

Positive policies and legal responses to enhance security of tenure in Brazil

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This study focuses on the process of implementing national policies and legislation concerning the promotion of land and housing rights by the Federal Government and the civil society in Brazil. To illustrate such context, the analysis will focus on specific policies and programmes such as the National Programme to Support Sustainable Urban Land Regularization, established in 2003 by the Ministry of Cities, the National Social Housing System and its National Social Housing Fund, approved in 2005, and the National City Conferences, held in 2003 and 2005. The case of Brazil was chosen as these initiatives represent an attempt of the Federal Government to implement policies and programmes consistent with the scale of the housing deficit and lack of secure tenure affecting the urban poor.

Brazil has enshrined in its national legislation most housing rights laid down in the international human rights standards although this considerable advance has not always resulted in more or better access to adequate housing and land by the poor population. Since the collapse of its National Social Housing System in 1996 and the approval of its new democratic constitution, in 1988, Brazil has experienced new policies and programmes aimed at promoting the right to the city and the right to housing of the population living in informal urban settlements. National programmes to support the production of social housing, land regularization and slum upgrading have been implemented by the Ministry of Cities created in 2003. Civil society, social movements and NGOs have been leading the implementation of such policies together with the Federal Government and consistent with the principles and instruments provided by the Federal Law on Urban Development — the City Statute.¹

In Brazil up to 2002, despite the existence of a few support programmes and the availability of some human settlements financing from Municipalities, there was no integrated and comprehensive approach at the national level to the problem of informal land and housing markets. Only in 2003, recognising the scale and the implications of the informal urban development process, did the Federal Government (through the newly created Ministry of Cities) for the first time formulate a national policy and a corresponding national programme on this question.²

Brazil has serious land-access problems both in urban and rural areas, as can be seen from the many and varied conflicts for land possession, which affect equally urban dwellers, afro-descendants and indigenous communities.

This study will focus on the national public policies and legislation that have been proposed and/or implemented by the Federal Government and civil society, which are concerned with protecting and promoting the right to adequate housing and land of the population living in informal settlements. The starting point is the approval of the City Statute.

The positive policies considered in this study are a) the National Programme to Support Sustainable Urban Land Regularization, established in 2003 by the Ministry of Cities, which proposed the full integration of the informal settlement residents into the city and the urban society by implementing the legal, urban and environmental regularization of informal

1. Law no. 10.257/2001.

2. The Urban Reform Movement demanded from President Lula that a specific institutional apparatus be created within the Federal Government to deal with matters related to urban development. As a result, the Ministry of Cities was established by law in January 2003.

settlements; and b) the National Social Housing System and the National Social Housing Fund which were designed and discussed with the participation of different stakeholders. The National System establishes guidance, criteria, programmes and processes that must be carried out by the Municipalities and States if they want to obtain national funds to promote and subsidize housing projects of social interest and/or land regularization. Both programmes will be analyzed in the light of the institutional legal bases established to support them, the participatory approach and the investments made by the Federal Government.

This study is presented in three chapters, followed by a brief conclusion. The first chapter presents the national context and general information on the housing deficit and homelessness. The second chapter summarizes the national legal framework laid down in the Constitution and in national legislation, which inform the analysed policies and programmes. The third chapter analyses the nature of the National Programme to Support Sustainable Urban Land Regularization and the National Social Housing System, the circumstances under which standard-setting took place and its limitations and restrictions. The conclusion is elaborated in order to recommend ways and means to improve protection and fulfilment of security of tenure and housing rights.

Background

Brazil is by far the largest and most populous country in South America, with an estimated population of 187 million people.³ Of the 38 million inhabitants still living in rural areas, 73 per cent have an annual income below the poverty line (US\$260), placing the country among the worst in the world in terms of distribution of income. Within its borders, 32 million people starve and another 65 million exist on precarious nourishment. Of the 32 million people who starve, half live in the countryside.⁴ According to official statistics, from 1970 to 1990, about 30 million people migrated from rural areas to the cities and the number of rural workers dropped 23 per cent in the years between 1985 and 2000. Today, about 85 per cent of the Brazilian population lives in cities.⁵ The census figures for 2000 indicate that this persistent rural exodus has left more than 1.4 million rural properties unoccupied — that is, 14.6 per cent of all rural dwellings.

Far from being only a rural issue, the lack of available city land forces thousands of Brazilians into urban areas where many of them live in cardboard or tin shacks (*barracos*) in the slums known as *favelas* or *vilas*. Many other low-income Brazilians live in *cortiços*, collective multi-family buildings where the conditions are often unsanitary and the dwellings lack basic infrastructure and are often crumbling and unstable.

The Brazilian urbanizing process intensified from the second half of the twentieth century onwards and was propelled by free labour and by the interruption of maritime commerce that stimulated capital investment in local industrial production instead. The appearance and development of urban informal settlements in Brazil is due to a number of causes all of which are related to social, economic and political inequalities. These causes can be summarized into those referring to the growth of urban populations; to high unemployment levels and low salaries earned by migrant workers; to heavy macroeconomic adjustments imposed by the international financial institutions that oblige the State to reduce or eliminate social policies;⁶

3. UN-HABITAT, 2005.

4. Valente, 2003, p. 375.

5. UN-HABITAT, 2005.

6. Public housing schemes addressing the low-income population, such as the Financial Housing System (SFH) and the National Housing Bank (BNH) in place from 1964 to 1986, were badly constructed, economically

to urban regulations controlling land use and occupation that established city zoning standards which created differences in price between the well regulated and well located areas and those on the peripheries where there was virtually no regulation. This duality and the resulting tension between the *legal* and *illegal* portions of the city remains a troubling factor in Brazilian society today.⁷ Some 4.4 million homeless urban families have a family income of less than \$225⁸ (three minimum salary per family), which is insufficient for them to afford the purchase of any kind of home in the public or private real-estate market. They are generally classified as living in precarious urban housing and it is common to find many extended families crowding into a single shack unfit for even one family.

Housing financing also failed to promote democratic access to land because the credits offered benefited almost exclusively the middle and upper classes. Furthermore, what public housing was built by the Government for the poor was too expensive and of poor quality. Efforts by Government agencies to extend the city infrastructure to outlying areas often ended up increasing the value of formerly uninhabited zones on the new routes into and out of the cities, thus stimulating speculation and penalizing residents of the peripheral areas and the taxpayers who paid for such projects.

Table 1: Brazil's housing deficit (in 2001)

Region	Housing deficit	Percentage of total permanent private residences	Population without adequate housing**	Inadequately housed population as percentage of total population
North	411,625	20.2	1,277,480	14.0
Northeast	2,631,790	23.0	8,876,959	18.4
Southeast	2,412,460	11.9	6,672,060	8.9
South	690,312	9.6	1,908,901	7.4
Center west	488,482	15.4	1,371,761	11.8
Total*	6,656,526***	14.8	20,190,986	11.7

*: Excluding the rural housing deficit in Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

** : Does not include dwellers in improvised residences.

***: In 2007, the Federal Government estimated that 12.4 million people were living in precarious conditions in 3.2 million housing units. Data is being updated by the Ministry of the Cities and the IBGE (Brazilian Institute of Geography and Statistics) which takes into account other criteria to determine and count the number of “subnormal housing”, the denomination used by IBGE. Studies were carried out in 555 municipalities that contain 98 per cent of the precarious and/or irregular housing.

Recent statistics show that the Brazilian housing deficit has increased over the last decade from 5.4 million housing units in 1991 to 6.7 million in 2001 — an increase of 21.7 per cent in only ten years. Furthermore, it continues to grow at a rate of 2.2 per cent per year. In 2000,

inaccessible, and poorly served by the public services and infrastructure. The buildings were constructed in peripheral areas of the larger cities and distant from the jobs.

7. The IBGE (Brazilian Institute of Geography and Statistics) considering only the areas with more than 50 irregular buildings, estimates that the *illegal* areas called *favelas* increased by 22 per cent between 1991 and 2002. However, the *favela* population represents only a part of the *illegal* land occupation.

8. As of July 2004.

the urban housing deficit was estimated at 5.4 million (81.3 per cent of the total). The urban housing deficit in metropolitan areas represents 29.3 per cent of the total. Paradoxically, the 2000 census indicates that there are 4.8 million unoccupied residences in the cities (about 10.3 per cent of the total amount of urban residential construction).

National legislative framework

The 1988 Brazilian Constitution introduced institutional and legal processes for the democratization of the state after a period of military dictatorship which ended in 1984. The new Constitution also opened up possibilities to resolve a range of problems stemming from social inequality in Brazilian cities, particularly by recognising the right of the citizens to participate in formulating and implementing public policy, and to promote public control of the state. The Constitution recognized the Municipalities as components and autonomous members of the Federation, together with the Union and the States.⁹

The Constitution also provided for a new legal framework for the right to the property both over urban and rural land and introduced new regulations for urban residents, rural peasants, indigenous peoples and afro-descendants to access land ownership.¹⁰ The right to property is guaranteed and land must have a social function.¹¹ Although that property ownership creates a social function has been a fundamental principle of the Constitution since 1934, in practice, the requirement has rarely been implemented by the private sector, and government action to enforce compliance has been sporadic. However, the City Statute has provided for the application of taxes by the Municipal government over the properties that do not fulfil its social function, non compliance by landowners will result in sanctions. The Municipal governments are entitled to include, demarcate and charge the landowners whose properties are empty, underused or non-used, considering regulations established by the master plan. The social interest of such a property must be consistent with its environmental, social, economic and cultural aspects and vocations, as well as the strategies for urban development. All cities with more than 20,000 inhabitants, those belonging to metropolitan regions or urban conglomerations, those of special tourism interest, those influenced by projects with a regional or national environmental impact, and those where the Municipal government intends to apply any of the legal instruments of the City Statute, are obliged to revise or approve new master plans. The qualified participation of the civil society is a criterion for master plans to be considered valid and legally binding.

Property rights are regulated according to the special constitutional provisions addressing rural and urban land, indigenous people's and afro-descendants' lands, and private and public land. As for property rights over urban land, the Municipalities have jurisdiction to issue laws supplementing State and Federal legislation as applied to local matters such as environment, culture, health and urban rights. All Municipalities are required to develop a master plan as the basic legal instrument for urban development and to ensure that both the city and property owners fulfil the legal social functions. The Municipalities may also promote legislation and/or regulations as required for control, utilization, urbanization and occupation of urban land. Those who have been in irregular possession of urban public areas for more than five years

9. In accordance with Article 18 of the Constitution. Before the Constitution of 1988 the Municipalities in Brazil were not provided with autonomy. They could even approve their own Municipal constitution.

10. Articles 182 and 183; 184–191; 231 and 232; and Article 68 of Constitutional Dispositions respectively.

11. Articles 5, XXII e XXIII; 182 and 186. The fulfilment of the social function is the core element of the right to property as it determines the relationship between the needs of the individual owner and the needs of the society in connection with the property concerned. Eduardo Novoa Monreal developed this concept in *El derecho de Propiedad Privada* (The right to private property), in 1979.

have the right to legalize possession and use and each level of government must recognize this special right under its jurisdiction.¹²

The City Statute¹³ defines the framework, principles and instruments to regulate the social function of property, the democratic participation on urban management, the recognition of informal settlements as part of the city and subject of rights, and the empowerment of the Municipalities as the main local agents entitled to regulate land usage and occupation. The City Statute innovates by introducing clear regulations governing democratic participation of civil society on urban planning and management. The Municipalities must so arrange the Municipal decision-making procedures that all the concerned parties can participate directly in the process of designing public policy and in the subsequent management of programmes on housing, land and urban planning which result from such policies.

The City Statute establishes principles and guidelines that express a new conception of urban development and land use and occupation. These principles must guide public and private agents actions in order to reconstruct the cities under the principles of justice, democracy and sustainability. City and property acquired a new reach and meaning in the context of Brazilian legal-urban order due to the constitutional demand that both have to meet social functions regarding the access, the usage and the distribution of their wealth and possibilities.

The law's text originated from the popular amendment on urban reform presented to the Constitutional Assembly in 1988, during the elaboration of the democratic Constitution. The City Statute recognizes the fundamental role of the Municipalities in city management and establishes guidelines for urban development policies. It introduces major fundamental innovations as it provides a new legal-political framework for the regulation of urban property and for designing urban policies, which must be implemented by Municipalities under a democratic and participatory process. The City Statute adopted a range of legal instruments that address land ownership regularization and slum upgrading. It also guarantees protection against forced evictions by the adoption of the legal instruments of urban adverse possession and the Special Zones of Social Interest. The latter recognize informal settlements as part of the urban order and provides for special regulations for land divisions and usage.

These instruments have to primarily be implemented by Municipal governments based on master plans and/or Municipal laws of development and use of urban land. However, there are still some national laws that must conform to the City Statute's principles, guidelines and instruments. For instance, the National Law of Urban Parcelling¹⁴ is being revised¹⁵ to consider slum upgrading and regularization within the competence of the Municipalities. This new legislation aims to integrate environmental and urban policies as a way to improve decision-making process related to land development, management, regularization and construction, as well as to enhance the Municipal capacity to deal with urban-environmental conflicts. It also addresses issues related to land parcelling, condominiums, contracts, property and land registration, expropriation, urban and environmental licenses, urban planning, etc.

12. This process of urban adverse possession (called *usucapião*) is recognized in the Article 183 of the Constitution and in the civil code and refers to rights acquired by irregular residents who have occupied private lands for five years for use as habitation, individually or collectively.

13. The approval of this law is considered a major victory of social movements and NGOs acting within the national movement of urban reform. The City Statute resulted from an intense negotiation process among the urban reform movement, the real estate sector, the public registers, the social movements, the environmental movements, the Municipalities, the States and the Federal Government institutions which deal with housing and environment. It had been discussed in the National Congress for more than 10 years.

14. Federal Law no. 6766/1979.

15. By bill no. 3.057/2000.

National housing policies

The National Programme to Support Sustainable Urban Land Regularization

The problem of the lack of housing in Brazil has various dimensions. Thus, if public policies are to be efficient, they should be drawn up bearing in mind not only the lack of housing and land, but also the necessity to improve the existing structures and to guarantee access to adequate sanitary and environmental conditions. To improve the housing quality aspects, attempts have been made to develop policies of title regularization capable of satisfying the demands of those living in informal settlements, and improvement programmes for those living in settlements where infrastructure is still lacking.

Until 2003, there were some Federal programmes directly or indirectly addressing informal settlements, such as the Habitat-Brazil programme (supported by the Inter-American Development Bank) and the Building Materials programme, supported by the Federal Savings Bank. However, there was no national policy to frame and articulate these and other future programmes on social housing. It was in this context that the Ministry of Cities proposed and discussed at national level the terms of such a national policy. According to Fernandes,¹⁶ the Ministry of Cities coordinated throughout 2003 a process of discussion of the National Programme of Support to Sustainable Urban Land Regularization, with the following bases:

- a) the recognition of the social right to housing and security of tenure as fundamental human rights, in accordance with the 1988 Federal Constitution and the terms of the Global Campaign for Secure Tenure of UN-HABITAT;
- b) access to urban land as a realization of the constitutional principle of the social function of property and of the city;
- c) the supremacy of public law over private law in the regulation of the urban order and in the interpretation and application of the City Statute;
- d) an understanding of the curative nature of the regularization programmes, which need to be implemented within a broad context of public policies in all spheres of government;¹⁷
- e) the need to reconcile urban and environmental regularization with legal regularization; and
- f) the need to contribute to the revival of the processes of social mobilization around the discussion of informal urban development.

The National Programme was structured into strategies aiming at acquiring legal, financial, and administrative/institutional support to the regularization of urban informal settlements, including those located on land belonging to the Union. The Ministry of Cities then tried to promote inter-ministerial integrated discussions on this subject and to coordinate a series of actions with the purpose of giving technical and financial support for Municipalities and States to improve/promote their land regularization programmes, cadastres and registration of existing informal settlements. Furthermore, proposed partnerships to discuss urban, legal, and

16. Fernandes, 2006. Mr. Fernandes was the Director of Land Affairs at the Ministry of Cities' National Secretariat for Urban Programmes, and in that capacity he co-ordinated the initial formulation and implementation of the National Programme to Support Sustainable Urban Land Regularization.

17. According to the Brazilian legislation, informal settlements do not have to be regularized (for instance very recent occupations), nor are all consolidated settlements considered upgradeable. Based on safety, health or environmental reasons, public authorities may not recognize the right of the residents to stay on the occupied areas but may, instead, have to offer concrete and acceptable conditions for the relocation of residents.

social land regularization and developed an information system to identify the different ownership and tenure regimes; and to disseminate information on existing sources of resources for housing programmes.

Analyses made by the National Forum of Urban Reform and by Fernandes, have pointed out a range of difficulties, which have arisen from the attempt to implement the National Programme to Support Sustainable Urban Land Regularization. One of them has been the insufficient allocation of funds by the Federal Government.¹⁸ Urban policies (such as land, housing, environmental sanitation, transport and mobility) and investments in cities have not been recognized as an investment in the national economy. They have been only viewed as social policies or at most as infrastructure investments for economic development.¹⁹ By not being adequately funded and institutionally supported, the regularization programme has effectively been limited to the dimension of land regularization in strictly legal terms, and has not been able to confront the necessity of upgrading informal settlements, especially those located in declared environmental protection areas.²⁰ Besides this, there is no direct relation between this programme and the main National Social Housing System, approved in 2005 and managed by the Ministry of Cities. In the more restricted ambit of its National Secretariat for Urban Programmes — regardless of the fact that all current programmes being implemented are interrelated — in 2003 and 2004 there was no adequate incorporation of the objectives of each programme into the terms of reference formulated by the others.

Another issue of attention is the growing conflict between public policies that aim to protect the right to housing and those that aim to promote environmental preservation, as well as between environmental laws and those allowing the titling of informal settlements on behalf of its inhabitants, which emphasizes the necessity to reconcile urban legislation and public policies with environmental laws and policies. In those situations in which environmental values and housing needs (both international human rights and constitutional rights) cannot be fully or even partly reconciled, and if the environmental value has to prevail over the housing rights, effective alternatives have to be offered to the low-income population living in the areas. This has been the scope of the revision of abovementioned National Law of Urban Parcelling,²¹ which governs the subdivision of urban areas and land regularization programmes at local and State levels. The fact is that, even those Municipalities that have already progressed in drafting local policies to tackle the growth of informal land development through regularization programmes are still facing legal obstacles deriving from the Federal legislation in force — national urban laws, Forestry Code, registration laws, expropriation laws, etc. It is expected that a proposed bill brought to the House of

18. According to the Ministry of the Cities, in 2004, US\$ 2.2 million were allocated to support land regularisation projects that benefited 126 informal settlements in 49 Municipalities. In 2005, US\$ 20 million were allocated to this program and this amount permitted the Ministry to assist approximately 600 Municipalities - <http://www.cidades.gov.br/index.php?option=content&task=section&id=142>

19. According to Fernandes (idem), “*Given the rigorous and overly orthodox policy of fiscal adjustment adopted by the federal government since 2003, the social policies have been given second rating, and the budgets of those ministries in the social domain [including the Ministry of the Cities] have been seriously affected*”.

20. In January 2007, the Federal Government launched the Programme for Growth Acceleration (PAC) which provides for the revision and improvement of regulatory frameworks for investments for regional development; exemption of certain taxes over infrastructure services and investments; adoption of long-term fiscal policies and envisages the investment of US\$ 70 billions in infrastructure, housing, sanitation and transport until 2010, mainly in urban areas. The programme’s main goal is to increase Gross Internal Product in 4.5 per cent in 2007 and in 5.0 per cent from 2008 on.

21. Federal Law no. 6766/1979.

Representatives — aiming at creating the Federal Law of Territorial Responsibility to substitute the current law on land subdivision — will tackle and regulate such conflicting matters.

In 2005, a resolution approved by the National Council for the Environment established special criteria and procedures which, under certain conditions, would permit regularization of informal settlements located in preservation areas, and recognize it as a matter of social interest. Although this resolution represents a concrete solution for assuring security of tenure for the population living in such areas, the procedures to be adopted to achieve land titles necessarily require the realization of comprehensive studies and extended technical analyses of the environmental impacts.

Acceptance and recognition of the new tenure titles created by the City Statute (mainly the concession of the right to use, the special concession of use for housing purposes and the surface rights) by the private and public financing agencies in housing finance programmes, especially by the Federal Savings Bank, are still issues to be addressed.

Another discussion that has required reflection and effort is the re-thinking of the concept and utilization of public land belonging to the Union, especially those vacant or under-utilized. It is necessary to reverse the process of intensive privatization of public land in Brazil that has led to abuses in land registration, irregular appropriation, corruption and arbitrary public management. A considerable part of the Union's land is occupied by consolidated informal settlements, but regularization has been difficult due to the legal property regime that still has been governed by ancient legislation and by traditional institutional practices, for instance the coastal lands, the areas assigned to the Brazilian Army and Navy, properties of the National Social Security Institute and of the Federal Railway Company, and Union lands in former Federally-managed territories such as Roraima, Rondonia and Amapa. In this sense, decentralization of public land management is also an obstacle to be removed if regularization programmes are to benefit hundreds of thousands of people all over the country. As it is very difficult for the Federal Government to act directly because the Municipalities are the public authority responsible for approving land divisions and upgrading projects, it is fundamental to create financial, technical and institutional conditions for these Municipalities to manage the regularization of public land act through the support of Federal programmes.

It is necessary that programmes to fulfil the social function of public property and land ownership regularization be given priority in Federal Government strategies for poverty reduction and social/human development, in addition to being included as line items in the annual Federal budget.

The National Programme to Support Sustainable Urban Land Regularization continues to be implemented by the Ministry of Cities through projects that are carried out in partnership with States, Municipalities, Public Defenders and NGOs.²² Projects promoting land titling and upgrading are being implemented to benefit informal settlements on public land in urban areas, including those belonging to the Union, and in private areas. However, limits and constraints affecting the full implementation of the projects are still in place and in need to be properly tackled by policy-makers, stakeholders and beneficiaries. The table below show the number of beneficiaries of this programme, according to the current phase of the land regularization process been implemented.

22. The possibility to implement projects in partnership with NGOs was introduced in 2005, restricted to those tackling the legal aspect of land regularization.

Table 2: National Programme to Support Sustainable Urban Land Regularization (Programa Papel Passado, Ministério das Cidades). Results 2003–2006

Phase	Direct action	Indirect action
Number of States involved in Programme (all phases)	26	25
Number of Municipalities involved in Programme (all phases)	201	145
Number of areas involved in Programme (all phases)	1,046	1,125
Number of families with land regularization process initiated	934,345	418,706
Number of families with land regularization process in advanced progress	284,596	285,820
Number of families that have acquired property titles	65,791	241,915
Number of families with property titles registered in the public registry	23,824	241,915

Source: Ministry of Cities/SNPU November 2006. <http://www.cidades.gov.br/media/FichaDeSituacaoGerenteDaMeta.pdf>.

The number of beneficiaries that effectively acquired property titles is ten times less than the number of families that are still in the process of land regularization. This is a result of the excessive procedures and stages to follow to acquire and legally register the beneficiaries' properties. It also demonstrates the necessity to endeavour integrated institutional, economic and political efforts to champion the right to security of tenure for those living in informal settlements or buildings.

The table above relates to the regularization process of private areas or of areas belonging to the municipalities or the states. However, with regard to the regularization of property belonging to the Union, the National Secretariat of Union's Property, in partnership with grassroots and residents associations, is regularizing lands and buildings currently been occupied by 537,495 families. Among these, 406,993 families have initiated the land regularization process; 117,514 families are in advanced stage of land regularization; 12,138 families have acquired property titles; and 850 have already registered the titles in the public registry).²³

In 2005, the National City Council approved the creation of a Work Group on Urban Conflicts with the participation of all social segments, the Ministry of Cities and the National Secretariat of Human Rights, with the objective to discuss solutions to prevent forced evictions and land conflicts. Many grassroots organizations, social movements and NGOs demand the support of this Work Group to avert evictions affecting urban informal settlements and land occupation. The support is provided through the attempt to negotiate a friendly solution with the person or institution carrying out the eviction (State, Municipality, private landowner, judge, public prosecutor, etc.), an initiative aimed at averting the eviction and finding an alternative housing solution for the affected families. Till date, the Ministry of Cities is dealing with land conflicts in 16 States and 37 Municipalities, affecting 65 urban settlements.

23. *Source:* Ministry of the Cities/SNPU November 2006. <http://www.cidades.gov.br/media/FichaDeSituacaoGerenteDaMeta.pdf>.

In June 2006, organizations of civil society, social movements, governmental and NGOs discussed and approved a Brazilian Platform for the Prevention of Evictions,²⁴ which provides for recommendations for the effective implementation of public policies, proposals for changes in legislation, and pleas to the judiciary to rule over evictions taking into account the protection of the human rights of the affected communities. Many issues raised in the Platform is now been discussed by the Work Group on Urban Conflicts as to adopt concrete measures to prevent and avert evictions.

The National Social Housing System

Social groups in Brazil have carried out innovative, independent and self-organized experiences to address housing and land rights. The most common experiences involve cooperatives, associations and *mutirões*²⁵ for housing production and improvements and rehabilitation of housing in central areas. Since the 1980s, urban social movements and organizations have been organized under the National Forum of Urban Reform and have drawn up a Platform for Urban Reform to achieve housing and land rights and to combat poverty and social inequalities. This platform was presented during the constituent process, which led to the Constitution of 1988, by means of a popular amendment.²⁶ The National Forum of Urban Reform is a coalition composed of different stakeholders from the civil society — NGOs, social movements and professional organizations — that deal with housing, urban management, urban transportation and sanitation.²⁷ The Forum is also organized by local or regional forums in some cities and it deals with the following issues: a) actions in the defence of the right to the city and of communities whose housing rights are threatened with forced displacement by the implementation of projects for development or the promotion of tourism and/or infrastructure construction or improvement; b) participation in programmes and projects for land regularization in informal and irregular urban settlements; c) organization of counselling and capacity building on public rights and policies for popular leaderships and organizations; and d) participation in city management processes. The National Forum of Urban Reform succeeded in obtaining approval for the City Statute and also contributed to the establishment of the Ministry of Cities in 2003.

The National Forum of Urban Reform also played a major role both in the first and the second National City Conferences held in 2003 and 2005 respectively, besides the State and Municipal Governments and the private sector. The objective of the conferences was to establish the guidelines and goals for public policies addressing national urban development,

24. The Brazilian Platform tackles the causes and consequences of evictions and provides for recommendations to national and local governments, the judiciary and the civil society. Available in English and Portuguese at http://www.cohre.org/view_page.php?page_id=64.

25. *Mutirão* is the process by which landowners or tenants build or improve their homes through unpaid collective work during weekends. They are popular housing programmes with government-supplied materials and volunteer labour.

26. The popular amendment proposal on urban reform for the Constitution project in 1987 was underwritten by 131,000 voters and presented by various organizations.

27. The National Forum on Urban Reform is coordinated by the following groups: a) popular Movements: National Union for Popular Housing, National Confederation of Resident Associations (CONAM), Popular Movement Centre (CMP), and National Movement on the Fight for Housing; b) professional Entities: National Architectural Federation, Geographical Association of Brazil (AGB), Brazilian Association of Engineers and Architects, National Federation of Engineering Unions, National Federation of Federal Savings Bank Employees, and National Federation of Engineering and Architectural Students; and c) NGOs: Polis Institute, Brazilian Institute on Municipal Administration (IBAM), FASE, IBASE, CAAP, Bento Rubião, COHRE, and National Association of Public Transportation (ANTP).

housing, sanitation and transportation. They also led to the establishment of the National City Council,²⁸ composed of various segments of the government, the civil society and the private sector.

The first National City Conference was held in October of 2003 to establish a National System of Cities. They went through several preparatory phases such as City Conferences in the States and Municipalities.²⁹ The Conference was organized by a National Committee especially set up for this purpose and composed by different stakeholders that deal with urban issues. The National Conference formulated guidelines and priorities for urban policies and the form of management for these policies. The main result of the first Conference was the election of councillors for the National City Council. The National City Council was then composed of 71 representatives.

The second National City Conference took place in November 2005 to establish a National Policy for Urban Development. It consolidated a process of popular participation in policy and programme design. More than 2,000 representatives of social movements, governments, professional entities, NGOs and the private sector — that were elected in State and Municipal Conferences — attended the National meeting. 86 new members were elected for the National City Council and recommendations were approved by the participants addressing subjects related to: the reduction of interest on the public debt (in order to increase investments in urban and rural development); the destination of 10 per cent of the public debt and 2 per cent of the public taxes for sanitation and housing programmes; ensuring that the National City Council should be regulated by law and must be considered a deliberative body; the approval of the bill of law that regulates the national sanitation policy forbidding privatization of the public sanitation service; among others.

The discussions that took place in both Conferences also targeted the main issues related to implementation of the National Social Housing System, recently approved, as detailed below.

The approval, by the Chamber of Councilmen, of the bill creating the National Social Housing System and the National Social Housing Fund³⁰ is a result of the organization of the urban social movements. It was signed by one million people and then presented as of popular initiative to the Federal Chamber, in 1992.³¹ It creates an articulated national housing system composed of an executive public authority, the Ministry of Cities; by the Federal Savings Bank, as its operational agent; by the National City Council and the National Social Housing Fund; by housing councils and funds created in the Municipal and State levels; and by housing cooperatives and community associations. This Law³² was finally approved by the Federal Senate in 2005 and established the National Social Housing System to facilitate access for the poor to rural and urban land and adequate housing through the use of subsidies. The law provides for the transfer of funds previously used to repay the foreign debt, to Municipal and State programmes to subsidise housing and land for the low-income

28. In accordance with Provisional Measure number 2.220/2001 and Decree number 5.031/2004, the National City Council is a consultative body. It has the responsibility to propose guidelines for the formulation and implementation of national urban development policies comprising housing, transportation and sanitation; provide guidelines and recommendations for the application of the City Statute; and elaborate national and regional plans for spatial organization.

29. Approximately 320,000 participants attended State and Municipal Conferences, who elected 2,500 delegates for the National City Conference.

30. The proposal for this new law was first presented to the Chamber of Councilmen in 1988.

31. According to the Constitution, citizens may present bills of law by popular initiative. Registration of one percent of the national electorate for national projects of law is required.

32. Federal Law no. 11.124/2005.

population. The National Social Housing Fund is managed by the Social Housing Fund Management Council,³³ composed of 22 representatives of whom 10 are from the governmental sector and 12 are from the non-governmental section (social movements, the private housing sector, trade unions, professional entities, universities and NGOs). The council members are entitled to approve the annual plan of financial investment for housing programmes considering the resources available in the National Social Housing Fund, to establish criteria for the Municipalities, States, housing cooperatives and associations to access these financial resources, and to monitor the full application of such resources.

The establishment of the National Social Housing System and its National Social Housing Fund is *per se* one of the greatest achievements of the urban social movements and their organizations, and will benefit the entire population that lack adequate housing. By establishing such a system, the management of the financial resources and the setting of criteria to access funds, subsidies and loans for housing projects are now coordinated by a participatory body — which comprises Federal, State and Municipal governments, social movements, the private sector, trade unions, professional entities, universities and NGOs. The Management Council will decide over the application of the funds allocated to housing projects, estimated in US\$ 650 million for 2007.

The efficiency of the system depends on the adhesion of the States and Municipalities to it, through the creation of State and Municipal social housing funds managed by participatory and multi-representative councils. The social movements must have one-quarter of the seats, and the councils must be entitled to deliberate and approve a Municipal/State Social Housing Plan, with the participation of the civil society and compatible with the Municipal master plan. The deadline to States and Municipalities to adhere to the system is 31 December 2007 otherwise they will not be able to access funds for 2008.

Within the current on-going process where States and Municipalities are to adhere to the National Social Housing System, two main issues must be addressed to improve the efficiency and accountability of the System. Firstly, State and Municipal governments must create City Councils instead of specific Social Housing Councils, as a means to integrate urban policies and programmes such as housing, sanitation and public transport. Secondly, the States and Municipalities must include in the legislation creating the State/Municipal Social Housing System the possibility that housing cooperatives and associations access the funds directly.

Since the creation of the Ministry of Cities in 2003, investments in housing have progressively increased as shown in Table 3.

Table 3: Investments in housing by the Federal Government (2002–2003)

Year	Amount (in billions of Reais)
2002	7.02
2003	7.92
2004	9.14
2005	13.82
2006	15.02

Resources from the Fund for Time of Work; Fund of Social Development; Federal Budget, Federal Savings Bank; Fund for the Workers Support; Brazilian System of Savings and Loans.

Source: Ministry of Cities: <http://www.cidades.gov.br/>

33. Decree no. 5.796 of 06.06.2006.

Conclusions

Urban social movements and NGOs influenced the implementation of official Federal programmes for social housing and land ownership regularizations. The creation of multi-stakeholder, deliberative and participatory mechanisms to influence the implementation of these policies is still in the agenda of such organizations.

However, the policies and programmes will not *per se* reduce the housing deficit significantly if it is not combined with the application of instruments to democratise access to land and property rights by the poor population. An integral, comprehensive and socially oriented approach to land and housing rights is necessary in order to marshal the attributes and assets associated with the land sector as a key source for the improvement of the poor population's lives. Treating access to land simultaneously as a human rights concern and a development concern will be a fruitful way to implement public policies with a rights-based approach to development.

Despite the fact that the Federal Government has indeed managed to advance significantly in formulating comprehensive national housing and land policies and in creating the essential legal-institutional bases, many programmes are isolated and to a great extent ineffective, and thus have little significant impact on the Brazilian reality. There are still many structural obstacles of a conceptual, political, institutional and financial nature to be overcome, such as to consider the urban, environmental and socioeconomic implications of the informal production of the habitat in urban areas. Moreover, although many Municipalities have formulated their own land regularization programmes, the States have not done the same. The role of the State in land regularization processes is relevant once they have the jurisdiction to approve environmental licenses and environmental impact assessments, which are necessary to implement many slum upgrading projects.

Although the Municipalities are primarily entitled to rule over land occupation and to implement regularization projects, the States are also obliged to support social housing programmes and have private jurisdiction to regularize informal settlements located on State land. In this sense, there is a major expectation that States and Municipalities engage in the National Social Housing System by creating specific local funds and respective management councils which not only relate to housing, but also articulate with other urban policies, such as land regularization, transport, sanitation and urban infrastructure. The urban social movements and organizations propose the creation of State and Municipal City Councils with jurisdiction to determine criteria for funding allocation, to approve the application of State/Municipal budgets and expenditures and to monitor the implementation of programmes and projects.

The effects of these new policies and legal provisions on the ground will much depend on the application of the new master plans recently revised or approved by Municipalities. Although the Federal Government has the capacity to expropriate and to acquire areas for social housing projects, as well as to regularize the lands belonging to the Union that are occupied by informal settlements, only the Municipalities are entitled to apply legal instruments to ensure that unproductive or unused urban properties fulfil their social functions. The application of such legal instruments, such as progressive Building and Land taxes (IPTU) over time, will gradually distribute more equitably the costs and benefits of public investment in infrastructure and will penalize proprietors speculating on an increase in property values due to public investments. Non-fulfilment of the social function of property implies violation of the urban order and, if allowed to grow, can involve the Municipal authorities in lawsuits for administrative mismanagement.

Even the formulation of a national policy on the utilization of Federal land for regularization projects still depend on the recognition of the social right to housing and the social function of the Union's land. In 2006 the Federal Government formulated a Provisional Measure that defined clear criteria for the utilization of such public areas, which were criticized by internal sectors of the Federal Government, especially the Ministry of Finance, Ministry of Defence, the Navy and the Army. As a result, the Provisional Measure was not approved as a law, because these ministries did not agree with the regularization of both occupied and under-utilized public properties, as such properties have been historically viewed as mere potential sources of revenue.

With the support of the National Programme for Sustainable Urban Land Regularization many local governments are developing Municipal plans to regularize informal settlements and to relocate population living in risky or improper areas, by the implementation of legal instruments now enshrined in the new master plans. However, the titles of Special Concession for Housing Purposes, even when issued by the Federal Government, have not been accepted by the Federal Savings Bank (CEF) as a deed of trust to access public funding for housing.

Furthermore, it is relevant to call on the courts to protect the right to adequate housing more effectively and to consider and apply international human rights law when deciding cases involving rights of possession, forced evictions and land conflicts affecting vulnerable people living in urban informal settlements. Within the Brazilian legal system, the Civil Code has been traditionally applied by the Judiciary to give privilege to full ownership rather than possession in those processes where there is a conflict between the two. These decisions undermine the fulfilment of the social function of property and the application of instruments to protect security of tenure, enshrined in the City Statute.

In order for the rights to housing to be fully respected, a question of strategy requires attention: the need to obtain recognition from public managers that the consideration of human rights is a key objective in the application of urban and housing policies. The Brazilian experience shows that social participation is possible and results in fruitful outcomes when the different social segments (NGOs, grassroots movements, activists, professional entities, etc.) engage together in actions based on a consistent and strategic urban-political platform.

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