

# City Statute: Building a Law

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## Introduction

The first Brazilian constitution to address the urban question was that of 1988, promulgated when Brazil's cities already housed over 80 per cent of the population. The massive demographic movement from the rural areas of Brazil basically began at the time of the 1929 global economic crisis, which brought the São Paulo coffee boom to an end and encouraged large numbers of unemployed people to head for the cities (Chaffun, 1996, p. 18-19). This process of urbanisation and high overall demographic growth became particularly acute from the mid-1950s to the 1970s during the so-called developmentalist period. Brazil's expanding population was increasingly concentrated in rapidly growing cities that eventually became the huge metropolises of today.

The country's municipal administrations were totally unprepared for the task of dealing with the spin-off effects of rapid urbanisation. Under increasing pressure, municipalities lacked adequate financial resources, administrative structures and specific legal instruments. Meanwhile, influenced by the dominant sectors in the urban economy, local governments channelled their scarce funds to the private sector, adopting city planning norms and standards shaped by the capitalist property and real estate sectors. As at national level, wealth in the urban areas tended to be heavily concentrated on the few. Cities became increasingly divided: for a minority the benefits of consumer affluence and technological progress were everywhere in evidence, while a large part of the population remained deprived of citizenship and subjected to increasing crime and other problems associated with city life.

Regulatory planning rooted in the belief that the formulation of urban policies was the exclusive responsibility of technical staff employed by the various public administrations made things worse. Technocratic management underpinned a process which led on the one hand to private value capture of public investments, and on the other to the segregation of huge masses of people forced to live in ramshackle downtown tenements or in favelas and precarious settlements on the fringes of our cities. These people were excluded not only from the consumer market but also, in the case of favela dwellers, from the benefits of essential urban services.



This situation resulted in the emergence of popular pressure groups which began to demand action from the public authorities. These organisations, known at the time as urban social movements and allied to bodies representing professional categories such as architects, engineers, geographers and social workers, were particularly active in the 1970s. In the 1980s, they eventually came together to form the National Urban Reform Movement (MNRU) tasked with struggling for democratically-based access to decent living conditions in the cities. The MNRU concentrated its activities on two key complementary fronts, both concerned with improving city-based quality of life: (i) the physical and political context; and (ii) legislation involving a quest for special juridical norms.

As a result of continuing and widespread debate, the whole idea of urban reform gradually acquired a conceptual framework and increased political consistency within the context of the National Constituent Assembly. Elected in 1986, the Assembly became an invaluable focus for public debate as well as an opportunity for popular initiative proposals to be submitted. Through the Assembly and the so-called popular amendments, the subject of urban policy, and particularly its social aspects, became a recognised political component of the constituent process in the months leading up to the adoption of the new Constitution.

As a direct result of the Constitution promulgated in 1988, the City Statute—approved 13 years later—now stands as a concrete expression of the constitutional norms, especially with regard to the principles of social function of the city and urban property. The aim of the present text is to give an account of the way in which the City Statute was formulated over the years.



## Historical aspects

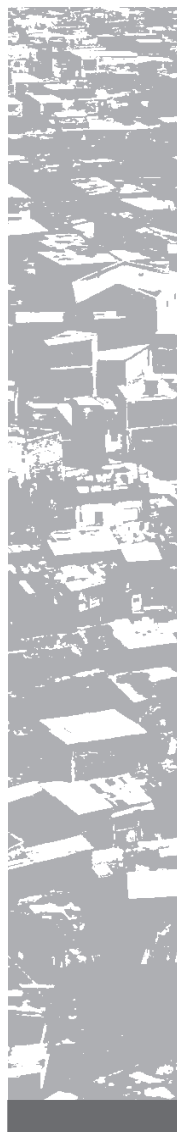
The institutionalisation of the urban question at federal level<sup>1</sup> can be traced back as far as 1953, to the occasion of the 3<sup>rd</sup> Brazilian Architects Congress held in Belo Horizonte. The final declaration of this congress proposed the creation of a law to establish a ministry specialising in urban development and housing at the central government level (Serran, 1976, p. 28-29). The following year the 4<sup>th</sup> Congress, held in São Paulo from 17-24 January 1954, revisited this proposal. In 1959, the Rio de Janeiro division of the Brazilian Architects Institute (IAB) published a proposal for a federal bill entitled the Own House Law (Lei da Casa Própria). This suggestion, submitted to the 1960 presidential candidates Adhemar de Barros, Henrique Lott and Jânio Quadros, contained four key ingredients: (i) the “establishment of commercial firms specialised in financing individual house purchase”; (ii) amounts loaned for housing purposes to be linked to rising wage levels; (iii) rules to allow repossession of properties (with compensation) in the event of non-payment by the mortgagee; and (iv) the establishment of a National Housing Council. This last suggestion was implemented in 1962 under the João Goulart government (Goulart assumed power after Jânio Quadros resigned).

1. Brazil is a Federative Republic comprising the “indissoluble union” of the states, municipalities and the Federal District (CF, art. 1<sup>o</sup>, caput).

In 1963 the Urban Reform and Housing Seminar held at the Hotel Quitandinha in Petrópolis (state of Rio de Janeiro)—known as the “Quitandinha Seminar”, in which politicians such as Deputy Rubens Paiva (subsequently murdered during the military regime) and technicians and intellectuals participated (Souza, 2002, p.156-157)—produced a document outlining the history of popular struggle for housing over the past few years and calling for greater social justice in cities. This document contained a recommendation that the Brazilian National Congress should be presented with a federal bill addressing urban and housing policy. It also set out the principles and fundamental precepts of urban and housing policy that many decades later would be incorporated into the juridical order.



The following are examples of the pioneering nature of this document:



1. “Latin America’s housing problem (...) is the result of conditions of underdevelopment brought about by a number of different factors, including exploitative processes (...)”;
2. “The housing situation in Brazil [is characterised] by the increasingly disproportionate gap in the urban centres between wages or family incomes and the cost of rents or purchase of permanent homes [given that] the substantial number of dwellings that have been built have been almost exclusively for the benefit of economically better-off classes”;
3. “In the largest urban centres of the country the population living in substandard accommodation (...) is large and growing, both in absolute as well as relative terms”;
4. “The housing deficit (...) is aggravated by the demonstrative failure by the private sector to provide the resources and the investments necessary for increasing the supply of social housing (...)”;
5. “The absence of a systematic housing policy (...) continues to have deleterious effects on the overall development of the country, grossly undermining the socio-economic gains produced by our development process”;
6. “The basic rights of man and the family include the right to housing” and increasing the stock of housing requires “limits to be placed on the right of property and land use”. Furthermore, what is needed is “urban reform in the form of a set of measures to be introduced by the state to ensure fair utilisation of urban land, territorial organisation, amenities in urban agglomerations and the provision of decent housing for all families”;
7. “It is of great importance when formulating a housing policy to ensure that people understand the problem and participate in community-based development programmes”;
8. “The adoption of measures to restrict anti-social property speculation is indispensable for disciplining private investment”;
9. “To proceed effectively with an effective urban reform process, paragraph 16 of Article 141 of the Federal Constitution needs to be modified in order to permit expropriation without compensation in money” (Serran, op cit., p 55-58).

It is clear that this historic text contained the basic principles which at a later date would be progressed by the National Urban Reform Movement (MNRU) in the National Constituent Assembly, with greater emphasis on social aspects. In early 1963, reacting to these proposals <sup>2</sup> and the increasingly robust popular campaign for enactment of the so-called 'base reforms', the João Goulart government in its annual message to the National Congress drew attention to the housing question in the following terms:



**“We are not unaware of the fact that developing the country and increasing the national wealth, will [not automatically] improve the standard of living of the population at large and provide it with appropriate housing conditions. We also do not ignore the fact that the lack of regulatory legislation has caused the construction industry to be transformed into the favourite captive of speculators, thereby impeding access to own homes by the poorer sectors of our population”.**

Aborted by the military coup of 31 March 1964, the bill was not in the event submitted to the National Congress.

Although the urban question was acquiring status within the political and environment—the Quitandinha Seminar had genuinely influenced political decisions— “the repercussions of Quitandinha bore no comparison to the attention given to the social mobilisation in rural parts of Brazil organised by peasant leagues clamouring for agrarian reform” (Souza, 2002, p.157).

It was perhaps for this reason, after the first urban legislation initiatives had been frustrated under the Goulart democratic government, that the military administration went ahead and approved a new law (the Land Statute) addressing the rural-agrarian question. As for the urban problem, ongoing debate was restricted to housing policy as the result of which the National Housing Bank (BNH) was established in 1964.<sup>3</sup> Discussion of legislation of broad applicability to urban areas would only return to the political agenda at the end of the 1970s.

While urban problems deteriorated, criticism of the National Housing Bank responsible for providing housing finance became more strident, despite the BNH expanding its remit in the early 1970s to include sanitation programmes. Meanwhile, the federal government established the first metropolitan region in an attempt to deal with the problems beyond the confines of municipal jurisdiction by setting up the National Commission on Urban Policy and Metropolitan Regions (CNPU).

2. According to Jorge Wilhelm (1965, p. 161).

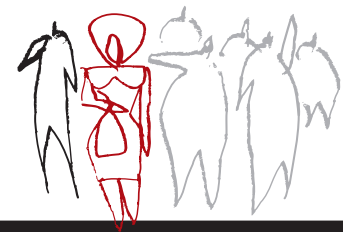
3. Established in 1964 by the military government that had recently assumed power, the aim of the BNH was to finance housing programmes. With regard to popular housing, it supported “removal” of favelas and the relocation of residents to “housing complexes”. However, the majority of resources expended were directed towards satisfying middle class housing demand. The system created in 1964 included, in addition to the BNH, the Federal Housing and Urbanism Service (SERFHAU), charged with guiding the elaboration of municipal master plans. The (SERFHAU) was extinguished in 1974, followed by the BNH in 1986.

However, no legislative proposal had yet been presented to support adoption of policies to promote access by poor people to urban amenities and services. During the military regime, the first attempt in this respect was made under the aegis of the CNPU, which later became the National Urban Development Council (CNDU). In 1976 a draft bill focused on urban development was drawn up, based on the precept that “local administrations do not possess a range of urban planning instruments for counteracting property speculation and promoting distribution of urban public services” (Grazia, 2003, p. 57).

News of this draft bill leaked to the media which produced alarmist headlines in a number of newspapers and weekly magazines, one of which alerted readers to the fact that the military government “intended to socialise urban land” (Ribeiro and Cardoso, 2003, p. 12). At this point the government withdrew the bill.

Social demands nevertheless continued to become more vocal. The 1981 election campaign, involving the first direct elections since the military coup in 1964, led to the urban question being put back on the national political agenda. Subsequently, in 1982, the 20<sup>th</sup> General Assembly of the Brazilian Bishops’ National Conference (CNBB) approved a document entitled “Urban Land and Pastoral Action” criticising the formation of stocks of urban land for speculative purposes and other public policies designed to get rid of favelas. This text proposed, *inter alia*, tenure regularisation of informal settlements, outlawing holdings of unoccupied urban land and making it a condition that urban property should be regarded as a social function (CNBB, 1982).

The following year (1983) the government of General João Figueiredo, which had as its Interior Minister (responsible for the urban question) Colonel Mário Andreazza, declared that a risk existed that “the urban problem could encourage popular sectors of our population to rally round leaders opposed to the authoritarian regime” (Ribeiro and Cardoso, *op. cit.*, p. 13), and finally submitted to the National Congress the project that had been drawn up in the CNDU. This turned out to be a softer version of the original bill given that it excluded a number of provisions such as “awarding possession of land to urban dwellers who occupy land illegally” (Grazia, 2002, p. 21) but the proposition in fact preserved the essence <sup>4</sup> of the 1976 draft bill.



4. According to Adauto Cardoso (*apud* Grazia, 2002, p. 20), a previous version of the bill had been published “without government permission” in the newspaper *O Estado de S. Paulo*, of 27/1/1982, which carried reports of reactions to the possibility of tenure regularisation. It is interesting to note that this same controversy would be revived in the National Constituent Assembly and also, almost 20 years later, on the occasion of ratification of the City Statute.

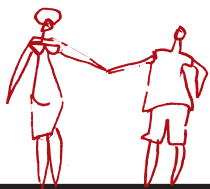


The CNDU-inspired bill, known as Urban Development Law (LDU) 775/83 aimed “to improve quality of life in cities” by means of guidelines and instruments covering topics such as:

1. Recovering investments made by public authorities from properties which had resulted in property price appreciation (‘value capture’);
2. The possibility of the public authorities expropriating urban properties to undertake urban renewal works or to combat retention of vacant land;
3. The right of pre-emption;
4. Taxing property income resulting from factors associated with the localisation of properties;
5. Surface rights;
6. Controlling land use and occupation;
7. Making urbanisation compatible with available facilities and equipment;
8. Introducing progressive property taxes and compulsory building as a condition of property rights;
9. Tenure regularisation of areas occupied by low income populations;
10. Legal recognition of representative residents’ associations;
11. Encouraging individual and community-based participation;
12. The right of communities to participate in the elaboration of plans, programmes and projects concerned with urban development; and
13. Awarding the Ministério Público the legitimate right to undertake actions in defence of urban ordering.

Many of the provisions of the LDU in 1983 were based upon the Urban Reform Popular Amendment <sup>5</sup> which would be presented later to the 1986-1988 National Constituent Assembly. It is important to recall that the constitution drawn up under the military regime in 1967/69 was still in force. This constitution, obviously mirroring the authoritarian profile of the military regime, had failed to acknowledge the predominantly urban nature of modern Brazil, and the only constitutional basis for the LDU legislative proposal was the fragile and still imprecise principle of the social function of property.

Presentation of the bill represented a daring move. The reaction of conservative sectors of Brazilian society was immediate. The most backward-looking sectors of the urban business elite called the project “communist”—the usual epithet employed at the time to describe any initiatives of a democratic nature. The São Paulo-based magazine *Visão*, mouthpiece of the conservative business sectors supporting the government, made front-page news of the question, accusing the bill of ushering in the end of the right to own property in Brazil. Bill 775/83 was never put to the vote in the National Congress.



5. In a comparative examination of the Bill of Law 775/83 (LDU) and the Urban Reform Popular Amendment, Adauto Lúcio Cardoso (2003, p. 31) denotes the difference between emphasis on the LDU in urban planning and the amendment on popular participation, affirming that “the popular amendment is concerned with a whole range of discussions and reflects a pattern of thinking and questioning about urban subjects that was introduced by the LDU”.

## The Constituent Process and the Urban Reform Popular Amendment

The return to democracy in 1985 led to the convocation of a National Constituent Assembly, installed in 1986. Its modus operandi was “daring and innovative without parallel in the constitutional history of Brazil and a rare occurrence even in comparative law” (Coelho and Oliveira, 1989, p. 20).

Throughout the entire process opportunities for popular participation arose from the beginning. The Sub-Commission on Urban and Transport Questions alone involved 12 public meetings (Araújo, 2009, p.377). However, the most important example of democratic participation in the constituent process was that involving the popular amendments.


Following approval of the first bill, which was given its systematic framework on 15 July 1987, amendments drawn up at the initiative of citizens were admitted, together with those formulated by the sitting members of the Constituent Assembly. These needed a minimum of 30,000 signatures and sponsorship by at least three representative associations. In total, 122 popular amendments were presented to the Assembly, containing over 12 million signatures. In the event, only 83 of these amendments met the regulatory requirements and were officially accepted. Among these was the Urban Reform Popular Amendment.

Under the formal responsibility of the National Engineers’ Federation, the National Architects’ Federation and the Brazilian Architects’ Institute, together with input from the National Urban Land Confederation, the Association of BNH Borrowers and the Favela Dwellers Defence Movement, “in addition to over 40 local and regional associations” (Maricato, 1988), Popular Amendment No.63 of 1987 was officially registered (carrying 131,000 signatures, with Nazaré Fonseca dos Santos as the first).

The Amendment consisted of 23 articles and aimed to include in the new Constitution the following:

1. The universal right to decent urban living conditions and the introduction of democratic management of cities;
2. The possibility of public authorities expropriating urban properties (with payments in public debt bonds) in order to produce social housing, with the exception of homes occupied by their owners, who would be eligible to receive prior full compensation (in cash);
3. Property value capture arising from investment of public funds;
4. Popular initiatives and vetoing of laws;
5. The possibility, in the absence of regulatory federal law, of directly applying a constitutional norm on the basis of a court decision;
6. Public authorities failing to comply with constitutional precepts to be subject to penal and civil action;
7. Pre-eminence given to urban rights on the basis of instruments such as: progressive property taxes, a property appreciation tax, preferential rights, expropriation, description of public land, designation of buildings of heritage importance, a special urban and environmental protection regime, Real Right of Use Concession and Compulsory Parcelling and Building;
8. Separation between ownership and building rights;
9. Special *usucapiao* for housing purposes, a form of adverse possession, applied to public and private land;



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10. The right to housing based on public policies ensuring: urbanisation and tenure regularisation, housing programmes to enable people to purchase or rent their own homes, maximum limits fixed for basic rents, technical assistance and provision of non-reimbursable funds from local budgets;
  11. State control of indices applied to rent adjustments and adjustments to be valid for a minimum period of 12 months without adjustments;
  12. A state monopoly introduced to provide public services and ban taxpayer- subsidised private sector outsourced services;
  13. The establishment of a public transport fund to subsidise fares amounting to over 6 per cent of minimum monthly wages;
  14. Popular participation in the elaboration and implementation of a “land use and occupation plan” and in procedures in the legislature prior to its approval.

Predictably the Urban Reform Popular Amendment excited a good deal of controversy. In an article published in the *Folha de São Paulo* on 20 August 1987, (the day after the amendment had been presented), Constituent Assembly member Deputy Luiz Roberto Ponte (PMDB-RS, who was also president of the Brazilian Construction Industry Chamber (CBIC), protested that land, the main focus of the urban reformists’ concern, was not a major problem since “it only constituted 5 per cent of the cost of constructing decent housing”.

The architect Ermínia Maricato, Professor of the University of São Paulo (USP) and at the time director of the São Paulo branch of the architects’ professional association—who had defended the amendment in the plenary of the National Constituent Assembly—refuted this criticism in the same newspaper, affirming that the relatively low cost of land compared with overall building costs only applied to “housing developments that were practically outside the cities” and “speculators holding back vacant land exacerbated this situation”.

The above statements are examples of the controversial atmosphere in which the urban reform proposal was received. The text that was finally submitted in the constitutional document was as follows:







“Article 182. Urban development policy, executed by the municipal public authority, according to general guidelines fixed in law, aims to order and fully develop the social functions of the city and guarantee the well-being of its inhabitants.

§1. The Master Plan approved by the Municipal Chamber, and an obligatory requirement for cities with over 20,000 inhabitants, is the basic instrument ruling development and urban growth policy.

§2. Urban property fulfils its social function when it meets the fundamental requirement of the city ordering expressed in the Master Plan.

§3. Expropriations of urban properties shall be subject to prior and fair compensation in cash.

§4. The Municipal Public Authority will be empowered, on the basis of a specific law for the area covered by the Master Plan, to demand under terms of federal law, that an owner of urban land that is not built upon, that is underutilised or not utilised, shall ensure that it is adequately used, failing which the following sanctions will be imposed:

I. Compulsory parcelling or building;

II. Progressive property and land tax to be imposed;

III. Expropriation against payment in public debt bonds previously approved by the Federal Senate, redeemable over a period of up to ten years in annual, equal and successive instalments, with the real value of compensation and legal interest rates secured.

Article 183. A person in possession of an urban plot of up to 250 square metres for five years uninterruptedly and unopposed, using it as housing for himself or his family, shall acquire dominion over it providing he does not own another urban or rural property.

§1. The title of dominion and use concession will be conferred upon male or female owners, or on both, regardless of civil status.

§2. This right will not be extended to the same property holder more than once.

§3. Public properties will not be acquired by *usucapiao*”.

At the end of the constituent process, the Urban Reform Popular Amendment was partially approved, representing a not entirely satisfactory outcome for either defendants or opponents of the amendment. On the one hand, the MNRU was disappointed that the social function of property, a fundamental guideline of the amendment, had been made subject to a federal law that would set out urban policy guidelines and, furthermore, made conditional on the issuance of municipal Master Plans. On the other hand, the São Paulo State Federation of Industries (FIESP) made it clear that it was opposed to urban *usucapiao* (Maricato, 1988).

Once the Federal Constitution had been promulgated, the majority of the legislative aspects concerned with urban reform became subject to federal law. That was how the City Statute came into being.



## The City Statute

### Initial project and first reactions

Regardless of its background and the nature of its contents, the draft law owed its origin not to a parliamentarian, architect, urbanist, lawyer, geographer, sociologist, economist, social worker or a member of one of the pro-housing popular movements. Neither was he a businessman with links to the private property sector. The author of the project was in fact Senator Pompeu de Sousa, journalist and professor, born in 1916, who did not live to witness approval of his bill (substantially modified) in 2001, since he died ten years earlier.

The bill was introduced on 28 June 1989, with the official title of “Senate Bill of Law (PLS) No.181 of 1989 (City Statute)”. After receiving a favourable opinion from the official rapporteur of the Senate, Senator Dirceu Carneiro (PSDB-SC), the bill was approved by the Senate exactly one year later and submitted to the Chamber of Deputies where it would be scrutinised and reformulated over a period of 11 years.

In the Chamber, the bill of law (now known as PL5788/90) was regarded as a kind of “locomotive” to which 17 “wagons” were attached over the years. These 17 appendages were basically proposals of greater or lesser importance put forward by federal deputies. The authors of these proposals, were deputies Raul Ferraz (1989), Uldorico Pinto (1989), José Luiz Maia (1989), Lurdinha Savignon (one proposal in 1989 and another, co-sponsored in 1990), Ricardo Izar (one in 1989 and one in 1991), Antônio Brito (1989), Paulo Ramos (1989), Mário Assad (1989), Eduardo Jorge (1990, co-sponsored), José Carlos Coutinho (1991), Magalhães Teixeira (1991), Benedita da Silva (1993), Nilmário Miranda (1996), Augusto Carvalho (1997), Carlos Nelson (1997) and Fernando Lopes (1997).

The main proponents were individual deputies such as Deputy Raul Ferraz (PMDB-BA), who “presented a substitute text to the PL 775/83 with its adaptation to the 1988 Constitution” (Motta, 1998, p. 211); Lurdinha Savignon (PT-ES) and Eduardo Jorge (PT-SP) who presented proposals with the assistance of the MNRU; and Deputy Nilmário Miranda (PT-MG). The proposal by the latter reflected the efforts being made to achieve a consensus in 1993 by a Working Group comprising representatives nominated by Deputy Luiz Roberto Ponte, a lobbyist for the business sector and Deputy Nilmário Miranda himself, who had strong connections to the urban reform movement.

When presenting the justification for his bill, Senator Pompeu de Sousa affirmed that his aim was to restrict “undue and artificial property appreciation which made it difficult for poorer people to access land for housing purposes and forced the local public authorities to intervene in areas where rising prices were often the result of public investments effectively paid for by all but benefiting only a few”.



Texts produced by the Brazilian Society for the Defence of Tradition, Family and Property (TFP)<sup>6</sup> reflected the views of property owning members of this group concerning the City Statute. According to them the Statute “offended the principles of natural order, consecrated by the social doctrine of the Church and rooted in Brazilian society: private property and free enterprise” (TFP, 2004, p.5). The measures described in the bill regarding the social function of property and the abuse of rights fell victim to a series of radical restrictions imposed by the various urban business sectors. “The business sector failed to accept or even initiate discussion about these definitions” (Araújo and Ribeiro, 2000, p. 7).

The business sector also opposed the proposal for collective *usucapiao*. According to Vicente Amadei, adviser to the Association of Companies Buying, Selling, Renting and Managing Residential and Commercial Properties in São Paulo (SECOVI/SP)<sup>7</sup>, who represented the views of the urban business sector during the debate in the legislature, complained strongly that this was “an incentive to land invasion” (DM, 1992, p. 34).

The City Statute was equally repudiated by representatives of the civil construction industry and real estate practitioners who participated in the 56th National Civil Construction Industry Meeting in Fortaleza in 1992. In the final report on the meeting, the Brazilian Construction Industry Chamber (CBIC) stated that “the project camouflages state authoritarianism, particularly by interfering in the acquisition of urban property, which is the object of buying and selling among private parties” (DM, 1992, p. 34).

It is clear that, although the various sectors active in the urban property market (landowners, construction firms and incorporators) regarded the subject from different angles (sometimes conflictive) they were nevertheless unanimous in their rejection of the City Statute.

Within the urban reform movement the Bill was of course welcomed. Since the promulgation of the 1988 Constitution, the movement had made great efforts to ensure that the federal law required under the urban policy chapter would be approved and given operational effect. For the MNRU, according to the legal expert Nelson Saule Jr., “since the early 1990s, the federal bill of law regarding urban development known as the ‘City Statute’ [was considered] to be the reference framework for introducing a law which regulates the chapter on urban policy contained in the Brazilian Constitution” (Saule Jr., 2003, p. 1).

Positions were clear and the scene was set for further dispute in Congress. On the one hand, the groups and movements that had battled to introduce urban reform ideas supported the Statute and were determined to fight for its approval by the Congress. On the other hand, the big business lobbies defending the political cause of private property, were obviously opposed to the parliamentary bill.



6. Social organisation of an ultraconservative frame of mind dedicated to unconditional defence of the right of property

7. A big business institution representing the property/real estate sector in Brazil's largest city.

### **The Legislative debate: from conflict to unanimity**

In 1991, when the City Statute was ready to be voted in the first Commission to which it had been submitted (the Constitution and Justice and Drafting Commission, or CCJR), the Chamber of Deputies modified its criteria for internal distribution of federal bills. Instead of examining the proposals in advance, the CCJR was henceforth to be charged with giving its opinion only after scrutiny by the so-called Merit Commissions. The bill was therefore submitted to the Road Network and Transport, Urban and Internal Development Commission known as the CDUI (the 'roads and transport' part of the title was later dropped). In 1990 the rapporteur of the bill in this commission, Deputy Nilmário Miranda (PT-MG), called for public meetings on the City Statute and "responded to a call by the executive power which requested a longer deadline than would normally the rule for presentation of its amendments" (Araújo and Ribeiro, 2000, p. 1 and 2). In parallel, two other commissions—the Economic, Industrial and Business Commission (CEIC) and the Consumer Protection, Environmental and Minorities Commission (CDCMAM)—called for public meetings on the bill. In response to internal Chamber rulings, consideration of the bill was eventually returned to the commission most interested in its content (the CDUI), responsible for ultimately deciding on its merit.

In 1993 the bill was submitted to the CEIC, to be accompanied by the rapporteur, Deputy Luís Roberto Ponte (PMDB-RS, whose performance in the Constituent Assembly, according to the assessment of the Institute of Socio-Economic Studies (INESC), was described in the following terms:



"In terms of coherence and reactionism this Parliamentary Representative is a one of the best examples (...). He is a leading light in the national business scenario and unlike many he has used his mandate to defend causes. He has set himself totally against all the trade union movement ideas and has succeeded in performing as a representative of the business class with brilliance and determination. He has undoubtedly done exceptional work in the Constituent Assembly and is one more name which the rightwing can trust" (Coelho and Oliveira, 1989, p. 379).

This bad augury was soon proven. The process began to be seriously delayed, and Deputy Ponte failed to report on progress to the CEIC. "Given the delays in presenting the legal opinion and the contrary position taken by the rapporteur with regard to part of the content of the City Statute" (Araújo and Ribeiro, 2000, p. 2), Deputy Nilmário Miranda proposed to Deputy Ponte the formation of a working group comprising representatives from bodies specialising in the subject, nominated by both deputies. This proposal was duly accepted.

The working group consisted of representatives of popular entities, professionals and business representatives from civil society, Federal Government technical staff and legal advisers. The objective was to seek to achieve an agreement which would result in a substitute bill with the prospect of it being approved by all currents of opinion. However, "in spite of all the work done by the group and the result reached by consensus, the rapporteur, Deputy Luís Roberto Ponte, failed to honour the agreed undertaking, which was to incorporate into his Rapporteur's Formal Opinion the substitute item<sup>8</sup> prior to following up with a vote on the City Statute" (Araújo and Ribeiro, op. cit., p. 2).

Outside the confines of the National Congress, Brazilian society was engaged in a similar confrontation. The MNRU began to exert pressure with a series of “public declarations (...) aimed at pressing for the Congressional representatives to restart scrutiny of the bill” (Grazia, 2003, p. 60). Meanwhile the business sector took the opposite view, in league with the TFP, hardening their approach especially from July 1992 onwards. “The TFP took to the streets to collect signatures on a document calling on Congress not to approve this project [in advance of a plebiscite]. (...). After this campaign, the City Statute ceased being a part of the agenda for discussion and voting” (TFP, 2004, p 11 and 12).

Deputies meanwhile continued with their task in the Commission. Those linked to the urban reform movement insisted that the City Statute should be voted forthwith and its content approved despite calls for alterations. The business lobby put forward a series of amendments to change the very nature of the bill. No fewer than 114 amendments were presented, the majority of them of an extremely conservative nature.

This spate of reactions took a quieter turn only in 1996 when Deputy Luís Roberto Ponte finally presented his report. The causes for delay can be summed up as follows: on the one hand, an attempt to achieve a coordinated, mutually satisfactory agreement by the Urban Policies Secretariat (SEPURB) of the Ministry of Planning probably strongly influenced Ponte’s approach. On the other, the bodies linked to the urban reform movement took the initiative to negotiate with deputies who were set against its approval, as well as with Deputy Ponte, because they reckoned that the bill “needed to exit the commission where contrary interests were focussed” (Grazia, 2003, p. 60). To do this the MNRU “had to retreat from some of its proposals (...) in the hope that some of the foregone aspects could be recouped in other commissions (...). It was a risky but successful shot in the dark”, according to Grazia de Grazia (op. cit., p. 61).

The rapporteur’s report adopted a more pragmatic, less conceptual, approach than the original bill by focussing on the provision of legal instruments for the municipal authorities to use in their future efforts in urbanisation, house construction, etc. It is noteworthy that in this respect the original instruments were maintained in the modified bill and others incorporated, such as the rules on Transfer of Rights to Build, Onerous Grants on the Right to Build (Outorga Onerosa do Direito de Construir) and Consortiated Urban Operations. All these were effectively instruments which had been consistently defended by the urban reform movement at different times and that in fact were already being applied in certain cities.

It was also the case that the business sector was able to profit from the application of the above-mentioned tools by some municipalities. The report submitted by the congressional rapporteur confirms this by stating that, “these instruments can be of benefit to urban property developers because they represent an innovative step towards prospective partnerships between the public authorities and private firms” (CD, s/d, p. 377).

While the approaches of the two sets of opinion were tactically at odds—with the MNRU seeking certain important points but intent on recovering its negotiating losses at a later stage, and the business sector gradually incorporating instruments “of benefit to property activities”, the bill was approved without further dispute, to the surprise of many.



When, on 29 October 1997, the vote on the bill was finally taken in the CEIC (the first in the Chamber of Deputies) “to the consternation of all those present, there was no objection whatsoever to the report as presented. All statements from the floor were in favour of the report, which was approved unanimously. After such long delays obstructing the bill, suggesting strong resistance to the tone of the forthcoming law, the vote was taken by consensus and with no reservations” (Araújo and Ribeiro, 2000, p. 3).

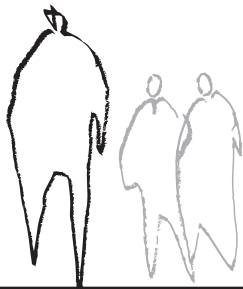
Approved in the CEIC, the bill then proceeded to the Commission for Consumer Protection, Environment and Minorities (CDCMAM) where it received contributions dealing with environmental policy, particularly the idea of Neighbourhood Impact Studies (EIV) resulting from an initiative proposed by Deputy Fábio Feldmann (PSDB-SP).

At the end of 1998 the bill was submitted to the main merit commission, the Urban and Interior Development Commission (CDUI) presided over by Deputy Inácio Arruda (PC do B-CE), closely associated with urban social movements.

The chairman of any congressional commission is responsible for nominating the rapporteurs. In the event, Deputy Inácio Arruda (PC do B-CE) took on the job of rapporteur of the City Statute and began to activate a wide-ranging programme of consultation, public meetings, debates and seminars which eventually led to the 1<sup>st</sup> Cities Conference strategically timed to begin on the day following the vote on the bill in the commission (1 December 1999).

During the debates in the run-up to the vote, a substantial number of suggestions were incorporated into the text in an attempt to align its contents with the Urban Reform Amendment. The National Urban Reform Forum proposed for example the inclusion of instruments to regularise property and land tenure such as the ZEIS and the Special Use Concession for Housing Purposes, a plan to deal with residents affected by Consortiated Operations, and a chapter on democratic management of cities and participatory budget processes. Also proposed was the idea of introducing fines on city mayors who failed to submit municipal Master Plans. The FNRU also suggested suppressing the article authorising the issuance of building potential certificates in the urban operation context, but this was not accepted.

SECOVI-SP (1999) contributed only a small number of suggestions, giving the impression that it was satisfied with the text as it stood. Predictably, SECOVI pressed for retaining measures conditioning the application of fines to combat cases where “infrastructure was not being used and where demand existed to make use of it” (not accepted), the entity unexpectedly supported the inclusion of the “participatory budget” process as an instrument of urban policy as well as demanding that the administration of urban operations should be “obligatorily shared with representatives of civil society”—both instruments of democratic management taken from the urban reform agenda. In these latter aspects the suggestions of the SECOVI-SP were taken on board.



The resulting text was approved. The City Statute was finally submitted to the Constitution, Justice and Drafting Commission (CCJR), charged with scrutinising the constitutionality of the bill. In this commission, although the MNRU had perceived that “consensus was not much in evidence” (Grazia, 2003, p. 61), only two alterations were made. The first was to withdraw the measures referring to urban agglomerations and metropolitan regions, which were considered unconstitutional since they involved state-level competencies. The second, in order to satisfy demands advanced by construction industry lobbies and congressmen associated with the evangelical churches led by Deputy Bispo Rodrigues (PL-RJ), resulted in the suppression of measures which determined in the case of Neighbourhood Impact Studies the need to organise “consultative meetings with the affected communities” and to insist on licences being withdrawn unless this requirement was observed.

From the point of view of the MNRU itself, the various concessions underpinning the content of the bill, leaving their application to be regulated by municipal legislation, were acceptable since “it was known that in accordance with the correlation of forces existing in each municipality the guidelines set forth in federal law will be, or will not be, absorbed” (Grazia, op. cit., p. 62).

The CCJR, however, took a whole year (2000) to examine the bill, occasioning an upsurge of public campaigns, MNRU notes and manifestoes, etc. A petition signed by jurists and lawyers defending the constitutionality of the bill was submitted to the commission. On 29 November 2000, the favourable report of Deputy Inaldo Leitão (PSDB-PB) was finally voted unanimously and the bill was returned to the Senate for the alterations made in the Chamber of Deputies to be ratified.

It would appear at this stage that consensus had been achieved. However the business lobby had a further complaint. In accordance with the 1988 Constitution, bills approved in the Chamber and Senate commissions (the case of the City Statute) did not require to be submitted to plenary unless an appeal was mounted against this procedure by at least 1/10th of the respective congressmen. Employing this procedure, a group of deputies under the leadership of Deputy Márcio Fortes (PSDB-RJ), and with the diligent support of Deputy Paulo Octávio (PFL-DF), both major figures in the real estate sector, put forward Appeal No. 113 of 12 December 2000 in an attempt to ensure that the bill was in fact submitted to plenary session in the Chamber of Deputies.

As a countermeasure, the bodies linked to the MNRU opposed the appeal. These included members of political parties that at the time opposed the government, as well as pro-government deputies such as Deputy Ronaldo César Coelho <sup>9</sup>, chairman of the CCJR, whose performance was described as “of key importance” by the urban reform movement (Grazia, 2003, p. 62).



9. Businessman and ex-banker.

On 20 February 2001, the appeal was overturned and the City Statute returned to the Federal Senate—almost 11 years after its first presentation.

Reported on favourably by Senator Mauro Miranda (PMDB-GO), the bill was approved unanimously. Conservative and progressive senators and deputies, workers' representatives and business lobbyists, right-wing and left-wing activists in the party political spectrum—all without exception finally chose to support and welcome a legislative proposal which had been initially widely regarded as “socialist and confiscatory” (TFP, 2004, p. 6) and “a disrespectful attack on the rights of the citizen and of property” (DM, 1992, p. 34).

### **Difficulties encountered in presidential ratification**

According to Grazia de Grazia (2003, p. 63), “the period between approval by the Senate and ratification by the President was very tense. It was known that a number of controversial questions remained that favoured excluded sectors of the population but ran contrary to the interests of the property sectors and the Federal Government”. While the MNRU appeared to be convinced that opposition from such quarters was still substantial, the evidence nevertheless suggests that the opposition of the property sector was not as explicit as it appeared at the time. Eduardo Graeff<sup>10</sup>, Special Adviser to the Presidency of the Republic, affirmed for example that “during the ratification process objections of a legal nature gave us much work in the presidential office. I believe that the team saw things from a conservative juridical viewpoint” (Graeff, 2003, p. 1). On the other hand, Graeff asserts that he has no recollection of pressure being exerted on him by the property sector opposed to ratification: “The person with access to the government and who could have strongly objected was Luís Roberto Ponte, that deputy from Rio Grande do Sul linked to the construction industry (...). However, I reckon that he had no reason to object since the bill was not a bad one for construction sector interests” (Graeff, op. cit., p. 1).

The business lobby never in fact requested an overall veto or even a substantive veto of the City Statute. A number of minor objections were presented, particularly concerned with the “special use concession for housing purposes”—an instrument designed to ensure a degree of tenure to the occupants of public areas who had been living there for at least five years, unopposed by the owner of the land. Since the 1988 Constitution (Articles 183, §3) adheres to the tradition of making it impossible for public buildings to be acquired by usucapiao (involving full ownership being transferred from the public to the private sector), “an almost insurmountable difficulty would be created for tenure regularisation of settlements in public areas, a circumstance which would place occupants in the position of having to resign themselves to the irregularity of the situation” (Alfonsin, 2002, p. 163).



10. Sociologist and colleague, friend and adviser to President Fernando Henrique Cardoso since the time when he was a senator. Eduardo Graeff is the son of the late Professor Edgar Graeff, architect and prominent intellectual linked to social and democratic causes in opposition to the military regime.



The President of the Republic at the time, Fernando Henrique Cardoso, vetoed this measure and ratified the Statute, affirming that “recognising the importance and the validity of the concept of special use concession for housing purposes, the Executive Power will submit without delay to the National Congress a normative text in order to ensure that the lacuna is filled”.

This promise was fulfilled by Provisional Measure No. 2.220 of 4 September 2001 which regulated the application of the instrument “dealt with by §1 of Article 103 of the Constitution” and established the National Urban Development Council, which later became the Cities Council during the government of President Luis Inácio Lula da Silva. The City Statute became law on 10 July 2001.

## Final comments

The history of the City Statute raises questions about why the powerful urban business sectors, which at the outset had reacted strongly against the proposals for urban reform, chose to approve and unanimously support a series of legal instruments that could allegedly contravene their interests.

The unanimous approval of the City Statute can be largely attributed to the effects of the length of time (almost 12 years) that passed between formulation and approval of the new law. During this period the majority of the instruments that were included in the Statute had already been put into practice by municipalities prior to its final ratification and the results of the municipal ‘experiments’ were considered by the property sector to be very encouraging. Undoubtedly this was an important factor in the willingness of this economic sector to modify its opposition to the overall scheme.

It can be said that while the City Statute initially appeared to be a threat to the business sector it gradually became to be perceived (and taken advantage of) as a significant market opportunity.

It was not by chance therefore that the document submitted by the SECOVI/São Paulo (1999) to the Urban and Interior Development Commission (CDUI) in the Chamber of Deputies on the occasion of the debate organised by the rapporteur of the bill (still not voted) should include proposals such as that related to the ‘participatory budget’ process. The business lobby commented in this respect that “exclusion of participation by citizens, especially in affairs regarding society as a whole, can no longer be admitted” since such participation is “absolutely necessary for ensuring adequate observance of the consortiated urban operation plan”. These proposals in reality coincided with those put forward by MNRU and were eventually incorporated in the text.



Noting that “this support for democratic ideas is a further new achievement reflecting new times”, Erminia Maricato mentions as an example an internal document from the OECD (30 of the world’s richest countries) affirming that: “participation, democratisation, good public management and respect for human rights are excellent step towards durable development” (Maricato, 2000, p. 131-132).

This perception by the business sector with regard to the urban problem, which saw market risk factors resulting from the deterioration of living conditions in the large metropolitan areas, although far removed from the hard-hitting attitudes of the MNRU, helps to explain the change of approach of the corporative powers with regard to the content of the City Statute and the emergence of consensus between the two parties. For Raquel Rolnik (2003), “the urban situation was getting very bad, deteriorating to a very low point (...). In São Paulo it was clear that the business sectors realised that the model was not working and what we see now is a certain predilection in the sector for thinking about alternative models”.

In these circumstances it is not difficult to understand the convergence of opinions, although founded on different propositions and analyses, between the business sectors and the MNRU. Regardless of the very serious ‘cause and effect’ problems, cities nevertheless are magnets which, like no other type of human grouping, bring together a mass of cultural and material facilities capable of boosting standards of dignity, ethical principles and educational and cultural levels that should underpin all organised societies. The City Statute is most definitely an invaluable piece of legislation aimed at achieving this goal.



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