal, environmental and political reasons. However, mainly in response to mobilisation of the FNRU, the President eventually signed Provisional Measure No. 2.220 on 4 September 2001, which established under certain conditions—and providing environmental criteria were respected—the subjective right (i.e. not only as a public administrative prerogative) of the occupants of publicly-owned land, including municipal land, to be awarded the special use concession for housing purposes. This Provisional Measure, which remains extremely important from a social and political point of view, also established the conditions under which municipal authorities could transfer occupiers of public land to more suitable areas when necessary, particularly when environmental criteria were not being respected. Local authorities have been obliged to make joint legal, political and administrative efforts to respond appropriately to existing occupancy situations and to ensure that relocations conform to the social and environmental interests of the city as a whole.



Broadening the legal-urban order

The legal-urban order consolidated by the City Statute has been complemented by a series of new important federal laws dealing with a range of related topics, e.g.: public private partnerships (Federal Law No. 11.079 of 2004), inter-municipal consortia (Federal Law No. 11.107 of 2005) and the national sanitation policy (Federal Law No.11.445 of 2007). A major process of institutional change marked by the creation of the Ministry of Cities and the National Cities Council in 2003 provided the socio-political basis underpinning this approach to legal reform.

An even greater effort has been made regarding the question of tenure regularisation for ensuring that recognised social rights are respected. This has involved efforts to overcome a series of legal obstacles embedded in current federal legislation (urban, environmental, procedural and notarial). Federal Law No. 10.931/2004 introduced free property registration as part of the regularisation programmes. Meanwhile Federal Law No. 11.481/2007 aimed to facilitate tenure regularisation processes by the municipal authorities concerned with informal consolidated settlements on land owned by the Union. Federal Law No. 11.888/2008 instituted the right of communities to benefit from technical assistance in the course of regularisation programmes, while Federal Law No. 11.952/2009 provided a regulatory framework for tenure regularisation in urban areas in Legal Amazônia. Federal Law No. 11.977/2009 regulated the housing programme known as Minha Casa, Minha Vida and also aimed to facilitate tenure regularisation of informal settlements. A lively national debate has taken place around the revision of Federal Law No. 6766 of 1979 (Bill of Law No.3057/2000) regulating land parcels for urban purposes and regularising informal settlements.

Conflicts of interest

Formulating, approving, applying and interpreting the City Statute have involved a long history of conflict. Over ten years of complex discussion were necessary for the bill of law to be finally approved, with modifications. Although passed unanimously, the final text of the law provides some indication of the many difficulties encountered in the bargaining and negotiating process which involved different interest groups arguing their case for legal control of urban development. Furthermore, the socio-political, legal and ideological conflicts that marked the process of formulation of the framework law did not evaporate on approval of the Statute. On the contrary, the application and interpretation of its principles generated a renewed spate of disputes among jurists, urbanists, property developers and organised social movements.

Following its approval by the National Congress, the new law was submitted for sanction and/or veto by the President of the Republic. At this stage the battle between jurists began to be exploited and even fomented by sectors arguing that various clauses and instruments contained in the law were unconstitutional and therefore justified a presidential veto. Only a few of the specific-issue measures were eventually vetoed. However, controversy among legal experts continued, although this was often masked by technical discussions on formal aspects of the new law. Basically, the overriding problem—both in Congress and elsewhere—was the strong resistance of property sector-linked conservative groups to the new conception espoused by the Federal Constitution (and consolidated by the City Statute) of the right of urban property ownership in accordance with the constitutional principle governing the social functions of property and the city. Most criticism of the new law can be traced back to a distorted view of the



previously-mentioned civilista principles, which still underpin jurisprudential and legal doctrines based on a natural, untouchable, almost sacred right to property—regardless of wider social and environmental interests related to the use of urban land.

This problem results partly from the obsolete curriculum of academic law courses in Brazil's universities. Most do not teach Urban Law, instead choosing to spend more than four years discussing the formal aspects of Civil Law, although the new 2002 Civil Code was largely already out of date on its introduction. This has made it difficult to change approaches to the urban question: many jurists still view the city from the angle of private property ownership and fail to see or understand anything beyond the individual interests of property owners. For example, legal experts supporting the public authorities seek to justify the application of external administrative restrictions on the exercise of urban property ownership but fail to understand that property is essentially a source of social obligations—the social function rests precisely on the power of obligation intrinsically arising from ownership, and not merely on the administrative constraints flowing from exercising policing power. With regards to one specific form of property (real estate) the Brazilian State, for historical and political reasons, has never succeeded in reforming the classic legal-liberal approach and therefore has been unable to successfully promote either agrarian or urban reform. Brazilian cities—fragmented, segregated, exclusionary, inefficient, expensive, polluted, dangerous, unjust and illegal—are the result of the failure by the State to reform the liberal-legal order and overturn the speculative approach of the market which regards property solely as merchandise to be bought and sold, with no account taken of social and environmental questions and, above all, of the needs of the poorest members of the population.

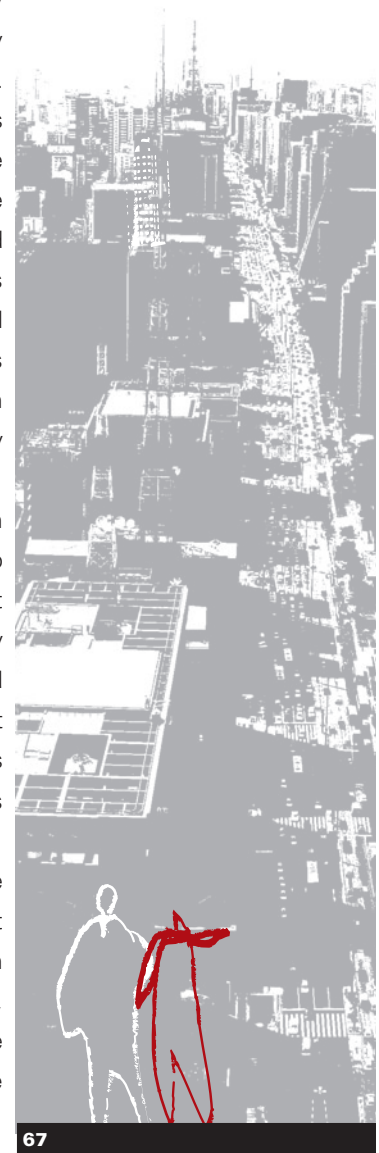
Traditionally, confronting the idea that the processes involved in the use, occupation, parcelling, construction and conservation of land and its resources should not be confined to individual interests and market forces has been an enormous challenge. Regulating these processes in some way or other is the key to achieving a balance between individual rights and interests on the one hand and collective rights and social, cultural and environmental interests on the other. However, the legal-cultural myth that regards property as a source of rights and not of social obligations still persists. The interpretation of what is effectively the right to use, enjoy and dispose of assets also involves the right to not use, not to enjoy and not to dispose of this asset—led to the perpetuation of a large number of vacant lots (particularly in areas possessing services and infrastructure), empty or underutilised buildings, extremely high land prices and an upsurge of informal settlements. Attempts to regulate this situation through urban planning, including employing the current set of municipal Master Plans, have in general not succeeded in establishing a clear relationship with property market forces: the result has often been a rapid price appreciation of land and the consequent appearance of new forms of socio-spatial segregation. Although one of the principles of urban policy defined by the City Statute (involving a public authority obligation rather than a faculty) ruled on participation by communities in the value increment generated by the urban planning process, in the majority of Brazilian cities communities have not been involved in the debate about rising property prices generated by interventions by the public authorities, in spin-off value capture from public works and services that have increased the value of private property, or in the formulation of urban legislation targeted at altering the ways of using and occupying land.



A further subject of discord has been the environmental question. The City Statute has upheld the proposal for folding urban and environmental rights into urban planning activities by municipalities in an exemplary fashion. The idea of ensuring that the 'green agenda' and the 'brown agenda' of cities are compatible is, for example, one of the reasons why the City Statute has received broad international acclaim (i.e., for its contribution to international debate on ways to take forward sustainable development). Whether the City Statute eventually gives rise to laws and public policies and effective strategies and urban-environmental action programmes will depend crucially on the actions undertaken by municipalities and Brazilian society—within and outside the state apparatus. In many cities a conflict is evident between the burgeoning occupation of permanent preservation or other non-edificandi areas and the social right to housing. This is a false dilemma given that in reality the two values are constitutionally protected, with both rooted in the concept of the social functions of property and the city. The problems engendered by the existing entrenched situations of consolidated settlements should be avoided in future: it is abundantly clear that substantial effort is called for to minimise further human occupation of environmental areas. This will require not only close monitoring and enforcement by our local authorities but also parallel efforts to provide people with access to land, urban services and housing in cities for the poorer sectors of the population, employing public policies or through the market. We also need to formulate a policy for the appropriate preservation and conservation of duly demarcated areas by upgrading our management and monitoring strategies. Finally, something has to be urgently done about existing environmentally hazardous situations with regard to housing and settlements. We need to understand that optimum solutions will never be possible, and therefore solutions are called for which have some chance of practical success. This is a task that needs to be approached pragmatically, requiring maximum mitigation of, and compensation for, environmental damage. Removing or relocating people from the settlements will be a last resort only in extreme cases (and subject to the provision of acceptable alternatives).

A further point of dispute has been the question of democratising the property registers, especially within the context of the urban property tenure regularisation programmes. A significant effort has been made to simplify, cheapen and introduce a degree of uniformity to the procedures for registering property, given that official registration is a key component of the Brazilian legal tradition, guaranteeing the legality and security of property transactions. In order to achieve this, closer contact needs to be maintained with Public Land Registry Offices, treating them as valuable partners in the tenure regularisation programmes at the outset which can assist with the search for creative legal solutions and find the best ways of distributing the costs and responsibilities involved in property ownership. A number of structural obstacles to such initiatives nevertheless remain, the solution of which will depend on the route to be taken by judicial reform.

It has proved equally difficult to deal with the issue of simplification of legal procedures, particularly those involving collective usucapiao interventions. The problems, as well as the costs, have been substantial. It is clear that approval of collective rights makes no sense if the procedural channels for recognising such rights are not addressed collectively. Given that fast track (rito sumário) legal procedures are not sufficient, we need to establish more flexible collective legal processes to take more account of the real nature of the issues at stake. Finally, a more wide-ranging debate needs to be undertaken with regards to reform of the judiciary and the Civil Procedure Code.



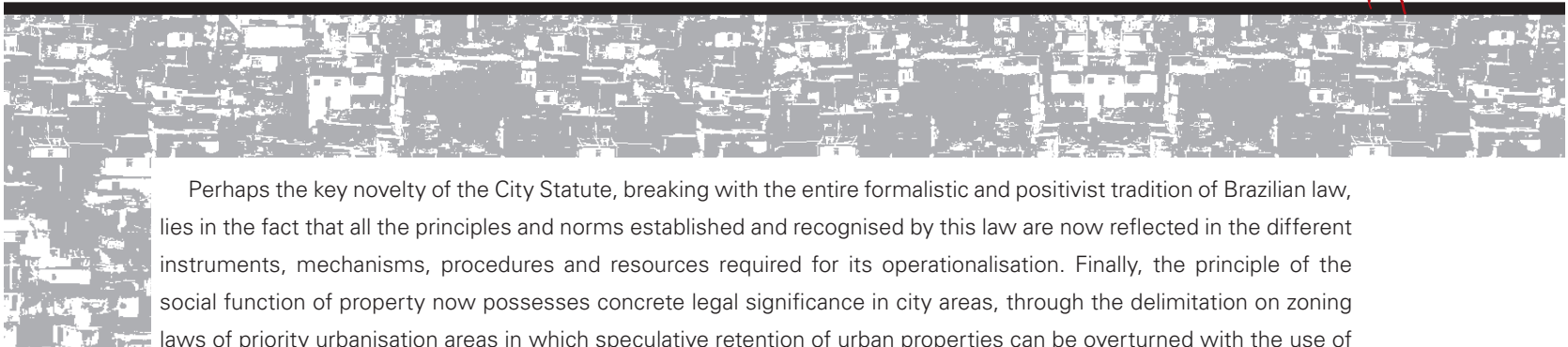
Moving forward

A full eight years after its approval the City Statute still attracts criticism. Despite having received very substantial international acclaim, even after the formulation and/or approval by the municipalities of around 1,500 Master Plans to comply with the legal obligations under this law, adverse comments continue to be made by different sectors—with misgivings about the progress and scope of the law when seen against the background of an urban situation that has scarcely changed. Those who generally defend the City Statute allege that it is too early to judge whether it has been effective or not. They reckon that more time is required for its repercussions to be fully appreciated, particularly when the enormous housing deficit and the accumulated volume of urban, social and environmental problems caused by the exclusionary nature of the pre-City Statute urban policies are taken into account (and before the Ministry of Cities was established). It has to be remembered that one of the main motives for setting up the Ministry of Cities in 2003 was to establish conditions for the Union, the states and especially the municipalities to put into practical effect, together with society as a whole, the urban policy principles established by the City Statute.



Approval of the City Statute undoubtedly consolidated the constitutional order in Brazil in terms of controlling urban development processes in a bid to re-orientate the action of the state, the property market and society as a whole towards the acceptance of new economic, social and environmental criteria. Whether the City Statute now goes on to produce practical policies and programmes will depend on reform of local legal-urban structures, i.e. putting into effect the regulatory and institutional framework created by each municipality for controlling the use and development of land and involving approval of appropriate Master Plans and local urban management procedures. The municipalities have a key role in reverting the excluding pattern of urban development in Brazil. However, the scale of the urban problem in Brazil is now so massive and the effort needed for confronting it—with all its legal, social, environmental, financial etc ramifications—so urgent, that it is no longer sufficient to talk of ‘municipal’ policies. Rather, all three levels of government need to come together to confront this problem jointly. The involvement of the state governments is especially crucial, although it has to be noted that most of them have failed so far to formulate a clear urban and housing policy (including policies concerning devolved and other state-owned land). While the Union needs to be closely involved in the generation of national urban and housing policies, the promotion of urban reform in Brazil urgently calls for across-the-board public policies involving community, voluntary, academic, private sectors and others. In short, there is space for all and a pressing need for involvement by all.

“Good” laws such as the City Statute are unlikely to change the situation by themselves, but “bad” laws can put insurmountable obstacles in the way of practical action by society and governments committed to undertaking significant reforms. Even in a hostile legal atmosphere, however, it is possible to undertake key legal-urban reforms, since a solid socio-political pact now exists which provides a solid basis for the activities of the public authorities. The City Statute consolidated a legal paradigm containing the right to the city, to territorial organisation, to urban planning and to democratic management of the same—all rights to benefit the community combined with the obligation of the public authorities to undertake urban policies to guarantee the social functions of the city and property. It is no longer simply a question of discretionary power being exercised by the public authorities (e.g. doing what they want, when and how they want). Similarly, urban property owners are increasingly having to accept a concept of the city in which the individual right to property cannot be considered absolute since owners are now required to observe the rules concerning the territorial ordering of the city set forth in the Master Plans. The need remains to establish a solid socio-political pact in order to ensure the sustainability of this approach.



Perhaps the key novelty of the City Statute, breaking with the entire formalistic and positivist tradition of Brazilian law, lies in the fact that all the principles and norms established and recognised by this law are now reflected in the different instruments, mechanisms, procedures and resources required for its operationalisation. Finally, the principle of the social function of property now possesses concrete legal significance in city areas, through the delimitation on zoning laws of priority urbanisation areas in which speculative retention of urban properties can be overturned with the use of applicable and monitorable urban intervention instruments. Law, good management and access to justice go hand-in-hand in the City Statute. Master Plans have occasionally been annulled on account, for example, of the lack of effective popular participation; city mayors have run the risk of losing their mandates due to administrative malfeasance; public civil actions of all types have been taken to defend the urban order and the right to the sustainable city. Noteworthy progress has also been made towards tenure regularisation in many municipalities based on the legal framework of the City Statute. Progress has also been made with regard to protection of the cultural and environmental assets of cities; communities have participated in public consultative meetings on urban planning issues that previously were restricted to architects and urbanists; students have begun to study Urban Law in the (still few) relevant university degree courses on the subject being slowly introduced into the law faculties. The latter is indispensable for spreading the new legal culture focused on cities that has emerged since introduction of the City Statute.

It is vital to defend the innovative approach to the legal order contained in the City Statute as a prerequisite for further progress in the area of urban reform, involving public policies, socio-political processes, legal actions, jurisprudential rulings—all increasingly adhering to the principle of the social functions of property and the city under the overall heading of the ‘right to the city’. It is therefore vital for legal experts, urban experts and Brazilian society as a whole to realise that the approval of the City Statute—rather than bringing the battle for urban reform in Brazil to a close—is only the beginning. Although the Statute represents an important achievement, new controversies regarding urban policy are likely to continue to arise in cities and courts throughout Brazil.

The City Statute certainly possesses gaps, limitations and problems of scale, including the lack of firm rulings on rural areas, environmental areas, river basins, large metropolitan areas, etc. Profound changes involving these areas cannot be introduced ad hoc in the City Statute since they depend in the final analysis on changes in the Federative Pact itself. Other defects can also be pointed to, but there is no doubt that significant progress has been made and that the legal framework introduced by the City Statute has finally begun to show results. Despite laudable progress Brazil still has a long road to travel and needs to address, and overcome, many obstacles before the effects of legal and institutional reform can truly take root.

Brazil's experience has clearly demonstrated that urban reform calls for a precise combination (almost always elusive) of renewed social mobilisation, legal reform and institutional change. This is effectively an open process in which the quality of the changes produced is intrinsically linked to the capacity of society to exercise its rights to participate in the process of urban ordering. The rules of the game have been substantially changed. It remains to be seen whether the new political spaces thus created will be used in future to maximum effect by Brazilian society in a bid to make progress on the urban reform agenda. Notwithstanding this law it is vital to ensure that urban policy is managed in a fair and just manner. The greatest challenge facing Brazil's Urban Law at present is to give concrete expression to the set of ideas contained in the City Statute targeted at urban reform and the right to the city. Committing to this new legislative architecture and ensuring that the new legal-urban order contained therein is translated into concrete action will demonstrate the true worth of the City Statute.



City Statute: Building a Law

José Roberto Bassul



Introduction

The first Brazilian constitution to address the urban question was that of 1988, promulgated when Brazil's cities already housed over 80 per cent of the population. The massive demographic movement from the rural areas of Brazil basically began at the time of the 1929 global economic crisis, which brought the São Paulo coffee boom to an end and encouraged large numbers of unemployed people to head for the cities (Chaffun, 1996, p. 18-19). This process of urbanisation and high overall demographic growth became particularly acute from the mid-1950s to the 1970s during the so-called developmentalist period. Brazil's expanding population was increasingly concentrated in rapidly growing cities that eventually became the huge metropolises of today.

The country's municipal administrations were totally unprepared for the task of dealing with the spin-off effects of rapid urbanisation. Under increasing pressure, municipalities lacked adequate financial resources, administrative structures and specific legal instruments. Meanwhile, influenced by the dominant sectors in the urban economy, local governments channelled their scarce funds to the private sector, adopting city planning norms and standards shaped by the capitalist property and real estate sectors. As at national level, wealth in the urban areas tended to be heavily concentrated on the few. Cities became increasingly divided: for a minority the benefits of consumer affluence and technological progress were everywhere in evidence, while a large part of the population remained deprived of citizenship and subjected to increasing crime and other problems associated with city life.

Regulatory planning rooted in the belief that the formulation of urban policies was the exclusive responsibility of technical staff employed by the various public administrations made things worse. Technocratic management underpinned a process which led on the one hand to private value capture of public investments, and on the other to the segregation of huge masses of people forced to live in ramshackle downtown tenements or in favelas and precarious settlements on the fringes of our cities. These people were excluded not only from the consumer market but also, in the case of favela dwellers, from the benefits of essential urban services.





This situation resulted in the emergence of popular pressure groups which began to demand action from the public authorities. These organisations, known at the time as urban social movements and allied to bodies representing professional categories such as architects, engineers, geographers and social workers, were particularly active in the 1970s. In the 1980s, they eventually came together to form the National Urban Reform Movement (MNRU) tasked with struggling for democratically-based access to decent living conditions in the cities. The MNRU concentrated its activities on two key complementary fronts, both concerned with improving city-based quality of life: (i) the physical and political context; and (ii) legislation involving a quest for special juridical norms.

As a result of continuing and widespread debate, the whole idea of urban reform gradually acquired a conceptual framework and increased political consistency within the context of the National Constituent Assembly. Elected in 1986, the Assembly became an invaluable focus for public debate as well as an opportunity for popular initiative proposals to be submitted. Through the Assembly and the so-called popular amendments, the subject of urban policy, and particularly its social aspects, became a recognised political component of the constituent process in the months leading up to the adoption of the new Constitution.

As a direct result of the Constitution promulgated in 1988, the City Statute—approved 13 years later—now stands as a concrete expression of the constitutional norms, especially with regard to the principles of social function of the city and urban property. The aim of the present text is to give an account of the way in which the City Statute was formulated over the years.

Historical aspects

The institutionalisation of the urban question at federal level¹ can be traced back as far as 1953, to the occasion of the 3rd Brazilian Architects Congress held in Belo Horizonte. The final declaration of this congress proposed the creation of a law to establish a ministry specialising in urban development and housing at the central government level (Serran, 1976, p. 28-29). The following year the 4th Congress, held in São Paulo from 17-24 January 1954, revisited this proposal. In 1959, the Rio de Janeiro division of the Brazilian Architects Institute (IAB) published a proposal for a federal bill entitled the Own House Law (Lei da Casa Própria). This suggestion, submitted to the 1960 presidential candidates Adhemar de Barros, Henrique Lott and Jânio Quadros, contained four key ingredients: (i) the “establishment of commercial firms specialised in financing individual house purchase”; (ii) amounts loaned for housing purposes to be linked to rising wage levels; (iii) rules to allow repossession of properties (with compensation) in the event of non-payment by the mortgagee; and (iv) the establishment of a National Housing Council. This last suggestion was implemented in 1962 under the João Goulart government (Goulart assumed power after Jânio Quadros resigned).

1. Brazil is a Federative Republic comprising the “indissoluble union” of the states, municipalities and the Federal District (CF, art. 1^o, caput).

In 1963 the Urban Reform and Housing Seminar held at the Hotel Quitandinha in Petrópolis (state of Rio de Janeiro)—known as the “Quitandinha Seminar”, in which politicians such as Deputy Rubens Paiva (subsequently murdered during the military regime) and technicians and intellectuals participated (Souza, 2002, p.156-157)—produced a document outlining the history of popular struggle for housing over the past few years and calling for greater social justice in cities. This document contained a recommendation that the Brazilian National Congress should be presented with a federal bill addressing urban and housing policy. It also set out the principles and fundamental precepts of urban and housing policy that many decades later would be incorporated into the juridical order.



The following are examples of the pioneering nature of this document:



1. “Latin America’s housing problem (...) is the result of conditions of underdevelopment brought about by a number of different factors, including exploitative processes (...)”;
2. “The housing situation in Brazil [is characterised] by the increasingly disproportionate gap in the urban centres between wages or family incomes and the cost of rents or purchase of permanent homes [given that] the substantial number of dwellings that have been built have been almost exclusively for the benefit of economically better-off classes”;
3. “In the largest urban centres of the country the population living in substandard accommodation (...) is large and growing, both in absolute as well as relative terms”;
4. “The housing deficit (...) is aggravated by the demonstrative failure by the private sector to provide the resources and the investments necessary for increasing the supply of social housing (...)”;
5. “The absence of a systematic housing policy (...) continues to have deleterious effects on the overall development of the country, grossly undermining the socio-economic gains produced by our development process”;
6. “The basic rights of man and the family include the right to housing” and increasing the stock of housing requires “limits to be placed on the right of property and land use”. Furthermore, what is needed is “urban reform in the form of a set of measures to be introduced by the state to ensure fair utilisation of urban land, territorial organisation, amenities in urban agglomerations and the provision of decent housing for all families”;
7. “It is of great importance when formulating a housing policy to ensure that people understand the problem and participate in community-based development programmes”;
8. “The adoption of measures to restrict anti-social property speculation is indispensable for disciplining private investment”;
9. “To proceed effectively with an effective urban reform process, paragraph 16 of Article 141 of the Federal Constitution needs to be modified in order to permit expropriation without compensation in money” (Serran, op cit., p 55-58).

It is clear that this historic text contained the basic principles which at a later date would be progressed by the National Urban Reform Movement (MNRU) in the National Constituent Assembly, with greater emphasis on social aspects. In early 1963, reacting to these proposals ² and the increasingly robust popular campaign for enactment of the so-called 'base reforms', the João Goulart government in its annual message to the National Congress drew attention to the housing question in the following terms:



“We are not unaware of the fact that developing the country and increasing the national wealth, will [not automatically] improve the standard of living of the population at large and provide it with appropriate housing conditions. We also do not ignore the fact that the lack of regulatory legislation has caused the construction industry to be transformed into the favourite captive of speculators, thereby impeding access to own homes by the poorer sectors of our population”.

Aborted by the military coup of 31 March 1964, the bill was not in the event submitted to the National Congress.

Although the urban question was acquiring status within the political and environment—the Quitandinha Seminar had genuinely influenced political decisions— “the repercussions of Quitandinha bore no comparison to the attention given to the social mobilisation in rural parts of Brazil organised by peasant leagues clamouring for agrarian reform” (Souza, 2002, p.157).

It was perhaps for this reason, after the first urban legislation initiatives had been frustrated under the Goulart democratic government, that the military administration went ahead and approved a new law (the Land Statute) addressing the rural-agrarian question. As for the urban problem, ongoing debate was restricted to housing policy as the result of which the National Housing Bank (BNH) was established in 1964.³ Discussion of legislation of broad applicability to urban areas would only return to the political agenda at the end of the 1970s.

While urban problems deteriorated, criticism of the National Housing Bank responsible for providing housing finance became more strident, despite the BNH expanding its remit in the early 1970s to include sanitation programmes. Meanwhile, the federal government established the first metropolitan region in an attempt to deal with the problems beyond the confines of municipal jurisdiction by setting up the National Commission on Urban Policy and Metropolitan Regions (CNPU).

2. According to Jorge Wilhelm (1965, p. 161).

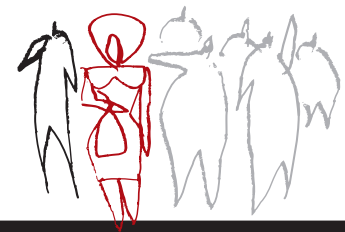
3. Established in 1964 by the military government that had recently assumed power, the aim of the BNH was to finance housing programmes. With regard to popular housing, it supported “removal” of favelas and the relocation of residents to “housing complexes”. However, the majority of resources expended were directed towards satisfying middle class housing demand. The system created in 1964 included, in addition to the BNH, the Federal Housing and Urbanism Service (SERFHAU), charged with guiding the elaboration of municipal master plans. The (SERFHAU) was extinguished in 1974, followed by the BNH in 1986.

However, no legislative proposal had yet been presented to support adoption of policies to promote access by poor people to urban amenities and services. During the military regime, the first attempt in this respect was made under the aegis of the CNPU, which later became the National Urban Development Council (CNDU). In 1976 a draft bill focused on urban development was drawn up, based on the precept that “local administrations do not possess a range of urban planning instruments for counteracting property speculation and promoting distribution of urban public services” (Grazia, 2003, p. 57).

News of this draft bill leaked to the media which produced alarmist headlines in a number of newspapers and weekly magazines, one of which alerted readers to the fact that the military government “intended to socialise urban land” (Ribeiro and Cardoso, 2003, p. 12). At this point the government withdrew the bill.

Social demands nevertheless continued to become more vocal. The 1981 election campaign, involving the first direct elections since the military coup in 1964, led to the urban question being put back on the national political agenda. Subsequently, in 1982, the 20th General Assembly of the Brazilian Bishops’ National Conference (CNBB) approved a document entitled “Urban Land and Pastoral Action” criticising the formation of stocks of urban land for speculative purposes and other public policies designed to get rid of favelas. This text proposed, *inter alia*, tenure regularisation of informal settlements, outlawing holdings of unoccupied urban land and making it a condition that urban property should be regarded as a social function (CNBB, 1982).

The following year (1983) the government of General João Figueiredo, which had as its Interior Minister (responsible for the urban question) Colonel Mário Andreazza, declared that a risk existed that “the urban problem could encourage popular sectors of our population to rally round leaders opposed to the authoritarian regime” (Ribeiro and Cardoso, *op. cit.*, p. 13), and finally submitted to the National Congress the project that had been drawn up in the CNDU. This turned out to be a softer version of the original bill given that it excluded a number of provisions such as “awarding possession of land to urban dwellers who occupy land illegally” (Grazia, 2002, p. 21) but the proposition in fact preserved the essence ⁴ of the 1976 draft bill.



4. According to Adauto Cardoso (*apud* Grazia, 2002, p. 20), a previous version of the bill had been published “without government permission” in the newspaper *O Estado de S. Paulo*, of 27/1/1982, which carried reports of reactions to the possibility of tenure regularisation. It is interesting to note that this same controversy would be revived in the National Constituent Assembly and also, almost 20 years later, on the occasion of ratification of the City Statute.

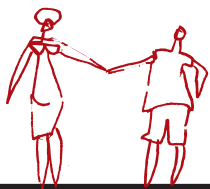


The CNDU-inspired bill, known as Urban Development Law (LDU) 775/83 aimed “to improve quality of life in cities” by means of guidelines and instruments covering topics such as:

1. Recovering investments made by public authorities from properties which had resulted in property price appreciation (‘value capture’);
2. The possibility of the public authorities expropriating urban properties to undertake urban renewal works or to combat retention of vacant land;
3. The right of pre-emption;
4. Taxing property income resulting from factors associated with the localisation of properties;
5. Surface rights;
6. Controlling land use and occupation;
7. Making urbanisation compatible with available facilities and equipment;
8. Introducing progressive property taxes and compulsory building as a condition of property rights;
9. Tenure regularisation of areas occupied by low income populations;
10. Legal recognition of representative residents’ associations;
11. Encouraging individual and community-based participation;
12. The right of communities to participate in the elaboration of plans, programmes and projects concerned with urban development; and
13. Awarding the Ministério Público the legitimate right to undertake actions in defence of urban ordering.

Many of the provisions of the LDU in 1983 were based upon the Urban Reform Popular Amendment⁵ which would be presented later to the 1986-1988 National Constituent Assembly. It is important to recall that the constitution drawn up under the military regime in 1967/69 was still in force. This constitution, obviously mirroring the authoritarian profile of the military regime, had failed to acknowledge the predominantly urban nature of modern Brazil, and the only constitutional basis for the LDU legislative proposal was the fragile and still imprecise principle of the social function of property.

Presentation of the bill represented a daring move. The reaction of conservative sectors of Brazilian society was immediate. The most backward-looking sectors of the urban business elite called the project “communist”—the usual epithet employed at the time to describe any initiatives of a democratic nature. The São Paulo-based magazine *Visão*, mouthpiece of the conservative business sectors supporting the government, made front-page news of the question, accusing the bill of ushering in the end of the right to own property in Brazil. Bill 775/83 was never put to the vote in the National Congress.



5. In a comparative examination of the Bill of Law 775/83 (LDU) and the Urban Reform Popular Amendment, Adauto Lúcio Cardoso (2003, p. 31) denotes the difference between emphasis on the LDU in urban planning and the amendment on popular participation, affirming that “the popular amendment is concerned with a whole range of discussions and reflects a pattern of thinking and questioning about urban subjects that was introduced by the LDU”.

The Constituent Process and the Urban Reform Popular Amendment

The return to democracy in 1985 led to the convocation of a National Constituent Assembly, installed in 1986. Its modus operandi was “daring and innovative without parallel in the constitutional history of Brazil and a rare occurrence even in comparative law” (Coelho and Oliveira, 1989, p. 20).

Throughout the entire process opportunities for popular participation arose from the beginning. The Sub-Commission on Urban and Transport Questions alone involved 12 public meetings (Araújo, 2009, p.377). However, the most important example of democratic participation in the constituent process was that involving the popular amendments.

Following approval of the first bill, which was given its systematic framework on 15 July 1987, amendments drawn up at the initiative of citizens were admitted, together with those formulated by the sitting members of the Constituent Assembly. These needed a minimum of 30,000 signatures and sponsorship by at least three representative associations. In total, 122 popular amendments were presented to the Assembly, containing over 12 million signatures. In the event, only 83 of these amendments met the regulatory requirements and were officially accepted. Among these was the Urban Reform Popular Amendment.

Under the formal responsibility of the National Engineers’ Federation, the National Architects’ Federation and the Brazilian Architects’ Institute, together with input from the National Urban Land Confederation, the Association of BNH Borrowers and the Favela Dwellers Defence Movement, “in addition to over 40 local and regional associations” (Maricato, 1988), Popular Amendment No.63 of 1987 was officially registered (carrying 131,000 signatures, with Nazaré Fonseca dos Santos as the first).

The Amendment consisted of 23 articles and aimed to include in the new Constitution the following:

1. The universal right to decent urban living conditions and the introduction of democratic management of cities;
2. The possibility of public authorities expropriating urban properties (with payments in public debt bonds) in order to produce social housing, with the exception of homes occupied by their owners, who would be eligible to receive prior full compensation (in cash);
3. Property value capture arising from investment of public funds;
4. Popular initiatives and vetoing of laws;
5. The possibility, in the absence of regulatory federal law, of directly applying a constitutional norm on the basis of a court decision;
6. Public authorities failing to comply with constitutional precepts to be subject to penal and civil action;
7. Pre-eminence given to urban rights on the basis of instruments such as: progressive property taxes, a property appreciation tax, preferential rights, expropriation, description of public land, designation of buildings of heritage importance, a special urban and environmental protection regime, Real Right of Use Concession and Compulsory Parcelling and Building;
8. Separation between ownership and building rights;
9. Special *usucapiao* for housing purposes, a form of adverse possession, applied to public and private land;



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10. The right to housing based on public policies ensuring: urbanisation and tenure regularisation, housing programmes to enable people to purchase or rent their own homes, maximum limits fixed for basic rents, technical assistance and provision of non-reimbursable funds from local budgets;
 11. State control of indices applied to rent adjustments and adjustments to be valid for a minimum period of 12 months without adjustments;
 12. A state monopoly introduced to provide public services and ban taxpayer- subsidised private sector outsourced services;
 13. The establishment of a public transport fund to subsidise fares amounting to over 6 per cent of minimum monthly wages;
 14. Popular participation in the elaboration and implementation of a “land use and occupation plan” and in procedures in the legislature prior to its approval.

Predictably the Urban Reform Popular Amendment excited a good deal of controversy. In an article published in the *Folha de São Paulo* on 20 August 1987, (the day after the amendment had been presented), Constituent Assembly member Deputy Luiz Roberto Ponte (PMDB-RS, who was also president of the Brazilian Construction Industry Chamber (CBIC), protested that land, the main focus of the urban reformists’ concern, was not a major problem since “it only constituted 5 per cent of the cost of constructing decent housing”.

The architect Ermínia Maricato, Professor of the University of São Paulo (USP) and at the time director of the São Paulo branch of the architects’ professional association—who had defended the amendment in the plenary of the National Constituent Assembly—refuted this criticism in the same newspaper, affirming that the relatively low cost of land compared with overall building costs only applied to “housing developments that were practically outside the cities” and “speculators holding back vacant land exacerbated this situation”.

The above statements are examples of the controversial atmosphere in which the urban reform proposal was received. The text that was finally submitted in the constitutional document was as follows:





"Article 182. Urban development policy, executed by the municipal public authority, according to general guidelines fixed in law, aims to order and fully develop the social functions of the city and guarantee the well-being of its inhabitants.

§1. The Master Plan approved by the Municipal Chamber, and an obligatory requirement for cities with over 20,000 inhabitants, is the basic instrument ruling development and urban growth policy.

§2. Urban property fulfils its social function when it meets the fundamental requirement of the city ordering expressed in the Master Plan.

§3. Expropriations of urban properties shall be subject to prior and fair compensation in cash.

§4. The Municipal Public Authority will be empowered, on the basis of a specific law for the area covered by the Master Plan, to demand under terms of federal law, that an owner of urban land that is not built upon, that is underutilised or not utilised, shall ensure that it is adequately used, failing which the following sanctions will be imposed:

I. Compulsory parcelling or building;

II. Progressive property and land tax to be imposed;

III. Expropriation against payment in public debt bonds previously approved by the Federal Senate, redeemable over a period of up to ten years in annual, equal and successive instalments, with the real value of compensation and legal interest rates secured.

Article 183. A person in possession of an urban plot of up to 250 square metres for five years uninterruptedly and unopposed, using it as housing for himself or his family, shall acquire dominion over it providing he does not own another urban or rural property.

§1. The title of dominion and use concession will be conferred upon male or female owners, or on both, regardless of civil status.

§2. This right will not be extended to the same property holder more than once.

§3. Public properties will not be acquired by *usucapiao*".

At the end of the constituent process, the Urban Reform Popular Amendment was partially approved, representing a not entirely satisfactory outcome for either defendants or opponents of the amendment. On the one hand, the MNRU was disappointed that the social function of property, a fundamental guideline of the amendment, had been made subject to a federal law that would set out urban policy guidelines and, furthermore, made conditional on the issuance of municipal Master Plans. On the other hand, the São Paulo State Federation of Industries (FIESP) made it clear that it was opposed to urban *usucapiao* (Maricato, 1988).

Once the Federal Constitution had been promulgated, the majority of the legislative aspects concerned with urban reform became subject to federal law. That was how the City Statute came into being.



The City Statute

Initial project and first reactions

Regardless of its background and the nature of its contents, the draft law owed its origin not to a parliamentarian, architect, urbanist, lawyer, geographer, sociologist, economist, social worker or a member of one of the pro-housing popular movements. Neither was he a businessman with links to the private property sector. The author of the project was in fact Senator Pompeu de Sousa, journalist and professor, born in 1916, who did not live to witness approval of his bill (substantially modified) in 2001, since he died ten years earlier.

The bill was introduced on 28 June 1989, with the official title of “Senate Bill of Law (PLS) No.181 of 1989 (City Statute)”. After receiving a favourable opinion from the official rapporteur of the Senate, Senator Dirceu Carneiro (PSDB-SC), the bill was approved by the Senate exactly one year later and submitted to the Chamber of Deputies where it would be scrutinised and reformulated over a period of 11 years.

In the Chamber, the bill of law (now known as PL5788/90) was regarded as a kind of “locomotive” to which 17 “wagons” were attached over the years. These 17 appendages were basically proposals of greater or lesser importance put forward by federal deputies. The authors of these proposals, were deputies Raul Ferraz (1989), Uldorico Pinto (1989), José Luiz Maia (1989), Lurdinha Savignon (one proposal in 1989 and another, co-sponsored in 1990), Ricardo Izar (one in 1989 and one in 1991), Antônio Brito (1989), Paulo Ramos (1989), Mário Assad (1989), Eduardo Jorge (1990, co-sponsored), José Carlos Coutinho (1991), Magalhães Teixeira (1991), Benedita da Silva (1993), Nilmário Miranda (1996), Augusto Carvalho (1997), Carlos Nelson (1997) and Fernando Lopes (1997).

The main proponents were individual deputies such as Deputy Raul Ferraz (PMDB-BA), who “presented a substitute text to the PL 775/83 with its adaptation to the 1988 Constitution” (Motta, 1998, p. 211); Lurdinha Savignon (PT-ES) and Eduardo Jorge (PT-SP) who presented proposals with the assistance of the MNRU; and Deputy Nilmário Miranda (PT-MG). The proposal by the latter reflected the efforts being made to achieve a consensus in 1993 by a Working Group comprising representatives nominated by Deputy Luiz Roberto Ponte, a lobbyist for the business sector and Deputy Nilmário Miranda himself, who had strong connections to the urban reform movement.

When presenting the justification for his bill, Senator Pompeu de Sousa affirmed that his aim was to restrict “undue and artificial property appreciation which made it difficult for poorer people to access land for housing purposes and forced the local public authorities to intervene in areas where rising prices were often the result of public investments effectively paid for by all but benefiting only a few”.



Texts produced by the Brazilian Society for the Defence of Tradition, Family and Property (TFP) ⁶ reflected of the views of property owning members of this group concerning the City Statute. According to them the Statute “offended the principles of natural order, consecrated by the social doctrine of the Church and rooted in Brazilian society: private property and free enterprise” (TFP, 2004, p.5). The measures described in the bill regarding the social function of property and the abuse of rights fell victim to a series of radical restrictions imposed by the various urban business sectors. “The business sector failed to accept or even initiate discussion about these definitions” (Araújo and Ribeiro, 2000, p. 7).

The business sector also opposed the proposal for collective *usucapiao*. According to Vicente Amadei, adviser to the Association of Companies Buying, Selling, Renting and Managing Residential and Commercial Properties in São Paulo (SECOVI/SP) ⁷, who represented the views of the urban business sector during the debate in the legislature, complained strongly that this was “an incentive to land invasion” (DM, 1992, p. 34).

The City Statute was equally repudiated by representatives of the civil construction industry and real estate practitioners who participated in the 56th National Civil Construction Industry Meeting in Fortaleza in 1992. In the final report on the meeting, the Brazilian Construction Industry Chamber (CBIC) stated that “the project camouflages state authoritarianism, particularly by interfering in the acquisition of urban property, which is the object of buying and selling among private parties” (DM, 1992, p. 34).

It is clear that, although the various sectors active in the urban property market (landowners, construction firms and incorporators) regarded the subject from different angles (sometimes conflictive) they were nevertheless unanimous in their rejection of the City Statute.

Within the urban reform movement the Bill was of course welcomed. Since the promulgation of the 1988 Constitution, the movement had made great efforts to ensure that the federal law required under the urban policy chapter would be approved and given operational effect. For the MNRU, according to the legal expert Nelson Saule Jr., “since the early 1990s, the federal bill of law regarding urban development known as the ‘City Statute’ [was considered] to be the reference framework for introducing a law which regulates the chapter on urban policy contained in the Brazilian Constitution” (Saule Jr., 2003, p. 1).

Positions were clear and the scene was set for further dispute in Congress. On the one hand, the groups and movements that had battled to introduce urban reform ideas supported the Statute and were determined to fight for its approval by the Congress. On the other hand, the big business lobbies defending the political cause of private property, were obviously opposed to the parliamentary bill.



6. Social organisation of an ultraconservative frame of mind dedicated to unconditional defence of the right of property

7. A big business institution representing the property/real estate sector in Brazil's largest city.

The Legislative debate: from conflict to unanimity

In 1991, when the City Statute was ready to be voted in the first Commission to which it had been submitted (the Constitution and Justice and Drafting Commission, or CCJR), the Chamber of Deputies modified its criteria for internal distribution of federal bills. Instead of examining the proposals in advance, the CCJR was henceforth to be charged with giving its opinion only after scrutiny by the so-called Merit Commissions. The bill was therefore submitted to the Road Network and Transport, Urban and Internal Development Commission known as the CDUI (the 'roads and transport' part of the title was later dropped). In 1990 the rapporteur of the bill in this commission, Deputy Nilmário Miranda (PT-MG), called for public meetings on the City Statute and "responded to a call by the executive power which requested a longer deadline than would normally the rule for presentation of its amendments" (Araújo and Ribeiro, 2000, p. 1 and 2). In parallel, two other commissions—the Economic, Industrial and Business Commission (CEIC) and the Consumer Protection, Environmental and Minorities Commission (CDCMAM)—called for public meetings on the bill. In response to internal Chamber rulings, consideration of the bill was eventually returned to the commission most interested in its content (the CDUI), responsible for ultimately deciding on its merit.

In 1993 the bill was submitted to the CEIC, to be accompanied by the rapporteur, Deputy Luís Roberto Ponte (PMDB-RS, whose performance in the Constituent Assembly, according to the assessment of the Institute of Socio-Economic Studies (INESC), was described in the following terms:



"In terms of coherence and reactionism this Parliamentary Representative is a one of the best examples (...). He is a leading light in the national business scenario and unlike many he has used his mandate to defend causes. He has set himself totally against all the trade union movement ideas and has succeeded in performing as a representative of the business class with brilliance and determination. He has undoubtedly done exceptional work in the Constituent Assembly and is one more name which the rightwing can trust" (Coelho and Oliveira, 1989, p. 379).

This bad augury was soon proven. The process began to be seriously delayed, and Deputy Ponte failed to report on progress to the CEIC. "Given the delays in presenting the legal opinion and the contrary position taken by the rapporteur with regard to part of the content of the City Statute" (Araújo and Ribeiro, 2000, p. 2), Deputy Nilmário Miranda proposed to Deputy Ponte the formation of a working group comprising representatives from bodies specialising in the subject, nominated by both deputies. This proposal was duly accepted.

The working group consisted of representatives of popular entities, professionals and business representatives from civil society, Federal Government technical staff and legal advisers. The objective was to seek to achieve an agreement which would result in a substitute bill with the prospect of it being approved by all currents of opinion. However, "in spite of all the work done by the group and the result reached by consensus, the rapporteur, Deputy Luís Roberto Ponte, failed to honour the agreed undertaking, which was to incorporate into his Rapporteur's Formal Opinion the substitute item⁸ prior to following up with a vote on the City Statute" (Araújo and Ribeiro, op. cit., p. 2).

8.The replacement text elaborated by the group in response to the rapporteur's refusal to accept it was later transformed into Bill No.PL 1.734/96 by Deputy Nilmário Miranda.

Outside the confines of the National Congress, Brazilian society was engaged in a similar confrontation. The MNRU began to exert pressure with a series of “public declarations (...) aimed at pressing for the Congressional representatives to restart scrutiny of the bill” (Grazia, 2003, p. 60). Meanwhile the business sector took the opposite view, in league with the TFP, hardening their approach especially from July 1992 onwards. “The TFP took to the streets to collect signatures on a document calling on Congress not to approve this project [in advance of a plebiscite]. (...). After this campaign, the City Statute ceased being a part of the agenda for discussion and voting” (TFP, 2004, p 11 and 12).

Deputies meanwhile continued with their task in the Commission. Those linked to the urban reform movement insisted that the City Statute should be voted forthwith and its content approved despite calls for alterations. The business lobby put forward a series of amendments to change the very nature of the bill. No fewer than 114 amendments were presented, the majority of them of an extremely conservative nature.

This spate of reactions took a quieter turn only in 1996 when Deputy Luís Roberto Ponte finally presented his report. The causes for delay can be summed up as follows: on the one hand, an attempt to achieve a coordinated, mutually satisfactory agreement by the Urban Policies Secretariat (SEPURB) of the Ministry of Planning probably strongly influenced Ponte’s approach. On the other, the bodies linked to the urban reform movement took the initiative to negotiate with deputies who were set against its approval, as well as with Deputy Ponte, because they reckoned that the bill “needed to exit the commission where contrary interests were focussed” (Grazia, 2003, p. 60). To do this the MNRU “had to retreat from some of its proposals (...) in the hope that some of the foregone aspects could be recouped in other commissions (...). It was a risky but successful shot in the dark”, according to Grazia de Grazia (op. cit., p. 61).

The rapporteur’s report adopted a more pragmatic, less conceptual, approach than the original bill by focussing on the provision of legal instruments for the municipal authorities to use in their future efforts in urbanisation, house construction, etc. It is noteworthy that in this respect the original instruments were maintained in the modified bill and others incorporated, such as the rules on Transfer of Rights to Build, Onerous Grants on the Right to Build (*Outorga Onerosa do Direito de Construir*) and Consortiated Urban Operations. All these were effectively instruments which had been consistently defended by the urban reform movement at different times and that in fact were already being applied in certain cities.

It was also the case that the business sector was able to profit from the application of the above-mentioned tools by some municipalities. The report submitted by the congressional rapporteur confirms this by stating that, “these instruments can be of benefit to urban property developers because they represent an innovative step towards prospective partnerships between the public authorities and private firms” (CD, s/d, p. 377).

While the approaches of the two sets of opinion were tactically at odds—with the MNRU seeking certain important points but intent on recovering its negotiating losses at a later stage, and the business sector gradually incorporating instruments “of benefit to property activities”, the bill was approved without further dispute, to the surprise of many.



When, on 29 October 1997, the vote on the bill was finally taken in the CEIC (the first in the Chamber of Deputies) “to the consternation of all those present, there was no objection whatsoever to the report as presented. All statements from the floor were in favour of the report, which was approved unanimously. After such long delays obstructing the bill, suggesting strong resistance to the tone of the forthcoming law, the vote was taken by consensus and with no reservations” (Araújo and Ribeiro, 2000, p. 3).

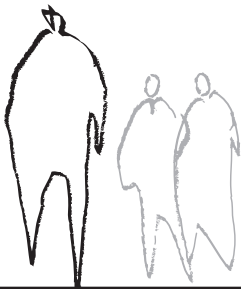
Approved in the CEIC, the bill then proceeded to the Commission for Consumer Protection, Environment and Minorities (CDCMAM) where it received contributions dealing with environmental policy, particularly the idea of Neighbourhood Impact Studies (EIV) resulting from an initiative proposed by Deputy Fábio Feldmann (PSDB-SP).

At the end of 1998 the bill was submitted to the main merit commission, the Urban and Interior Development Commission (CDUI) presided over by Deputy Inácio Arruda (PC do B-CE), closely associated with urban social movements.

The chairman of any congressional commission is responsible for nominating the rapporteurs. In the event, Deputy Inácio Arruda (PC do B-CE) took on the job of rapporteur of the City Statute and began to activate a wide-ranging programme of consultation, public meetings, debates and seminars which eventually led to the 1st Cities Conference strategically timed to begin on the day following the vote on the bill in the commission (1 December 1999).

During the debates in the run-up to the vote, a substantial number of suggestions were incorporated into the text in an attempt to align its contents with the Urban Reform Amendment. The National Urban Reform Forum proposed for example the inclusion of instruments to regularise property and land tenure such as the ZEIS and the Special Use Concession for Housing Purposes, a plan to deal with residents affected by Consortiated Operations, and a chapter on democratic management of cities and participatory budget processes. Also proposed was the idea of introducing fines on city mayors who failed to submit municipal Master Plans. The FNRU also suggested suppressing the article authorising the issuance of building potential certificates in the urban operation context, but this was not accepted.

SECOVI-SP (1999) contributed only a small number of suggestions, giving the impression that it was satisfied with the text as it stood. Predictably, SECOVI pressed for retaining measures conditioning the application of fines to combat cases where “infrastructure was not being used and where demand existed to make use of it” (not accepted), the entity unexpectedly supported the inclusion of the “participatory budget” process as an instrument of urban policy as well as demanding that the administration of urban operations should be “obligatorily shared with representatives of civil society”—both instruments of democratic management taken from the urban reform agenda. In these latter aspects the suggestions of the SECOVI-SP were taken on board.



The resulting text was approved. The City Statute was finally submitted to the Constitution, Justice and Drafting Commission (CCJR), charged with scrutinising the constitutionality of the bill. In this commission, although the MNRU had perceived that “consensus was not much in evidence” (Grazia, 2003, p. 61), only two alterations were made. The first was to withdraw the measures referring to urban agglomerations and metropolitan regions, which were considered unconstitutional since they involved state-level competencies. The second, in order to satisfy demands advanced by construction industry lobbies and congressmen associated with the evangelical churches led by Deputy Bispo Rodrigues (PL-RJ), resulted in the suppression of measures which determined in the case of Neighbourhood Impact Studies the need to organise “consultative meetings with the affected communities” and to insist on licences being withdrawn unless this requirement was observed.

From the point of view of the MNRU itself, the various concessions underpinning the content of the bill, leaving their application to be regulated by municipal legislation, were acceptable since “it was known that in accordance with the correlation of forces existing in each municipality the guidelines set forth in federal law will be, or will not be, absorbed” (Grazia, op. cit., p. 62).

The CCJR, however, took a whole year (2000) to examine the bill, occasioning an upsurge of public campaigns, MNRU notes and manifestoes, etc. A petition signed by jurists and lawyers defending the constitutionality of the bill was submitted to the commission. On 29 November 2000, the favourable report of Deputy Inaldo Leitão (PSDB-PB) was finally voted unanimously and the bill was returned to the Senate for the alterations made in the Chamber of Deputies to be ratified.

It would appear at this stage that consensus had been achieved. However the business lobby had a further complaint. In accordance with the 1988 Constitution, bills approved in the Chamber and Senate commissions (the case of the City Statute) did not require to be submitted to plenary unless an appeal was mounted against this procedure by at least 1/10th of the respective congressmen. Employing this procedure, a group of deputies under the leadership of Deputy Márcio Fortes (PSDB-RJ), and with the diligent support of Deputy Paulo Octávio (PFL-DF), both major figures in the real estate sector, put forward Appeal No. 113 of 12 December 2000 in an attempt to ensure that the bill was in fact submitted to plenary session in the Chamber of Deputies.

As a countermeasure, the bodies linked to the MNRU opposed the appeal. These included members of political parties that at the time opposed the government, as well as pro-government deputies such as Deputy Ronaldo César Coelho ⁹, chairman of the CCJR, whose performance was described as “of key importance” by the urban reform movement (Grazia, 2003, p. 62).



9. Businessman and ex-banker.

On 20 February 2001, the appeal was overturned and the City Statute returned to the Federal Senate—almost 11 years after its first presentation.

Reported on favourably by Senator Mauro Miranda (PMDB-GO), the bill was approved unanimously. Conservative and progressive senators and deputies, workers' representatives and business lobbyists, right-wing and left-wing activists in the party political spectrum—all without exception finally chose to support and welcome a legislative proposal which had been initially widely regarded as "socialist and confiscatory" (TFP, 2004, p. 6) and "a disrespectful attack on the rights of the citizen and of property" (DM, 1992, p. 34).

Difficulties encountered in presidential ratification

According to Grazia de Grazia (2003, p. 63), "the period between approval by the Senate and ratification by the President was very tense. It was known that a number of controversial questions remained that favoured excluded sectors of the population but ran contrary to the interests of the property sectors and the Federal Government". While the MNRU appeared to be convinced that opposition from such quarters was still substantial, the evidence nevertheless suggests that the opposition of the property sector was not as explicit as it appeared at the time. Eduardo Graeff¹⁰, Special Adviser to the Presidency of the Republic, affirmed for example that "during the ratification process objections of a legal nature gave us much work in the presidential office. I believe that the team saw things from a conservative juridical viewpoint" (Graeff, 2003, p. 1). On the other hand, Graeff asserts that he has no recollection of pressure being exerted on him by the property sector opposed to ratification: "The person with access to the government and who could have strongly objected was Luís Roberto Ponte, that deputy from Rio Grande do Sul linked to the construction industry (...). However, I reckon that he had no reason to object since the bill was not a bad one for construction sector interests" (Graeff, op. cit., p. 1).

The business lobby never in fact requested an overall veto or even a substantive veto of the City Statute. A number of minor objections were presented, particularly concerned with the "special use concession for housing purposes"—an instrument designed to ensure a degree of tenure to the occupants of public areas who had been living there for at least five years, unopposed by the owner of the land. Since the 1988 Constitution (Articles 183, §3) adheres to the tradition of making it impossible for public buildings to be acquired by usucapiao (involving full ownership being transferred from the public to the private sector), "an almost insurmountable difficulty would be created for tenure regularisation of settlements in public areas, a circumstance which would place occupants in the position of having to resign themselves to the irregularity of the situation" (Alfonsin, 2002, p. 163).



10. Sociologist and colleague, friend and adviser to President Fernando Henrique Cardoso since the time when he was a senator. Eduardo Graeff is the son of the late Professor Edgar Graeff, architect and prominent intellectual linked to social and democratic causes in opposition to the military regime.

The President of the Republic at the time, Fernando Henrique Cardoso, vetoed this measure and ratified the Statute, affirming that “recognising the importance and the validity of the concept of special use concession for housing purposes, the Executive Power will submit without delay to the National Congress a normative text in order to ensure that the lacuna is filled”.

This promise was fulfilled by Provisional Measure No. 2.220 of 4 September 2001 which regulated the application of the instrument “dealt with by §1 of Article 103 of the Constitution” and established the National Urban Development Council, which later became the Cities Council during the government of President Luis Inácio Lula da Silva. The City Statute became law on 10 July 2001.

Final comments

The history of the City Statute raises questions about why the powerful urban business sectors, which at the outset had reacted strongly against the proposals for urban reform, chose to approve and unanimously support a series of legal instruments that could allegedly contravene their interests.

The unanimous approval of the City Statute can be largely attributed to the effects of the length of time (almost 12 years) that passed between formulation and approval of the new law. During this period the majority of the instruments that were included in the Statute had already been put into practice by municipalities prior to its final ratification and the results of the municipal ‘experiments’ were considered by the property sector to be very encouraging. Undoubtedly this was an important factor in the willingness of this economic sector to modify its opposition to the overall scheme.

It can be said that while the City Statute initially appeared to be a threat to the business sector it gradually became to be perceived (and taken advantage of) as a significant market opportunity.

It was not by chance therefore that the document submitted by the SECOVI/São Paulo (1999) to the Urban and Interior Development Commission (CDUI) in the Chamber of Deputies on the occasion of the debate organised by the rapporteur of the bill (still not voted) should include proposals such as that related to the ‘participatory budget’ process. The business lobby commented in this respect that “exclusion of participation by citizens, especially in affairs regarding society as a whole, can no longer be admitted” since such participation is “absolutely necessary for ensuring adequate observance of the consortiated urban operation plan”. These proposals in reality coincided with those put forward by MNRU and were eventually incorporated in the text.



Noting that “this support for democratic ideas is a further new achievement reflecting new times”, Erminia Maricato mentions as an example an internal document from the OECD (30 of the world’s richest countries) affirming that: “participation, democratisation, good public management and respect for human rights are excellent step towards durable development” (Maricato, 2000, p. 131-132).

This perception by the business sector with regard to the urban problem, which saw market risk factors resulting from the deterioration of living conditions in the large metropolitan areas, although far removed from the hard-hitting attitudes of the MNRU, helps to explain the change of approach of the corporative powers with regard to the content of the City Statute and the emergence of consensus between the two parties. For Raquel Rolnik (2003), “the urban situation was getting very bad, deteriorating to a very low point (...). In São Paulo it was clear that the business sectors realised that the model was not working and what we see now is a certain predilection in the sector for thinking about alternative models”.

In these circumstances it is not difficult to understand the convergence of opinions, although founded on different propositions and analyses, between the business sectors and the MNRU. Regardless of the very serious ‘cause and effect’ problems, cities nevertheless are magnets which, like no other type of human grouping, bring together a mass of cultural and material facilities capable of boosting standards of dignity, ethical principles and educational and cultural levels that should underpin all organised societies. The City Statute is most definitely an invaluable piece of legislation aimed at achieving this goal.



Bibliographical references

ALFONSIN, Betânia. *Concessão de uso especial para fins de moradia: garantindo a função social da propriedade pública*. [Special Use Concession for housing purposes: guaranteeing the social function of public property] In: OSÓRIO, Leticia Marques (org.). *Estatuto da Cidade e reforma urbana: novas perspectivas para as cidades brasileiras*. [City Statute and urban reform: new perspectives for Brazilian cities]. Porto Alegre: Sergio Antonio Fabris, 2002.

ARAÚJO, Suely Mara Vaz Guimarães de. *Subcomissão da Questão Urbana e Transporte*. [Subcommission on the urban and transport question] In: BACKES, Ana Luiza, AZEVEDO, Débora Bithiat de and ARAÚJO, José Cordeiro de (orgs.). *Audiências públicas na Assembléia Nacional Constituinte: a sociedade na tribuna*. [Public meetings in the National Constituent Assembly]. Brasília: Câmara dos Deputados, Edições Câmara, 2009.

ARAÚJO, Suely Mara V. G. de and RIBEIRO, Vera Lúcia Santos. PL 5.788/90 (*Estatuto da Cidade*): *análise histórica e situação atual do debate*. [City Statute: historical analysis and current situation regarding the debate] Text presented at the 1st Brazilian Congress on Urban Law]. Belo Horizonte, mimeo., 2000.

BASSUL, José Roberto. *Estatuto da Cidade: quem ganhou? Quem perdeu?* [City Statute: who won? Who lost?]. Brasília: Senado Federal, Subsecretaria de Edições Técnicas, 2005.

BRASIL. Constituição Federal. Brasília: Senado Federal, [1988] 2003.

_____. *Sistema de Informações do Congresso Nacional (SICON)*. Senado Federal, <<http://www.senado.gov.br/sicon>>.

_____. Law no. 10.257, of 10 July 2001 (City Statute), which “regulates Arts. 182 and 183 of the Federal Constitution, establishes general guidelines of urban policy and sets forth other provisions”. Available at <<http://www.senado.gov.br/legislacao>>.

_____. Provisional Measure No. 2.220, of 4 September 2001, which “addresses the Special Use Concession dealt with under §1º of Art. 183 of the Constitution and establishes the National Urban Development Council and addresses other measures”. Available at <<http://www.senado.gov.br/legislacao>>.

CD (CÂMARA DOS DEPUTADOS). Avulso do projeto de lei n. 5.788-D, de 1990 (Do Senado Federal, PLS n. 181/89), s/d. [Federal Senate: ref bill No. 5.788-D] CHAFFUN, Nelson. No date. *Dinâmica global e desafio urbano*. [Global dynamic and urban challenge] In: BONDUKI, Nabil (org.). *Habitat – as práticas bem sucedidas em habitação, meio ambiente e gestão urbana nas cidades brasileiras*. [Habitat- successful practices concerned with housing, environment and urban management in Brazilian cities]. São Paulo: Studio Nobel, 1996.

CNBB (Conferência Nacional dos Bispos do Brasil). *Solo urbano e ação pastoral*. [Urban land and pastoral action] São Paulo: Paulinas, 1982.

COELHO, João Gilberto Lucas e OLIVEIRA, Antonio Carlos Nantes de; coordinated by INESC. *A nova Constituição: avaliação do texto e perfil dos constituintes*. [The new Constitution: evaluation of the text and profile of the assembly constituents] Rio de Janeiro: Revan, 1989.

DM (Revista Dirigente Municipal). *Os destinos da propriedade: os empreendedores imobiliários se rebelam contra o Estatuto da Cidade, em votação no Congresso*. [Uses for property: real estate sector rebels against City Statute during vote in Congress]. Revista Dirigente Municipal, São Paulo, Year XXIII, No. 8, p. 34-35, 1992.

FINEP (Financiadora de Estudos e Projetos). *Habitação popular: inventário da ação governamental*. [Popular housing: inventory of government action]. São Paulo: Garilli, 1985.

FNRU (Fórum Nacional da Reforma Urbana). *Sugestões do Fórum Nacional da Reforma Urbana de Emendas ao Estatuto da Cidade*. [Suggestions of the National Urban Reform Forum for amendments to the City Statute]. Document submitted to CDUI/CD, 1999.

GRAEFF, Eduardo. Interview with author. Mimeo, 2003.



GRAZIA, Grazia de. *Estatuto da Cidade: uma longa história com vitórias e derrotas*. [City Statute: a long story involving achievements and failures] In: OSÓRIO, Leticia Marques (org.). *Estatuto da Cidade e reforma urbana: novas perspectivas para as cidades brasileiras*. [City Statute: new perspectives for Brazilian cities]. Porto Alegre: Sergio Antonio Fabris, 2002.

_____. *Reforma urbana e Estatuto da Cidade* (Urban Reform and the City Statute). In: RIBEIRO, Luiz Cesar de Queiroz e CARDOSO, Adauto Lucio (orgs.). *Reforma urbana e gestão democrática: promessas e desafios do Estatuto da Cidade*. [Urban reform and democratic management : promises and challenges of the City Statute]. Rio de Janeiro: Revan, 2003.

INTERNET. <www.cidades.gov.br>.

_____. <www.direitoacidade.org.br>.

_____. <www.estatutodacidade.org.br>.

_____. <www.favelatemmemoria.com.br>.

_____. www.senado.gov.br

MARICATO, Ermínia. *Terra urbana e a constituinte*. [Urban land and the Constituent Assembly] Folha de São Paulo, 27/8/1987, p. A14.

_____. *O usucapião urbano e a gafe da Fiesp*. (Urban *usucapiao* and FIESP's gaff). Folha de São Paulo, 14/7/1988, p. A14.

_____. *As ideias fora do lugar e o lugar fora das ideias: planejamento urbano no Brasil*. [Ideas out of place and place out of ideas] In: ARANTES, Otília, VAINER, Carlos e MARICATO, Ermínia. *A cidade do pensamento único: desmanchando consensos*. [The one thought city: breaking down consensuses]. Petrópolis: Vozes, 2000.

MARTINE, George. *A trajetória da urbanização brasileira: especificidades e implicações*. [The route taken by urbanisation in Brazil: specificities and implications]. Paper presented to Brazilian Urbanisation Process Seminar: a Global Diagnosis]. Belo Horizonte, 1995.

MATTOS, Liana Portilho (org.). *Estatuto da Cidade comentado* [Commentary on City Statute]. Belo Horizonte: Mandamentos, 2002.

RIBEIRO, Luiz Cesar de Queiroz e CARDOSO, Adauto Lucio (orgs.). *Reforma urbana e gestão democrática: promessas e desafios do Estatuto da Cidade*. [Urban reform and democratic management: promises and challenges of the City Statute]. Rio de Janeiro: Revan, 2003.

ROLNIK, Raquel. Interview with author. Mimeo., 2003.

SCHMIDT, Benício and FARRET, Ricardo Libanez. *A questão urbana*. [The urban question] Rio de Janeiro: Jorge Zahar, 1986.

SECOVI-SP. Sugestões para Alteração do PL 5.788/90 – Estatuto da Cidade. [Suggestions for modifying PL 5.788/90 – City Statute]. Document submitted to CDUI/CD, 1999.

SERRAN, João Ricardo. *O IAB e a política habitacional*. [The IAB and housing policy]. São Paulo: Schema, 1976.

SOUZA, Marcelo Lopes de. *Mudar a cidade: uma introdução crítica ao planejamento e à gestão urbanas*. [Changing the city: a critical introduction to planning and urban management] Rio de Janeiro: Bertrand Brasil, 2002.

TFP. *TFP contra a Reforma Urbana socialista e confiscatória* - Estatuto da Cidade. [The TFP against socialist and confiscatory Urban Reform]. <www.tfp.org.br/secoes/arquivo>, consulted on 9/2/2004.

WILHEIM, Jorge. *São Paulo, metrópole 65: subsídios para seu plano diretor*. [São Paulo, metropolis 65: information for its Master Plan]. São Paulo: Difel, 1965.



Commentary on the City Statute

(Law N° 10. 257 of 10 July 2001)



Ana Maria Furbino Bretas Barros
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Chapter I. General Guidelines

Article 1. The provisions of this law will be applied in the execution of urban policy, which is the subject of Arts. 182 and 183 of the Federal Constitution.

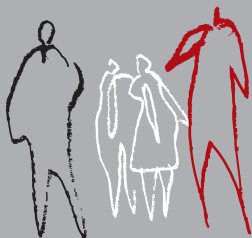
Sole paragraph - For all effects, this Law known as the City Statute establishes norms of public order and social interest which regulate the use of urban property in favor of the common good, safety and well-being of citizens, as well as environmental equilibrium.

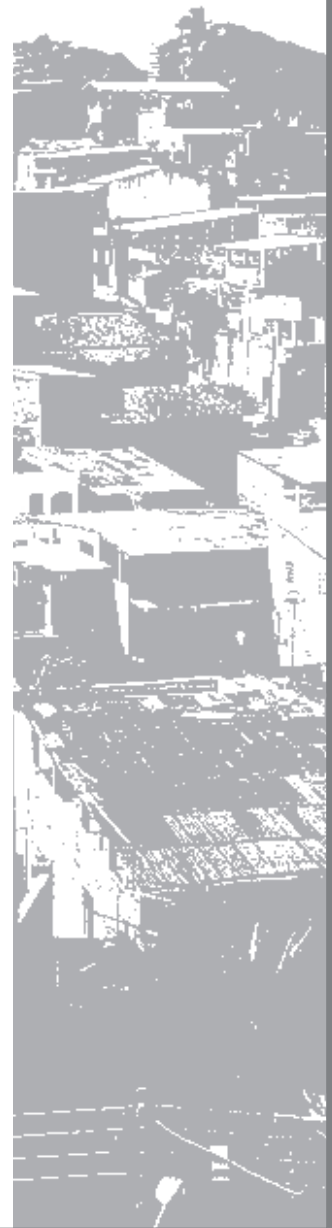
The City Statute is the Brazilian federal law which regulates Articles 182 and 183 of the Federal Constitution of 1988.

Article 182 sets forth that urban policy is the responsibility of the municipality and must guarantee the social functions of the city and the development of its citizens. It also establishes that the Municipal Master Plan is the basic instrument for the organisation of urban land. The Master Plan must define what shall be the use and the type of occupation of each part of the municipal territory in a bid to ensure that all the properties therein fulfill their social role.

Paragraph 4 of the same article contains a set of key instruments for giving concrete expression to the social role of property: compulsory parceling and building; progressive property and land tax and expropriation/sanction.

Article 183 of the Federal Constitution deals with acquisition of property by the occupant of an urban dwelling who uses it for housing himself or his family. This measure guarantees the right of ownership to the person who effectively uses the property in accordance with its legal purpose.





Article 2. The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, based on the following general guidelines:

I – to guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, employment and leisure, for current and future generations;

II - democratic administration by means of participation by the population and the representative associations of the various sectors of the community in the formulation, execution and monitoring of urban development projects, plans and programmes;

III - cooperation between governments, the private sector and other sectors of society in the urbanisation process, to satisfy the social interest;

IV - planning of the development of cities, of spatial distribution of the population and of the economic activities of the Municipality and of the territory under its area of influence, in order to avoid and correct distortions caused by urban growth and its negative effects on the environment;

V - provision of urban and community equipments, transportation and public services that are appropriate to the interests and needs of the population as well as reflecting local circumstances;

VI - ordering and control of land use, in order to avoid:

- a) the improper use of urban real estate;
- b) the proximity of incompatible or inconvenient uses;
- c) the parcelling of land, construction or excessive or improper use with regard to urban infrastructure;
- d) the installation of developments or activities that could become hubs that generate traffic, with no prevision for corresponding infrastructure;
- e) the speculative retention of urban real estate, resulting in its underutilisation or non-utilisation;
- f) the deterioration of urbanised areas;
- g) pollution and environmental degradation;

VII - integration and complementarity between urban and rural activities, taking account of the social economic development of the Municipality and the territory under its area of influence;

VIII - adoption of production and consumption patterns related to goods and services and of standards of urban expansion compatible with the limits of environmental, social and economic sustainability of the Municipality and of the territory under its area of influence;

IX - fair distribution of the costs and benefits resulting from the urbanisation process;

X - adaptation of economic, taxation and financial policy instruments and public expenditure to suit the goals of urban development, in order to give priority to investments which generate general well-being and enjoyment of the assets by different social segments;

XI - recovery of government investments that have led to appreciation in the value of urban property;

XII - protection, preservation and recovery of the natural and built environment, and of the cultural, historic, artistic, landscape and archeological heritage;

XIII - public hearings involving municipal governments and members of the population interested in the processes of execution of developments or activities with potentially negative effects on the natural or built environment, the comfort or safety of the population;

XIV – tenure regularisation and urbanisation of areas occupied by low income populations through the establishment of special urbanisation, land use, land occupation and building norms, taking due account of the socio-economic situation of the population and environmental norms;

XV - simplification of the legislation concerning subdivision, land use, occupation and building regulations, in order to permit cost reductions and increase the supply of lots and housing units;

XVI - equality of conditions for public and private agents in the promotion of developments and activities related to the urbanisation process, serving the social interest. o, atendido o interesse social.



Article 2 of the City Statute defines the guidelines which must be followed by the Municipality when elaborating its urban policy. All these guidelines are intended to ensure the existence of just and fair cities in which all inhabitants, both rich and poor, can enjoy the benefits of the urbanisation process.

Article 3. It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

I - to establish legislation concerning general norms of urban law:

II - to establish legislation concerned with norms for cooperation between the Federal Government, the States, the Federal District and the municipalities with regard to urban policy, bearing in mind the need to balance development with well-being nationwide;

III – to promote, on its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction schemes and the improvement of housing conditions and basic sanitation;

IV – to institute guidelines for urban development, including housing, basic sanitation and urban transportation;

V – to prepare and execute national and regional plans to order territory and promote economic and social development.



The Federative Republic of Brazil consists of four federated entities not subordinate to one another. The municipalities are the local bodies most closely in touch with citizens. The States comprise several municipalities; the Federal District is the administrative seat of the country; finally, the Union represents the sum total of the States and the Federal District.

Each of these entities is responsible for elaborating its own laws, executing public policies, and fixing and collecting taxes, in accordance with the distribution of competences set forth in the Federal Constitution. For certain subjects and policies, the Federal Constitution makes cooperation between these entities obligatory.



In the case of Urban Law, legislative competence is concurrent, i.e. requiring cooperation between the federated entities. Urban policy must be developed by the municipalities according to the attributes conferred upon them by the Federal Constitution, while the states are responsible for legislating on the establishment and regulation of Metropolitan Regions. The Federal Government sets out general norms for urban development.

Exercising its role on the subject of Urban Law, the Federal Government promulgated the City Statute. This law embraces the general norms which must be observed by all the municipalities with regard to the territorial organisation of their territories as well as with respect to the elaboration and execution of their urban development policies.

Chapter II. The tools of urban policy

Section I. The instruments in general

Article 4. For the purposes of this Law, the following instruments among others shall be employed :

I - national, regional and state plans for organizing territory and promoting economic and social development;

II - planning of the Metropolitan Regions, urban and micro-regional conglomerations;

III - municipal planning, especially:

- a) elaborating a Master Plan;**
- b) disciplining parcelling, land use and occupation;**
- c) environmental zoning;**
- d) multi-annual plan;**
- e) budget guidelines and annual budget;**
- f) participatory budget management;**
- g) sectoral plans, programmes and projects;**
- h) economic and social development plans;**

IV - financial and taxation rules, involving:

- a) taxes on built property and urban land – IPTU;**
- b) betterment fees;**
- c) fiscal and financial incentives and benefits;**

V - legal and political rules regarding:

- a) expropriation;**
- b) administrative easement;**
- c) administrative limitations;**
- d) earmarking buildings or urban properties of heritage interest;**
- e) establishment of Conservation Zones;**
- f) establishment of Special Social Interest Zones;**

- g) Concession of Real Right to Use;**
- h) Concession of Special Use for Housing Purposes;**
- i) Compulsory Parcelling, Building or Utilization;**
- j) Special Usucapiao for Urban Property;**
- l) Surface Rights;**
- m) Right to Preemption;**
- n) Award of the Right to Build or Change of Use;**
- o) Transfer of the Right to Build;**
- p) Consortiated Urban Operations;**
- q) Land Tenure Regularisation;**
- r) free technical and legal assistance for poorer communities and social groups;**
- s) popular referendum and plebiscite;**
- t) demarcation of urban land for the purpose of tenure regularisation (included in Law No. 11.977 of 2009)**
- u) legitimation of possession (included in Law No. 11.977 of 2009).**

VI – Draft bill on Environmental Impact Study and Neighborhood Impact Studies.

- §1. The instruments mentioned in this Article are governed by specific legislation, observing that established by the present Law.**
- §2. In the cases of social housing programmes and projects developed by government entities that operate specifically in this area, the Concession of the Real Right to Use public properties can be contracted on a collective basis.**
- §3. The instruments foreshadowed in this article which require expenditure of municipal funds shall be subject to social control as a way of guaranteeing the participation of communities, movements and civil society entities.**

Article 4 of the City Statute defines a broad set of instruments to enable the Municipality to be in a position to formulate an urban policy that can give concrete expression to the social function of urban property and to the right of all people to the city.

The Statute establishes that urban policy must be the outcome of extensive planning, involving integrated plans for territorial organisation at the national, state, regional, metropolitan, municipal and inter-municipal levels. Specifically at the municipal level, the Statute determines that municipal planning must involve urban, environmental, budgetary, sectoral planning as well as economic and social development planning and, moreover, that municipal plans must determine that budgetary management is undertaken in a participatory manner, involving all citizens.

The Statute includes taxation instruments embracing taxes, contributions, incentives and fiscal and financial benefits aimed at providing the means for introducing uses and activities that are considered important in the context of urban policy.



The clause concerned with legal and political measures provides the Municipality with tools for enabling the following:

- A range of social intervention measures concerned with the free use of private property: expropriation, easement and administrative limitations, designation of properties for heritage purposes, the establishment of conservation units, compulsory parcelling, building or utilisation and the right of pre-emption;
- Tenure regularisation of property used for social purposes: Concession of the Real Right of Use, the Special Use Concession for Housing Purposes, Special *Usucapiao* of Urban Properties (a form of adverse possession), surface rights, urban planning demarcation for tenure regularisation purposes and legitimisation of possession;
- Urban development and redistribution to the community of the benefits arising from the urbanisation process: Building Waiver Rights and Usage Alterations, Transfers of the Right to Build and Consortiated Urban Operations;
- Instruments targeted at democratising urban management and the right to housing: popular referendum and plebiscite, free technical and legal assistance for poorer communities and social groups. It is worth noting that the development of a housing policy that is also socially inclusive is afforded by the establishment of Special Social Interest Zones (ZEIS). This instrument can be used for regularising occupied areas where the process of occupation has occurred regardless of urban planning norms. The device can also be used for vacant areas earmarked for social housing.

In the first case, the establishment of an area occupied as a ZEIS allows the introduction in a particular parcel of land of special urbanistic parameters that are in line with the form of occupation undertaken by the community. Thus the ZEIS procedure can permit the installation of, for example, street systems consisting of narrow streets or alleyways that are more suitable for occupied hilly or steep areas, or also for 'consolidating' occupied areas in environmental preservation areas, thereby minimising the need for removing homes during the process of tenure regularisation. This also allows mechanisms to be implemented that prevent the eviction of residents from already regularised settlements and their subsequent occupation by wealthier social segments attracted to such areas by rising property prices. Examples of mechanisms of this type include: (i) the prohibition of lot 're-parcelling' to avoid situations where someone can acquire various regularised lots, transform them into a single larger lot and construct new buildings on the land); and (ii) defining the type of land use that is permissible in the circumstances (e.g. allowing only single- family units to be erected).

When applied to vacant or unused properties, the ZEIS enables the public authorities to reserve areas benefiting from infrastructure, services and urban equipments for social housing, thereby proving that this is an important instrument for avoiding the eviction of poor people, forcing them to live in peripheral areas remote from the urban centres.

It is worth noting that the City Statute establishes no direct correlation between urban readjustments and instruments. Each Municipality chooses, regulates and applies the instruments in accordance with its desired urban development strategy. Different instruments in the City Statute do not present, by themselves, a solution for a particular urban problem. Specific urban upgrading will depend on the relevant municipal authorities applying instruments which can be used in an integrated and coordinated manner in a particular territory. Therefore regulation of the instruments must be detailed in the Master Plan and introduced as part of an urban development strategy with a view to ensuring their effective application.

Section II. Of compulsory parcelling, building or use

Article 5. Specific municipal laws to cover areas included in the Master Plan shall determine the compulsory parcelling, building or use of non-aedificandi, under-utilised or un-utilised urban land and must establish conditions and deadlines for the implementation of the said obligations.

§ 1. Properties are considered to be under-utilised if:

I - utilisation is lower than the minimum defined in the Master Plan or its related legislation;

II - (VETOED)

§ 2. The owner shall be notified by the Municipal Administration to comply with the requirement and the notification must be registered in the local property deed office.

§ 3. Notification shall be conducted as follows:

I - by an official of the responsible municipal government agency, to the owner of the property, or, if the owner is a company, to whosoever possesses general administrative or managerial responsibility;

II - by public notice following three unsuccessful attempts to notify the owner in the manner called for in above sub-clause I.

§ 4. The deadlines referred to in the header above cannot be less than:

I - one year, from the time of notification, for the project to be registered in the relevant municipal agency;

II - two years, from the approval of the project, to allow work on the development to commence.

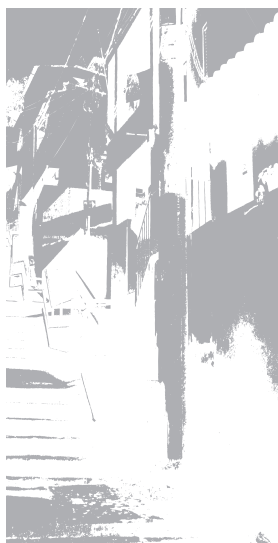
§ 5. In large-scale developments, in exceptional cases, a specific municipal law (referred to in the header paragraph) can call for the procedure to be concluded in stages and assure that the approved development includes the project as a whole.

Article 6. The transmission of the property, inter vivos or on death, after the date of notification, transfers the obligations for parcelling, construction or use determined under Article 5 of this Law, without any deadlines being interrupted.

The retention of vacant or idle land within the urbanised area of a municipality in the expectation of future price appreciation to benefit its owners means that fewer urban spaces are available in the city for housing as well as for undertaking economic activities vital for the development of society as a whole and especially that of economically vulnerable groups.

In order to avoid such vacant spaces being formed, to restrain property speculation and to increase access to urbanised land, the City Statute regulates the compulsory sub-dividing (parcelling), building or utilisation of such areas in order to oblige owners to use underutilised land for a proper purpose, thereby giving concrete expression to the constitutional precept of the social function of property.

The municipalities are responsible for publishing norms for applying this instrument within their territories, without which the instrument would not be valid. The local public authority must specify in its Master Plan the areas where this instrument will be employed and introduce a specific law regulating its application.



It is important to note that the various instruments designed to force owners to make full use of properties, such as compulsory parcelling, building and utilisation, the Progressive IPTU (property tax) and 'expropriation reimbursed with public debt bonds', can be combined with the establishment of ZEIS. By combining such instruments the local authority can ensure that idle urbanised land is used for social housing.

Compulsory parcelling, building or utilisation is applied to non-edificandi properties consisting only of bare earth, or properties that are unused, abandoned and uninhabited; and underutilised property, the use of which is less than the minimum defined by law. Once the owner of a particular property has been notified, he is obliged to ensure that an effective and appropriate use is made of such property within a specific period of time. If this property is sold, the new owner becomes responsible for complying with this obligation.

Section III. Progressive Property Taxes (IPTU)

Article 7. In the case of noncompliance with the conditions and deadlines established in the form of the header of Article 5 of this Law, or if the steps called for in §5 of Article 5 of this law are not complied with, the Municipality shall proceed to impose built property and urban land taxes (IPTU) that are progressive over time, with the basic aliquot increasing over a period of five consecutive years.

§1. The value of the tax aliquot to be applied for each year will be fixed in the specific law referred to in the header of Article 5 of this Law and shall not exceed twice the value charged in the previous year, to a maximum rate of fifteen percent.

§2. In the event of the obligation to parcel, build or use the property not being complied with within five years, the Municipality shall charge the IPTU at the maximum rate until the said obligation is met, with the prerogative detailed in Article 8 guaranteed.

§3. The concession of exemptions or a tax amnesty with regards to the progressive taxation charge determined by this article is prohibited.

In order to compel owners to comply with the required obligation, whether compulsory parcelling, building or utilisation, the City Statute rules that municipalities can proceed to charge Progressive IPTU.

The IPTU is a tax to be paid by owners or holders of urban properties, calculated as a percentage of the market value of a given property. The City Statute enables the Municipality to increase the IPTU aliquot progressively over the years for properties whose owners fail to obey the fixed deadlines established for compulsory parcelling, building or utilisation. This is a way of penalising the retention of a property with a view to taking advantage of increasing prices, and ensures that the delay incurred in waiting for speculative price appreciation, of no benefit to the city itself, becomes an economically unviable proposition. In this case, the Progressive IPTU is employed more as a sanction than as a revenue-gathering device.

In order to ensure that the instrument is effective, the City Statute vetoed the concession of tax waivers or amnesties.

Section IV. For expropriation with payment in bonds

Article 8. If the property owner has not complied with the obligation to sub-divide, build or use the property five years after IPTU has been charged, the Municipality can proceed to expropriation of the property, with payment to be made in public debt bonds.

§ 1. The public debt bonds must be previously approved by the Federal Senate and shall be redeemed over a period of up to ten years in annual, equal, and successive installments, with the real value of the compensation assured and at a legal interest rate of six percent (6 per cent) per year.

§ 2. The real value of the indemnity:

I - shall reflect the base value for calculation of the IPTU, discounting the amount included as the result of public works undertaken by the local authorities in the area where the property is located after the notification mentioned in §2 of Article 5 of this Law;

II - expectations of yields, foregone profits and compensatory interest will not be computed.

§ 3. The bonds mentioned in this article cannot be used to pay taxes.

§ 4. The Municipality will proceed to the suitable use of the property in a maximum of five years calculated from the time the property becomes a public asset.

§ 5. The use of the property can be made effective directly by the local government or by means of conveyance or concession to third parties providing the due bidding procedures are observed.

§ 6. The party acquiring the property under the terms of §5 is subject to the same obligations for parcelling, building or use set forth in Article 5 of this Law.

Property, in common with any fundamental right, can be limited and even the target of a suppressive intervention. The Federal Constitution, conferring upon the State the power to relieve an owner of his property, makes it possible to undertake expropriation in the public interest or for social interest purposes, but this procedure requires prior fair compensation to be made in cash.

As exceptions to this general rule, the Federal Constitution foreshadows two other expropriation modalities, both intrinsically related to the social function of property: expropriation for purposes of urban reform and expropriation for agrarian reform purposes, both as sanctions.

The Statute regulates expropriation of property for urban purposes. Through this modality the municipal authority can punish an owner who fails to use his property for the social function established in the Municipal Master Plan. Unlike expropriations undertaken in the public and social interest, expropriation for urban reform purposes requires payment to the owner to be made in public debt bonds repayable over a period of ten years.

Another important difference, also concerning the sanction character of this modality of expropriation, consists of the value of the compensation involved. This value in general corresponds to the market value of a particular property. In the case of expropriation for urban purposes this involves a real value corresponding to the calculation base used for the IPTU, with an amount proportionate to the value of public investment in the area near to the property discounted. This type of calculation is in line with the guidance on fair distribution of the benefits of urbanisation expressed in Article 2 of the City Statute. Furthermore, the real value of expected yields, foregone profit and compensatory interest cannot be considered as part of the calculation.

Expropriation for urban reform purposes can only be undertaken if the owner, compelled to make appropriate use of his property, fails to do so after Progressive IPTU has been applied over a period of five years. Expropriation presupposes the following sequence of actions: firstly, the municipal authority, under the terms of municipal law, notifies the owner to parcel, build or utilise his property. After the deadline stipulated in the official notification in accordance with legal procedures, and in the event of the owner failing to comply, the Municipality can increase the IPTU aliquot on an annual basis over a period of five years in accordance with Article 7 of the City Statute and local municipal law. Only after these instruments have been applied can expropriation for urban reform purposes be undertaken by the Municipality.

The linking of the expropriation sanction regulated by the City Statute to the social function of property also obliges the local authorities to make appropriate use of the property following expropriation. In the event of this is not happening, the city mayor and other public agents involved are judged to have committed an administrative impropriety in accordance with Article 52 of the City Statute. Administrative impropriety is taken to signify any act that contravenes the duty of the public officials to act honestly and decently. An administrative impropriety act is not a crime from a legal point of view, but any person acting thus is subject to sanctions which can occasion suspension of political rights, loss of public employment, seizure of assets, and repayment of monies to the public purse.¹

Section V. Special Usucapiao Rights for Urban Property

Article 9. Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and unopposed, who uses it as his or his family's home, can establish dominion over the property, as long as he is not the owner of any other urban or rural property.

§ 1. The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.

§ 2. The rights granted in this article will not be recognised to the same possessor more than once.

§ 3. For the purposes of this article, the legitimate heir continues to have full rights to the possession enjoyed by his predecessor providing he was residing in the property at the time that it was left open to succession.

Article 10. In urban areas of over two hundred and fifty square meters occupied by the low income population for housing purposes, for five years, uninterruptedly and without opposition, and where it is not possible to identify the land occupied by each possessor, residents can avail themselves of collective usucapiao, providing the possessors do not own any other urban or rural property.

1. Administrative impropriety is addressed in the Federal Constitution, Art.37, §4 and by Law No. 8.429/92.

§ 1. The owner can, for the purpose of calculating the timeframe required by this Article, add to his possession that of his predecessor, providing possession is continuous for both.

§ 2. The Special Collective Usucapiao of urban real estate shall be decided by the judge who shall pass down a ruling which will serve as a title for registering in the real estate deeds office.

§ 3. In his ruling the judge will award an equal ideal portion of the land to each possessor, regardless of the size of the land that each occupies, except in the case of a written agreement existing among the condominial parties establishing differentiated ideal portions.

§ 4. The special condominium thus constituted is indivisible and cannot be terminated except by a favorable determination submitted by at least two thirds of the members of the condominium, in the event of urbanisation works being implanted after the condominium has been constituted.

§ 5. The determinations related to the administration of the special condominium shall be based upon a majority vote by the condominium members present, requiring the others to comply with the decision, whether or not they in agreement or were absent from the voting session.



Article 11. While the special urban action for usucapiao is pending, any other actions, petitions, or possessions that are proposed relating to the property subject to usucapiao will be stayed.

Article 12. Legitimate parties involved in proposing an action to lead to special urban usucapiao include:



I - the possessor, alone, in a group or supervenient;

II - the possessors, in co-possession;

III - an association of community residents acting as a procedural substitute, duly established, with legal standing, providing this association is explicitly authorised by those that it represents.

§1. Intervention by the Ministério Público is obligatory in the event of Special Urban Usucapiao.

§2. The submitting party shall enjoy the benefits provided by the courts and free legal assistance, including assistance in the real estate deeds office.



Article 13. Special usucapiao for urban real estate can be invoked as defense, with the ruling that recognises it to be regarded representing a valid title which can be registered in the real estate deeds office.



Article 14. In the legal procedures related to special urban real estate *usucapiao*, the summary action will be considered as a procedural writ.

In Brazil around 40 per cent of families living in urban areas do not legally possess a property or any legal document(s) to confirm possession of the land on which they live. This has arisen from the rapid, disorganised and unjust process of urbanisation, resulting in poor people not having their right to housing recognised, and with their only option being to occupy a space in the city by constructing their own houses on vacant land or squatting in abandoned buildings.

Acknowledging that this illegal situation is unfair for poorer people as well as being prejudicial to society as a whole, the Federal Constitution, in its Article 183, guarantees to the holder of an urban property of up to 250 square meters square and who does not have another property or who has not yet been the beneficiary of the instrument, the acquisition of the said property. In this case the possessor must demonstrate that he has occupied the property for at least five years, unopposed, and that he uses the property for dwelling purposes.

Once the legal requirements have been fulfilled, the possessor becomes the owner by means of a judicial process of *usucapiao* or of a specific extrajudicial procedure in accordance with Law No. 11.977 of 7 July 2009, which rules on urban demarcation and legitimation of ownership.

In Articles 9 and 14 the City Statute regulates special urban *usucapiao* by introducing a series of norms intended to overcome bureaucratic and economic bottlenecks that could obstruct the effective acknowledgement of the right conceded to the possessor of the property under the terms of the Constitution. It guarantees, for example, free of charge access to all the legal documents and those deposited in the land registry office, including legal assistance for beneficiaries. It also ensures that residents' associations can submit *usucapiao* requests in the name of residents providing this is authorised by the latter, and also permits collective submissions for urban *usucapiao*.

It is often not possible to identify and separate favelas areas into smaller lots, which technically would rule out the possibility for individuals to make individual submissions. However, collective *usucapiao* means that only the external perimeter of the occupied area needs to be demarcated, a procedure which could lead to possible recognition of the right of ownership of the group of residents living in a given urban settlement.

Section VI. Concerning Special Use Concession for Housing Purposes

Article 15. (VETOED)

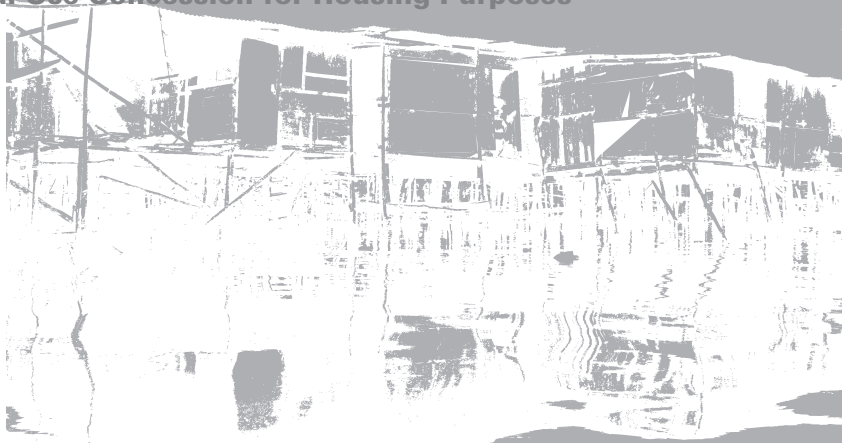
Article 16. (VETOED)

Article 17. (VETOED)

Article 18. (VETOED)

Article 19. (VETOED)

Article 20. (VETOED)





Section VII. Concerning surface rights

Article 21. The urban property owner can concede to another party the right to use of surface of his land for a specified or unspecified time, through a public deed registered in the public deeds office.

§. The surface right includes the right to utilise the land, the sub-soil, or the aerial space related to the land, in the form established in the respective contract, in conformity with urban legislation.

§2. The surface rights can be offered free of charge or not.

§3. The person receiving the surface rights shall be wholly responsible for defraying the fees and taxes levied on the surface of the property, also accepting responsibility proportional to his effective share of occupation, with the fees and taxes on the area that is the object of the concession of the surface rights, excepting any measure to the contrary expressed in the respective contract.

§4. The surface right can be transferred to third parties in accordance with the terms of the respective contract.

§5. Upon the death of the person receiving the surface rights, his rights are transferred to his successors.



Article 22. In case of conveyance of the land, or of the surface right, the party receiving the surface rights and the property owner respectively, will have the right of preference, in equal conditions, to offers received from third parties.

Article 23. Surface rights are terminated:

I - by the expiry of the term;

II - by failure to comply with the contractual obligations assumed by the person assuming the surface rights.

Article 24. Upon termination of the surface rights, the property owner will recover full dominion the land, as well as the accessions and improvements in the property regardless of any compensation, unless the parties have stipulated to the contrary in the respective contract.

§ 1. Before final termination of the contract, the surface rights shall be terminated if the person receiving the surface rights uses the land for a purpose that is different from that for which it was conceded.

§ 2. Extinction of the surface rights shall be registered in the real estate deed office.

Surface right was an innovation in Brazilian law introduced by the City Statute². Until this law was promulgated, the general understanding in Brazil was that everything that was constructed or planted, (i.e. all ways of accessing land) presumed that the land belonged to an owner.

Surface right effectively means that ownership of the land is separated from the right to use the surface of such land. This is an interesting instrument for tenure regularisation of a social interest occupation of publicly owned land. Based on a contract which sets out the right to the surface, the public authority retains the ownership of the public land concerned, but can concede to the resident the right to construct a dwelling on this land, with a full guarantee that he can exercise upon it his right to housing, sell it under certain conditions or pass it to his heirs. Since the public authority retains ownership of the land, it can also prevent the property being acquired by someone who intends to use it for another purpose than that for which the right has been given—for example the provision of housing for the low-income population—thereby avoiding eviction of the residents and occupation of the property by wealthier people.

2. At present the Surface Law is also addressed in the Civil Code, Law No. 10.406/2002 promulgated after the City Statute

Section VIII. The Right to Preemption



Article 25. The Right to Preemption confers upon the municipal government a preference to purchase urban property which is being conveyed in exchange for money between private parties.

§ 1. Municipal law based on the Master Plan shall establish areas in which the right to preemption will apply, and shall establish a period of during which this right will be in force, not more than five years, renewable from one year after termination of the initial period.

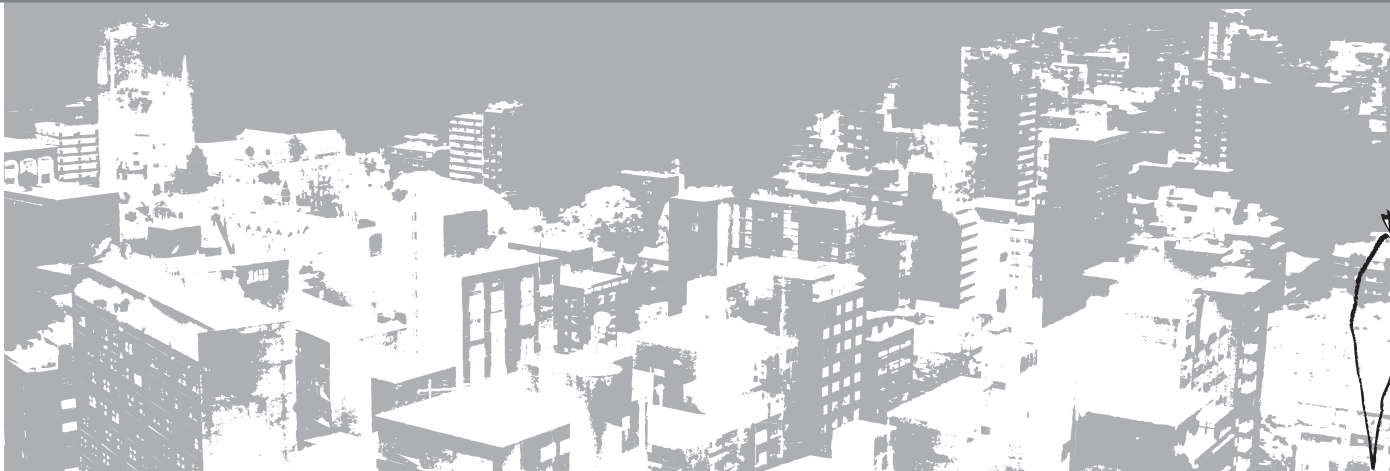
§ 2. The Right to Preemption is assured during the period when it will be in force, established according to the terms of §1, regardless of the number of conveyances of the property to which it applies.

Article 26. The Right to Preemption will be exercised whenever the local government needs areas for:



- I – land tenure regularisation;
- II - execution of social housing programmes and projects;
- III - establishment of a land reserve stock;
- IV - ordering and guiding urban growth;
- V - installation of urban and community equipments;
- VI - creation of public leisure spaces and green areas;
- VII - creation of conservation units or protection of other areas of environmental interest;
- VIII - protection of areas of historic, cultural or landscape interest;
- IX - (VETOED)

Sole paragraph. The municipal law foreshadowed in §1 of Article 25 of this Law must include each area in which the right to preemption will be applied for one or more of the purposes indicated by this Article.



Article 27. The owner must notify his intention to convey the property so that the Municipality, within a maximum period of 30 days, can confirm in writing its interest in purchasing it.



§1. The notification mentioned in the header will be annexed to the purchase proposal signed by the third party interested in purchasing the property, on which will be indicated the payment terms and period of validity.

§2. The Municipality will publicise, in an official journal and in at least one wide circulation local or regional newspaper, an official notice advising of the notification received in the terms of the header and of the municipality's intention to acquire the property in accordance with the conditions set forth in the proposal.

§3. Once the deadline mentioned in the header has expired without any declaration of interest being submitted, the property owner is authorised to undertake conveyance to third parties, in accordance with the conditions set forth in the proposal.

§4. Once the sale to a third party is finalised, the owner will be required to present a copy of the public property transaction deed to the Municipality within a period of thirty days.

§5. A conveyancing undertaken in conditions different to those of the proposal presented is void of complete rights.

§6. If the hypothesis presented in §5 materialises, the Municipality can acquire the property for the appraised base value of the IPTU or by the value indicated in the proposal presented, if this is lower.



The right of preemption guarantees to the municipal authority that it will have preference for acquiring properties that are being conveyed³. Under this procedure the owner who wishes to sell property must first communicate the facts to the local authority which, if it so wishes, can buy the property at the same price as that offered by a third party.

Utilisation of this instrument enables the municipal authority to acquire urban land to be used for the purposes set forth under Article 26.

In order to apply this instrument, it is necessary for the municipality to have drawn up its Master Plan as well as a specific law delimiting the areas that will be subject to the right of pre-emption and that indicates the purpose to which each of the areas will be put after the land has been acquired by the public authority.

The municipal law addressing the right of pre-emption in an area must also define the period of time during which this right will remain valid. During this period, any conveyance involving payment of properties must be preceded by notification to the municipality in order to give the latter the power to exercise its right of preference.

In the exercise of its right of preference the municipal authority must observe a number of specific precautions: it must only use the property for purposes specified in the law and can only purchase the asset at market price. If these obligations are not observed, the mayor and his agents involved in the operation and utilisation of the property following purchase will be charged with administrative impropriety under the terms of Article 52, III and VIII of the City Statute.

3. City Statute: Guide for Implementation by Municipalities and Citizens. Brasília: Publications Division, Chamber of Deputies, 2001, p.137.

Section IX. Award with Costs of the Right to Build

Article 28. The Master Plan can establish areas in which the right to build can be exercised above the basic floor area coefficient adopted, with a counterpart sum to be handed over by the beneficiary.



§1. For the purposes of this Law, floor area coefficient is the ratio between the built area and the lot size.

§2. The Master Plan can establish a single basic floor area coefficient for the entire urban area or a different coefficient relating to specific areas within the urban zone.

§3. The Master Plan will define the maximum limits of the floor area coefficient, taking account of the proportion between the existing infrastructure and the increased density foreseen in each area.



Article 29. The Master Plan can establish areas in which changes of land use can be permitted, with a counterpart sum to be handed over by the beneficiary.

Article 30. A specific municipal law will establish the conditions to be observed for the award with costs of the right to build and change of use, establishing:



I - the formula for calculating the charge;

II - the cases that might be exempt from payment for the award;

III - the counterpart sum to be paid by the beneficiary.



Article 31. The funds generated by the award of the right to build and change of use shall be applied for the purposes established in sub-clauses I to IX of Article 26 of this Law.

The Onerous Grant on the Right to Build ('Building Waiver with Costs') is an instrument designed to boost urban development, enabling the public authorities to encourage densification of certain areas of the city to the detriment of others as a way of promoting the maximum use of the installed infrastructure, as well as making it possible for the community to capture the value generated by public authority interventions. The instrument is also an indirect way for the local government to increase revenue.

The guidelines related to the "just distribution of the costs and benefits arising from the urbanisation process" and to the "recovery of investment by the public authority resulting from the price appreciation of urban properties" (Clauses IX and XI of Article 4), together with the separation of the rights to build from the right to ownership and to fulfillment of the social function of property, sustain the argument that it is legitimate for the public authorities to recover for the community the increased value of the properties resulting from property price appreciation generated as a result of public investments.

The mechanism can be traced back to the principle of 'Solo Criado' introduced in Brazil in the 1970s, which in the words of José Afonso da Silva,⁴ can be understood as "all building above a single coefficient, whether involving occupation of air or underground space" ('artificial land' based on the separation of land and building rights'). In simple terms, this refers to buildings constructed on land that measures more than the built-up area proportionate to this area of land and is therefore considered to be 'Solo Criado', and this creation of land calls for compensation to be sought in exchange for the costs generated by the infrastructure works involved.

It can be seen that the concept of 'Solo Criado' presupposes that the right of property encompasses the right to build, but the latter is limited by a single or basic use coefficient. In other words, the right of an owner to build is restricted to the single law-based building coefficient as defined in the Municipal Master Plan. Any building above this coefficient will only be permitted in predefined areas and will be subject to a counterpart payment to the municipal authority.

In order to apply the Building Waiver, the Municipality must, on the basis of its Master Plan, define the basic use coefficient for its entire territory. This does not need to be uniform in all areas (i.e. it can differ from zone to zone). In addition, the Master Plan must identify the areas where the right to build over and above the established coefficient can be exercised, the basic use coefficients and the Plan must also establish the maximum allowable coefficients.

The establishment of the maximum use coefficient must take into account the capacity of the infrastructure and the increased density to which a property will be subject. In order to avoid overloading the infrastructure, the public authority must establish limits for the additional constructed area and also define limits by type of use (e.g., residential use, services use or commercial use).

The concession of additional building potential by the local government also makes it possible to regulate the land market. It is known that, given that there are great variations in the building potential of properties and the fact that no charge has been levied for using this potential, certain areas will appreciate in price to the detriment of others. This instrument, however, can certainly influence land prices, resulting in a specific properties increasing substantially in value.

4. SILVA José Afonso da: *Direito urbanístico brasileiro*. 4th Edition revised and updated. São Paulo: Malheiros, 2006. p. 262.

Section X. Of Consortiated Urban Operations

Article 32. A specific municipal law, based on the Master Plan, can limit the area for application of consortiated operations.



§ 1. A Consortiated Urban Operation is the totality of the interventions and measures coordinated by the municipal government, with the participation of owners, residents, permanent users and private investors and aimed at undertaking structural urban readjustments, social improvement and introducing environmental benefits in a given area.

§ 2. Urban Consortiated Operations can include:

I - the modification of indices and formats related to the parcelling, use and occupation of land, as well as alterations to building norms, always taking into account the environmental impacts generated as a result;

II - the regularisation of constructions, repairs or extensions undertaken in contravention of current legislation.



Article 33. The specific law that rules on Urban Consortiated Operations shall include an urban consortiated operation plan and this will contain the following as minimum requirements:



I - the definition of the area to be affected;

II - the basic occupation programme for the area;

III - a programme covering ways and means to attend to the economic and social needs of the population directly affected by the operation;

IV - the purposes of the operation;

V - a prior Neighbourhood Impact Study;

VI – counterpart payment to be required from the owners, permanent users and private investors in order to compensate for their enjoyment of the benefits established in sub-clauses I and II of §2 of Article 32 of this Law;

VII - the form in which the operation will be controlled, with the operation to be obligatorily shared with civil society representatives.

§1. The funds obtained by the municipal government under the terms of sub-clause VI of this article will be exclusively invested in the Consortiated Urban Operation.

§2. Once the specific law indicated in the header is approved, any licenses and authorizations issued by the municipal government in violation of the Consortiated Urban Operation will be declared null and void.

Article 34. The specific law that approves the consortiated urban operation can call for the issuing by the Municipality of an specific number of certificates to cover potential additional construction, which will be offered for sale at auction or used directly in payment for work required for the operation.



§1. The certificates for potential additional construction shall be freely traded, but will be converted to the right to build solely in the area to be covered by the operation.

§2. Once the request for the license to build is submitted, the certificate for additional building potential will be used in payment for the construction area that exceeds the standards established by the land use and occupation legislation, up to the limit fixed by the specific law ruling on the consortiated urban operation.

Consortiated Urban Operations are concerned with introducing urban projects on the basis of partnerships between the public authority, property owners, civil society and private capital, with all of them conforming to municipal urban planning guidelines. Such projects must be in accordance with the rules governing urban structural development, environmental protection and the promotion of social improvement.

The basic idea of this instrument is to transform a specific area of the city under the aegis of the municipal public authority with a view to giving concrete expression to the objectives and actions established under the Master Plan by means of partnerships established with the private sector. The instrument can be used for different purposes: conversion and upgrading of old deactivated industrial and port areas which have cut back on operations or are undergoing land use changes; the transformation of urban complexes endowed with infrastructure and vacant land where it is proposed to upgrade usage and density; upgrading the land use and infrastructure around large urban facilities such as avenues, metro stations, special bus corridors, parks and stadiums; better land use connected with substantial urban works, etc.

The City Statute establishes a number of requirements for the undertaking of urban operations by municipalities in a bid to guarantee that the benefits of such operations are distributed between the directly affected population, the public authority and private investors.

In order to encourage involvement by the private sector, the municipal authority must provide a number of incentives, including, for example, alterations to the parameters and types of parcelling, use and occupation of land. One of these incentives is related to awarding additional building potential to private sector firms. The municipal authority can award additional potential building 'certificates' as a form of counterpart payment to enable the local authorities to recoup funds for undertaking public works and urban improvements based upon forecasts of increased density and on certificate values that reflect the market value of the land involved in such operations. These certificates also make it possible to link resources to the undertaking of a particular public work foreseen both in the Master Plan and the urban operation law, guaranteeing that the resources are allocated for the purpose to which they were earmarked.

Municipalities need to be forewarned of problems regarding the implementation of this instrument: the concentration of public and private resources in a specific area can end up causing residents to be ejected, particularly low income families, as a result of the price appreciation of the land and properties located on it. Thus the urban operation plans must pay specific attention to establishing housing programmes to cater for these families, ensuring that they remain within the urban operation area. Care is particularly required in cases where relocation of families is necessary for executing the works. It is also vital to guarantee housing solutions with the wide-ranging participation of the population affected.



Section XI. Of the Transfer of the Right to Build



Article 35. Municipal law, based on the Master Plan, can authorise the owner of urban property, whether public or private, to exercise in another location, or convey, through public deed, the right to build established in the Master Plan or in related urban legislation, when the said property is considered necessary for purposes of:

I - installation of urban and community equipments;

II - preservation in cases where the property concerned is considered to be of historic, environmental, landscape, social or cultural interest;

III - facilitating programmes directed to tenure regularisation, urbanisation of areas occupied by low-income populations and social interest housing.

§1. The same facility can be conceded to a property owner who donates his asset, or part of it, to the local government, for the purposes detailed in sub-clauses I to III of the header.

§2. The municipal law referred to in the header shall establish the conditions regarding application of the Transfer of the Right to Build.

The instrument for transferring the rights to build aims to ensure that the owner of a property situated in an area with restrictions on the right to build (e.g. where constructions cannot be erected up to the limits of the basic use coefficient defined for that particular piece of land) can be assured of the economic use of his assets. Such limitations can occur in cases where the municipal authority, in the public interest, restricts construction of buildings in order to preserve environmental areas or areas of particular historic, cultural, landscape or social interest.

In order to make it possible to protect these areas and at the same time guarantee the economic use of a particular property, the municipal government must institute the transfer of right to build, a device which is generally operated by and among private parties. By means of this instrument the owner can exercise his right to build in another location, whether this is another piece of land owned by him or whether it involves transferring or conveying the land or property to a third party. In both cases the maximum use coefficient of the place where the rights to build will be exercised must be respected, as well as the other rules foreshadowed in the Master Plan, such as building potential eligible for transfer, the appropriateness of areas or zones of the city to which the rights will be transferred and the conditions to be complied with for preserving the property once the owner has been benefited by the transfer.

This instrument can also be used for installing public amenities, for tenure regularisation or for urbanising areas occupied by low income people. In these cases, the transfer of the rights to build can present advantages over and above the device of expropriation.



110

Section XII. Concerning the Neighbourhood Impact Study



Article 36. Municipal law shall define the private and public developments and activities in urban areas which require the previous preparation of a Neighbourhood Impact Study (NIS) prior to being able to secure the licenses or authorizations to build, expand or operate from the municipal government.

Article 37. The NIS will be executed in such a way as to take into account the positive and negative effects of the development or activity concerning the quality of life of the population residing in the area and its proximities, including the analysis, at least, of the following questions:



I - population density;

II - urban and community equipments;

III - land use and occupation;

IV - real estate appreciation;

V - generation of traffic and demand for public transportation;

VI - ventilation and lighting;

VII - urban landscape and natural and cultural heritage.



Sole paragraph. The documents that comprise the NIS will be publicised and be made available for public consultation by the competent municipal government agency to interested parties.

Article 38. The preparation of the NIS will not be a substitute for the preparation and approval of the prior Environmental Impact Study required by environmental law.

Any activity developed in the city generates corresponding impacts that need to be taken into consideration with regard to urban planning. A variety of urban norms for different parts of the city are called for.

However, certain activities interfere in the urban dynamic in such a way that urban norms are not sufficient for guiding urban development and cause certain impacts (e.g., overloading the urban infrastructure, public services and equipments, etc.) which must be subjected to specific evaluation. In order to enable the local government to appraise the consequences of the establishment of large developments or major extensions to existing constructions, the Neighbourhood Impact Study has been instituted.

This instrument provides the public authority with information to enable it to decide whether to award licences for development to proceed or not. Once in possession of the NIS, the municipality can issue a licence, refuse to issue a licence, or condition the issuing of a licence to the implementation of measures by the developers to attenuate or take action to reduce the impact⁵. Throughout this process the community must be allowed to participate in decisions, and it will be an obligatory requirement that all the documents and studies are available for consultation by any interested party.

Each municipality must be responsible for elaborating a specific law identifying the activities and developments that are subject to the NIS requirement prior to licences being awarded. Given the varied situations in different municipalities, only the local government is in a position identify causes of impacts on their territory.



111

Chapter III. Of Master Plans



Article 39. Urban property fulfills its social function when it meets the basic requirements for ordering the city set forth in the Master Plan, assuring that the needs of the citizens are satisfied with regards to quality of life, social justice and the development of economic activities, respecting the guidelines established in Article 2 of this Law.

5. City Statute: a guide for implementation by municipalities and citizens. Brasília: Chamber of Deputies, Publications Division, 2001, p.200.



Article 40. The Master Plan, approved by municipal law, is the basic instrument of urban development and expansion policy.

§1. The Master Plan is an integral part of the municipal planning process, and the multi-year plan, the budget guidelines and the annual budget shall be required to include the guidelines and priorities established in this Plan.

§2. The Master Plan shall apply to the municipal territory as a whole.

§3. The law that institutes the Master Plan shall be revised at least once every 10 years.

§4. In the course of preparation of the Master Plan and in the monitoring of its implementation, the municipal Legislative and Executive powers will be required to ensure that:

I - public hearings and debates are organised with participation by the population and associations representing the different segments of the community;

II - publicity concerning the documents and information;

III - access to the documents and information by interested parties.

§5. (VETOED)



Article 41. The Master Plan is mandatory for :

I – cities with over 20,000 inhabitants;

II – cities located in metropolitan regions and urban conglomerations;

III – cities where the municipal government intends to use the instruments established in §4 of Article 182 of the Federal Constitution;

IV - cities of special tourist interest;

V – cities falling within the area of influence of developments or activities with significant environmental impact in the regional or national domain.

§1. In the case of the developments or activities described in sub-clause V of the header, the technical and financial resources required for the preparation of the Master Plan will be inserted in the compensatory measures adopted.

§2. In the case of cities with over 500,000 inhabitants, an integrated urban transport plan shall be prepared, compatible with the Master Plan or contained within it.



Article 42. The Master Plan should contain as a minimum requirement:

I - delimitation of the urban areas where compulsory parcelling, building or use is to be applied, taking due account of the existence of infrastructure and demand for use of this infrastructure in accordance with Article 5 of this Law;

II - measures required by Arts. 25, 28, 29, 32 and 35 of this Law;

III - a system of oversight and control.

The Master Plan is the main instrument established by the Statute which assembles all the remaining instruments and establishes how each part of the municipal territory fulfils its social function. This municipal law should be revised at least once every ten years. Moreover it must embrace the construction of a social, economic and territorial pact targeted at the urban development of the municipality.

The City Statute defines which cities are obliged to draw up a Master Plan. This plan should not be restricted only to the urban area of cities but to the totality of the municipal territory, encompassing rural areas, woodland, traditional communities, environmental preservation areas, water resources, etc. throughout the entire municipality. It follows that the Master Plans will differ from one municipality to another given the different types of environments throughout the country in which the municipality is located, the particular bioma, the size of the municipal territory, the size of the urbanised area, the urban agglomeration to which a given municipality will eventually belong, the size of the population, the patterns of urbanisation, economic aspects, the existence and location of large infrastructural works such as ports, railways, roads, airports etc.

The concept of the Master Plan as set forth in the City Statute presupposes the need to address urban problems, in particular the enormous liability resulting from social inequality in Brazilian cities, in addition to calling for a dynamic and ongoing planning process in the municipality itself. Thus the Master Plan should not be conceived merely as a technical piece of urban planning but as a political process involving decision-taking about the management of the municipal territory which involves the entire community.

In order for the process of elaboration and implementation of the Master Plan to be truly expressed in a social, economic and territorial pact, it is vital to involve the effective participation of the population at all stages. This must be assured by the municipal authority by establishing Councils with a broad membership representing the different segments of society in the municipality, follow-up, monitoring and discussion forums, the holding of public meetings and, finally, the municipal authorities must ensure that any information provided to the public is eminently transparent.

The Master Plan should also influence municipal budgets and public investment as a whole, with guidelines that can be easily incorporated in the multi-annual plans, in the annual budget procedures, and in other sectoral municipal programmes, plans and projects related to housing, environmental sanitation, transport, urban mobility etc.

The Master Plan must refer to the application of the City Statute instruments by defining the concept, procedures of application and demarcation of the territory covered by the Plan. Some of the instruments such as compulsory parcelling, building and utilisation, the right of pre-emption, building waivers, consortiated urban operations and transfer of the right to build can only be applied if they are expressly contained in the Master Plan.

It is worth noting that the Master Plan brings together sectoral policies involved in the planning and ordering of the entire territory, and the municipality must use its regulatory powers to formulate sectoral policies and schedule its investments in timed stages. In this respect, in order to counteract housing deficits and improve public services, the municipal authority must seek to take forward a land use policy in the Master Plan aimed at making land available for the provision of social housing and the installation of the requisite infrastructure.



Chapter IV. Democratic administration of the city

Article 43. To guarantee the democratic administration of the city the instruments, among others, shall be employed:



I - urban policy councils, at the national, state and municipal levels;

II - debates, hearings and public consultations;

III - conferences on subjects of urban interest, at the national, state and municipal level;

IV - popular initiatives related to bills of law, plans, programmes and urban development projects;

V - (VETOED)



Article 44. Within the municipal context, participatory budget management as indicated in line f of sub-clause III of Article 4 of this law shall mean conducting debates, hearings and public consultations about the proposals of the multi-annual plan, the budget guidelines law and the annual budget as a mandatory condition prior to their approval by the City Chamber.



Article 45. The administrative entities of metropolitan regions and urban conglomerations must assure the compulsory and substantive participation of the population and of associations representing different segments of the community in order to guarantee to them direct control of administrative activities as well as assuring the population of complete exercise of citizenship.

One of the fundamental elements of the City Statute is to promote participation by society in the entire process of urban management. Decisions about the future of cities cannot be limited to representative democracy represented by local Council Chambers; they need to involve all those directly affected by public actions and investments. It is not simply a question of 'consulting' popular opinion about proposals put forward by the municipality, but to guarantee the existence of genuinely effective consultative and deliberative fora during the urban planning process. It is also essential to ensure citizen participation in decisions involving the use of public funds.

In the struggle to overcome the massive social inequality that is a feature of Brazilian cities, the participatory process now plays an important role in the battle for investments and in efforts to reach agreement on an urban planning scheme that takes into account the needs of poor people living in the city. In other words, it is a way of ensuring that the poorer members of the population, traditionally excluded from the planning process in the cities, are able to participate in decisions about how land is regulated and occupied, as well as having a say in how public funds are to be used.

Exploring these possibilities, the City Statute introduced a number of instruments to ensure the democratisation of city administration in an effort to encourage popular participation in decision-making processes and to prevent cities from mirroring a model desired by those with sufficient economic power capable of influencing political decisions. These instruments include: the creation and functioning of councils, the holding of public meetings and municipal urban policy-related conferences.

These consultative and deliberative fora should ensure that all sectors of society are taken into account and that the investment and action agenda of the municipalities is submitted to such fora.

Chapter V. General Measures

Article 46. The municipal government can extend to the owner affected by the obligation determined in the header of Article 5 of this Law, the creation of a property consortium as a way to establish financial viability arising from the use of the property.



§1. A property consortium is considered as a way to make viable the implementation of urbanisation or building plans by means of a procedure which involves an owner transferring his property to the municipal government and after work has been undertaken receives, as payment, duly built property units or urbanised units.

§ 2. The value of the property units to be delivered to the owner shall correspond to the value of the property before execution of the works in accordance with the provisions set forth in §2 of Article 8 of this Law.

It is possible that in certain cases the owner obliged by the municipal authorities to parcel, build or utilise his property in accordance with Article 5 of the City Statute does not possess sufficient resources to do so. In this case, the application of this instrument could be rendered unviable if the owner of the property shows that he is not capable of complying with the municipal order. In order to make it possible to effect compulsory parcelling, building or utilisation and consequently to ensure that an underutilised urban property complies with its social function, the 'property consortium' was established.

With this instrument, the Municipality can make it easier for an owner to transfer his property to the municipal authorities that aim to undertake urbanisation or building programmes. As counterpart, after the public works have been undertaken, the ex-owner is entitled to receive property of a value corresponding to the value of his own property at the time it was transferred to the municipality.



Article 47. The taxes on urban property, as well as the fees for public urban services, shall vary, depending on the social interest function involved.

Article 48. In the case of social housing programmes and projects developed by public organs or entities engaged in with specific activities in this area, the real right to use public property contracts shall:



I - for all legal purposes be considered as a public deed and the requirements of sub-clause II of Article 134 of the Civil Code will not apply;

II - constitute a title of mandatory acceptance as a guarantee for housing finance contracts.

Article 49. The States and Municipalities shall have a period of 90 days, from the time this law comes into force, to establish deadlines for issuing guidelines for urban developments, the approval of projects for parcelling and building, the undertaking of inspections and the issuing of the term of verification and conclusion of construction.

Sole paragraph. If the provisions of the header are not complied with, a period of 60 days will be established for undertaking each of the said administrative acts, a requirement which shall remain in force until the States and Municipalities have established them by law in another form.

Article 50. The Municipalities that need to comply with the requirement called for in sub-clauses I and II of Article 41 of this Law and that do not have a Master Plan approved at the time this law comes into force, must approve a Plan by 30 June 2008.

Article 51. For the effects of this Law, the measures relating to the Municipality and the Mayor also apply to the Federal District and its Governor.

Article 52. Without prejudice to the punishment of other public agents involved in the application of other applicable sanctions, the Mayor will be held responsible for administrative impropriety under the terms of Law No 8.429 of 2 June 2 1992, when:

I - (VETOED)

II - within five years there is no compliance with the appropriate use of the property incorporated into the public domain in accordance with the terms of §4 of Article 8 of this Law;

III - areas obtained on the basis of the right to preemption are used in violation of the terms of Article 26 of this Law;

IV - the funds generated by the award of the right to build and change use are disbursed in contravention of the measure set forth in Article 31 of this Law;

V - the funds obtained from consortiated operations are disbursed in contravention of the measure set forth in §1 of Article 33 of this Law;

VI - the Mayor impedes or fails to guarantee the requirements set forth in sub-clauses I to III of §4 of Article 40 of this Law;

VII - there is a failure to take the necessary measures to guarantee the observance of the terms of §3 of Articles 40 and 50 of this Law;

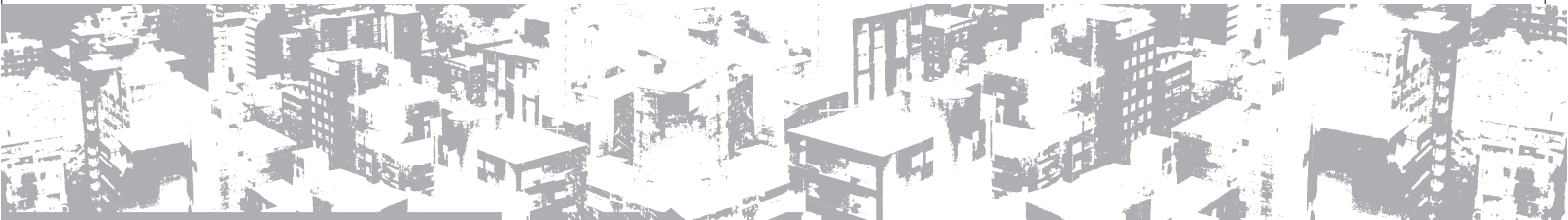
VIII - a property is acquired under the right to preemption under the terms of Articles 25 – 27 of this Law at a price that proves to be higher than the going market rate.

Impropriety consists of any bad conduct contrary to the duty to perform public duties honestly. For public agents this duty flows from the Federal Constitution itself, which demands correct behaviour by officials as a basic principle of good public administration. The Constitution also sets forth a range of sanctions to be applied in the event of acts of impropriety being committed: suspension of political rights, loss of public office, seizure of assets and obligation to reimburse the public purse in the form and amount set forth in the law, without prejudice to the determination of appropriate penal charges.

In order to regulate this article of the Federal Constitution, Law No.8249/9092 was brought into force. This law defines three modalities of administrative impropriety: acts leading to illicit enrichment, acts that are prejudicial to the public purse and acts against the principles of public administration. In each of these cases appropriate sanctions are established.

Conducts or omission defined as acts of administrative impropriety by the City Statute must be interpreted by taking account of the acts defined by the Law of Administrative Impropriety. Once the act of impropriety has been identified the appropriate sanctions will be decided upon.





For example, a city mayor who uses funds secured by the municipal authority from cash-generating building waivers for purposes not foreshadowed in Article 31 of the City Statute can be accused of committing an act of impropriety contrary to the principles of public administration or an act that affects the public purse. In the first case, it is enough that the mayor has acted fraudulently and the public agent will be punished with the sanctions appropriate to the act in question. In the second case, it is necessary to demonstrate that actual harm has been caused to the public coffers.

Article 53. Article 1 of Law No. 7347 of 24 July 24 1985 will be in force, with the addition of a sub-clauses 37,38 and 39: [Repealed by Provisional Measure No. 2.180-35 of 24 August 2001].

Article1.

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III -

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Article 54. Article 4 of Law No. 7347 of 1985 will now be in force in the following terms:

Article 4. An alert can be issued for the purposes of this Law for the purpose of avoiding environmental damage, or harm to the consumer, urban order, or to the property and rights of properties of artistic, aesthetic, historic, tourist and landscape value (VETOED).

Article 55. Article 167, sub-clause, item 28 of Law No.6.015 of 31 December 1973, modified by Law No. 6.216 of June 1975, comes into force as follows:

Article167.

I -

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28) of the declaratory rulings of usucapiao, regardless of the regularity parcelling of land or buildings;

.....

Articles 53 and 54 of the City Statute modified Law No. 7347/1985, known as the law of Public Civil Action, address the procedural tutelage of collective interests. With this alteration, public civil action aimed at making those who caused moral and patrimonial harm to collective interests becomes an important instrument for protecting the urban order and for giving effect to the norms contained in the City Statute.

It should be noted that Article 53 of the City Statute was repealed by Provisional Measure No. 2180/2001, which has the force of law. This repeal, in response to a number of technical questions raised, did not in fact suppress the alteration by the City Statute since the Provisional Measure generated a similar alteration, including the measure contained in public civil action law regarding the urban environment.





By means of public civil action it is possible to make those who cause harm to the urban environment responsible for repairing the damage, desist from a given conduct or to pay some form of compensation. Any person who causes damage to the urban environment, whether an individual, a firm or an agent of the public authority, can be obliged to make good the damage. A number of different practitioners can propose that a public civil action should be started, including the Ministério Público and civil society associations. A residents' association from a particular neighbourhood that has been in existence for at least one year and is active in monitoring public policies espoused by the municipal authority can, for example, start an action with a view to halting the construction of a building in a place that is not permitted by municipal legislation.

Article 56. Article 167, sub-clause 1 of Law No. 6.015 of 1973, comes into force with the addition of sub-clauses 37, 38 and 39:

Article167.

I -

37) of the administrative terms or of the declaratory rulings for the Special Use Concession for housing purposes, regardless of the regularity of parcelling of land or building;

38) (VETOED)

39) of the constitution of the right to the surface of urban property;

Article 57. Article 167, sub-clause of Law No. 6.015 of 1973, comes into force with the addition of sub-clauses 18, 19 and 20:

Article167.

II -

18) of the notification of the compulsory parceling, building or use of the urban property;

19) of the termination of the Special Use Concession For Housing Purposes;

20) of the termination of the surface right to urban property.

Article 58. This law shall enter force 90 days following its publication.





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