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Urban planning at a crossroads

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Urban planning at a crossroads
A critical assessment of Brazil’s City Statute, 15 years later

Edesio Fernandes

Introduction: the City Statute and urban planning in Brazil

It is increasingly acknowledged that the combination of socio-spatial segregation and informality that has profoundly marked urban development globally has, to a significant extent, resulted from the exclusionary nature of prevailing urban legal systems. Policy makers, urban managers and social movements committed to the urban reform agenda ask a fundamental question: what does it take to turn national and local urban legal systems into effective factors of socio-spatial inclusion instead? A growing socio-political movement has vigorously argued that the promotion of legal reform is necessary to support urban reform. As a result, new urban laws governing land rights and management, territorial organisation, planning and housing have been recently enacted in several countries and cities, and serious investment has been made by institutions such as UN-Habitat and the World Bank towards the formulation and approval of inclusive urban legal systems. In this context, Brazil’s celebrated national urban policy law – the 2001 City Statute – has been widely regarded as a groundbreaking regulatory framework that is conducive to providing legal support to urban reform. Lauded internationally, the ambitious City Statute has been proposed as a paradigm to be considered internationally.

This law places special emphasis on urban planning. Long discredited following decades of nonexistence, irrelevance and inadequacy, urban planning was revived in the 1980s and 1990s, especially at the municipal level, as part of the intertwined processes of political democratisation and institutional decentralisation, and within the context of the emerging urban reform socio-political process. The 1988 Federal Constitution gave urban planning an enormous boost as it declared that property rights are only to be recognised when land and property fulfil those social functions determined by municipal master plans and other urban and environmental laws. This heralded a new chapter for planning, and for planners who were committed to changing the nature of the urban planning process. Traditional ‘Urban Planning’ became ‘Inclusive Planning’, and old ‘master plans’ became ‘participatory master plans’. The City Statute entrenched these shifts and required municipalities to formulate new municipal master plans (MMPs) according to the new planning and management principles.

But, what exactly can be expected of these new urban laws? What is required for them to be fully enforced, and socially effective? What are the nature, possibilities and constraints of
progressive urban laws vis-à-vis the broader socio-political process? What has effectively happened to this new wave of urban planning? This chapter explores these questions through a discussion of the City Statute. Almost 15 years have passed since its approval, and a comprehensive assessment of the urban land governance framework it proposed – and especially of the municipal initiatives that sought to implement the Statute’s vision – is urgently necessary. Such a critical assessment of the Statute’s enforcement should provide important elements for the more general discussion on the expectations of newly approved urban laws, and promote a critique of the roles of all involved stakeholders, so as to correct mistakes, change courses and advance the urban reform agenda. Above all, this assessment is necessary to determine if and how the new generation of MMPs has effectively translated the general principles of the City Statute into rules and actions, as well as discussing what the main legal and social obstacles to the full implementation of the national law have been. It is also necessary to discuss if and how Brazilian society has made effective use of the many legal possibilities for the recognition of the range of social rights created by the new legal-urban order. In particular, this assessment has to take into account the broader context of the deep political-institutional crisis Brazil has experienced over the last three years – which has already led to the President’s impeachment.

A new urban land-governance framework

The enactment of the 2001 law was the result of a nationwide process of social mobilisation. The City Statute regulated the original chapter on urban policy introduced by the 1988 Federal Constitution, which had itself been preceded by an unparalleled socio-political mobilisation, especially through formulation of the Popular Amendment on Urban Reform. I have discussed both the constitutional chapter and the City Statute in detail elsewhere (see Fernandes 1995, 2007, 2011; Fernandes and Rolnik 1998); for the purposes of this chapter, it should be stressed that the main dimensions of the City Statute are as follows:

- It firmly replaced the traditional legal definition of unqualified individual property rights with the notion of the social function of property so as to support the democratisation of the access to urban land and housing.
- It defined the main principles of land, urban and housing policy to be observed in the country.
- It created several processes, mechanisms, instruments and resources aiming to render urban management viable, with emphasis placed on the capture for the community of some of the surplus value generated by state action that has been traditionally fully appropriated by land and property owners.
- It proposed a largely decentralised and democratised urban governance system, in which intergovernmental articulation as well as state partnerships with the private, community and voluntary sectors are articulated with several forms of popular participation in the decision-and law-making process.
- It recognised the collective rights of residents in consolidated informal settlements to legal security of land tenure as well as to the sustainable regularisation of their settlements.

Together, these intertwined dimensions of the City Statute constituted a new urban land governance framework in Brazil.

Federal Law 10.257/2001 belongs within the context of a broader legal-urban reform process that has been ongoing for some 30 years. A new legal-urban order has been consolidated – sophisticated, articulated and comprehensive – including the constitutional recognition of
Urban Law as a field of Public Law with its own paradigmatic principles, namely, the socio-environmental functions of property and of the city and the democratic management of the city. The collective right to sustainable cities was explicitly recognised, and there is a clear commitment in the legal system to the urban reform agenda. These structural legal changes have been expanded at all governmental levels – federated states and especially municipalities. This new legal-urban order has been supported by the creation of a new institutional order at federal level, with the creation in 2003 of the Ministry of Cities; National Conferences of Cities have been promoted every two years since then; the National Council of Cities meets regularly; and Caixa Economica Federal – the world’s largest public bank – has promoted several federal plans and projects, especially Plan to Accelerate Growth (PAC) and My House, My Life National Housing Programme (MCMV). All these combined amount to the largest social programme in the history of Latin America. Both the legal and the institutional orders are fundamentally social conquests, having largely resulted from a historical process of socio-political mobilisation involving thousands of stakeholders – associations, NGOs, churches, unions, political parties, universities and sectors of land and property capital – which since the late 1970s have claimed for the (rather late) constitutional recognition of land, urban and housing questions, as well as for the decentralisation and democratisation of, and popular participation in, law and decision-making processes.

Given the highly decentralised nature of the federative system, the materialisation of this legal framework was largely placed in the hands of the municipal administrations through the formulation of MMPs. Prior to the enactment of the new law, the majority of municipalities did not have an adequate regulatory framework in place to govern the processes of land use, development, preservation, construction, regularisation, etc. Most of them did not have basic information, maps, photos and other relevant materials either. Of the 1,700 municipalities that had a legal obligation to approve MMPs so as to apply the City Statute, some 1,450 have already done so, which is remarkable in itself.

Despite this, urban-environmental problems have worsened in the main cities, street protests and land and housing conflicts have increased in urban areas, and a growing number of people have questioned the validity of urban planning as a means of promoting socio-spatial inclusion, as well as the efficacy of the City Statute as a means of giving meaning to the constitutional notion of the social function of property.

Since the enactment of the City Statute, cities have undergone significant changes. The rates of urban growth have decreased but are still relatively high, especially in middle-sized and small cities, thus leading to the formation of new metropolitan regions. Economic development and the emergence of a so-called ‘new middle class’/‘precarious working class’ have aggravated further long-standing urban problems of transportation, mobility, environmental impact and urban violence. Infrastructure and energy provision problems have increased, and the fiscal crisis of the public administrations is widespread, especially at the municipal level. Above all, the land and housing crisis has escalated. The housing deficit remains enormous (between 6 and 7 million units), and, despite the impressive number of units already built/contracted, MCMV has not reached the poorest families and has been criticised for reinforcing long-standing processes of socio-spatial segregation. While the levels of land, property and rental appreciation – and speculation – have broken historical records, there is an enormous stock of vacant serviced land, abandoned/under-utilised properties (calculated as 5.5 million units), as well as of public land and property without a social function. Informal development rates are still high, with the densification/verticalisation of old settlements and the formation of new settlements usually in peripheral areas – while it has also been taking new shapes – backyarders, informal rental transactions, etc. The proliferation of gated communities in peripheral areas/other metropolitan
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municipalities means that for the first time, rich and poor are competing for the same space. Urban development in the new economic frontiers – especially in the Amazon – has largely taken place through informal processes, and there are a growing number of land disputes and socio-environmental conflicts.

Moreover, over the last two decades or so, significant public resources – land, fiscal incentives, various credit, tax exemptions, building and development rights – have been given to land developers/urban promoters/builders, usually within the context of urban renewal/revitalisation programmes, rehabilitation of downtown areas/historic centres, large scale projects and modernisation of harbours/ports/infrastructure. The number of recent forced evictions – the World Cup was estimated to have evicted 250,000 people alone – is staggering, not only in Rio de Janeiro and São Paulo, but even in municipalities such as Belo Horizonte and Porto Alegre that were long committed to the urban reform process. This process, which was so vivid in the 1980s and 1990s, seems to have lost momentum, and stakeholders have questioned who has benefitted from the transfer of public resources. They have increasingly denounced the growing process of property speculation; the elitist utilisation of the enormous amount of financial resources newly generated especially through the sale of building and development rights in public auctions; the way the so-called ‘unlocking of land values’ by large projects and events has reinforced socio-spatial segregation; the recurrent abuse of the legal arguments of ‘public interest’ and ‘urgency’; and the enormous socio-environmental impact of federal programmes and others.

Growing land conflicts, rental prices, urban informality, numbers of evictions and removals, worsening of transportation, mobility and sanitation problems, but especially a growing process of commodification characterise Brazilian cities, which are currently both venue and object of post-industrial capitalist production. This new stage of urban development and financialisation of cities has required the strengthening of the individualist and patrimonial legal culture that had long prevailed prior to the enactment of the City Statute: property viewed merely as a commodity; consideration of exchange values but not of use values; and the right to use/enjoy or dispose of property often meaning the right not to use/enjoy/dispose of – in other words, to freely speculate.

What has happened to the urban reform process? How to explain the growing gaps between the progressive new legal order and the exclusionary urban and institutional realities? The legal-urban order is still largely unknown to jurists and society, when not objects of legal as well as socio-political disputes. The legal and social efficacy of the implementation of the City Statute remains a challenge. There is also a gap between the institutional order and the urban and social realities. The Ministry of Cities has often been preempted or bypassed by the federal budget or by other ministries, and the National Council of Cities has often been bypassed by Ministry of Cities or other Ministries, having had difficulties to renew the levels of social mobilisation. When there is not a lack of projects, duplicity, inefficiency, waste, lack of continuity and corruption have marked the fragmented urban management at all governmental levels.

It is in this context that there is a growing skepticism among planners, managers, academics and society regarding the City Statute. The federal law has been demonised by some, who have blamed it for recent processes of socio-spatial segregation, the fact that the new urban management tools have been appropriated by conservative sectors, as well as for the fact that new forms of old processes of “socialisation of costs and privatisation of benefits” have emerged with the re-concentration of public services and equipment. Has the City Statute failed, as the skeptics believe? Rather than contributing to the promotion of socio-spatial inclusion, has it perversely contributed to the current escalating process of commodification of cities, and to the further peripheralisation of the urban poor, as some have argued?
Is the critique legitimate? An assessment of MMPs

The new legal-urban order consolidated by the City Statute placed law and planning at the heart of the socio-political process, especially at the municipal level, and it is the very quality of this process that will determine the meanings and reach of the notion of the social function of property. It is unquestionable that, for all its sophistication and successive developments, the legal-urban order still has significant limits: there are several bottlenecks in the judicial system, including the length and costs of judicial procedures; the difficulties with the registration system remain challenging; MMPs have not been articulated with an adequate urban management system; municipalism is exaggerated and often artificial, and there is not a properly defined metropolitan/regional dimension; and the different realities of middle-sized and small municipalities, and especially the different realities of North and North-East, have not yet been properly contemplated by the legal order. A crucial aspect is the reduction of the notion of spatial organisation to that of ‘municipal’ organisation, ‘local’ government being reduced to ‘municipal’ government – when it should be at least ‘metropolitan’. Nonetheless, the progress of the legal-urban order is undeniable.

It is in this context that one should ask: is the federal law the real problem? Or, has there been an adequate understanding of the new legal-urban order by lawyers, urban planners, public managers and society? Have the new legal and politico-institutional spaces been occupied? Have the new legal principles been translated into urban policies? Have the new legal rights been claimed by the population? Have the new legal principles been defended by the judicial courts?

There are some important surveys, case studies and comparative studies already available, especially Cymbalista and Santoro (2009), Santos Jr. and Montandon (2011) and Schult et al. (2010). There are also several published case studies, and a “Bank of Experiences” has been created by the Ministry of Cities.² These existing studies have clearly shown that there has been progress on many fronts: the general discourse of urban reform has been adopted by most MMPs; specific sectors – environment, cultural heritage – have been addressed; Special Zones of Social Interest (ZEIS) have been created in areas occupied by existing informal settlements; and, whatever the variations, the participatory nature of the discussion of MMPs was remarkable. Perhaps the main achievement has been the production and recording of data about cities.

However, there are several problems of legal efficacy undermining the new MMPs: excessive formalism and bureaucracy of municipal laws; requirement of further regulation by several subsequent laws for full enforcement; punctual changes have been promoted without participation; and both the obscure legal language and the imprecise technical legal writing (urban laws are rarely written by legal professionals) have widened the scope for legal and socio-political disputes. There are also serious problems of social efficacy undermining the new MMPs: most plans remain ‘traditional’, merely technical and regulatory, often failing to territorialise the proposals and intentions, or to intervene in the land structure and the land and property markets. The emphasis on the new tools has been placed without a clearly defined project for the city. The majority of MMPs have failed to recapture any surplus value resulting from state and collective action, and when this has happened, there has been no or limited social redistribution of the newly generated financial resources. Moreover, most MMPs have placed little to no emphasis on social housing in central areas, having failed to earmark central, serviced, vacant land for social housing. Generally speaking, there are no specific criteria for the expansion of urban zones; public land and property have not been given a social function; and there has been no clearly articulated socio-environmental approach. Large projects have often bypassed MMPs, and presumed collective eviction. Above all, land, urban, housing, environmental, fiscal and budgetary policies have not been integrated, and the regularisation of informal settlements is still
largely viewed as an isolated policy, with most MMPs imposing enormous technical difficulties to the legalisation of informal settlements. Bureaucratic management and technical complexity have also meant that there has been a widespread lack of administrative capacity to act at municipal level. Many MMPs are copies of models promoted by an ‘industry’ of consultants. Obscure planning language has been as problematic as obscure legal language.

But, it is the country’s broader politico-institutional context that requires further understanding.

The City Statute in context

Since the 1980s, significant progress has been made towards the creation of a legal framework to govern urban development nationally. However, both the promising progress at the municipal level, especially in the 1990s, and the reach and implications of the more recent federal laws and relevant federal programmes have, over the last 15 years, been undermined by the tensions inherent in the country’s politico-institutional system and renewed socio-political disputes within civil society, as well as jeopardised further by the ongoing political crisis that has led to the President’s impeachment. From the perspective of the urban reform agenda, this last period has been particularly difficult as there has been a gradual, notable backlash at all governmental levels insofar as the articulated processes of urban development, policy, planning and management are concerned. The enormous public investment in cities made by the government especially since 2003 has been jeopardised, if not partly wasted, by the lack of a clearly defined and integrated conceptual framework and a corresponding institutional context governing the overall treatment of the ‘urban question’. Far from redressing long-standing urban, social and environmental problems, the nature of governmental action at all levels has worsened the pattern of urbanisation, that is: a perverse pattern of combined socio-spatial segregation, environmental degradation, economic inefficiency, fiscal crisis, administrative irrationality, social insecurity, as well as rampant land and housing informality. The current process of ‘urban spoliation’ can no longer be blamed on the lack of laws, planning, or financial resources.

The last 15 years were strongly characterised by intertwined processes of politico-institutional tensions and socio-political conflicts, as well as being increasingly marked by a manifest conceptual socio-political dispute regarding the definition of what cities are, for whom they are managed, who makes decisions and how, and who pays, and how, for the financing of urban development. Federal policies on and in cities were, and remain, sectoral, isolated and fragmented, thus reflecting the same institutional fragmentation that exists among several federal ministries and even within the Ministry of Cities itself. In conceptual terms, the federal government has failed to understand what cities really are in the contemporary world, especially given the current stage of post-industrial capitalism in the country. Nor has the federal government understood the nature and implications for the country of the ongoing process of urban development, especially within the context of rapidly globalising land, property and rental markets. While most political parties, politicians and managers do not have or follow a clearly defined urban policy, at the federal level especially investment in cities has been viewed merely as a means of ‘creating infrastructure for economic development’ and/or ‘formulating social policy’. The enormous investment of public resources, especially through the PAC and MCMV, has taken place without the previous definition of an integrated land, territorial, and urban national policy. The equally massive Bolsa Familia social poverty eradication/income redistribution programme has also been largely conceived without a solid understanding of its impact on urban areas and on the overall pattern of urban development and management. Moreover, several economic policies – such as incentives to the national automobile manufacturing industry – were implemented with little understanding
of their impact on cities, while other economic development policies – such as the construction of a system of dams – had little concern for their environmental impact. The institutional and legal action of the federated states has also been very limited.

The fact that decreasing poverty rates co-exist with growing informal development rates has clearly shown that poverty can no longer be viewed as the sole reason for informal development, or even the main one. Other factors to be considered have largely to do with the nature of the territorial organisation order and its relation to the land structure: there lies the reason for the state’s structural inability to provide accessible, adequate, sufficient, well-located and affordable access to serviced urban land and housing. The current public services crisis has demonstrated that the building of walls, imaginary or concrete, is insufficient to protect the more privileged socio-economic groups. If in the past the lack of basic sanitation only affected the urban poor, today’s public health crisis has no borders, especially given the combined impact of the ongoing Zika, Dengue and Chikungunya pandemics. Even if the urban poor remain more directly affected, the impact has been widely felt. The same applies to the growing failure of other public services and infrastructure systems, such as the widespread energy crisis, especially given the saturation of the electricity and water provision models. The serious problems now regularly experienced by the urban population concentrated in São Paulo, Minas Gerais and Rio de Janeiro, among others, tend to be aggravated further by severe droughts and other consequences of extreme weather patterns. And yet, urban policies, plans, projects and laws at all governmental levels have failed to seriously take into account these new environmental scenarios, and economic development is still promoted in an unqualified manner.

All in all, the inadequacy of the politico-institutional system and resulting governance processes is manifest, from the lack of a metropolitan sphere, intergovernmental articulation and a national territorial policy/system of cities, to conflicting ‘green’ and ‘brown’ agendas and inefficient environmental policies regarding coastal protection, river basins, vegetation, global warming, gas emissions and the Amazon. At the root of these problems is the lack of a comprehensive and articulated land policy. The ‘urban question’ has been up for grabs, when it has not been auctioned off by the government.

Had the federal government understood that, perhaps the current political crisis would not have taken place. Amid all the uncertainties, two things are certain: the street demonstrations have an urban nature and – consciously or not, directly or indirectly – they are ultimately about the nature of the social process of production of urban space. Even when they are conveyed in specific or narrow terms, their claims ultimately address and condemn the general urban development pattern: socio-spatial segregation that affects the 84 per cent urban population (Worldometers 2016); the increasing peripheralisation of the urban poor; the concentration of public services, equipment, facilities and opportunities; growing taxation and limited access to public services. Cities are the socio-spatial expression of an exclusionary and perverse socio-political pact.

Has this exclusionary urban development pattern resulted from the lack of urban planning, as many have argued? The answer is no. Brazil’s urbanisation has largely been a state-led process. What is at stake is the kind and nature of traditional urban planning (theory, education and, above all, practice), which has long been viewed merely as a ‘technique of territorial organisation’, as well as being ‘neutral’ and ‘objective’ socially and politically. The fragmented approach has dissociated urban policy from land policy and housing policy, as well as from transportation, environmental, fiscal and budgetary policies. Urban planners and managers have no understanding of the exclusionary and speculative dynamics of the property markets they create, seeing themselves as poor hostages of such aggressive markets. As a result, this elitist planning tradition has led to informality. Moreover, there is no attempt to share with the
community some of the significant surplus value resulting from state action (through public works, services and urban laws) and, when there are attempts, as in the case of São Paulo, they reinforce socio-spatial segregation as most of the newly gained resources are invested in the same areas in which there is already a higher concentration of services and equipment. Mistaking effects for causes, well-intended governmental actions have had bad effects: as described, the social programme implemented by the federal government has already built over 2 million houses in precarious peripheries, and costly, but isolated, regularisation programmes have led to higher land, property and rental prices and thus to evictions.

Urban planning has also long been dissociated from urban management. Lengthy bureaucratic procedures, the lack of intergovernmental articulation as well as of transparency and accountability together have significantly contributed to the current urban crisis, particularly at the local level, given the widespread lack of municipal capacity to implement more complex proposals. Although nominally recognised and even required by the legal-urban order in force, popular participation has not taken place in all stages of decision-making and it has often been manipulated, reinforcing the long-standing tradition of political patronage.

The period was also marked by a national context of intense, excessive and rather artificial politico-institutional decentralisation, as well as by tense, volatile and largely manipulated intergovernmental articulations. While their legal obligations have increased over the years, municipalities still fundamentally lack the capacity to act and thus to formulate, implement and monitor urban policies. The lack of sufficient resources explains only part of the problem, however, as there has also been widespread poor utilisation of existing fiscal and financial resources by municipal administrations. Municipalities have often opted for maintaining their dependence on federal and federated-state financial transfers for political reasons, especially regarding their hesitation to make full use of their legal power to implement land and property taxation and thus antagonise powerful local groups. By doing so, they have reinforced historical patterns of political patronage, as well as renovating long-existing dynamics of political clientelism.

In this confused politico-institutional context, only in recent years has there been a more critical discussion on the inadequacies of the prevailing ‘federative pact’ and the shortcomings of the formal municipalism in place, thus questioning the notion that the role of federal government is merely to provide financial support to municipalities. According to this still dominant view, even the sizeable federal resources from both PAC and MCMV have to be spent by municipalities, and by municipalities alone. In many cases, significant financial resources have been unused or have even returned to the federal government given the lack of municipal capacity to formulate projects, open tendering processes and monitor the implementation of public contracts. In cases where NGOs and the private sector have been included in the process of urban management, through public–private partnerships (PPPs) and other schemes, mismanagement and corruption have also been common. There has been a growing call for the formulation and implementation of truly national policies to govern the phenomenon of urban development and all its implications and consequences.

To complicate a chronically difficult situation even further, for all its long-standing shortcomings, contradictions and constraints, the federal government actions in cities have been severely affected by the ongoing, and worsening, political, institutional, economic and fiscal crisis that virtually paralysed the country from January 2015, when President Dilma Rousseff took office to undertake her second mandate, until her impeachment in August 2016. This is a lamentable situation that has already had serious implications for the existing set of sectoral federal policies: the prospects for the future of the country’s patchy national urban policy are now even worse, as ultimately what is at stake at the core of the impeachment process are two different national socio-political projects with the one opposing the Rousseff government being
more unambiguously in favour of neoliberal policies, privatisation schemes, flexibilisation of labour relations, unqualified property rights and the deregulation of economic activities and urban development processes.

In 2006, the Ministry of Cities had already been sacrificed in the name of ‘governability’, handed over to a conservative party, and gradually turned into little more than a ‘clientelistic business desk’. While the new President has promptly signalled his support for further orthodox fiscal and economic austerity measures, several decisions taken by the elected government over the last 12 years, especially those of a social nature, have been revoked without any discussion or consultation. This backlash has meant that significant cuts have been announced to the main federal programmes, including Bolsa Familia, PAC and MCMV. The newly appointed Minister of Cities seems to be strongly committed to a widespread programme of privatisation, PPPs and support to land developers and property promoters. His very first measure has been to abolish the dimension of MCMV that encouraged collective self-construction by housing cooperatives and residents’ associations. Such changes have been met with increasing hostility on the part of a growing number of people and organisations, and socio-political protests have occurred. As a result, some decisions have been fully or partly reversed or suspended, worsening the general political uncertainty. It is impossible to say with any degree of clarity what the future might hold, although new socio-political pacts are forming and the level of social mobilisation has gradually decreased. It can be expected that Brazilian cities will have an even harder time in the near future. While daily revelations of the extent of corruption practices have gripped the nation’s attention, the political crisis has worsened the economic and fiscal crises.

Conclusion

The last 15 years have been marked by ups and downs, advances and backlashes, euphoria and depression, but the current mood is one of uncertainty. While there has been greater public intervention in urban areas at both the federal and the municipal levels, especially through a number of laws, programmes and plans, the lack of a consistent, articulated urban policy framework has undermined much of the efforts, often reinforcing patterns of waste, inefficiency, exclusion and segregation, rather than promoting productivity, sustainability and inclusion. Long-existing structural problems, obstacles and bottlenecks have not been removed, thus determining the limited, elitist nature of urban governance, and long-standing tensions and disputes have gradually come to the fore. Given the evolving, spiraling political and economic crises, much of what had been achieved – especially through poverty reduction policies – has turned out to be fragile.

The post-City Statute confirmation of old socio-spatial segregation processes at all governmental levels, despite the possibility of significantly changing the course of things through the formulation of profoundly different and inclusive MMPs, seems to demonstrate that, with the support of legal professionals, urban planners and public managers remain, and have seemingly increasingly become, hostages to exclusionary land and property markets that they have created and fomented in the first place, as well as to segregating public policies that they have implemented. To break with this perverse logic, a concentrated effort needs to be promoted to provide more information – as well as better formation – to planners and legal professionals, judges, prosecutors and registry officers, as well as society as a whole, on the nature and possibilities of the new legal-urban order that the City Statute symbolises. If judicial courts need to follow Urban Law principles when interpreting property-related conflicts, rather than embracing obsolete unqualified private law ideas, civil society also needs to claim more vigorously for the recognition of social and collective rights.
Brazil’s legal-urban order has significantly changed, but have the jurists understood that? Has the nature of urban planning been changed accordingly? Have urban managers assimilated the new principles? Has civil society awoken to the new legal realities? The answer is no. To play the game according to the new rules is fundamental for the collective construction of sustainable and fairer cities for the present and future generations. The future of the City Statute requires a thorough renewal of the socio-political mobilisation process around land, urban, housing and environmental matters so as to advance urban reform nationally. It is a task of all to defend the City Statute from the proposed, essentially negative, changes being discussed at the National Congress, overcome the existing obstacles and improve the legal order further, but above all, to fight for its full implementation. However, the street demonstrations have told an important cautionary tale: legal reform is not sufficient. For all the undeniable progress towards confronting poverty and inequality, there is still an enormous amount of work to be done to redress several forms of historical injustices, to provide better public services and to promote effective inclusive socio-economic and urban policies. This requires an articulated set of public policies, ranging from the creation of a truly redistributive tax system – in a country dominated by regressive and indirect taxation – to more incisive land policies.

If ‘bad laws’ can make very difficult both the recognition of collective and social rights and the formulation of inclusive public policies, ‘good laws’ per se do not change urban and social realities even though they express principles of socio-spatial inclusion and socio-environmental justice, or even, as is the rare case of the City Statute, when the legal recognition of progressive principles and rights is supported by the introduction of the processes, mechanisms, tools and resources necessary for their materialisation. If decades of socio-political disputes were necessary for the reform of the legal-urban order and for the enactment of the City Statute, a new historical stage has been opened ever since, namely that of the socio-political disputes at all governmental levels, within and outside the state apparatus, for its full implementation. The fact is that Brazil, and Brazilians, have not yet done justice to the City Statute.

Once the current political crisis is over, the promotion of urban reform will take time and will require continuity and systematic responses at all governmental levels in order to address existing problems, as well as other fundamental factors such as capacity building, approval of articulated policies according to a clearly defined urban agenda and the allocation of the necessary resources. There is still a long way to go and serious obstacles to overcome. The rules of the game have already been significantly altered; what remains to be seen is whether or not the newly created legal and political spaces will be used in such a way as to advance the urban reform agenda in the country. The right to the city is still to be conquered. There are many important lessons there for scholars, policy makers, managers and activists elsewhere.

Notes

1 The law was approved following 12 years of intense discussion and fierce disputes within and outside the National Congress. Now acclaimed internationally, in 2006 Brazil won UN-HABITAT’s Scroll of Honour for having approved the law.

2 For more information, see www.cidades.gov.br/index.php/planejamento-urbano/392-banco-de-experiencias [accessed 2 November 2016].

3 For example, public works such as the Belo Monte dam and many PAC-sponsored projects do not have a clear environmental impact dimension, and the deforestation of the Atlantic rainforest, as well as of the Amazon, continues at alarming rates.

4 The largest socio-environmental disaster in Brazil’s history has developed for the last nine months – initially in Mariana, Minas Gerais, as a result of the waste water released by the bursting of a dam, which subsequently affected 40 cities of two federated states, a large stretch of the Atlantic Ocean, the valley of the Rio Doce, several communities and economic activities and has yet to receive proper governmental attention.
References