



The Statute of the Peripheral City

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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 adherence 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 than 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.



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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
Manaus (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.

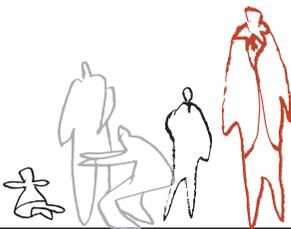
In the mid-1970s, the emergence of urban social movements clamouring for better living conditions took place at a time when political participation by society was still relatively restricted. The growth of these movements went hand-in-hand with the generalised call for political freedoms. It was against 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 condominal 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.

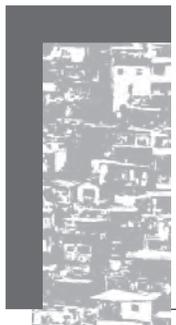
These and other achievements showed that the correct road had been taken. Establishment of the Ministry of Cities, which the aforementioned Architects' Congress had called for in 1963, was given concrete expression 40 years later. This can be considered to be a significant victory and a sign that the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

