

## **A new Statute for Brazilian cities**

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On 10 July 2001, a groundbreaking legal development took place in Brazil with the enactment of Federal Law no. 10.257, entitled “City Statute”, which aims to regulate the original chapter on urban policy introduced by the 1988 Constitution. The new law provides consistent legal support to those municipalities committed to confronting the grave urban, social and environmental problems which have directly affected the daily living conditions of the 82% of Brazilians who live in cities. Resulting from an intense negotiation process which lasted for more than ten years, within and beyond the National Congress, the City Statute confirmed and widened the fundamental legal-political role of municipalities in the formulation of directives for urban planning, as well as in conducting the process of urban development and management. It deserves to be known at the international level because it is an inspiring example of how national governments can materialise the principles and proposals of the UN Global Campaigns on Good Governance and on Securing Tenure for the Urban Poor.

It is impossible to underestimate the impact the new law can have on Brazil’s legal and urban order, once its possibilities are fully understood and its provisions effectively put into practice. The City Statute has four main dimensions, namely: a conceptual one, providing elements for the interpretation of the constitutional principle of the social functions of urban property and of the city; the regulation of new instruments for the construction of a different urban order by the municipalities; the indication of processes for the democratic management of cities; and the identification of legal instruments for the comprehensive regularisation of informal settlements in private and public urban areas.

In conceptual terms, the City Statute broke with the long-standing tradition of civil law and set the basis of a new legal-political paradigm for urban land use and development control, especially by adopting the following approach to urban property rights: the right to urban property is ensured provided that a social function is accomplished, which is that determined by municipal urban legislation. It is the task of municipal governments to control of the process of urban development through the formulation of territorial and land use policies in which the individual interests of landowners necessarily co-exist with other social, cultural and environmental interests of other groups and the city as a whole. For this purpose, municipal government was given the power to, through laws and several urban planning and management instruments, determine the measure of this – possible – balance between individual and collective interests over the utilisation of this non-renewable resource essential to sustainable development in cities, that is, urban land.

In order to materialise and widen the scope for municipal action, the City Statute regulated the legal instruments created by the 1988 Constitution, as well as creating new ones. All such instruments can, and should, be used in a combined manner aiming not only to regulate the process of land use development, but especially to induce it according to a “concept of the city” to be expressed through the local Master Plan. Municipalities were given more conditions to interfere with, and possibly revert to some extent, the pattern and dynamics of formal and informal urban land markets, especially those of a speculative nature, which have long brought about social exclusion and spatial segregation in Brazil. In fact, the combination of traditional planning mechanisms – zoning; subdivision; building rules, etc. – with the new instruments – compulsory subdivision/edification/utilisation order, extrafiscal use of local property tax progressively over time; expropriation-sanction with payment in

titles of public debt; surface rights; preference rights for the municipality; onerous transfer of building rights; etc. – will open a new range of possibilities for the construction of a new urban order which is, at once, economically more efficient, politically fairer and more sensitive to social and environmental questions.

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

Last, but not least, the City Statute also recognised legal instruments to enable municipalities to promote land tenure regularisation programmes and thus democratise the conditions of access to urban land and housing. As well as regulating the constitutional institutes of *usucapiao* (adverse possession) rights and concession of the real right to use (a form of leasehold), to be used in the regularisation of informal settlements in, respectively, private and public land, the new law went one step further and admitted the collective utilisation of such instruments. The section of the City Statute that created a third instrument, the concession of special use for housing purposes, was vetoed by the President on legal, environmental and political grounds. However, given the active mobilisation of the National Forum for Urban Reform, the Provisional Measure no. 2.220 was signed by the President on 4 September 2001, recognising the subjective right (and not only the prerogative of the Public Authorities) of those occupying public land until that date, under certain circumstances, to be granted the concession of special use for housing purposes. The Provisional Measure also established the conditions for the municipal authorities to promote the removal of the occupiers of unsuitable public land to more adequate areas. This is a measure of extreme social and political importance, but its application will require a concentrated legal, political and administrative effort on the part of the municipalities to respond to the existing situations in a suitable legal manner which is compatible with other social and environmental interests.

The approval of the City Statute consolidated the constitutional order in Brazil regarding the control of the process of urban development, aiming to re-orient the action of the local state, the land market and society as a whole according to new legal, economic, social and environmental criteria. Its effective materialisation in policies and programmes will depend on the reform of the local legal-urban order by the municipalities. The role of municipalities is crucial so that the exclusionary pattern of urban development can be reverted. However, in the last analysis the future of the new law will fundamentally depend on the wide mobilisation of Brazilian society, within and without the state apparatus.

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