Edesio Fernandes

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“Possibilities, challenges and lessons of the urban reform process in Brazil.”

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Edesio Fernandes

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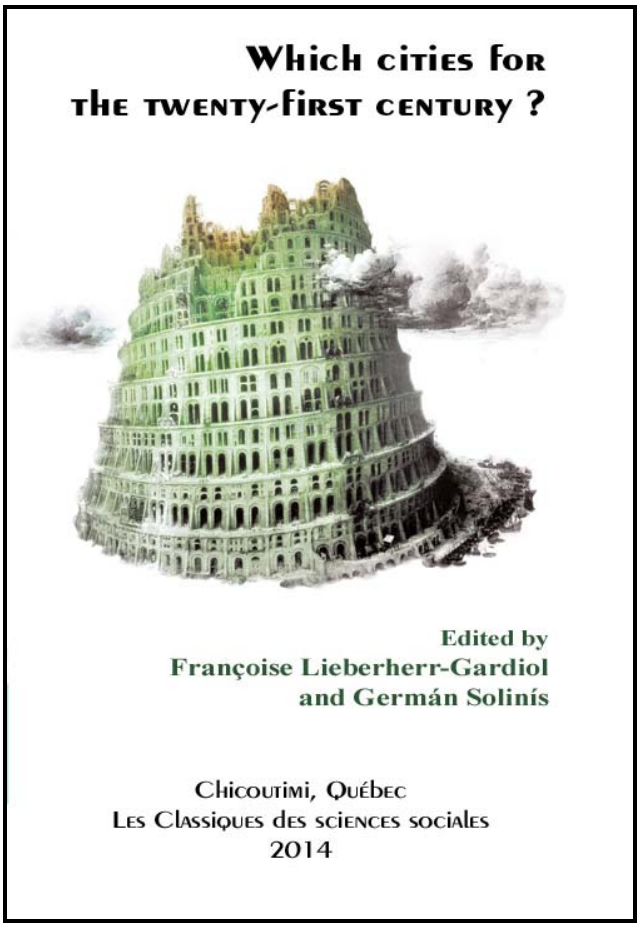

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Possibilities, challenges and lessons of the urban reform procès in Brazil

by Edesio Fernandes

Urban development and its challenges

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The exclusionary nature of the growing process of urban development globally has renewed the calls for the promotion of urban reform in many countries. Many low- and middle-income countries are currently in the uncomfortable position of having to "change the wheels with the car moving", given the grave social, urban, and environmental problems that have accumulated over years, and even decades, of rapid urbanisation and governmental neglect. This task has been complicated further by the effects of the changes in the nature and dynamics of the traditional urbanisation process within the context of the ever-changing global economy. More than ever, stakeholders in several countries understand that the importance of getting the regulatory and institutional frameworks right cannot be underestimated. The promotion of urban reform takes times and it requires continuity and systematic responses at all governmental levels in order to address the scale of the existing problems. It also requires other fundamental factors such as capacity building, approval of articulated policies accor-

ding to a clearly defined public agenda, and the allocation of the necessary esources. [1]

It is in this context that the Brazilian experience deserves to be better known. An important process of urban reform has been slowly, but consistently, promoted in Brazil since the late 1980s. Significant legal and institutional changes have been introduced at the national level, creating a whole new legal-urban order that was consolidated with the enactment of the 2001 City Statute and the installation, in 2003, of both the Ministry of Cities and the National Council of Cities. More recently, as record-breaking investments by the federal government in housing, sanitation, infrastructure, especially through the Plan to Accelerate Growth – PAC, the "My House, My Life" Housing Programme, and other social programmes have raised a new set of questions to be addressed by policymakers in the country.

This national legal order has been complemented by the impressive enactment of a whole generation of Municipal Master Plans: some 1.400 such plans have already been formulated all over the country since 2001, and it is the nature of their contents, as well as their effective enforcement, that will materialise the new urban-legal order consolidated by the City Statute.

Above all, the Brazilian experience clearly shows that urban reform requires a precise, and often elusive, combination of renewed social mobilisation, legal reform, and institutional change. This is a long, open-ended process, the political quality of which resides ultimately in the Brazilian society's capacity to effectively assert its legal right to be present and actively participate in the decision-making process. The rules of the game of urban development and management have already been significantly altered; what remains to be seen is whether or not the newly created legal and political spaces will be used at all governmental levels in such a way as to advance the urban reform agenda in the country. There is still a long way to go in Brazil, and many are the serious obstacles to be overcome.

This article describes the main aspects of the process of urban reform in Brazil. Following a brief account of the historical context, the

[1] This article draws from, updates and expands upon, articles published by the author in 2007 and 2010; see Fernandes (2007a; 2007b; 2010; and 2013).

article will discuss the new legal-urban order that has been created in Brazil since the promulgation of the 1988 Federal Constitution; special emphasis will be placed on the provisions of the internationally acclaimed 2001 City Statute. The article will then describe the new institutional apparatus that resulted from the creation of the Ministry of Cities and the National Council of Cities in 2003, as well as discussing some of the main problems affecting these new institutions since their creation.

As a conclusion, it will be argued that, while significant progress has already been made towards the realization of the urban reform agenda in Brazil, the socioeconomic, political, institutional and legal disputes over the control of the land development processes have increased. The renewal of social mobilisation at all governmental levels is crucial for the consolidation, and expansion, of this new inclusive and participatory legal-urban order.

The origins of the Urban Reform Movement

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As a result of rapid urbanisation since the 1930s, Brazil has experienced one of the most drastic processes of socioeconomic and territorial re-organisation in the developing world. Over 83% of the total population of 190 million people lives in urban areas, and there is an enormous concentration of population and economic activities in a very small part of the national territory. All the relevant figures and available data clearly indicate the staggering scale and complex nature of this process, which has been widely discussed in an extensive literature. [2] Put briefly, rapid urbanisation in Brazil has generated a nationwide urban crisis characterised by the combination of sociospatial segregation, negative environmental impact, and escalating informal development. The escalating housing deficit has been estimated as 7 million units, while some 15 million other families live in inadequate

[2] Data on the urbanisation process in Brazil can be found in several sources, the main one being the site of the Brazilian Institute of Geography and Statistics – IBGE (*www.ibge.gov.br*); for some recent analytical studies, see Fernandes and Valenca (2001).

conditions. At the same time, there are about 5.5 million under-utilised properties in the country, and an enormous stock of serviced, but vacant, plots of land.

However, despite a longstanding tradition of political, legal, and financial centralisation during most of the urbanisation process, until recently the federal government had failed to formulate and implement comprehensive national land and urban policies, or even to put together a basic institutional infrastructure to deal with the many concerns affecting cities and the growing urban population. In fact, prior to the creation of the Ministry of Cities in 2003, both the lack of a proper governmental response at the federal level and the elitist and exclusionary nature of the actual governmental intervention through the few existing programmes were some of the main factors determining the exclusionary nature of land and urban development in Brazil. This was aggravated further by the conditions of political exclusion resulting from the centralised and authoritarian legal system in force until the promulgation of the 1988 Federal Constitution, which undermined not only the legal-political powers of municipal government, but also the quality of the representative democracy system at all governmental levels.

Another fundamental factor in the creation and reproduction of this process was the prohibitive, obsolete legal order still affirming the anachronistic paradigm of the 1916 Civil Code, thus reinforcing the historical tradition of unqualified private property rights. [3] As a result, until recently the scope for significant state intervention in the domain of property rights through land policy and urban planning was very reduced, especially at the municipal level. [4] While most municipalities still have only a set of basic laws – determining the urban perimeters and traditional constructions codes – only from the mid-1960s did a

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3 I have discussed the legal basis of the historical process of urban development in Brazil elsewhere; see Fernandes (2002a).

4 Although it is less popular in Brazil than it is internationally, the impressive case of Curitiba demonstrates that many problems with the legal order may be successfully overcome if there is a solid political-institutional pact in place; in any case, Curitiba is indeed the exception that proves the rule, because of the conservative and even exclusionary nature of the city planning strategies adopted in that city until recently. For a general reference, see Schwartz (2004); see also Fernandes (1995c).

new generation of more ambitious planning laws start to be enacted in some of the main cities, although initially they were regularly legally contested.

From the mid-1970s and especially early 1980s on, important cracks appeared in the longstanding military regime, as a result of a powerful combination of factors: the growing social mobilisation through trade unions, civic organisations, social movements, residents' associations, groups linked to the progressive branch of the Catholic Church, and other collective channels; the re-organisation of traditional political parties and creation of new ones expressing renewed political claims for politico-institutional change, particularly through democratic elections and the strengthening of local government; and also, to a lesser extent, to the rearrangements within land and property capital. The first significant attempts at the democratisation of urban management at the municipal level could be identified in the mid-1970s. [5]

As a result of the growing process of social mobilisation and political change an important federal law was approved in 1979 aiming to regulate urban land subdivision nationally, as well as providing basic elements for the regularisation of consolidated informal settlements in cities. Soon afterwards, some progressive environmental laws were also enacted, including a groundbreaking legal recognition in 1985 of a civil public action to defend diffuse interests in environmental matters, *locus standi* being extended to the emerging NGOs. [6] At the municipal level, the first land regularisation programmes were formulated in 1983 in Belo Horizonte and Recife. [7]

A national Urban Reform Movement then emerged and started to gain momentum, within the broader political opening process aiming to promote the redemocratisation of the country. [8] With the increasing strengthening of a new sociopolitical pact, there was a wide recogni-

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5 See Kowarick (1994) for analyses on the social mobilisation processes in Sao Paulo.

6 For a detailed analysis of the civil public action, see Fernandes (1995b; 1994).

7 For a critical analysis of the first stage of the regularisation programme in Belo Horizonte, see Fernandes (1993).

8 For a broader analysis of the urban reform movement, see M. L. de Souza (2001).

tion of the need for deeper legal and political changes in the country, thus leading to the remarkable, though, in many respects, flawed 1986–88 Constitution-making process**.**

A new legal-political order for the cities with the 1988 Federal Constitution

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It was the original chapter on urban policy introduced by the 1988 Constitution that set the legal-political basis for the promotion of urban reform in Brazil. Although the urbanisation process in Brazil started in the 1930s with its peak in the 1970s and several federal constitutions were promulgated in 1934, 1937, 1946, 1967 and the 1969 general amendment, there were no specific constitutional provisions to guide the processes of land development and urban management until the 1988 Federal Constitution came into force.

Since the Constitution-making process was itself the subject of an unprecedented level of popular participation, much of this constitutional chapter resulted from was developed based on the "Popular Amendment on Urban Policy" that had been formulated, discussed, disseminated and signed by more than a hundred thousand social organisations and individuals involved in the Urban Reform Movement. This "Popular Amendment" recognized the following general principles: autonomy of municipal government; democratic management of cities; the social right to housing; the right to the regularisation of consolidated informal settlements; the social function of urban property; and the need to combat land and property speculation in urban areas. Another important "Popular Amendment" proposed the approval of a series of constitutional provisions recognising the collective right to a balanced environment.

Following a process of intense disputes in the Constituent Congress, a progressive chapter on environmental preservation was

eventually approved, together with a groundbreaking, though limited, chapter on urban policy. [9]

Most of these popular claims were recognised to some extent. The right to the regularisation of consolidated informal settlements was promoted through the approval of new legal instruments aiming to render such programmes viable, both concerning settlements formed on private land (*usucapiao* rights, that is, a special form of adverse possession rights in five years) and on public land ("concession of the real right to use", a form of leasehold). The need to combat land and property speculation in cities was explicitly addressed, and new legal instruments were created for this purpose, namely, subdivision, utilisation and construction compulsory orders ; progressive property taxation; and a punitive form of expropriation. The principle of the democratic management of cities was fully endorsed, as the 1988 Constitution provided a series of legal-political instruments aiming to widen the conditions of direct participation in the overall decision-making process.

The autonomy of municipal government was also recognised in legal, political and financial terms, to such an extent that Brazilian federalism is considered to be one of the most decentralised in the world. However, the 1988 Constitution did not take a proper stand on the matter of metropolitan administration, transferring to the federated-states the power to do so. [10]

At that juncture, there was no political consensus on the recognition of the social right to housing. Regarding the recognition of the principle of the social function of urban property, there were heated debates between antagonistic groups, and as a result the following formula was approved: "private property is recognised as a fundamental right provided that it accomplishes social functions, which are those determined by municipal master plans and other urban and environmental laws". By making the principle of the social function of urban property conditional on the approval of municipal planning

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9 For an analysis of the constitutional chapter on urban policy, see Fernandes (1995a) and Fernandes and Rolnik (1998); for a discussion of the environmental chapter, see Fernandes (1996a; 1992a).

10 For an analysis of the Brazilian experience of metropolitan administration between 1973 and 1988, see Fernandes (1992b).

laws, the intention of conservative groups seemed to be to make this principle merely rhetorical. The limited Brazilian experience with city and master planning so far had been largely ineffective in terms of its power to reverse the exclusionary conditions of urban development. On the contrary, informal land development had largely resulted from the elitist and technocratic nature of city planning.

Faced with the impossibility of approving another, more progressive constitutional formula, the Urban Reform Movement then decided to make the most of the situation and subvert the approved provision, by consciously investing in the formulation of municipal master plans throughout the country that would be both inclusive and participatory.

Local experiences in the 1990s and the expansion of the new legal-urban order

TOC

Brazil became an interesting urban planning and management laboratory, with new strategies and processes establishing new relations between the public, the community, the private, and the voluntary sectors where urban land development was concerned. The promulgation of the 1988 Constitution inaugurated a whole new legal-urban order, and its possibilities began to be realized throughout the 1990s by means of a series of progressive local experiences. Many municipalities approved new urban and environmental laws, including some master plans, and new land regularisation programmes began to be implemented by several of them. [11]

Special emphasis was placed on the political quality of all such processes, with popular participation being encouraged in various areas, from the definition of urban policies in "City Conferences" to the introduction of innovative participatory budgeting process. [12] Sin-

[11] I have discussed the ongoing experiences of land regularisation in Brazil in some detail elsewhere; see Fernandes (2002b, 2000).

[12] For a critical analysis of the participatory budgeting process, see C. Souza (2001); see also Fernandes (1996b).

ce then, municipalities such as Porto Alegre, Santo Andre, Diadema, Recife and Belo Horizonte have gained international recognition.

However, the lack of regulation of the urban policy chapter in the 1988 Constitution through federal legislation, as is the tradition in Brazil, led to a series of legal-political difficulties, which were fomented by groups opposed to the advance of the new legal-urban order. This undermined the extent and the scope of the promising local experiences. As a result, the organisations involved in the Urban Reform Movement decided to consolidate and expand the urban reform movement itself initially by creating the National Forum of Urban Reform – NFUR in the early1990s.

Comprising a wide range of national and local organisations and movements, the NFUR was instrumental in promoting the urban reform banner and agenda nationally. Three of its main targets in the 1990s were the incorporation of the social right to housing in the 1988 Constitution ; the approval of a federal law regulating the constitutional chapter; and the approval of a bill of law, originating from a popular initiative using the new possibilities created by the 1988 Constitution, which proposed the creation of a National Fund for Social Housing. At the same time, the NFUR also called for the creation by the federal government of an institutional apparatus at the national level to promote urban planning and policy in Brazil.

A long process of social mobilisation and a fierce political struggle lasted throughout the 1990s and into the new century, within and outside the National Congress. In 1999, a new federal law regulated the action of "civil society organisations of public interest" so as to allow them to receive public money. The social right to housing was eventually approved by a constitutional amendment in 2000, and the federal law creating the National Fund for Social Housing was finally enacted in 2005. Of special importance was the enactment, in 2001, of the internationally acclaimed "City Statute", the federal law on urban policy.

A pioneering legal framework : the 2001 City Statute

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Resulting from an intense negotiation process which lasted for more than ten years, within and beyond the National Congress, the City Statute confirmed and widened the fundamental legal-political role of municipalities in the formulation of directives for urban planning, as well as in conducting the process of urban development and management. This groundbreaking 2001 City Statute recognised explicitly the "right to the city" in Brazil. [13]

The City Statute broke with the longstanding tradition of civil law and set the basis of a new legal-political paradigm for urban land use and development control. It did this especially by reinforcing the constitutional provision recognising the power and the obligation of municipal governments to control of the process of urban development through the formulation of territorial and land use policies, in which the individual interests of landowners necessarily co-exist with other social, cultural and environmental interests of other groups and the city as a whole.

The City Statute elaborated on the principle of the "social functions of property and of the city", thus replacing the individualistic paradigm of the 1916 Civil Code. In addition, the Statute provided a range of legal, urban planning and fiscal instruments to be used by the municipal administrations, especially within the context of their master plans, to regulate, induce and/or revert urban land and property markets according to criteria of social inclusion and environmental sustainability. All such instruments can, and should, be used in a combined manner aiming not only to regulate the process of land use development, but especially to induce it, according to a "concept of city", to be expressed through the municipal master plans.

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13 For a broad discussion of the new urban-legal order and the City Statute, see Fernandes (2007b).

Municipalities were given more scope for interfering with, and possibly reverting to some extent, the pattern and dynamics of formal and informal urban land markets, especially those of a speculative nature, which have long brought about social exclusion and spatial segregation in Brazil. In fact, the combination of traditional planning mechanisms – zoning; subdivision; building rules, etc. – with the new instruments – compulsory subdivision, construction and utilisation orders, extrafiscal use of local property tax progressively over time; expropriation-sanction with payment in titles of public debt; surface rights; preference rights for the municipality; onerous transfer of building rights ; etc. – opened a new range of possibilities for the construction by the municipalities of a new urban order which can be economically more efficient, politically fairer, and more sensitive to the gamut of existing social and environmental questions.

Moreover, the City Statute indicated several processes for municipalities to integrate urban planning, legislation and management so as to democratise the local decision-making process and thus legitimise a new, socially orientated urban-legal order. Several mechanisms were recognised to ensure the effective participation of citizens and associations in urban planning and management: audiences, consultations, creation of councils, reports of environmental and neighbourhood impact, popular initiative for the proposal of urban laws, public litigation, and above all the practices of the participatory budgeting process. Moreover, the new law also emphasised the importance of establishing new relations between the state, the private and the community sectors, especially through partnerships and linkage "urban operations" to be promoted within a clearly defined legal-political and fiscal framework.

The 2001 legislation also improved on the legal order regarding the regularisation of consolidated informal settlements in private and public urban areas, enabling municipalities to promote land tenure regularisation programmes and thus democratise the conditions of access to land and housing. As well as regulating the abovementioned constitutional instruments of *usucapiao* and concession of the real right to use, the new law went one step further and admitted the collective utilisation of such instruments. Subsequently, still in 2001, given the active mobilisation of the NFUR the Provisional Measure no. 2.220 was signed by the President, recognising the subjective right (and not only

the prerogative of the public authorities) of those occupying public land until that date to be granted, under certain circumstances, the "concession of special use for housing purposes", another form of leasehold rights.

All municipalities with more than 20,000 inhabitants, among other special categories, were given a deadline of five years to create and approve their master plans.

The City Statute has been complemented by important new federal laws enacted subsequently, namely those regulating public-private partnerships (2004) and intermunicipal consortia (2005). More recently, several federal laws were enacted in 2008, 2009 and 2010, aiming to facilitate the regularisation of informal settlements, particularly those occupying federal land. There has also been a nationwide discussion on the proposed, thorough revision of the 1979 Federal Law, which governs the subdivision of urban land.

This gradual, fundamental process of legal reform has also been supported by a significant process of institutional change, in which the creation of the Ministry of Cities in 2003 deserves special mention.

Institutional reform at the federal level

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Throughout the urbanisation process, there was no adequate institutional treatment of the urban questions at the federal level. There were some isolated, sectoral programmes scattered through several ministries dealing with aspects of the broader urban question, but there was no national urban policy to articulate them, especially because the then existing urban policy secretariat had insignificant powers and few resources. Given President Fernando Henrique Cardoso's celebrated academic and political background, the lack of a national urban policy and a corresponding institutional apparatus during his government (1995-2002) was particularly frustrating.

Only with the election of President Lula in 2003 was an original decision made to create the Ministry of Cities. It is important to stress that the new Ministry was not created as an executive decision by the

new President, but as his response to the social claim long defended by the NFUR and other stakeholders, which fact confers a special form of legitimacy on the Ministry of Cities.

The Ministry consists of an Executive Secretariat presiding over four National Secretariats, namely, housing; environmental sanitation; public transportation and mobility; and land and urban programmes. Among other tasks, the Executive Secretariat has focused on building the capacity of municipalities to act, initially through a national campaign for the elaboration of multipurpose municipal cadastres. As well as formulating national programmes on their respective subjects, the four Secretariats have been involved in several negotiations with the National Congress to promote further changes in the regulatory framework in force, with a relative degree of success so far.

Two important ongoing initiatives implemented by the Land and Urban Programmes Secretariat deserve special mention, namely the National Programme to Support Sustainable Urban Land Regularisation and the National Campaign for Participatory Municipal Master Plans.

Sustainable Urban Land Regularisation in a National Programme

Initiated in 2003 with what the then Minister called a "virtual budget", the National Programme to Support Sustainable Urban Land Regularisation has grown in resources and impact, and its importance and reach was recognised in 2005 by a generous Cities Alliance grant. [14] The programme combines intervention, articulation, and mobilisation strategies – legal, financial, urban planning strategies and political - in order to create the basic conditions for municipalities to act. Grants have been given to municipalities, federated-states and NGOs to promote the formulation and implementation of regularisation programmes and the judicial recognition of adverse possession rights. Special emphasis has been placed on the definition of criteria for the regularisation of settlements occupying federal land, and hun-

[14] For a detailed analysis of the National Programme, see Fernandes (2006).

dreds of thousands of leasehold titles have already been given to occupiers or are in the process of being finalised.

Promising partnerships have been formed with several stakeholders, especially NGOs and social movements; institutions representing land registrars, judges and prosecutors for the government; the Urban Development Commission of the National Congress; academia; etc. Educational "kits" have been distributed, including step-by-step manuals. A virtual network sends daily messages to some 10,000 people and institutions all over Brazil. Virtual courses on urban land regularisation have been promoted, aimed at thousands of people from several professional backgrounds and institutional positions, and from all over Brazil: local government officials; civil servants from most state governments and from several ministries of the Federal Government; land registration officers; lawyers, judges and prosecutors for the government; urban planners; members of NGOs and associations; residents in *favelas*, irregular land subdivisions and *quilombos* (areas occupied by the descendants of former slaves); etc.

Participatory Municipal Master Plans and the National Campaign

Another important initiative has been the National Campaign for Participatory Municipal Master Plans, which has been instrumental in boosting the discussion and mobilisation nationally around the issue. The abovementioned approval of municipal master plans is a legal requirement affecting about 1,700 Brazilian municipalities, and it is the political and technical quality of this process that will eventually determine the extent to which the possibilities of the new legal-urban order proposed by the City Statute will be realized.

For this gigantic task to be properly fulfilled there was an enormous need for municipalities to be provided not only with capacity building and financial resources, but also with adequate technical information and conceptual formulations. Educational "kits" have been widely distributed, grants have been given to municipalities and registered consultants committed to the urban reform agenda; a "bank of experiences" has been created, organising materials from more than

700 ongoing experiences; a virtual network disseminates experiences and information; and seminars and all sorts of meetings have been promoted throughout the national territory, always in partnership with local institutions.

Difficulties and constraints

Significant progress has already been made in the implementation of the urban reform agenda nationally, and the Ministry of Cities has gained increasing institutional credibility, social legitimacy, and political influence. However, the Ministry of Cities still faces many serious problems, the most immediate being its precarious institutional organisation, small team, and limited budgetary resources.

There is still a serious problem of fragmentation to be overcome in the way interrelated urban policies are formulated within the Ministry and in its relationship with other ministries. Only in 2007 was a new national sanitation policy approved by federal law. With due respect to the importance of the recently approved National Fund for Social Housing, as well as to the improvements already made to previously existing federal programmes through *Caixa Economica Federal*, the fact is that a new, comprehensive and articulated national housing policy has not yet been formulated. Federal investment in both areas, housing and sanitation, has significantly increased since 2003, indeed breaking historical records, but, given the longstanding governmental neglect of those matters and the extent of the accumulated social debt, the total budget is still limited. The ambitious "My House, My Life" national housing programme swiftly launched in 2009 in response to pressure from developers and promoters affected by the national effects of the global economic crisis bypassed the process of discussion of the national housing policy conducted by the Ministry of Cities; as mentioned below, some of its impacts have been questionable.

The creation of the Ministry of Cities has certainly given more visibility to the long neglected urban concerns, but with this recognition new disputes have also emerged – including disputes over the control of the Ministry of Cities itself. With the growing recognition of the political dimensions of the urban questions, fierce political disputes

have resulted from the constant realignment of the questionable political coalition supporting President Lula. As a result, while all the four National Secretaries were kept in office, in 2005 the first Minister and Executive Secretary, from a left-of- centre political party, were replaced by persons nominated by a conservative, populist political party less in tune with the principles of the urban reform agenda. At the same time, the long insignificant Urban Development Commission of the National Congress has been getting more political visibility and influence, and not all of its members fully embrace the reform agenda. More recently, the fact that the Ministry of Cities controls the enormous amount of financial resources earmarked for PAC and the housing programmes has increased the interest of conservative, centre-right political parties that support the governmental coalition, and as a result also the newly elected President Dilma Rousseff has recently nominated a conservative politician not clearly committed to the urban reform agenda as the new Minister.

Given all these constraints, the Ministry of Cities has been systematically investing in the establishment of partnerships of all sorts – within the federal government; through intergovernmental relations; with the National Congress and the Judiciary; with the private sector; and with the organised social movements, NGOs, and the academia.

A fundamental part of this process has been the intimate link between the Ministry of Cities and the National Council of Cities.

The National Council of Cities

Perhaps the most remarkable aspect of the new political-institutional apparatus that is currently being created in Brazil has been the installation of the National Council of Cities.

In April 2003, President Lula called for a national mobilisation to discuss a list of land, urban and housing policy goals, through a series of municipal "City Conferences" in which delegates would be elected to participate in State Conferences, and eventually in the National Conference planned to take place in October 2003. It was expected that some 300 or so municipalities, out of the 5,571 existing, would have the time and the conditions to organise local conferences. As it

happened, over 3,000 municipalities did so, as did all 27 federated-states. Over 2,500 delegates discussed the initial national policy directives on urban development, as well as the range of specific proposals on sectoral housing, planning, sanitation, and transportation national policies. They all voted on the definition of the final list of principles that should guide the formulation of national policies by the Ministry of Cities.

Moreover, one of the most important deliberations of the 1st National Conference of Cities was the creation of the National Council of Cities, with representatives from all sectors of stakeholders being elected. The National Council consists of 86 members, 49 representing segments of civil society (popular movements; workers' unions; NGOs; academic institutions; and the business sector) and 37 representing federal, federated-state and municipal administrations. All the members are elected for a two-year term. Citizen participation in the Council's deliberations is thus widely ensured, and the Ministry of Cities is legally required to follow and respect such deliberations.

The 2nd National Conference of Cities took place in December 2005, again as the culmination of a nationwide mobilisation process. Some 2,500 delegates and 410 observers from all federated-states and different social segments discussed a more articulated National Urban Development Policy, aiming to generate "fairer, democratic and sustainable" cities. The 3rd Conference took place in November 2007, again involving the participation of over 2,500 delegates; it aimed to take stock of previously approved plans and programs, as well as discussing the National Housing Plan. Perhaps involving a lesser degree of popular participation, the 4th National Conference took place in June 2010, discussing "Advances, difficulties and challenges in the implementation of the urban development policy".

The National Council of Cities has met on several occasions so far, issuing several important resolutions, and it has gradually been recognised as a most important sociopolitical forum. This recognition is unequivocal among the stakeholders more directly involved with the urban concerns discussed by the National Council. However, it still needs to be fully acknowledged by the federal government as a whole, particularly when it comes to fully accepting the National Council's deliberations as well as translating them into proper budgetary provisions. It is also crucial that the National Council is empowered to

control the Ministry of Cities, so that the urban reform agenda that justified its creation is not replaced by a series of clientelistic relations.

In any case, the promotion of the National Conferences and the action of the National Council have already made a difference to the course of urban policy in Brazil, and have conferred a unique degree of sociopolitical legitimacy on the decision-making process. For this reason, both initiatives were given the 2006 UN-Habitat Scroll of Honour Award.

Current challenges for the City Statute and the Ministry of Cities in Brazil

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It is undeniable that the approval of the City Statute consolidated the constitutional order in Brazil as to the control of the process of urban development, aiming to re-orient the action of the state, the land and property markets, and society as a whole, according to new legal, economic, social, and environmental criteria. Its effective materialisation in policies and programmes will depend on the reform of the local legal-urban orders, that is, the overall regulatory and institutional framework put together at the local level to govern land use development by the municipalities, particularly through the approval of adequate master plans. The role of municipalities is crucial so that the exclusionary pattern of urban development can be reversed in the country.

Over 1,400 municipalities have already implemented their master plans to some extent, and, 10 years after the enactment of the City Statute, several studies have recently begun to assess their efficacy from the viewpoint of how they have promoted both inclusiveness and participation. The existing studies have shown that there has been progress on many fronts: the general discourse of urban reform has been adopted by most Municipal Master Plans; specific sectors – environment, cultural heritage – have been dealt with; there has been a widespread creation of ZEIS - Special Zones of Social Interest corresponding to the areas occupied by existing informal settlements; and, whatever the variations – which naturally express the different politi-

cal realities in the Brazilian municipalities – the participatory nature of the discussion of the plans was remarkable. Perhaps the main achievement has been the record production of data and all sorts of information about Brazilian cities.

It is still early to make any definitive assessments, but there are strong elements suggesting that – even fully acknowledging the diversity of situations and the several problems and constraints affecting popular participation - while the new tradition of master planning is indeed more participatory than ever before, the socioeconomic, political and institutional disputes over the control of land development processes have worsened, very much as a reflection of Brazil's recent economic growth and the growing, record-breaking values generated by dynamic, and often speculative, land and property transactions in the country.

There are several problems of legal efficacy undermining the new Municipal Master Plans: excessive formalism and bureaucracy of municipal laws; requirement of further regulation by several subsequent laws for full enforcement; punctual changes have been promoted without participation; both the obscure legal language and the imprecise technical legal writing (urban laws are rarely written by legal professionals) have widened the scope for legal and socio-political disputes.

There are also several problems of social efficacy undermining the new Master Plans: most plans remain traditional plans, merely technical and regulatory, often failing to territorialise the proposals and intention, as well as to intervene in the land structure and in the land and property markets. The emphasis on the new tools created by the City Statute has been placed without a clearly defined project for the city. The vast majority of the plans has failed to recapture any surplus value resulting from state and collective action, and when this has happened, there has been no or limited social redistribution of the newly generated financial resources.

Moreover, most plans have placed no or limited emphasis on social housing in central areas, having failed to earmark central, serviced, vacant land for social housing. Generally speaking, there are no specific criteria for the expansion of urban zones, public land and property have not been given a social function, and there has been no clearly articulated socio-environmental approach. Large projects have often

bypassed the plans – and presumed collective eviction Above all, land, urban, housing, environmental, fiscal and budgetary policies have not been integrated, and the regularisation of informal settlements is still largely viewed as an isolated policy, with most plans imposing enormous technical difficulties to the legalisation of informal settlements. Bureaucratic management and technical complexity have also meant that there has been a widespread lack of administrative capacity to act at municipal level. Many Master Plans are mere copies of models promoted by an "industry" of consultants. Obscure planning language has been as problematic as obscure legal language.

It seems that many, if not most, municipal master plans have not been totally successful in the promotion of sociospatial integration, especially in that, by keeping the tradition of regulatory planning, they have failed to directly intervene in the land structure. Many new master plans have failed to territorialise their proposals and are not backed up by adequate spatial plans; many have limited themselves to the approval of conventional regulatory plans, especially zoning and land use regulations, but have failed to adopt the new urban tools so as to intervene more directly in the urban structure by determining obligations to land and property owners; and most of those few others that have made use of such new urban planning tools – especially the sale of building rights – have done so without having clearly determined a redistributive context for the application of the newly found financial resources, thus reinforcing traditional land and property speculation and sociospatial segregation processes. Technically complex and even somewhat obscure, many plans have not taken into account the limited capacity local administrations have to act so as to implement them. Indeed, the effective implementation of the approved laws is the main challenge faced by the social movements, urban managers, legal professionals and politicians committed to the promotion of urban reform in Brazil.

At the other governmental levels, the precarious institutional systems have experienced several problems. At the federal level, sectoral policies have not been integrated, within and outside the Ministry of Cities; urban policy has articulated with environmental policy; there is no national urban/metropolitan policy/system of cities, as well as no national territorial policy generally, and especially regarding the

Amazon. The institutional and legal action of the federated-states has been very limited.

Above all, at all governmental levels, there is a profound lack of understanding that cities are not only about "social policy"/"infrastructure for economic development", but they are about also the economy itself.

While it is undeniable that the process of urban reform in Brazil has been given an enormous boost with the recent legal and institutional reforms, there are many problems to be overcome and serious challenges to be confronted at the federal level, and the new laws and institutions should not be taken for granted.

At this juncture, it should be briefly mentioned the great impact the Plan to Accelerate Growth (PAC, launched by President Lula in 2007), may have to advance urban reform and the consolidation of the federal institutional apparatus in Brazil. The record amount of financial resources – initially announced as US$300 billion – in infrastructure, sanitation, land regularization and other fields – initially over three years, but extended by President Dilma Rousseff - has raised a new set of questions to be addressed by policymakers, namely :

- Are there adequate projects in place for the application of the new financial resources ?;
- Do the public administrations, especially at the municipal level, have the necessary conditions to manage such projects and resources in a proper and efficient manner?;
- Are there adequate channels and processes in place to enable social, fiscal and judicial control of the expenditures, so as to prevent the clientelistic use of the resources, not to speak of corruption ?

It is still premature to make a consistent and fair assessment of the impact of PAC, but there are already strong elements suggesting that a significant part of the new resources is being wasted given the lack of administrative capacity and institutional efficiency, when it is not be-

ing politically manipulated or, even worse, appropriated in corruption schemes.

The same applies to the federal housing program "My House, My Life" launched by President Lula in 2009 and extended by President Dilma in 2011, promising to build and deliver over 1.000.000 houses over three years, which also involve record-breaking investments by the federal government. Again, it is still premature to make a consistent and fair assessment of the impact of the programme, but there are already elements suggesting that, apart from the abovementioned problems with administrative capacity and institutional efficiency, by failing to articulate with the land structure – and thus make use of vacant and under-utilised private and public land and property - the programme has encouraged a significant increase in land prices as well as the construction of thousands of housing estates in precarious peripheral areas – thus reinforcing the traditional pattern of sociospatial segregation.

The City Statute itself has already been the subject of several proposed changes at the National Congress, many of which, if approved, might undermine its potential. So far, the discussion of such bills of laws has been stalled in the Urban Development Commission. Moreover, the continuity and the quality of the action of the Ministry of Cities will depend on how the existing political disputes and contradictory interests will be accommodated. The very existence of the Ministry has been questioned, especially by some people who would like to see it merged with other ministries within the context of a streamlined federal government.

On a broader level, the full realization of the urban reform agenda by the Ministry of Cities will depend on how the federal government as a whole understands the centrality of urban questions. Critical to this understanding will be the promotion of more interministerial integration and intergovernmental articulation. The Ministry of Cities will also need to be provided with a more consistent institutional infrastructure and capacity to act, and the necessary resources for the promotion of the whole new set of social policies and programmes. The control of urban development cannot be left only to market forces; but nor can it be left to municipal government alone. There is a crucial role for the federal government, as well as the federated-state governments.

On a more internal level, the Ministry of Cities needs to promote better integration between its Secretariats and respective programmes. The approval of a comprehensive housing policy aimed at the urban poor is of utmost importance, in part to slow the process of informal development. For this purpose, the clear definition of a national policy on the utilisation of federal land and property is particularly necessary. The definition of an articulated territorial organisation policy and system of cities is also crucial, including an adequate treatment of the pressing matter of metropolitan administration. More emphasis should be placed on the attempts to reconcile the "green" and the "brown" agendas in the country. Existing partnerships need to be reinforced, and new ones should be formed.

Possible lessons from the Brazilian experience

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The confirmation post-City Statute of old socio-spatial segregation processes by the Brazilian state at all governmental levels, despite the possibility of significantly changing the course of things through the formulation of profoundly different and inclusive Municipal Master Plans, seems to demonstrate that – with the support of lawyers - urban planners and public managers remain, and have seemingly become increasingly more, hostages to exclusionary land and property markets that they have created and fomented in the first place, as well as of segregating public policies that they have implemented.

To break with this perverse logic, as well as to put an end to the renewed legal and political disputes on urban land and property matters, a concentrated effort needs to be urgently promoted to provide more (in)formation to planners and legal professionals, as well as society as a whole, on the nature and possibilities of the new legal-urban order the City Statute symbolises more. The education and training of planners, as well as of legal professionals, judges, prosecutors, and registry officers, is of utmost importance. If judicial courts need to follow Public Law/Urban Law principles when interpreting property related conflicts, rather than embracing obsolete unqualified private

law ideas, Brazilian civil society needs to claim more for the recognition of social and collective rights.

Brazil's legal-urban order has significantly changed, but... have the jurists understood that? Has the nature of urban planning been changed accordingly? Have urban managers assimilated the new principles? Has civil society wakened up to the new legal realities ? To play the game according to the new rules is fundamental for the collective construction of sustainable and fairer cities for the present and future generations.

In this context, all things considered, I would propose a very cautious optimism. Even given due consideration to its shortcomings and constrains, the law is not the problem. The City Statute has created the most appealing enabling environment policy makers and managers could dream of in their attempts to promote urban reform. In the last analysis, the future of the City Statute and the new urban legal order it symbolises urgently requires a thorough renewal of the socio-political mobilisation process around land urban, housing and environmental matters so as to advance urban reform nationally.

It is a task of all progressive stakeholders to defend the City Statute from the proposed (essentially negative) changes being discussed at the National Congress; overcome the existing obstacles and improve the legal order further; but above all, to fight for the full implementation of the City Statute.

The Brazilian case makes it clear that, if "bad laws" can make it very difficult both the recognition of collective and social rights and the formulation of inclusive public policies, "good laws" *per se* do not change urban and social realities, even when much they express principles of socio-spatial inclusion and socio-environmental justice, or even, as is the rare case of the City Statute, when the legal recognition of progressive principles and rights is supported by the introduction of the processes, mechanisms, tools and resources necessary for their materialisation.

If decades of socio-political disputes were necessary for the reform of the legal-urban order and for the enactment of the City Statute, a new historical stage has been opened ever since, namely, that of the socio-political disputes at all governmental levels, within and outside the state apparatus, for its full implementation.

All in all, the Brazilian experience has clearly shown that, if urban reform requires combined institutional change and legal reform, it also fundamentally depends on nationwide social mobilisation. This is indeed a highly political process, and the constant renewal of social mobilisation in Brazil, through the NFUR and other collective channels, within and outside the state apparatus, is the *sine qua non* condition for the advance of the urban reform movement in the country.

The urban reform process is naturally an expression of the country's specific historical conditions and political processes, but important universal lessons can be learned by other countries and cities interested in promoting social inclusion in cities.

Besides the abovementioned socio-political, institutional and administrative requirements, the Brazilian case has stressed the importance of redefining the legal system to create the bases of an inclusive land and property governance framework, in which new legal concepts and principles (especially the recognition of collective rights), institutional mechanisms and socio-political processes are properly articulated. The perspective of urban reform also requires broader access to judicial courts to help push the legal boundaries from inside the legal system, as well as to guarantee the effectiveness of the legislation in force.

This is a process of renewed fierce disputes though, and, difficult as it is, changing the rules of the game is no guarantee that the game will be played accordingly. In fact, the enactment of progressive laws may perversely contribute to the creation of a legal discourse and practice that demobilises civil society, thus keeping unchallenged, if not legitimising, the main foundations of the exclusionary *status quo*. There is a growing literature discussing the possibilities, limits and intrinsic contradictions of participatory processes, especially participatory budgeting and municipal master planning processes. [15]

Also in this respect, the materialisation of the possibilities of any redefined legal system and its translation into a new socio-spatial pact will depend on how it is legally and politically appropriated by the

[15] For a critical analysis of the experiences of participatory budgeting, see Fernandes (2010).

stakeholders. As Jean-Jacques Rousseau clearly understood, houses make a town, but citizens make a city.

References

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Abers, R.N. (2000) *Inventing Local Democracy - Grassroots Politics in Brazil*, Lynne Rienner, Boulder Colorado.

Avritzer, L. (2009), *Participatory Institutions in Democratic Brazil*, Woodrow Wilson Center Press, Washington, D.C / The Johns Hopkins University Press, Baltimore.

Baiocchi, G. (Ed) (2003) *Radicals in Power - The Workers' Party (PT) and experiments in urban democracy in Brazil*, Zed Books, London and New York.

Caldeira, T. P. R. (2000) *City of Walls - Crime, Segregation, and Citizenship in Sao Paulo*, University of California Press, Berkeley and Los Angeles, California, 2000.

Fernandes, E (2013). "The challenges of reforming the urban legal framework: a critical assessment of Brazil's City Statute 10 years later**",** in *World Bank Legal Review 5*, Washington DC.

- (2010). Participatory Budgeting Processes in Brazil – 15 Years Later. In Kihato, C., Masoumi, M., Ruble, B. A., Subiros, P. & Garland, A. M. (Eds.) *Urban Diversityy – Space, Culture and Inclusive Pluralism in Cities Worldwide* (pp. 283-300). Baltimore: The John Hopkins University Press and Washington, DC: Woodrow Wilson Center Press.

-(2007a). Implementing the urban reform agenda in Brazil. *Environment & Urbanization*, 19 (1), 77-189.

-(2007b). Constructing the Right to the City in Brazil. *Social and Legal Studies*, 16 (2), 201-219.

-(2006). Principles, bases and challenges of the National Programme to Support Sustainable Urban Land Regularisation in Brazil. In Huchzermeyer, M. & Karam, A. (Eds.) *Informal settlements – A*

perpetual challenge? (pp. 62-83). Cape Town: University of Cape Town Press.

-(2002a). Providing security of tenure for the urban poor: the Brazilian experience. In Durand-Lasserve, A. & Royston, L. (Eds.) *Holding their Ground – Secure land tenure for the urban poor in developing countries* (pp. 101-126). London: Earthscan.

-(2002b). Combining tenure policies, urban planning and city management in Brazil. In Payne, G. (Ed.) *Land, Rights and Innovation – Improving Tenure Security for the Urban Poor* (pp. 209-232). London: ITDG.

-(2000). The legal regularisation of favelas in Brazil: problems and prospects. *Third World Planning Review*, 22 (2), 167-187.

-(1996a). Constitutional Environmental Rights in Brazil. In Anderson, M.R & Boyle, A.E. (Eds.) *Human Rights Approaches to Environmental Protection* (pp. 265-284). Oxford: Oxford University Press.

-(1996b). Participatory Budget: a new experience of democratic administration in Belo Horizonte, Brazil. *Report* 11 (December), 23-25.

-(1995a). *Law and Urban Change in Brazil*. Aldershot: Avebury.

-(1995b). Collective Interests in Brazilian Environmental Law. In Robinson, D. & Dunkley, J. (Eds.) *Public Interest Perspectives in Environmental Law* (pp. 117-134). Chichester: Wiley Chancery Law.

-(1995c). Curitiba, Brazil: Successfully Integrating Land Use and Transport Policies. *Report* 5 (June), 6-9.

-(1994). Defending Collective Interests in Brazilian Environmental Law: An Assessment of the Civil Public Action. *RECIEL - Review of European Community & International Environmental Law* 3 (4), 253-258

-(1993). The legal regularisation of "favelas" in Brazil - The case of Belo Horizonte. *Social & Legal Studies* 2 (2), 211-236.

-(1992a). Law, politics and environmental protection in Brazil. *Journal of Environmental Law* 4 (1), 41-56.

-(1992b). Juridical-institutional aspects of metropolitan administration in Brazil. *Third World Planning Review* 14 **(**3), 227-243.

Fernandes, E. & Rolnik, R. (1998). Law and Urban Change in Brazil. In Fernandes, E. & Varley, A. (Eds.) *Illegal Cities - Law and Urban Change in Developing Countries* (pp. 140-156). London: Zed Books.

Fernandes, E. & Valenca, M. (2001). (Eds.) *Urban Brazil: past and future*. *Geoforum* Special Issue, 32. London : Elsevier.

Kowarick, L. (1994). (Ed) *Social Struggles and the City. The Case of São Paulo*. New York: Monthly Review Press.

Schwartz, H. (2004). *Urban Renewal, Municipal Revitalization – The case of Curitiba, Brazil*. Alexandria, VA. : Hugh Schwartz.

Souza, M. L. de (2001). The Brazilian Way of Conquering the "Right to the City": Successes and Obstacles in the Long Stride Towards an 'Urban Reform'. *DISP* 147 25-31**.**

Souza, C. (2001). Participatory budgeting in Brazilian cities: limits and possibilities in building democratic institutions. *Environment and Urbanization* 13 (1), 159-184.

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