The City Statute and the legal-urban order

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Summary

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

Introduction

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

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

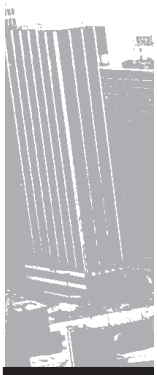
in the states and municipalities following the approval of thousands of municipal Master Plans and other urban planning and environmental laws. These have gradually led to the appearance of a set of programmes, projects and actions at all three levels of government, supported by a substantial number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

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

Background

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

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



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

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

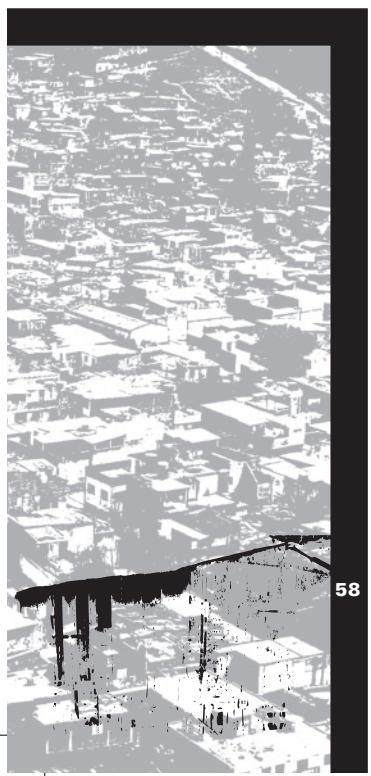
The National Urban Reform Movement made its appearance during this period, involving some of the existing social movements, trade unions and academic organisations. This movement began to assume an important role in the process of political opening leading to the country's return to democracy in 1985.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

The 1988 Federal Constitution

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

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

- **Municipal government autonomy;**
- **The democratic management of cities;**
- **The social right to housing;**
- **The right to regularisation of consolidated informal settlements;**
- **The social function of urban property; and**
- **Combating property speculation in urban areas.**



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

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

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

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

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

The new legal-urban order in the 1990s

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

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

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

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

The City Statute

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

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

(a) The social functions of property and the city

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

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

(b) A "toolbox"

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

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

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

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

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

(d) Tenure regularisation of consolidated informal settlements

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

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

Broadening the legal-urban order

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

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

Conflicts of interest

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

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

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

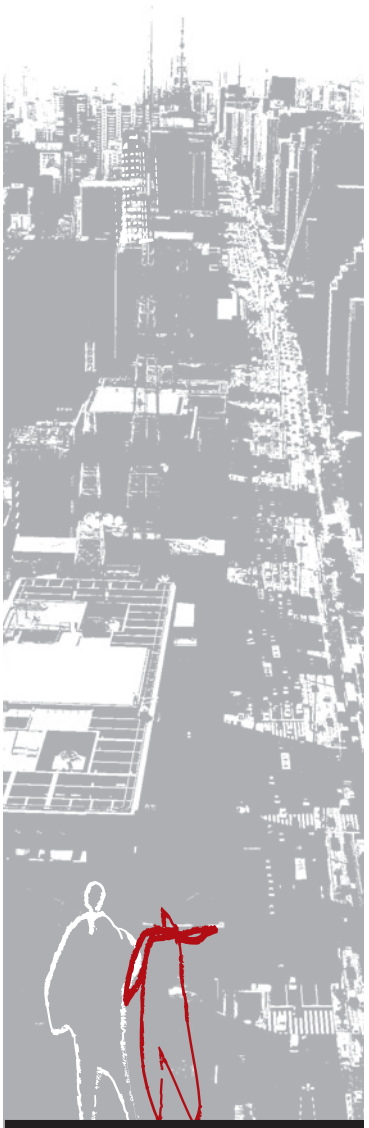
This problem results partly from the obsolete curriculum of academic law courses in Brazil's universities. Most do not teach Urban Law, instead choosing to spend more than four years discussing the formal aspects of Civil Law, although the new 2002 Civil Code was largely already out of date on its introduction.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

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

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

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

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



Moving forward

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

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

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

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

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

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

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