



The City of Diadema and the City Statute

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The purpose of this paper is to highlight the main repercussions of the City Statute on the management of urban development policy in Brazil at the local (municipal) level. While the 1988 Constitution represented the first important step towards defining the social function of the city and urban land, the City Statute marked the end of a long period of popular struggle and mobilisation targeted at democratising city and urban land administration. The principal aim of the law was, and remains, to ensure that municipal authorities make effective use of the planning tools at their disposal in order to implement a sustainable urban development policy focused on correcting the serious injustices encountered in the human occupation of land under their control.

The long and tortuous route taken by the City Statute in Brazil's National Congress made it possible during the 1990s for a number of cities such as Recife, Belo Horizonte, São Paulo, Curitiba, Rio de Janeiro and Porto Alegre to develop and experiment with a number of the Statute's instruments that were finally enacted in law in 2001. These were cities where local governments had mobilised both political commitment and interest among the inhabitants in efforts to broaden and deepen the scope of urban reform since the first introduction of the constitutional norm in 1988. These municipal authorities had been instrumental in formulating the City Statute and were therefore in an advantageous position to apply the various planning and other tools introduced under the law.

Tracing this historic process in a specific city can serve to highlight the importance of, and need for, the City Statute by demonstrating how it presented local authorities and social movements with vital new challenges. The city of Diadema referred to in the present text is a prime example of the chaotic growth of cities in Brazil's major metropolitan regions over the last 50 years.

The military dictatorship, which seized power in March 1964, interrupted a period of major social mobilisation demanding basic social reforms, including urban reform. Under this government Brazil was subjected to developmentalist economic policies that maintained a heavy concentration of wealth and income in few hands. Meanwhile, the advent of industrialisation was accompanied by a low wage environment combined with repression of political and trade union-related activities.



The authoritarian and technocratic urban planning approach by the various military governments proved to be ineffective from the point of view of satisfying the many demands generated in the cities by developmentalist economics. During this period a significant part of the country's population migrated to the cities, to the extent that almost 80 per cent of all Brazilians currently live in urban areas. Meanwhile the cities tended to expand towards the periphery either as a result of large public housing developments in such places or because of illegal lots being occupied by people building their own homes. This led to a proliferation of favelas either on the fringes of the cities or in vacant parts of the city fabric rife with property speculation. The expansion of the peripheral area of our cities meant that services had to be provided over longer distances, requiring major public investment despite low resource availability. Much of this investment was eventually appropriated by the speculative private property sector as a result of price appreciation of land. Low income families, with no possibility of gaining access to legitimate urban space, were condemned to live in favelas and other precariously-built settlements remote from the city centres and lacking all normal urban amenities. These areas became classic symbols of social exclusion, with local authorities becoming either hostages to, or partners in, this vicious circle. For example, public transport policy emerged as a determining factor for guaranteeing people's access to the city: as the distances between people's homes and their places of employment increased, so did the need for an ever-expanding and costly transport network.



Diadema at 50

The autonomous Municipality of Diadema is now 50 years old, having experienced rapid population growth during its first three decades of existence. In 1960 the city had 12,000 inhabitants; 79,000 in 1970; 228,000 in 1980; and 300,000 in 1990. Located in the metropolitan region of São Paulo between the cities of São Paulo and São Bernardo do Campo (the main hub of Brazil's vehicle industry), Diadema's population was primarily formed by the families of poorly-qualified migrant workers on low pay and subject to high manpower turnover. These people came to the area in search of jobs in the factories of the region, setting up home in Diadema because land was cheap and accessible there although it lacked any kind of urban infrastructure.



At present Diadema has 386,779 inhabitants (IBGE, 2007). With an area of 30.7 km², of which 7 km² are in a headwaters protection area, Diadema is the second most densely populated city in Brazil and the densest in São Paulo state, with 12,600 inhabitants per km². It is estimated that 13.3 per cent of all households (14,000 families or approximately 60,000 inhabitants) live in poverty, with a per capita income of between zero and half of one minimum wage. The 207 favelas and similar settlements cover 4.62 per cent of the city's area and house around 25 per cent (100,000) of the total population. Of these areas, 161 are now totally urbanised, 32 are undergoing urbanisation, 6 have already benefited from targeted local authority interventions, and 8 are located in risk areas and are subject to relocation. In the 1960s and 70s, the city saw its farmland increasingly taken over by informal plots and the occupation of both private and public land by large numbers of favelas. At the same time many industrial buildings were constructed in the city as a result of tax exemptions and other benefits provided by the local authority.

At the beginning of the 1980s Diadema had effectively become a dormitory town, with the overwhelming majority of its inhabitants living in precarious conditions. As far as public services were concerned, only 22 per cent of the road and street network was urbanised, with the remainder lacking drainage, surfacing, water and sewage networks, etc. Around 30 per cent of the population lived in favelas occupying 3.5 per cent of the city's area, totally abandoned by the local public authorities. Education, health, cultural and leisure services were in very short supply; in 1980, child mortality was one of the highest in Brazil, with 83 babies out of every 1,000 live births dying.

The first Master Plan of Diadema was published in 1973 with virtually no mention of the existence of favelas and the so-called 'illegal city'. However from the mid-1970s the voices of the excluded members of the population began to be raised. While popular social movements began to emerge all over Brazil, the metalworking workers' associations around São Paulo called a series of strikes which eventually led to the emergence of powerful trade union leaders, including Luis Inácio Lula da Silva (elected President of Brazil in 2002). A number of movements specifically concerned with urban issues began to emerge demanding proper housing, the regularisation of clandestine lots, and the installation of urban infrastructure in the favelas. In Diadema the housing movements achieved a high level of organisation and mobilisation, and as a result a number of still-vacant areas of land were invaded and quickly occupied by squatters.





In 1979, in response to the emergence of the social movements, the Federal Government under General João Figueiredo introduced Law 6.766, which regulated land parcelling and made incitement to land ‘invasion’ a criminal offence. This legislation established which settlements could be located in public areas and determined the minimum size of lots (125m²). However, despite providing an exception for sub-divided lots earmarked for social housing, this law in fact ended up forcing the majority of the areas occupied by poorer people into clandestinity, thereby increasing their social exclusion.

In 1982 Diadema elected Brazil’s first Workers’ Party (PT) mayor. The social basis of the PT, founded in 1980, drew strength from popular social movements, including the burgeoning pro-housing movements. From 1983 to 1996 the PT held power in the Diadema municipal administration, undertaking major transformations in the city, acknowledging the existence of favelas and irregular settlements and providing funds to improve the poorest areas while encouraging increased popular participation in local decisions involving local urban development policy.

The Diadema local authority targeted its investments at urban infrastructure: surfacing the road and street system, installing public street lighting and sanitation, providing stormwater and watercourse drainage, as well as upgrading health, education, culture and sports amenities—all to the benefit of the lower income sectors. At the same time, the authorities resorted to the legal expropriation of land in order to construct community facilities. Meanwhile, the neighbourhood associations and housing movements continued to call for further interventions in the favelas to provide even more services and the release of public land for building new homes.

In 1985 the law introducing the Real Right of Land Use Concession was approved by the Diadema Municipal Chamber, basically giving the right to people living in favelas and housing nuclei constructed in public areas to continue living there for 90 years. Interventions in these areas began with plot delimitation and rearranging the street grid to facilitate infrastructure implementation. With regard to favela upgrading, the municipal government’s response to its pressing shortage of resources was to fragment investment by providing improvements in the largest possible number of favelas rather than concentrating efforts on large projects in fewer places.

The housing budget gradually increased from 2.3 per cent of total municipal revenue in 1983 to 5.6 per cent in 1995. With growing investment, Diadema began to attract a large number of small and medium-sized industries, many of them suppliers of parts to the vehicle manufacturing plants in neighbouring municipalities. As a result the profile of the city changed over the years and residential areas began to be interspersed with industrial plants. Space, particularly in the central area, was increasingly occupied by commercial and service establishments, which generated a cycle of property appreciation in the city, creating new obstacles to efforts to improve the housing situation.

The 1988 Constitution

The restoration of democracy during the 1980s culminated in the promulgation of the 1988 Federal Constitution, which strengthened the role of the municipalities in the management of urban development policy in addition to establishing the concept of the social function of the city and urban property. However, the Constitution disappointingly made no provision for formally regulating these rights.

The necessary instruments for executing the policy set forth in the Constitution—the Master Plan, compulsory parcelling and building, progressive urban property and land taxes (IPTU), expropriation set against public debt bonds, Special Urban *Usucapiao* and the Special Use Concession—were not specifically regulated.

On the other hand, the reinforced role of municipalities to undertake urban development underpinned by the Constitution was important to Diadema, since it provided institutional recognition of the fact that urban disputes and the demand for land and housing would henceforth be targeted at the local authority. It was also acknowledged that the local administration would from this point on undertake a mediating role in urban land disputes and, importantly, prepare its Master Plan and management follow-up with the participation and involvement of local people in the detailed decision-making process.

A new symbolic achievement in early 2000 was the introduction of a Constitutional Amendment that confirmed housing as a social right, conferring upon it the same status as education, health, employment, leisure, security, social welfare, maternal and child protection and assistance to the homeless. Incorporation of the right to housing and urban development policy principles outlined in the Constitution led the Diadema authorities to press ahead more decisively with fresh actions on slum upgrading and territorial organisation of the city. When the municipal government undertook energetic initiatives in a bid to create urban policy administrative instruments based on the Constitutional text, it was met with opposition from conservative and 'patrimonialist' sectors which rejected the concept of an inclusive urban policy, arguing that the lack of a regulatory framework for these instruments rendered all the initiatives of the municipality unconstitutional.

It is interesting to note that Diadema built its urban development policy by encouraging different forms of popular participation in the process. In 1991 the Municipal Fund for Supporting Social Housing (FUMAPIS) was established with municipal budget resources, co-managed by an 11-member council: five representatives of the Executive, one representative of the Legislative Chamber, and five representatives from the community elected by direct vote in different parts of the city. In 1993 the 1st Diadema Housing Meeting provided a forum for local inhabitants and their associations to discuss municipal policy issues, of which the land tenure question was the most important at that particular moment. Throughout 1993 discussion meetings involving different social sectors, businessmen, trade unionists and the representatives of pro-housing movements were held all over the city to examine and debate the municipal government's proposal for a new Master Plan. The role played by the housing movements in this process was of special importance, supporting the local authority proposal to adopt democratisation instruments designed to provide better access by poorer inhabitants to land. Numerous public demonstrations were attended by hundreds of people in a bid to bring pressure to bear at municipal council meetings to consider and approve the 1994 Master Plan.



In 1994 Master Plan and the establishment of the AEIS

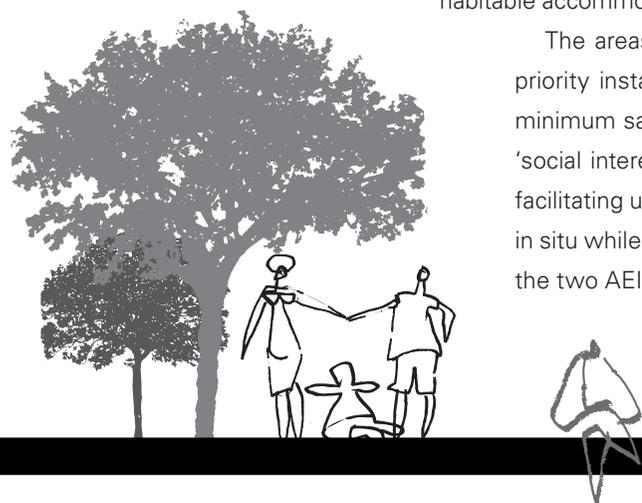
Promulgated in January 1994, the new Master Plan for Diadema embraced a series of urban planning instruments guaranteeing the social function of the city. In this way Diadema was legitimately able to press ahead with a number of initiatives that would later serve as a reference for other municipalities anxious to consolidate the instruments needed to underpin urban reform throughout the entire country.

The Master Plan defined its objectives as “to undertake the full development of the social functions of the city and property and to focus on the socially just and ecologically balanced use of the urban territory in order to assure the well-being of its inhabitants”. The major innovation of this Master Plan was the creation of the Special Areas of Social Interest (AEIS), a planning instrument which would later be called (in the City Statute) Special Social Interest Zones (ZEIS). In addition to the AEIS, the Master Plan also contained instruments such as compulsory parcelling and building, urban operations and the property consortia concept, under which property owners could enter into partnerships with the local municipal authority to secure urbanisation of their plots. These latter mechanisms, however, were practically unutilised given that the social movements found the AEIS process easier to understand and operationalise.

Together with the AEIS, the Master Plan also created the Special Environmental Preservation Areas (APA) with a view to ensuring that certain urban areas could be earmarked for occupation by low-income families while environmentally important areas were preserved.

Two types of AEIS were created by the Master Plan: AEIS-1 comprising vacant areas earmarked for building new housing nuclei and representing 2.8 per cent of the municipality’s territory (870,000 m²); and AEIS-2 referring to areas already occupied by favelas, covering 3.5 per cent of the territory (1.07km²) and containing around 25 per cent of Diadema’s inhabitants. Regulated by more flexible land use and occupation norms, the AEIS opened up the possibility for regularising the occupied areas and for maximising the use of both the land and the infrastructure installed in those areas. The AEIS-1 involved the demarcation of minimum lot sizes of 42m², minimum frontpage space of 3.5 m, maximum permitted square footage of habitable accommodation of three times the plot area and an occupancy rate of 80 per cent.

The areas defined as AEIS-1 constituted a stock of privately owned land for the priority installation of social housing for families with monthly incomes of up to 10 minimum salaries. Meanwhile, the AEIS-2 transformed land occupied by favelas into ‘social interest areas’ by adopting different urban planning standards with a view to facilitating urbanisation and upgrading and, above all, to ensure that families remained in situ while investments were channelled into improving their quality of life. Together, the two AEIS modalities encompassed a total area of 1.9km².



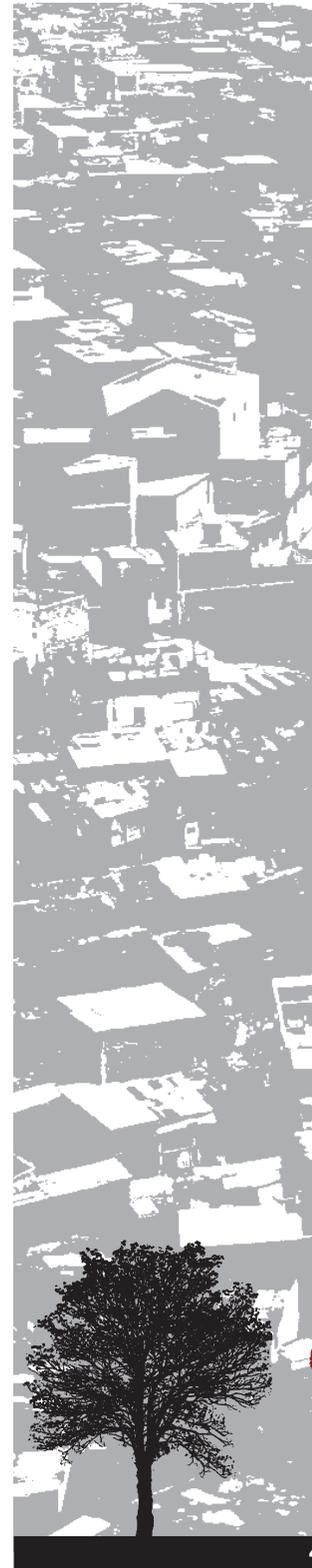
The goal of the Diadema local municipal authority was to put into practice other constitutionally approved urban policy management instruments in addition to the AEIS, such as compulsory utilisation and the Progressive Property Tax (IPTU). However, these good intentions were barred by court decisions resulting from lawsuits by property owners and investors who argued that the instruments could not have practical effect without prior regulation by means of specific legislation. Even the establishment of the AEIS, which permitted lots to be smaller than the 125m² demanded under Law 6766, was challenged in the courts. In some cases, landowners claimed compensation from the authorities, alleging that the change of use of their land amounted to “indirect expropriation”. The fact that the courts looked favourably upon these claims by private owners made the need for approval of the City Statute increasingly urgent.

Together with the Master Plan the Diadema municipal authority also approved a new Law for Land Use and Occupation and a Works and Buildings Code with far less restrictive building standards than previously and more in line with the proposals contained in the Master Plan.

By 1996, after three successive PT administrations, Diadema had undergone significant change. The road and street network was almost totally paved, the public lighting, water and garbage collection services were up and running and covered virtually the entire municipal area. Meanwhile, 90 per cent of families living in favelas had received some sort of assistance from the local authority, and around 40 per cent of the population residing in squatted public areas had received the Real Right of Use Concession allowing them to stay put for 90 years. Dozens of public amenities had been constructed, involving a network of 41 municipal schools, 10 cultural centres, 12 municipal libraries, 15 primary health units and 2 municipal hospitals. Diadema effectively ceased being a dormitory city, given that around 60 per cent of the workers residing in the city were employed within the municipal boundaries.

Of the total of 192 favelas and housing nuclei, over 90 per cent benefited from interventions and betterments initiated by the public authorities. In 1996, 51 per cent of these areas were urbanised and 38 per cent were undergoing urbanisation. These interventions were characterised by new infrastructure and tenure regularisation as well as assistance provided to people who wished to build their own houses. The previously highly informal settlements became more thoroughly integrated in the surrounding neighbourhoods, and access to urban services was provided to all.

At the end of 1996 the municipal elections ended the first cycle of three consecutive administrations in Diadema, all of which had pursued the same urban development policies. This also provided an opportunity to evaluate the urban development policy results achieved during the 14 years. The first observation was that political and administrative continuity, involving interventions over the medium and long-term, was important for setting down an institutional basis for fulfilling the social function of property and the city. The creation and implementation of the AEIS was a particularly noteworthy example of this.



Progress was also made in other areas, such as the establishment of the Real Right of Use Concession for 90 years (applied to around 5,000 families by 1996); favela upgrading that provided access to water, electricity, sanitation, paved roads, public transport and other public services; and assistance for community and self-build activities, making it possible to replace precarious housing with better quality brick and concrete dwellings. In addition, an official cadastre of properties was drawn up to include homes located in hitherto unregulated areas. In 1995, 48,000 properties were officially numbered for the first time, occupying lots alongside the 1,005 'official' municipal streets and 50 on 'internal' streets within the favelas and other housing settlements.

In Diadema these upgrading actions were undertaken in a wide-ranging (although not entirely conclusive) manner: the city as a whole was involved in the process in an effort to avoid the perpetuation of substandard pockets (bolsões) of bad housing and ensuring better living conditions and the opportunity for occupants to remain in situ. Many families in Diadema evicted from other places (mainly from the city of São Paulo) were able to enjoy the benefits of public infrastructure investments and services offered by the network of amenities in the areas of municipal health, education, social welfare, culture, sport, etc. It was abundantly clear that favela upgrading, rather than removal or relocation, was more suitable from a social point of view.



The AEIS experience

During their first three years of operation, from 1994 to late 1996, the AEIS proved to be an effective and appropriate instrument in that they facilitated access to land for the poorer population.

Following its revision in 1996, the Master Plan earmarked a total area of 745,000 m² covering 36 large landed properties, as AIES-1 for building new social housing units (HIS). Of this total area, 415,000 m² had been acquired by the municipal authority and housing movements by the end of 1996. A further 55,000 m² (8 per cent) were being negotiated between housing associations and landowners and 275,000m² (37 per cent) were not yet at the negotiation stage. The areas acquired by the local authorities were earmarked as a top priority for families needing to be transferred from risk areas (land subject to flooding or landslides) or where removal was necessary for the authorities to carry out upgrading work on the favelas in AEIS-2.

The purchase of AEIS-1 by the municipality and housing movements was preceded by a large number of meetings and much negotiation aimed at (i) reducing the normal market price of the land prior to the issuance of the Master Plan by at least 35 per cent, (ii) obtaining longer repayment periods and (iii) coming to friendly agreements with the landowners, which would permit rapid utilisation of the land and the launch of financing processes to allow the authorities to proceed speedily with building new social housing.



When the AEIS were created Diadema suffered from a land shortage. While the areas earmarked for AEIS had previously been mainly for industrial or mixed use, the advent of the AEIS led to a rapid increase in the supply of land, leading to lower prices. At the same time, industrial land and land for middle-class housing became scarcer and more expensive. The behaviour of the market was also influenced by other factors, such as the general economic situation in Brazil during the first years of the stabilisation plan (the Plano Real) and the fact that Diadema continued to attract a significant number of new businesses and industries, all of which tended to increase competition for land for commercial purposes.

Between 1997 and 2000, the Diadema municipal government—controlled by a different political party than the one which had governed the city since 1983—reduced public investments in urban development. The Housing Secretariat was incorporated into the Public Works Secretariat, and the participatory organisations ceased to function. A new review of the Master Plan in 1998 was carried out exclusively by local government technical staff, thereby breaking with the participatory planning model that had been adopted up to 1996. During this period illegal settlements gradually returned to the scenario. Despite these problems, the local authority did undertake some investment in favela urbanisation and succeeded in retaining a partnership arrangement with housing associations in two AEIS-1 areas where housing units were being built.



In the late 1990s Brazil experienced a prolonged economic crisis. This had repercussions on Diadema where industrial activity contracted, with negative effects on the industrial property sector and the formal housing market. With the growth in the number of housing associations and the increasing number of potential buyers, land and house prices gradually rose in the AEIS from around 1997. Perhaps surprisingly, the AEIS areas began to excite a great deal of interest among real estate operators anxious to benefit from rising prices. Since the housing associations effectively underpinned the market in the AEIS areas and possessed the necessary expertise for purchasing and exploiting land for building purposes, property developers and agents, in league with the associations, found opportunities to profit from the new situation. An absurd situation emerged where the AEIS areas at one point became more valuable than non-AEIS land elsewhere in the city.

Many of the developments undertaken by the pro-housing associations in the AEIS, however, failed to comply fully with the urban planning requirements set forth in the municipal laws. For example, many of the projects failed to take account of good ventilation and lighting standards. They also failed to respect the existence of green areas, and some existing residents sought to encourage ('informally') their occupation by poorer families who were unable to defray self-build costs or legally occupy the developments being built in the AEIS. Since the municipal government had ceased to monitor the activities of the associations, the law on beneficiary registration was often disregarded, with the result that the accommodation constructed in the AEIS-1 began to be taken over by people from outside Diadema in higher income brackets than those for whom the social housing was built.

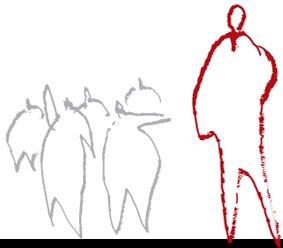
The City Statute (2001)

In 2001 the re-emergence of the process of urban reform in Diadema was marked at federal level by (i) the final approval in July 2001 of the City Statute and, at the local level, (ii) the re-formation of technical staff by the new municipal administration. The City Statute was a major advance that effectively regulated the instruments proposed in the 1988 Constitution and therefore legitimated the performance of local governments in this respect. Meanwhile, the Diadema administration was able to invest in recovering its urban development policy and took pains to encourage participation, once again, by society in the formulation and execution of relevant development plans.

The introduction of the City Statute symbolically consolidated urban development management and housing policy as public policies designed to ensure the right to the city and housing as universal rights. The City Statute served to underpin urban policy by enabling full development of the social functions of the city and of urban property and by ensuring the right to sustainable cities. By consolidating the means of collectively exercising this right, the Statute represented a significant advance in terms of urban planning legislation, as opposed to the traditional patrimonialist approach. In this way it proved to be an excellent device for overcoming the resistance of traditional forces (exploiting the lack of regulation and the backward-looking attitudes of the judiciary) to the application of the measures foreshadowed in the 1988 Constitution.

An overarching set of guidelines and urban planning instruments was established in the City Statute which, while calling for liaison between the three levels of government, awarded priority of action to the local municipal governments that were called upon to prepare and implement Master Plans based on popular participation and consultation. The long debate to which the City Statute was submitted resulted in the introduction of instruments which benefited from coherent regulation, conceptual clarity and transparent procedures—all of which would form a firm basis for application of the municipal Master Plans and the different regulations emerging from them. The City Statute placed a set of planning tools at the disposal of local governments which could choose to use them or not, depending on local situations, for elaborating their urban development policies in consultation with local people. The fundamental premise of the City Statute was to put an end to urban vacant areas traditionally a target for capitalist property speculators whereby private interests could capture value from infrastructural and other improvements brought about by public investments.

The City Statute reinforced the role of the municipality as regulator of the right to urban land ownership, minimising conflicts and legal problems arising from the use of urban planning instruments by local governments. This regulatory advance presupposes mediation between the different city stakeholders and political practitioners to ensure the pre-eminence of collective interests. At the same time, it breaks with the patrimonialist culture which in Brazil traditionally had taken advantage of government authorities and the legal system in order to preserve the privileges and interests of wealthy minority groups, thereby producing social and economic inequality. It is for this reason that participatory management is the key to fulfilling the objectives of the City Statute.



The instruments designed to guarantee access to land and housing are a fundamental part of the City Statute, and their effect in broader terms should facilitate genuine collective appropriation of urban land. It is not sufficient simply to demarcate settlements and build housing as a way of complying with the social function of the city. Rather, a sustainable city, in addition to creating the conditions for better access by all of its population, needs to possess commercial and services establishments, industries, public amenities, sports and leisure areas, etc.

In 2002, at the beginning of President Lula's first term of office, urban policy was once again thrust into the limelight and consolidated as a public policy throughout the entire country. For example, the new government created the Ministry of Cities, bringing together policies relevant to urban development, housing, public transport and sanitation. It also subsequently established the National Cities Conference and the Cities Council aimed at formulating Brazil's National Urban Development Policy.



The 2002 Master Plan

While the City Statute was approved in Brasília, the Diadema municipal government elected in early 2001 reinitiated its urban development policy and commenced a wide-ranging review process of the existing Master Plan. The Municipal Housing Secretariat was reorganised and began to postulate four main action lines: the provision of housing units; urbanisation and upgrading of favelas and other housing settlements; upgrading consolidated precarious areas; and land and property tenure regularisation. Also in 2001 the FUMAPIS council was reconstituted and required to meet on a monthly basis. At the same time, liaison between the municipal government and the housing movements and other sectors interested in municipal urban policy was re-established.

The review of the Master Plan in accordance with the City Statute guidelines was undertaken in two stages. The first, with the participation of technical staff from different sectors of the municipal authority, assessed the results of the 1994 Master Plan and drew up a list of the city's new requirements. The second stage involved public meetings and consultations to discuss and elaborate a series of new proposals to be incorporated in the new Master Plan. More than 70 meetings were organised in different parts of the city attended by representatives of the pro-housing movements, environmentalists, trade unionists and members of the municipal councils, together with representatives of real estate firms, the Commercial and Industrial Association of Diadema (ACID) and the local section of the São Paulo State Industrial Confederation (CIESP).

However, in spite of the tradition of popular participation in Diadema, difficulties were encountered in focusing the debate on the strategic instruments needed for dealing with the entire city. On many occasions the public meetings became platforms for activists to air ad hoc and emergency requirements. It was clear that the lack of understanding and detailed knowledge of the City Statute tended to distort and undermine discussion at these public events.



In an attempt to overcome this problem, training seminars designed to create planning agents were organised and attended by over 100 representatives of popular movements, trade unions, councils and local government officials. The idea of these seminars was to upgrade and deepen discussion about the new urban management instruments regulated by the City Statute in order to ensure compliance with the concept of the city and property as having a social function. Finally approved in 2002, the new Diadema Master Plan, in addition to incorporating the new City Statute instruments and revising those that had existed since 1994, contained a novel proposal to ensure that the urban development policy of the local government should be subject to an ongoing management process based on a participatory, shared and democratic approach. Among the new instruments incorporated in the Master Plan were the Right of Pre-emption and the Onerous Grant on the Right to Build.

The legal framework for land use was reformulated with the definition of four macro zones: (1) zones eligible for densification; (2) zones not eligible for densification; (3) strategic environmental preservation areas; and (4) industrial zones. The AEIS were retained, with new areas added, as well as the Environmental Protection Areas, and a number of areas were earmarked for Consortiated Urban Operations. Furthermore, the Master Plan incorporated the paradigms of sustainability and right to the city. The environmental question, despite being extremely relevant in view of the shortage of vacant spaces and the high population density of Diadema, was also covered by the Master Plan, but the application of its instruments proved to be slow-paced given the fact that the pro-environmental activists tended to take second place to the housing movements. It can be argued, however, that the urban policy of Diadema certainly contributed to restricting occupation of the Headwaters Preservation Areas—unlike in neighbouring municipalities where this practice grew apace.

Results of the City Statute instruments

Of all the urban planning instruments in the City Statute, the AEIS have proved to be the most effective consolidated element in Diadema's urban policy arsenal. The concept of the AEIS has been widely disseminated and incorporated by social movements and by the property sector in general. Current discussion centres on how to increase house building in these areas as a result of the new financing policies instituted by the Federal Government and the opportunities for subsidising families earning under six minimum wages.

A report issued by the Diadema local government in 2004 indicated that the municipality possesses 30 areas denominated as AEIS for social housing purposes since the introduction of the 1994 Master Plan. In this ten-year period 40 Social Housing Developments (EHIS) were established in Diadema, consisting of 8,862 units over an area of 1.02km². These EHIS provide housing for an estimated 35,448 people.

In his Master's thesis entitled *Diadema, Planning and Reality: Changes Resulting from the Master Plans*, the architect Wagner Membrides Bossi lists the results of the application of the City Statute instruments in the Diadema municipality between 1994 and 2008. He concludes that while some instruments were intensively applied, others had been allowed to fall into disuse by the public authorities and were disregarded by the wider community. The following summarises Membrides Bossi's conclusions:

AEIS-2 (Special Areas of Social Interest). These are areas occupied by favelas and low income housing settlements where urban and tenure regularisation programmes were implemented, supported by legal delimitation. The interventions that already existed in these places before the 1994 Master Plan were upgraded and produced effective results. The territory occupied by AEIS-2 increased from 3.5 per cent of the total area of the municipality (1.07 km²) in 1994 to 5.6 per cent (1.71 km²) in 2008.

AEIS-3 (Special Areas of Social Interest). A number of different social housing developments were undertaken outside the ambit of the AEIS-1, contributing to efforts to resolve the housing problem, but these were adversely affected by irregularities. Given the need to regularise such developments, the 2008 Master Plan incorporated them into what were known as AEIS-3, covering 3.5 per cent of the municipal territory (1.08 km²).

Special Environmental Preservation Areas (AP) and Environmental Preservation Zones (ZPA). These, covering 19.6 per cent of Diadema's municipal territory (6.02 km²) have played an important role in preventing the deterioration of protected areas by introducing licensing and strict control over building in such areas. A single middle-class residential development was approved and executed in an environmental preservation area in accordance with the legal norms. However, one social housing development was embargoed and only subsequently regularised. In addition, 2.89 km² of territory has been earmarked for the preservation of vegetation of environmental interest.

Compulsory Parcelling, Building and Utilisation (PEUC). The first six notifications regarding compulsory utilisation of underused properties occurred in 2007, a full six years after introduction of the City Statute. Despite acknowledgement by the local government authority of the importance of this instrument, a series of legal, political and administrative bottlenecks prevented them from proceeding. Given that the property tax (IPTU) and expropriation compensated with public debt bonds were conditional on notification, execution of these instruments is still at an embryonic stage. The same occurred with the Property Consortium, which has not been put to use to date.

Onerous Grant on the Right to Build ('Waiver of Building Rights'). This was used in nine cases between 2005 and 2008, resulting in a net receipt of R\$1.1 million accruing to the local government. This amount can be considered as of little consequence when compared with the housing and environmental needs of the municipality (housing and the environment are supposed to be beneficiaries of the revenue obtained from this arrangement).

Consortiated Urban Operation. This device was used to enable the construction of a shopping centre in the downtown area of Diadema with specific urban planning indices and parameters. In turn, the developer undertook to execute improvements in the surrounding road system, provide land in exchange for certain public areas affected by the works, undertake improvements to a variety of municipal amenities, and create a public park in the proximities of the development.

Neighbourhood Impact Report. This was completed in only five cases between 1999 and 2008. However, the majority of reports were of low technical quality.



Properties of Historic, Landscape, Artistic and Cultural Interest. Only one intervention under this category was undertaken by the municipal government, involving the restoration of a threatened property of historic value. The municipality is still negotiating to acquire a further historic building situated in the central area of the city.

Fiscal Exemption for Properties Possessing Vegetation of Environmental Interest. Up to 2008 only nine properties received IPTU reductions under this ruling. With the new rules under the Master Plan it is expected that the number of exempt beneficiaries will increase significantly.

Transfer of Development and Pre-emption Rights. These two instruments attracted a degree of ad hoc interest but have not yet produced concrete results.

The 2008 Master Plan

The most recent revision of the Diadema Master Plan, introduced in 2008 following discussion with the community and housing movements, resulted in the earmarking of new areas as AEIS-1. Furthermore, the housing nuclei resulting from the Real Right of Use Concession were defined as 'pre-emption' areas, i.e. the right of certain parties to acquire property in preference to others. As a result, FUMAPIS was given priority to purchase housing units in these nuclei with a view to creating a stock of housing to meet demand.

The 2008 Master Plan again modified the provisions related to land use and occupation, with the suppression of the 2002 macro-zones and the institution of a new system covering zones, special areas and structural axes. The AEIS were extended with the incorporation of 194,000 m² in the AEIS-1, together with the creation of the AEIS-3 aimed at the planning and tenure regularisation of the EHIS occupying 180,000 m². The new Master Plan, in common with the previous ones, set out general guidelines concerning the environment, public transport and socio-economic development. The Environmental Protection Zones (ZPA) were also defined, establishing a new series of objectives for the municipality in partnership with the state bodies with the aim of complying with environmental and headwaters protection legislation.

In 2009, given the possibility of fresh financial resources, the local government proposed to incorporate 42 new areas into AEIS-1. However, 11 tracts of land were withdrawn before the final vote on the proposal by the Municipal Chamber as a result of claims by commercial and workers' trade unions and associations, which argued jointly that such areas belonged to industrial zones and if they were occupied by housing would affect the activities and jobs availability in nearby companies. The exclusion of these areas was accepted by the pro-housing movements as the result of an agreement with the local government which undertook to put such areas back onto the agenda later in 2009. In October, the Municipal Chamber approved the incorporation of 17 more areas in the AEIS-1 amounting to a land area of 210,000m². According to the agreement, the municipal government will earmark 30 per cent of the approved areas to house families on incomes of between zero and three minimum wages under the Minha Casa, Minha Vida programme.



Financing and access to land

The City Statute and Master Plans have improved access to urban land but have failed to resolve all the problems involved. A financing system is needed to fund house building as a practical response to the persistently high housing deficit.

The funding of urban and housing policy in Diadema depended for many years almost exclusively on municipal resources. Between 1983 and 1988 the municipal government funded all the urbanisation works in the area from its own resources. However, as from 1989 the State and Federal governments began to provide limited (and insufficient) money for house-building in the area. The local government had been responsible for infrastructure works in the favelas up to 2003, i.e. before the volume of Federal and State funds was increased.

As for the construction of social housing, Diadema had no access to external funding for many years. From 1983-2000, only 100 social housing units were constructed in the municipality with federal funds and 1,300 with funds allocated by São Paulo State. Over the same period the municipal government financed the construction of 1756 housing units with own resources.

Between 2001 and 2008 the situation was significantly reversed, with the Federal Government under President Luis Inácio Lula da Silva introducing a different concept with regard to the relationship between the federative entities (union, states and municipalities). In the housing area, this involved introducing a financing system, accompanied by a set of programmes aimed at satisfying demand for housing from the lowest income segments of the population (families receiving between zero and three minimum salaries per month). These programmes included the Housing Subsidy Programme, the Better Living Programme (Programa Morar Melhor), the Brazil Habitar-IBD programme, the Growth Acceleration Programme (PAC) and the Minha Casa, Minha Vida programme. Over the past eight years the Federal Government has provided financing for new homes or upgraded urban facilities for 3,363 families; the São Paulo State government contributed funds for building a further 1,460 homes; and the local municipal government was able to reduce its share to providing funds for a mere 270 housing units.

On the one hand the significant growth in the volume of federal resources resulted from initiatives undertaken by the Lula government. On the other this process can be regarded as a result of the introduction of the City Statute. By providing urban land management with a solid legal framework the Statute established a good basis for participation by the housing associations while advancing public housing developments.

From 2001 to 2008 the Federal Government invested R\$56.9 million in housing in Diadema in projects that received R\$27.4 million counterpart funds provided by the municipality. A further R\$27 million was provided by the Residential Renting Programme (PA) run by the Federal Mortgage Bank (CAIXA) and R\$5.9 million in planning, urbanisation and tenure regularisation projects, giving an overall total of R\$89.8 million in federal resources. Over the same period the State Government of São Paulo invested over R\$39.9 million.

The norms established by the City Statute went hand-in-hand with housing financing. Since the issuing of the Diadema Master Plan, a Local Social Housing Plan containing programmes, targets and a modus operandi for dealing with housing problems is being drawn up. This plan will serve as a basis for the local government to design projects and capture funds from, for example, the National Social Housing Fund and the Minha Casa, Minha Vida programme.



Prospects for the urban situation in Diadema

In Diadema the application of the principles and guidelines for urban reform contained in the City Statute have made it possible to avoid the eviction of poorer people from the areas where they were living, in contrast to other municipalities where urbanisation and public investment in the poorer neighbourhoods have led to land price appreciation and the eviction of the original occupants. In Diadema it was necessary to proceed with basic changes throughout the city, particularly with regard to favela upgrading. Henceforth the favelas became known as 'housing nuclei'. At the same time efforts were made by the municipal authorities to put into effect social policies throughout the city aimed at providing access to the entire population to good quality services consistent with demand, with priority being given to health, education, security and social assistance.

In 1983 around 30 per cent of the population in Diadema lived in favelas. This figure was reduced to 3 per cent by 2009. According to municipal data, of a total of 225 housing nuclei in 2008, 155 were totally urbanised, 49 were partially urbanised, 4 were un-urbanised and 17 were awaiting total removal on account of being in risk or environmental protection areas. By 2009 all the housing nuclei in the city had received some form of intervention from the authorities although in certain cases, especially in those places subject to removal, such initiatives were taken on a provisional or emergency basis.



Since the introduction of the City Statute, participatory management in Diadema has involved the organisation of two Municipal Housing and Urban Development meetings (2001 and 2005) aimed at defining the long-term prospects for urban and housing policy in the city. Both meetings attracted around 400 representatives from the housing nuclei as well as leaders of social movements. Since 2003 Diadema has also hosted four local preliminary meetings of the Cities Conference, which was instituted by the Ministry of Cities as an instrument primarily designed to ensure better contact among the Federal Government, states and municipalities and to ensure participation by society in monitoring the National Urban Development Policy. Furthermore, regular elections have been held for the FUMAPIS council and a series of activities undertaken to support the organisation of housing associations, as well as the annual meetings of the Participatory Budget Plenaries charged with scrutinising future investment and expenditure plans.

According to estimates published in the Diadema Local Social Housing Plan, the housing deficit of the city estimated for 2008 was 9,499 new housing units. This study also identified a significant group of 22.45 per cent of urban households considered to be inadequate, with 60.47 per cent of them seriously overcrowded (affecting an estimated 17,623 households in 2008); 13.31 per cent with tenure problems (14,238 households in 2008); and 5.93 per cent lacking infrastructure or without toilet facilities (6,345 households). The local authority calculates that around 3,300 families currently live in risk areas or in environmental preservation zones and are considered to require priority treatment.

It is obvious from the above that many challenges remain to be overcome. The city nevertheless has good infrastructure, a dynamic economy and an excellent capacity for mobilising its population. The most pressing problem is the shortage of land and the city's very high population density. However, the decision by the local authorities to concentrate on the neediest areas throughout the whole municipal territory has led to a general improvement in urban facilities. For example, the replacement of wooden houses with no water or sewage disposal (or even a proper address) by homes built of brick and concrete with access to all the basic services represents a significant 'quality of life' leap for the population involved.

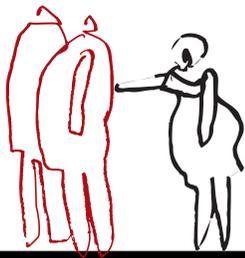


These changes have however generated new problems. Even with the advent of social policies and improved income distribution in recent years, the majority of the population suffers the extreme social inequality typical of other parts of Brazil. In Diadema this is particularly noticeable since ordinary incomes tend to be considerably lower than the average for the surrounding region. The rising price of land in the city has led to a gradual occupation of vacant lots as well as the verticalisation of housing units. According to Marta Cirera Sari Coelho (2008), "the main problem in Diadema is family cohabitation resulting in the proliferation of a large number of small lots on which houses of three or more floors are built by occupants who endure insalubrious conditions, including poor ventilation". This type of unsustainably dense housing is generally surrounded by low-grade urban space with few leisure areas.

In order to correct these distortions and address the existing housing deficit, the municipal government needs to possess a stock of land to substantially increase investment in housing and to use urban development management mechanisms more intensively. Despite the progress achieved in Diadema, abusive activities in the property market have barely altered. The prevailing shortage of land has led to artificial overpricing: the market price of land is between R\$400 and R\$600 per m² and occasionally over R\$800 per m²—unviable prices for the public authorities to purchase land in the quantities required to satisfy demand. The patrimonialist and rent-seeking culture has led to overvaluation of properties which often remain unoccupied for several years, depreciating surrounding properties and ruling out new developments. The need to use instruments such as compulsory parcelling, building and utilisation is clear. Before the City Statute was enacted, the absence of such instruments produced vast financial liabilities for the local authorities, which had to pay judicial debts related to properties that had undergone change of use, had restrictions on use or occupied areas that the municipal government had intervened in to avoid repossession, or even areas needed for constructing roads and streets. In many cases owners also profited from value capture of vacant lots.

Confronting the current urban situation in Diadema calls for the urgent and effective application of the instruments provided by the City Statute. The introduction of the AEIS process has been positive, but delays in applying the remaining instruments need to be tackled seriously. These result from the need to allow the instruments to ‘mature’ and from bureaucratic and legal impediments. However in a city such as Diadema—extremely well-located in a major metropolitan region and with substantial and continuing demand for urbanised land—it is vital now to notify the owners of all empty and underutilised properties in the city prior to enacting compulsory utilisation or to ensure that the relevant property taxes are collected by the authorities as a means of gathering resources for financing further housing developments and, once and for all, for confirming the social function of property. Another instrument that needs to be more intensively used is the Onerous Grant on the Right to Build. In this case, however, it is necessary to confirm planning indices for building and occupancy jointly with neighbouring cities in order to avoid disputes over location which could undermine the market and favour the private property sector. This is one of the aspects of urban development policy that, in any metropolitan region with its crowded cities, needs to be considered on a wider basis (i.e. beyond the municipal boundaries). Many of these problems can only be resolved by liaising regularly with neighbouring cities and by joint action undertaken by municipal governments to establish common guidelines that are regional or metropolitan in scope.

As with many other Brazilian cities, Diadema has made great strides in introducing a degree of fairness in its territory. However, much still needs to be done to balance the housing deficit, to improve the delivery of good quality public services with equity, to improve economic and environmental sustainability and, above all, to upgrade the quality of life of the city’s population. There is no doubt that while the City Statute is proving to be an important tool in this respect, it also needs to be fully deployed by different local stakeholders. Only at that stage will it become a truly meaningful law.





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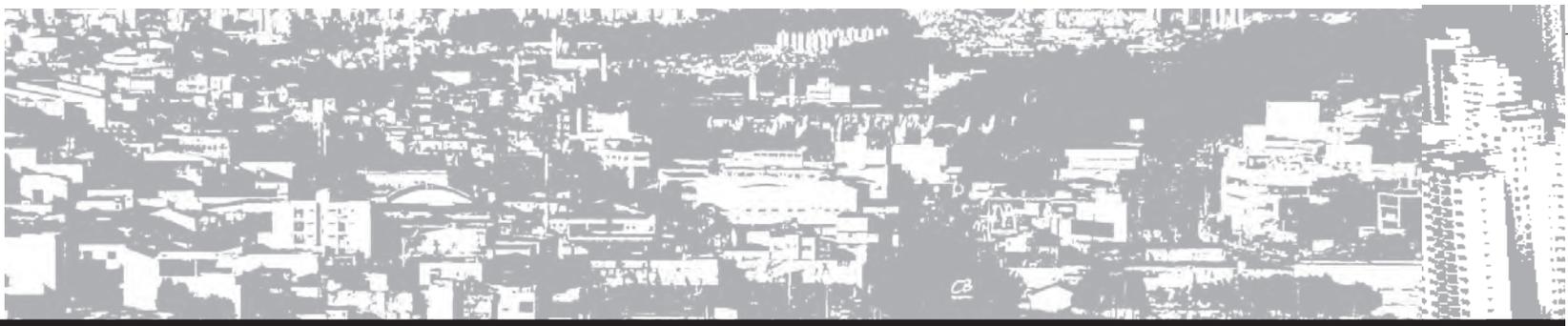
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