



Edésio Fernandes is a jurist and an urban planner. He is an Associate Lecturer at the Development Planning Unit, University College London and at the Institute for Housing and Urban Studies, and is also a member of the teaching faculty at the Lincoln Institute of Land Policy, Cambridge, Mass. During 2003, he was Director of Land Affairs at the Ministry of Cities' National Secretariat for Urban Programmes in Brazil, and in that capacity he coordinated the initial formulation and implementation of the National Programme to Support Sustainable Urban Land Regularization.

Address: edesiofernandes@compuserve.com

Implementing the urban reform agenda in Brazil

EDÉSIO FERNANDES

ABSTRACT This paper describes the urban reform process in Brazil and its legal and institutional innovations since the promulgation of the 1988 Federal Constitution. These include the 2001 City Statute and the creation of the Ministry of Cities and the National Council of Cities in 2003. The paper discusses the progress to date in urban reform and the issues that still need to be addressed. Within this, it notes the need for a combination of legal reform, institutional change and renewed social mobilization at all levels to take advantage of the new political spaces created for urban reform, and thus to reverse the spatial and social exclusion that has characterized most urban development in Brazil in recent decades.

KEYWORDS urban reform / urban planning / land tenure / urban legislation / social inclusion

I. INTRODUCTION

Since the late 1980s, there has been some good news from Brazil: an important process of urban reform has been slowly, but consistently, promoted in the country. Significant legal and institutional changes have been introduced at the national level, creating a whole new legal-urban order that was consolidated with the enactment of the 2001 City Statute and, in 2003, the installation of both the Ministry of Cities and the National Council of Cities.

Not unlike most low- and middle-income countries and transitional countries, Brazil is in the uncomfortable position of having to "change the wheels with the car moving", given the grave social, urban and environmental problems that have accumulated over decades of rapid urbanization and governmental neglect. This task has been complicated further by the effects of the changes in the nature and dynamics of the urbanization process in the global economy. More than ever, the importance of getting the regulatory and institutional frameworks right cannot be underestimated. The promotion of urban reform takes time, and it requires continuity and systematic responses at all governmental levels in order to address the scale of the existing problems, as well as other fundamental factors such as capacity building, approval of articulated policies according to a clearly defined agenda, and the allocation of necessary resources. There is still a long way to go in Brazil and there are many serious obstacles to overcome.

Above all, the Brazilian experience clearly shows that urban reform requires a precise, and often elusive, combination of renewed social mobilization, legal reform and institutional change. This is an open-ended process, the political quality of which resides ultimately in Brazilian society's capacity to effectively assert its legal right to be present and actively participate in the decision-making process. The rules of the game have already been significantly altered; what remains to be seen is whether or not the newly created political spaces will be used in such a way as to advance the urban reform agenda in the country.

This article describes the main aspects of the process of urban reform in Brazil. Following a brief account of the historical context, the article will discuss the new legal–urban order that has been created in Brazil since the promulgation of the 1988 Federal Constitution; special emphasis will be placed on the provisions of the 2001 City Statute. The article will then describe the new institutional apparatus that resulted from the creation of the Ministry of Cities and the National Council of Cities in 2003, as well as discussing some of the main problems affecting these new institutions. As a conclusion, it will be argued that, while significant progress has already been made towards the realization of the urban reform agenda in Brazil, the renewal of social mobilization at all governmental levels is crucial for the consolidation and expansion of this long-claimed process of the new legal–urban order.

II. ANTECEDENTS

Brazil has experienced one of the world's most drastic processes of socio-economic and territorial reorganization as a result of rapid urbanization since the 1930s: 83 per cent of the total population live in urban areas and there is a very high concentration of population and economic activities in a very small part of the national territory. All the relevant figures and available data clearly indicate the scale and complex nature of this process, which has been widely discussed.⁽¹⁾ Put briefly, rapid urbanization in Brazil has generated a national urban crisis characterized by a combination of sociospatial segregation, negative environmental impact, violence and growing informal development. The escalating housing deficit has been estimated at 7.9 million units and a further 15 million families live in inadequate conditions.

However, despite a long-standing tradition of political, legal and financial centralization during most of the urbanization process, until recently the federal government had failed to formulate and implement comprehensive national land and urban policies, or even to put together a basic institutional infrastructure to deal with the many concerns affecting cities and the growing urban population. In fact, prior to the creation of the Ministry of Cities in 2003, the lack of a proper governmental response at the federal level – given the elitist nature of actual governmental intervention through the few existing policies and programmes – was one of the main factors determining the exclusionary nature of land and urban development in Brazil. This was aggravated further by conditions of political exclusion that were the result of the legal system in force until the promulgation of the 1988 Federal Constitution, with this legal system not only undermining the legal–political powers of municipal government but also the quality of the representative democracy system at all governmental levels.

1. There are several sources of data on the urbanization process in Brazil, the main one being the website of the Brazilian Institute of Geography and Statistics (IBGE), accessible at www.ibge.gov.br. For some recent analytical studies, see Fernandes, Edésio and Márcio Valença (editors) (2001), "Urban Brazil: past and future", *Geoforum* Vol 32, No 4, Special Issue, Elsevier, London.

2. I have discussed the legal basis of the historical process of urban development in Brazil elsewhere. See Fernandes, Edésio (2002), "Providing security of tenure for the urban poor: the Brazilian experience", in Alain Durand-Lasserve and Lauren Royston (editors), *Holding Their Ground – Secure Land Tenure for the Urban Poor in Developing Countries*, Earthscan, London.

3. Although it is less popular in Brazil than it is internationally, the impressive case of Curitiba demonstrates that many problems with the legal order may be successfully overcome if there is a solid political–institutional pact in place. In any case, Curitiba is indeed the exception that proves the rule because of the conservative and even exclusionary nature of the city planning strategies adopted in that city until recently. For a general reference, see Schwartz, Hugh (2004), *Urban Renewal, Municipal Revitalization – The Case of Curitiba, Brazil*, Alexandria, VA; also Fernandes, Edésio (1995), "Curitiba, Brazil: successfully integrating land use and transport policies", *International REPORT Vol 5*, June, pages 6–9.

4. For analyses on the social mobilization processes in São Paulo, see Kowarick, Lucio (editor) (1994), *Social Struggles and the City. The Case of São Paulo*, Monthly Review Press, New York.

5. For a detailed analysis of the civil public action, see Fernandes, Edésio (1995), "Collective interests in Brazilian environmental law", in D Robinson and J Dunkley (editors), *Public Interest Perspectives in Environmental Law*, Wiley Chancery Law, Chichester; also Fernandes, Edésio (1994), "Defending collective interests in Brazilian environmental law: an assessment of the civil public action", *Review of European Community and International Environmental Law Vol 3*, No 4, pages 253–258.

Another fundamental factor in the creation and reproduction of this process was the prohibitive, obsolete legal order still affirming the anachronistic paradigm of the 1916 Civil Code, thus reinforcing the historical tradition of unqualified private property rights.⁽²⁾ As a result, until recently the scope for state intervention through land and urban planning was much reduced, especially at the municipal level.⁽³⁾ While most municipalities still have only a set of basic laws – determining the urban perimeters and traditional constructions codes – only from the mid-1960s did a new generation of more ambitious planning laws start to be enacted in some of the main cities, although initially their legality was regularly contested.

From the mid-1970s and especially the early 1980s, important cracks appeared in the long-standing military regime as a result of a powerful combination of factors: the growing social mobilization through trade unions, civic organizations, social movements, residents' associations, groups linked to the progressive branch of the Catholic Church, and other collective channels; the reorganization of traditional political parties and the creation of new ones expressing renewed political claims for political–institutional change, particularly through democratic elections and the strengthening of local government; and also, to a lesser extent, the rearrangements within land and property capital. The first significant attempts at the democratization of urban management at the municipal level can be identified in the mid-1970s.⁽⁴⁾

As a result of the growing process of social mobilization and political change, an important federal law was approved in 1979 aiming to regulate urban land sub-division nationally, as well as providing basic elements for the regularization of consolidated informal settlements in cities. Soon after, various progressive environmental laws were enacted, including a groundbreaking legal recognition in 1985 of a civil public action to defend diffuse interests in environmental matters, *locus standi* being extended to the emerging NGOs.⁽⁵⁾ At the municipal level, the first land regularization programmes were formulated in 1983 in Belo Horizonte and Recife.⁽⁶⁾

A national Urban Reform Movement then emerged, involving a number of then existing social movements, trade unions and academic organizations, which started to gain momentum within the broader political opening process aiming at promoting the re-democratization of the country.⁽⁷⁾ With the increasing strengthening of a new sociopolitical pact, there was a wide recognition of the need for deeper legal and political changes in the country, thus leading to the remarkable, although in many respects flawed, 1986–88 Constitution-making process.

III. THE 1988 FEDERAL CONSTITUTION

The urbanization process in Brazil began in the 1930s and peaked in the 1970s, during which time several federal constitutions were promulgated – 1934, 1937, 1946, 1967 and the 1969 general amendment. However, until the 1988 Federal Constitution came into force, there were no specific constitutional provisions to guide the processes of land development and urban management. It was the original chapter on urban policy introduced by the 1988 Constitution that set the legal–political basis for the promotion of urban reform in Brazil.

In fact, since the Constitution-making process was itself the subject of an unprecedented level of popular participation, much of this

constitutional chapter was developed based on the Popular Amendment on Urban Policy that had been formulated, discussed, disseminated and signed by more than 100,000 social organizations and individuals involved in the Urban Reform Movement. This amendment recognized the following general principles:

- the autonomy of municipal government;
- the democratic management of cities;
- the social right to housing;
- the right to the regularization of consolidated informal settlements;
- the social function of urban property; and
- the need to combat land and property speculation in urban areas.

Another important amendment proposed the approval of a series of constitutional provisions recognizing the collective right to a balanced environment.

Following a process of intense dispute in the Constituent Congress, a progressive chapter on environmental preservation was eventually approved, together with a groundbreaking, although limited, chapter on urban policy.⁽⁸⁾

Most of these popular claims were recognized to some extent. The right to the regularization of consolidated informal settlements was promoted through the approval of new legal instruments aiming to render such programmes viable, both concerning settlements formed on private land (*usucapiao* rights, that is, adverse possession or prescriptive acquisition rights in five years) and on public land ("concession of the real right to use", a form of leasehold). The need to combat land and property speculation in cities was explicitly addressed and new legal instruments were created for this purpose, namely: sub-division utilization and construction compulsory orders; progressive property taxation; and a punitive form of expropriation. The principle of the democratic management of cities was fully endorsed as the 1988 Constitution provided a series of legal-political instruments aiming to widen the conditions of direct participation in the overall decision-making process.

The autonomy of municipal government was also recognized in legal, political and financial terms to such an extent that Brazilian federalism is considered to be one of the most decentralized in the world, with Brazilian municipalities being compared to Swiss cantons in terms of political autonomy. However, the 1988 Constitution did not take a proper stand on the matter of metropolitan administration, transferring to the federated states the power to do so.⁽⁹⁾

At that juncture, there was no political consensus on the recognition of the social right to housing. Regarding the recognition of the principle of the social function of urban property, there were heated debates between antagonistic groups, and as a result the following formula was approved: private property is recognized as a fundamental right provided that it accomplishes social functions, which are those determined by municipal master plans and other urban and environmental laws. By making the principle of the social function of urban property conditional on the approval of municipal planning laws, the intention of conservative groups seemed to be to make this principle merely rhetorical. The limited Brazilian experience with city planning so far had been largely ineffective in terms of its power to reverse the exclusionary conditions of urban development. On the contrary, informal land development had

6. For a critical analysis of the first stage of the regularization programme in Belo Horizonte, see Fernandes, Edésio (1993), "The legal regularization of favelas in Brazil. The case of Belo Horizonte", *Social and Legal Studies* Vol 2, pages 211–236.

7. For a broader analysis of the Urban Reform Movement, see de Souza, Marcelo Lopes (2001), "The Brazilian way of conquering the 'right to the city': successes and obstacles in the long stride towards an 'urban reform'", *DISP* Vol 147, pages 25–31.

8. For an analysis of the constitutional chapter on urban policy, see Fernandes, Edésio (1995), *Law and Urban Change in Brazil*, Avebury, Aldershot; also Fernandes, Edésio and Raquel Rolnik (1998), "Law and urban change in Brazil", in Edésio Fernandes and Ann Varley (editors), *Illegal Cities – Law and Urban Change in Developing Countries*, Zed Books, London. For a discussion of the environmental chapter, see Fernandes, Edésio (1996), "Constitutional environmental rights in Brazil", in M R Anderson and A E Boyle (editors), *Human Rights Approaches to Environmental Protection*, Oxford University Press, Oxford; also Fernandes, Edésio (1992), "Law, politics and environmental protection in Brazil", *Journal of Environmental Law* Vol 4, No 1, pages 41–56.

9. For an analysis of the Brazilian experience of metropolitan administration between 1973 and 1988, see Fernandes, Edésio (1992), "Juridical-institutional aspects of metropolitan administration in Brazil", *Third World Planning Review* Vol 14, No 3, pages 227–243.

largely resulted from the elitist and technocratic nature of city planning. Faced with the impossibility of approving another, more progressive constitutional formula, the Urban Reform Movement then decided to make the most of the situation and subvert the approved provision by consciously investing in the formulation of municipal master plans throughout the country that were both inclusive and participatory.

IV. A NEW LEGAL-URBAN ORDER IN THE 1990s

A whole new legal-urban order was inaugurated with the promulgation of the 1988 Constitution, which led to a series of progressive local experiences throughout the 1990s. Many municipalities approved new urban and environmental laws, including some master plans, and Brazil became an interesting urban planning and management laboratory, with new strategies and processes establishing new relations between the public, the community, the private and the voluntary sectors where urban land development was concerned. New land regularization programmes were formulated and began to be implemented by several municipalities.⁽¹⁰⁾

Special emphasis was placed on the political quality of all such processes, with popular participation being encouraged in various areas, from the definition of urban policies in “city conferences” to the introduction of innovative participatory budgeting processes.⁽¹¹⁾ Since then, municipalities such as Porto Alegre, Santo Andre, Diadema, Recife and Belo Horizonte have gained international recognition.

However, the lack of regulation of the urban policy chapter in the 1988 Constitution through federal legislation, as is the tradition in Brazil, led to a series of legal-political difficulties, which were fomented by groups opposed to the advance of the new legal-urban order. This undermined the extent and the scope of the promising local experiences. As a result, the organizations involved in the Urban Reform Movement decided to consolidate and expand, initially by creating the National Forum of Urban Reform (NFUR) in the early 1990s.

Comprising a wide range of national and local organizations and movements, the NFUR⁽¹²⁾ has been instrumental in promoting the urban reform banner and agenda nationally. Three of its main targets in the 1990s were: the incorporation of the social right to housing in the 1988 Constitution; the approval of a federal law regulating the constitutional chapter; and the approval of a bill of law originating from a popular initiative using the new possibilities created by the 1988 Constitution, which proposed the creation of a National Fund for Social Housing. At the same time, the NFUR also called for the creation by the federal government of an institutional apparatus at the national level to promote urban planning and policy in Brazil.

A long process of social mobilization and a fierce political struggle lasted throughout the 1990s and into the new century, within and outside the National Congress. In 1999, a new federal law regulated the action of “civil society organizations of public interest” so as to allow them to receive public money. The social right to housing was eventually approved by a constitutional amendment in 2000, and the federal law creating the National Fund for Social Housing was finally enacted in 2005. Of special importance was the enactment, in 2001, of the internationally acclaimed City Statute, the federal law on urban policy.

10. I have discussed the ongoing experiences of land regularization in Brazil in some detail elsewhere; see Fernandes, Edésio (2002), “Combining tenure policies, urban planning and city management in Brazil”, in Geoffrey Payne (editor), *Land, Rights and Innovation – Improving Tenure Security for the Urban Poor*, ITDG, London; also Fernandes, Edésio (2000), “The legal regularization of favelas in Brazil: problems and prospects”, *Third World Planning Review* Vol 22, No 2, pages 167–187.

11. For a critical analysis of the participatory budgeting process, see Souza, Celina (2001), “Participatory budgeting in Brazilian cities: limits and possibilities in building democratic institutions”, *Environment & Urbanization* Vol 13, No 1, April, pages 159–184; also Fernandes, Edésio (1995), “Participatory budget: a new experience of democratic administration in Belo Horizonte, Brazil”, *International REPORT* Vol 11, December, pages 23–25.

12. Currently, the NFUR is coordinated by several organizations, the main ones being: FASE (Federation of Organizations for Social and Educational Welfare), CONAM (National Confederation of Residents’ Associations), CMP (Centre of Popular Movements), MNLM (National Movement to Fight for Housing), UNMP (National Union of Popular Movements), COHRE Americas, and FNA (National Federation of Architects and Urban Planners). See www.forumreformaurbana.org.br.

V. THE 2001 CITY STATUTE

The groundbreaking 2001 City Statute regulated and expanded on the constitutional provisions mentioned above, and it explicitly recognized the “right to the city” in Brazil.¹³ It was the result of an intense negotiation process that lasted for more than 10 years, within and beyond the National Congress, and confirmed and widened the fundamental legal-political role of municipalities in the formulation of directives for urban planning, as well as in conducting the process of urban development and management.

The City Statute broke with the long-standing tradition of civil law and set the basis for a new legal-political paradigm for urban land use and development control. It did this especially by reinforcing the constitutional provision recognizing the power and the obligation of municipal governments to control the process of urban development through the formulation of territorial and land use policies, in which the individual interests of landowners necessarily co-exist with other social, cultural and environmental interests of other groups and the city as a whole.

The City Statute elaborated on the principle of the “social function of property and of the city”, thus replacing the individualistic paradigm of the 1916 Civil Code. In addition, the statute provided a range of legal, urban and fiscal instruments to be used by the municipal administrations, especially within the context of their master plans, to regulate, induce and/or revert urban land and property markets according to criteria of social inclusion and environmental sustainability. All such instruments can, and should, be used in combination, aiming not only to regulate the process of land use development but especially to induce it according to a “concept of city”, to be expressed through the municipal master plans. Municipalities were given more scope for interfering with, and possibly reversing to some extent, the pattern and dynamics of formal and informal urban land markets, especially those of a speculative nature, which have long brought about social exclusion and spatial segregation in Brazil. In fact, the combination of traditional planning mechanisms – zoning, subdivision, building regulations, etc. – with the new instruments – compulsory sub-division, construction and utilization orders, extra-fiscal use of local property tax progressively over time, expropriation-sanction with payment in titles of public debt, surface rights, preference rights for the municipality, onerous (not free of charge) transfer of building rights, etc. – opened up a new range of possibilities for construction by the municipalities of a new urban order that can be economically more efficient, politically fairer and more sensitive to the complete range of existing social and environmental questions.

Moreover, the City Statute indicated several processes for municipalities to integrate urban planning, legislation and management so as to democratize the local decision-making process and thus legitimize a new, socially oriented urban-legal order. Several mechanisms were recognized to ensure the effective participation of citizens and associations in urban planning and management: audiences, consultations, the creation of councils, reports of environmental and neighbourhood impact, popular initiative for the proposal of urban laws, public litigation and, above all, the practices of the participatory budgeting process. Moreover, the new law also emphasized the importance of establishing new relations between the state, the private sector and the community sectors, especially through

13. For a broad discussion of the new urban-legal order and the City Statute, see Fernandes, Edésio (2007) (forthcoming), “Constructing the right to the city in Brazil”, *Social and Legal Studies* Vol 16.

partnerships and linkage “urban operations” to be promoted within a clearly defined legal–political and fiscal framework.

The 2001 legislation also improved on the legal order regarding the regularization of consolidated informal settlements in private and public urban areas, enabling municipalities to promote land tenure regularization programmes and thus democratize the conditions of access to land and housing. As well as regulating the constitutional institutes of *usucapiao* and concession of the real right to use mentioned earlier, the new law went one step further and admitted the collective utilization of such instruments. Subsequently, still in 2001, given the active mobilization of the NFUR, Provisional Measure No 2220 was signed by the president. This recognized the individual or collective rights (known as subjective rights) of those occupying public land until that date to be granted, under certain circumstances, the “concession of special use for housing purposes”, another form of leasehold rights, regardless of the wishes of the public authorities (and so this was not only provided at the prerogative of the public authorities).

All municipalities with more than 20,000 inhabitants, among other categories, were given a deadline of five years to create and approve their master plans. The City Statute has been complemented by important new federal laws enacted subsequently, namely those regulating public–private partnerships (2004) and inter-municipal consortia (2005). More recently, there has been a nationwide discussion on the proposed, thorough revision of the 1979 Federal Law, which governs the sub-division of urban land and the regularization of informal settlements.

A significant process of institutional change, in which the creation of the Ministry of Cities in 2003 deserves special mention, has also supported this gradual, fundamental process of legal reform.

VI. THE MINISTRY OF CITIES

Perhaps given Fernando Henrique Cardoso’s celebrated academic and political background, as well as his seminal studies on the nature of the “urban question” in Brazil, the lack of a national urban policy and a corresponding institutional apparatus during his government (1995–2002) was particularly frustrating. There were some isolated, sectoral programmes scattered over several ministries, which dealt with aspects of the broader urban question, but there was no national urban policy to articulate them, especially because the then existing urban policy secretariat had insignificant powers and few resources.

Only with the election of President Lula in 2003 was a decision made to create the Ministry of Cities. It is important to stress that the new ministry was not created as an executive decision by the new president, but rather as his response to the social claim long-defended by the NFUR and other stakeholders, and this confers a special form of legitimacy on the Ministry of Cities.

The ministry consists of an Executive Secretariat presiding over four national secretariats, namely housing, environmental sanitation, public transportation and mobility, and land and urban programmes. Among other tasks, the Executive Secretariat has focused on building the capacity of municipalities to act, initially through a national campaign for the elaboration of multipurpose municipal cadastres. As well as formulating

national programmes on their respective subjects, the four secretariats have been involved in several negotiations with the National Congress to promote further changes in the regulatory framework in force, with a relative degree of success so far.

Two important ongoing initiatives implemented by the Land and Urban Programmes Secretariat deserve special mention, namely the National Programme to Support Sustainable Urban Land Regularization and the National Campaign for Participatory Municipal Master Plans.

a. The National Programme to Support Sustainable Urban Land Regularization

Initiated in 2003 with what the then minister called a “virtual budget”, the National Programme to Support Sustainable Urban Land Regularization has grown in resources and impact, and its importance and reach were recognized in 2005 by a generous Cities Alliance grant.¹⁴ The programme combines intervention, articulation and mobilization strategies – legal, financial, urban planning and political – in order to create the basic conditions for municipalities to act. Grants have been given to municipalities, federated states and NGOs to promote the formulation and implementation of regularization programmes and the judicial recognition of adverse possession rights. Special emphasis has been placed on the definition of criteria for the regularization of settlements occupying federal land, and hundreds of thousands of leasehold titles have already been given to occupiers or are in the process of being finalized.

Promising partnerships have been formed with several stakeholders, especially NGOs and social movements, institutions representing land registrars, judges and prosecutors for the government, the Urban Development Commission and academia. Educational “kits” have been distributed, including step-by-step manuals. A virtual network sends daily messages to some 10,000 people and institutions all over Brazil. A most innovative and successful project was the promotion in 2006 of a virtual course on urban land regularization, aimed at about 900 people from several professional backgrounds and institutional positions, and from all over Brazil. The three-month course was promoted jointly by the Ministry of Cities and the Virtual Department of Minas Gerais Catholic University, and it was sponsored by the Cities Alliance. It covered a wide range of issues related to land regularization programmes in both private and public areas. Participants included: local government officials; civil servants from most state governments and from several ministries of the federal government; land registration officers; lawyers, judges and prosecutors for the government; urban planners; members of NGOs and associations; and residents in *favelas*, irregular land sub-divisions and *quilombos* (areas occupied by the descendants of former slaves, who had been set free in the late 1880s, had left the countryside and had nowhere to live in the urban areas).

b. The National Campaign for Participatory Municipal Master Plans

Another important initiative has been the National Campaign for Participatory Municipal Master Plans, which has been instrumental in

14. For a detailed analysis of the national programme, see Fernandes, Edésio (2006), “Principles, bases and challenges of the national programme to support sustainable urban land regularization in Brazil”, in Marie Huchzermeyer and Aly Karam (editors), *Informal Settlements – A Perpetual Challenge?*, University of Cape Town Press, Cape Town.

boosting nationally the discussion and mobilization around the issue. The approval of municipal master plans is a legal requirement affecting some 1,700 Brazilian municipalities, and it is the political and technical quality of this process that will eventually determine the extent to which the possibilities of the new legal-urban order proposed by the City Statute will be realized.

For this very large task to be properly fulfilled, there is an enormous need for municipalities to be provided not only with capacity building and financial resources but also with adequate technical information and conceptual formulations. Educational “kits” have been widely distributed, grants have been given to municipalities and registered consultants committed to the urban reform agenda; a “bank of experiences” has been created, organizing materials from more than 700 ongoing experiences; a virtual network disseminates experiences and information; and seminars and all sorts of meetings have been promoted throughout the national territory, always in partnership with local institutions.

c. Problems and constraints

Significant progress has already been made in the implementation of the urban reform agenda nationally, and the Ministry of Cities has gained increasing institutional credibility, social legitimacy and political influence. However, the Ministry of Cities still faces many serious problems, the most immediate being its precarious institutional organization, small team and limited budgetary resources.

There is still a serious problem of fragmentation to be overcome in the way inter-related urban policies are formulated within the ministry, and in its relationship with other ministries. The fundamental environmental sanitation bill formulated by the ministry stalled in the National Congress for a long time, given the political tensions resulting from the proposed distribution of legal powers on this issue, and a substantially modified version was eventually approved in December 2006. With due respect to the importance of the recently approved National Fund for Social Housing, as well as to the improvements already made to previously existing federal programmes through Caixa Economica Federal, the fact is that a new, comprehensive and articulated national housing policy has not yet been formulated. Federal investment in both housing and sanitation has significantly increased since 2003, indeed breaking historical records, but given the long-standing governmental neglect of those matters and the extent of the accumulated social debt, the total budget is still limited. The NFUR has criticized the fact that only 458 million reais (some US\$ 200 million) have been earmarked for the National Fund for Social Housing in the proposed 2007 federal budget, when a whole “housing package” was approved to provide incentives to the construction sector, benefiting families earning more than five minimum wages. Low-income families have not yet received the same priority treatment, and federal investment in the sector has significantly decreased: the 2006 budget had reserved one billion reais for the housing fund.

The creation of the Ministry of Cities has certainly given more visibility to the long-neglected urban concerns, but with this recognition new disputes have also emerged, including disputes over the control of the Ministry of Cities itself. With the growing recognition of the political

dimensions of the urban questions, fierce political disputes have resulted from the constant realignment of the questionable political coalition supporting President Lula. As a result, while all four national secretaries were kept in office, in 2005 the first minister and the executive secretary, from a left-of-centre political party, were replaced by persons nominated by a conservative, populist political party less in tune with the principles of the urban reform agenda. At the same time, the Urban Development Commission of the National Congress (that has long been insignificant) has been getting more political visibility and influence, and not all of its members fully embrace the reform agenda.

Given all these constraints, the Ministry of Cities has been systematically investing in the establishment of partnerships of all sorts – within the federal government; through inter-governmental relations; with the National Congress and the judiciary; with the private sector; and with the organized social movements, NGOs and academia. A fundamental part of this process has been the intimate link between the Ministry of Cities and the National Council of Cities.

d. The National Council of Cities

Perhaps the most remarkable aspect of the new political-institutional apparatus that is currently being created in Brazil has been the installation of the National Council of Cities.

In April 2003, President Lula called for a national mobilization to discuss a list of land, urban and housing policy goals, through a series of municipal city conferences in which delegates would be elected to participate in state conferences and eventually in the national conference planned to take place in October 2003. It was expected that some 300 out of 5,571 existing municipalities would have the time and the conditions to organize local conferences. As it happened, over 3,000 municipalities did so, as did all 27 federated states. Over 2,500 delegates discussed the initial national policy directives on urban development as well as the range of specific proposals on sectoral housing, planning, sanitation and transportation national policies. They all voted on the definition of the final list of principles that should guide the formulation of national policies by the Ministry of Cities.

Moreover, one of the most important deliberations of the First National Conference of Cities was the creation of the National Council of Cities, with representatives from all sectors of stakeholders being elected. The council consists of 86 members, 49 representing segments of civil society (popular movements, workers' unions, NGOs, academic institutions and the business sector) and 37 representing federal, federated state and municipal administrations. Members are elected for a two-year term, thus widely ensuring citizen participation in the council's deliberations, and the Ministry of Cities is legally required to follow and respect such deliberations.

The Second National Conference of Cities took place in December 2005, again as the culmination of a nationwide mobilization process. Two thousand five hundred delegates and 410 observers from all federated states and different social segments discussed a more articulated national urban development policy, aiming to generate "fairer, democratic and sustainable" cities.

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The National Council of Cities has met on several occasions, and it has gradually been recognized as a most important sociopolitical forum. This recognition is unequivocal among the stakeholders more directly involved with the urban concerns discussed by the council. However, it still needs to be fully acknowledged by the federal government as a whole, particularly when it comes to fully accepting the council's deliberations as well as translating them into proper budgetary provisions. For example, one deliberation concerned the allocation of 3 billion reais in the 2007 budget for the housing fund; as mentioned earlier, the government eventually proposed only 458 million reais.

In any case, the promotion of the national conferences and the action of the National Council of Cities have already made a difference to the course of urban policy in Brazil and have conferred a unique degree of sociopolitical legitimacy on the decision-making process. For this reason, both initiatives were given the 2006 UN-Habitat Scroll of Honour Award.

VII. CONCLUSION

The approval of the City Statute consolidated the constitutional order in Brazil as to the control of the process of urban development, aiming to reorient the action of the state, the land and property markets and society as a whole according to new legal, economic, social and environmental criteria. Its effective materialization in policies and programmes will depend on the reform of the local legal-urban orders – the overall regulatory and institutional framework put together at the local level to govern land use development by the municipalities, particularly through the approval of adequate master plans. The role of municipalities is crucial in reversing the exclusionary pattern of urban development in Brazil.

While it is undeniable that the process of urban reform has been given an enormous boost with the recent legal and institutional reforms, there are many problems to be overcome and serious challenges to be confronted at the federal level, and the new laws and institutions should not be taken for granted. The City Statute has already been the subject of several proposed changes at the National Congress, many of which, if approved, might undermine its potential. So far, discussion of such bills of law has been stalled in the Urban Development Commission. Moreover, the continuity and quality of the action of the Ministry of Cities will depend on how the existing political disputes and contradictory interests are accommodated. The very existence of the ministry has been questioned, especially by some people who would like to see it merged with other ministries within the context of a streamlined federal government.

On a broader level, the full realization of the urban reform agenda by the Ministry of Cities will depend on how the federal government as a whole understands the centrality of the urban questions. Critical to this understanding will be the promotion of more inter-ministerial integration and inter-governmental articulation. The Ministry of Cities will also need to be provided with a more consistent institutional infrastructure and capacity to act and the necessary resources for the promotion of the whole new set of social policies and programmes. The control of urban development cannot be left only to market forces; but nor can it be left to municipal government alone. There is a crucial role for the federal government, as well as the federated state governments.

On a more internal level, the Ministry of Cities needs to promote better integration between its secretariats and respective programmes. The approval of a comprehensive housing policy aimed at the urban poor is of utmost importance, in part to slow the process of informal development. For this purpose, the clear definition of a national policy on the utilization of federal land and property is particularly necessary. The definition of an articulated territorial organization policy and system of cities is also crucial, including an adequate treatment of the pressing matter of metropolitan administration. More emphasis should be placed on the attempts to reconcile the "green" and the "brown" environmental agendas in the country. Existing partnerships need to be reinforced, and new ones should be formed.

That said, the Brazilian experience has clearly shown that if urban reform requires a combination of institutional change and legal reform, it also fundamentally depends on nationwide social mobilization. This is indeed a highly political process, and the constant renewal of social mobilization in Brazil, through the NFUR and other collective channels within and outside the state apparatus, is the *sine qua non* condition for the advance of the Urban Reform Movement in the country.

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