

**“Urban planning to provide affordable housing in  
infrastructured areas, with social cohesion, through the market:  
Real estate profitability or right to the city assurance?”**

Paula Freire Santoro\*

© by the author(s)

(\*)Professor at Faculdade de Arquitetura e Urbanismo da Universidade de São Paulo – FAUUSP

Rua do Lago, 876

Cidade Universitária

São Paulo-SP

CEP 04280-000

[paulasantoro@usp.br](mailto:paulasantoro@usp.br)

Paper presented at the RC21 International Conference on “The Ideal City: between myth and reality. Representations, policies, contradictions and challenges for tomorrow's urban life” Urbino (Italy) 27-29 August 2015. <http://www.rc21.org/en/conferences/urbino2015/>

# **Urban planning to provide affordable housing in infrastructured areas, with social cohesion, through the market: Real estate profitability or right to the city assurance?**

**Keywords:** affordable housing, inclusionary housing policies, Special Social Housing Zones (ZEIS), Urban Operations.

## **Abstract**

*One of the major Latin American city planning challenges is to provide affordable housing for low-income families in infrastructured areas that offer jobs and services, promoting diversity and equity, translated in a good social and racial mix and social cohesion. This mission becomes increasingly difficult in a neoliberal context in which the task of providing land and housing for low-income families is transferred to the market, whose logic is based on the largest real estate profitability.*

*This paper will bring two Latin American experiences in urban planning that relate to both the profitability logic imposed by the market and the idea of providing the right to the city. The first analysed experience is centred in a special land reserve in municipalities zoning for social housing promotion, through the creation of Special Social Housing Zones (ZEIS). Since the 1980s, uses this land reserve instrument in central areas, and more recently, it has been combined with other instruments that pressure landowners to put their properties on the market, only when and if their properties are considered underutilized, unused or vacant by the municipal master plan.*

*Another observed urban experience, which has been largely implemented in international contexts, is known as inclusionary housing policies and it has been recently debated in São Paulo (Brazil) and Bogota (Colombia). They lie in the design of social housing policies through the use of a planning system to create affordable housing and social inclusion, by capturing resources generated in the marketplace. Inclusionary housing policies, in these Latin American cases, can be a legal framework that provides incentives to private developers to incorporate affordable housing as part of market-driven developments, and within the same development. Whereas Latin America does not have a tradition of regulating urban restructuring processes – different from the United States or some European countries –, this paper reflects whether these experiences resulted in the guarantee of public interests – e.g. infrastructured land,*

*assistance to families, social class mixing and social cohesion etc. – in order to produce more just cities; or whether public interest has been neglected. The hypothesis developed in the paper is that, although those inclusionary housing policies did have some social achievements – that were in some cases observed and underlined in order to guide policies –, generically speaking, they were appropriated by the market logic, transferring the centre of these politics from the task of safeguarding the right to the city, to ensure the profitability imposed by the real state market.*

## **1. Some of the theory on inclusionary housing policies**

One of the major Latin American challenges in city planning is to provide affordable housing for low-income families in infrastructured areas, promoting social mix and social cohesion. This mission becomes increasingly difficult in a neoliberal context in which the task of providing land and housing for low-income families is transferred to the market, whose logic is based on the largest real estate profitability.

This neoliberal scenario is being structured since the 1990s, from the reorganization of the State's role in the urban transformation (in the context of an erosion of municipal economic and tax base) and the withdrawal of the State from its role of direct funder of urban development. This period was associated with a strong encouragement of deregulation policies, privatization and liberation of markets, structuring what Harvey (1989) calls "entrepreneurialism", which corresponds to an assimilation, to a greater or lesser degree, depending on the country or the city, of the State's involvement in planning and urban management, replaced by the formula of the "public-private partnerships".

In the field of housing policy, those programs that were once centred in a State large-scale production, as happened for example during the Welfare State in Europe, were gradually replaced by programs in which governments would finance the private production of housing. And so public funds and subsidy policies to this production were structured in several countries.

The market entry in the production of urban space has been largely criticized, for it is grounded in the assurance of real estate business profitability obtained in the urban transformation. This paper aims to discuss two proposals for urban instruments that relate with the production of social housing by the market:

(i) The first one, focused on land reserve in the zoning for the production of social housing through the creation of Special Social Housing Zones (ZEIS), spread throughout Brazil and described here from the experience of São Paulo. Or, comparatively, the classification of land for *vivienda de interés prioritario* (social housing priority), widespread in Colombia, presented here from the experience of Bogota;

(ii) The second proposal, with some existing international experience and which has only recently entered the debate in Brazil, consists in the design of social housing promotion policies from the regulation of the urban restructuring. These can be termed *inclusionary housing policies*, found in several countries as documented by Calavita & Malatch (2010). In Brazil, where experiences are still rare, the paper analyses the instrument Solidarity Share and the production of social housing through Joint Urban Operations, both in São Paulo. In Colombia, the analysis is centred in cases of percentages for *vivienda de interés prioritario* in partial plans for areas of urban sprawl and urban restructuring. In addition, we present the possibility opened by the macro-projects of social housing production by the Central Government, on a larger scale and number of units.

Considering Latin America does not carry a strong tradition of regulating urban restructuring – unlike the US or European countries whose experiences serve as a basis for discussions brought up in this article – the debate on the implementation of these instruments is permeated by the fear that aspects relating to the guarantee of public interests will be neglected in regard of the profitability logic imposed by the neoliberal urban transformation. In this context of non-regulatory tradition, the latter responds to the logic of the appreciation of urban land and its role as exchange value, moving away from the regard of rights and the notion of use value and on the access to land, in order to guarantee the right to housing and to the city.

## **2. Inclusionary housing policies derived from land reserve zoning**

Inclusionary housing policies derived from land reserve in the zoning are based on the idea that intervening in the rules that define the use and occupation of land (zoning), can operate to expand the access to land for those who do not have this possibility through market mechanisms. The most common example in Brazil is the one of ZEIS. Initially conceived to recognize the existence of informal settlements and make their consolidation viable, this type of zoning was first called "regularization ZEIS". In the 1980s, however, the instrument was

transformed to encompass also delimited zones of areas considered underused, unused or not built, which would be cast for the production of, primarily, social housing; the zoning was now nicknamed "vacancy ZEIS".

In Brazil, there was a large spread of the instrument ZEIS: just under one third of municipalities across the country reported having specific legislation on Zones or Areas of Social Interest<sup>1</sup> (IBGE Munic, 2009). However, there are still only a few using underused areas in order to expand the offer of land for the production of social housing. This dissemination occurred after the approval of the City Statute (Federal Law n. 10,257/2001), the legal framework that required municipalities with over 20,000 inhabitants to elaborate a master plan. The measure allowed the expansion of the instrument contained in the municipal plans, usually accompanied by zoning and urbanistic instruments.

Maldonado (2012), describing the motivations for using land reserve in the zoning of Bogota, points out to the importance of zoning in supporting housing policies. According to the author, this type of zone reduces the value of the land, diminishing the need for land expropriation or public purchase, reduces the value of compensation payments (expropriation costs) and affects the land market as a whole (the same interpretation can be found in Cymbalista & Tsukumo, 2009). Furthermore, it meets the urban law principle of equitable delivery of charges and benefits and, perceptibly, it reinforces the social function of property. Some of these commented effects have not yet been well measured in Brazilian literature, e.g. there is no reliable research up to date that has succeeded to assess the effect of zoning on land prices throughout the country.

Regarding zoning, the instrument of ZEIS seeks to overcome the despotism of the "highest and best use" imposed by the real estate market in search of profitability, by proposing the use of well located and most central areas for social housing. At the same time as it seeks to reverse the role of zoning as a reserve of land and urban conditions exclusively for the elites, subject widely discussed in the literature (Villaça 1998, 2011; Rolnik, 1997), it ensures that the poor can live in the city – in urbanized, well infrastructured and equipped areas – and not outside it. Thus, it is an instrument conceived to avoid urban segregation, defending that the demarcation of areas is meant to stimulate social and racial mix, promoting spaces with social cohesion. In economic terms, it is expected that the coexistence of different social classes in

---

<sup>1</sup> Understood as "specific legislation dealing with areas for housing settlements of low-income population, spontaneously built, existing, consolidated or proposed by the master plan, where there is possibility for urbanization and land regularization" (Basic Research Questionnaire MUNIC IBGE 2009).

the same area might have a positive impact for the groups of lower income, which might benefit from positive externalities generated by the groups of highest income.

It is thus a key instrument in the making of a housing policy, for it aims at producing social housing *ex-ante*, through the urban policy, avoiding the high cost of the urban sprawl and *ex-post* processes of regularization and urbanization of precarious settlements, often both slow and traumatic.

### **3. Land reserve: the experience of implementing ZEIS in Brazil**

According to Rolnik and Santoro's (2014) analysis of the implementation of the "vacancy ZEIS" since it was conceived in the 1990s, the instrument has been used in order to:

- (i) Increase the stock of land for the production of social housing. This was the case in municipalities such as Diadema, which ever since the implementation of ZEIS doubled the supply of land for this purpose and managed to negotiate the land, effectively producing housing;
- (ii) Recognize the right to housing and prevent forced evictions, or even to instruct lawsuits that might come to demand the production of social housing in areas where original residents have been removed;
- (iii) Offer and put land in the market, through negotiation and orchestrated mediation by the public power, working actively in the construction of a housing policy;
- (iv) Gain production in scale, combined with housing policies for financing homebuyers, as in the case of the program Minha Casa Minha Vida in São Paulo;
- (v) Or even to do "more of the same", that means, to reproduce the poor examples of use of regulatory instruments to allow the production of housing on small plots or in areas with less urban infrastructure, reproducing the precariousness of slums in a new area.

Other challenges can be added to this assessment of the instrument. Further analysis of the deployment of ZEIS in São Paulo, described by Santoro and Borrelli (2015), showed that the design of the zones incorporated into the Strategic Master Plan of 2002 and later in the Zoning of 2004 (Law of Land Parceling, Use and Occupancy) was not linked to a housing plan with a quantitative and qualitative assessment of the reserve of land required for the production of new units of social interest, or that articulated ZEIS with other instruments in order to effectively use the land for social housing.

The instrument was also not quite combined with other mechanisms provided by the City Statute, whose purpose is to pressure land owners to deliver their land for this production – such as the triad formed by Compulsory Subdivision, Construction and Use (PEUCs), the Progressive Urban Property Tax (time progressive IPTU) and Expropriation with Government Bonds – or even that worked as an alternative to traditional expropriation proceedings, generally lengthy and costly – such as Preemption Rights, and later the Donation in Government Bonds, among others – in order to corroborate the process of making urbanized land accessible, in accordance to the principle of the social function of property.

On this subject, Faria (2013) states that merely deploying the instruments to fulfil the social function of property, without combining them with other instruments that will allocate the land to the public interest, might have the effect of delivering the land to the market, allocating them to more profitable uses.

Not least challenging is the making of a democratic and participatory territorial planning of the ZEIS, including the “vacancy ZEIS”. Gatti (2013) points out that the Nova Luz project in 2009, in São Paulo, was done without effective public participation, in spite of residents and shopkeepers that were subject to expropriations and evictions. In this context of conflict, the council for ZEIS 3 of this region became an important instrument for struggle. Despite its limitations, e.g. as a deliberative body, the council went to court claiming for the right to participation, and managed to legally stop the implementation of the project.

Equally challenging has been the demarcation of ZEIS in more central and under urban restructuring areas, due to the high prices of land that, if on the one hand prevent its acquisition by the government, on the other hand does not allow enough profitability to attract the market to produce housing for low-income families. Moreover, when accompanied by housing policies based on the financing of home acquisition for those who can afford it, the difficulty of permanence of families is increased. Pressured by the possibility of selling the home and obtaining the rentability related to the good location, families negotiate their property and, often, flock back to the peripheral, cheaper areas, reinforcing the old centre-periphery model. In these cases, even though some housing units are subtracted from the final bill, market logic moves away from the logic of housing needs (on the same subject, and again for São Paulo, see Santoro & Macedo, 2014). And yet, it draws attention to more complex gentrification processes that occur by the action of the housing market throughout time (Smith, 1996).

### **3.1. The case of ZEIS in São Paulo**

Santoro and Borrelli (2014) indicated that discussions on the master plan of São Paulo could be divided into two broader groups: on one side were the elites concerned in safeguarding their features (e.g. preventing mixed use in exclusively residential areas), and, on the other side, were residents of remote areas, demanding improvements in sanitation, infrastructure and, primarily, claiming for the delimitation of new perimeters of ZEIS. Organized urban social movements demanded according to the latter.

However, the perimeters of ZEIS have never exceeded 10% of the urbanized area and, of those, only 1% would be vacant ZEIS. More "vacancy ZEIS" were demanded by social movements, but technicians in the Municipal Housing Agency resisted, under the justification that land prices were too high for the acquisition for social housing and because properties' dimensions were below ideal pre-established standards, e.g. with very small plots.

ZEIS are zones in which a mandatory percentage for the production of social housing is fixed. The "vacancy ZEIS" (ZEIS 2 and 3) require the production of 40% of social interest housing (HIS, comprising families with income between 0 and 6 minimum wages), 40% of popular market housing (HMP, encompassing households with income between 6 and 16 minimum wages), and 20% for other uses. It must be highlighted that it is unusual in Brazil that a zone has a compulsory percentage fixed for a specific use, as zones will customarily only restrict uses and establish occupancy standards. But because the ZEIS of São Paulo were used as an example to other national experiences, the instrument conceived with mandatory percentages for HIS and HMP was disseminated throughout the country.

Among the innovative aspects of the delimitation of ZEIS in São Paulo, there is the inclusion of squatted buildings in the city centre and the social pressure for the establishment of a rehabilitation program for delivering underutilized buildings in the centre for the production of social housing (Cymbalista & Tsukumo, 2009).

Another relevant aspect was the methodology for delineating the perimeters of ZEIS in the rings around the centre: perimeters should combine properties with "housing problems", such as tenements areas, and real estate with "potential for change". Cymbalista and Tsukumo (2009) point out that, thus, one of the main criteria for perimeter demarcation was the location in areas considered undervalued within the central ring, while the public power chose not to interfere in areas that attracted most interest from the property market by that time.

Little progress was made in the revision of the Master Plan of 2014, conducted throughout 2013. A framework with the housing needs in the city was designed: there was demand for

230,000 new homes, for the adequation of about 890,000 households (with problems of urban or constructive formal regularity), and for housing solution for about 13,000 people living on the streets (Municipal Housing Plan 2009-2014). The estimate for 2024 is even greater, with the demand of almost 720,000 new homes. In order to produce this amount, 42 km<sup>2</sup> of land resources would be needed (only 8 km<sup>2</sup> were earmarked for this purpose). The framework has motivated the development of some strategies to anticipate and facilitate the access to land and resources for the production of social housing.

A first strategy, necessary to overcome resistance and approve the Master Plan, was the differentiation of "vacancy ZEIS" in two.

The first, known as "social movements ZEIS", changed the parameters in "vacancy ZEIS" (ZEIS 3), requiring mandatory percentage of 60% of the built area for families with income between 0 and 3 minimum wages, which cannot afford to pay for a home loan and represent the largest share of the housing deficit. The definition of this group was reviewed in the plan and called HIS 1. The focus on families who make up the bulk of the housing deficit was one of the most important measures in correcting the course of the instrument. The previous plan allowed assistance for families with income between 0 and 16 minimum wage, but as the minimum wage increased significantly in the last decade, it distorted the social groups that were able to access subsidised housing, then primarily middle classes.

The other one became known as "market ZEIS" (ZEIS 5). Those incorporated the request made by the real estate market, that the ZEIS could have a higher percentage of HMP, delivered to families whose income ranges from 6 to 10 minimum wages, and lower for HIS, making a most profitable product, which would interest the market in building in these areas.

A second strategy was the expansion and revision of the perimeters of ZEIS, evaluated as few and insufficient in the participatory process, which resulted in an increase in the number of perimeters from 964 to 2,281. The total area of ZEIS increased from 8 km<sup>2</sup> to approximately 41 km<sup>2</sup>, but still, the perimeters that grew the most were the occupied ZEIS (Office of Councilman Nabil Bonduki, 2014). However, if added to the areas of ZEIS considered unused, underused or not built – ZEIS 2, 3, 4 and 5, which grew at a similar value to ZEIS 1 alone, of 18.62 km<sup>2</sup> –, they still occupy only 35.86 km<sup>2</sup> (and with some demarcation problems).

The Plan sought to consider the territory as an important part of a social housing policy, reserving land and resources for social housing and articulating the instruments that pressure for the fulfilment of the social function of property and the city, as will be discussed later.

The framework for tackling the housing needs through the use of urban instruments is improving, but many challenges remain, such as those that allowed some "distortions" in the occupation of ZEIS, e.g.:

- (i) ZEIS fully occupied by institutional use, enabled by regulatory decrees, to date not modified;
- (ii) Upper-market housing projects occupying the totality of some perimeters of ZEIS, allowed to remain for having the *right of protocol* (projects were filed before the adoption of the Master Plan), or in some cases, even endorsed by a special council that evaluates cases of exceptional approval or corruption in the process of approval (as was the case of Solomon's Temple, that fully occupies a ZEIS). The transition from master plans kept this possibility;
- (iii) Areas that remain unoccupied in ZEIS for the difficulty of approving projects in protected area of water supply sources, whose regulations are more restrictive than the municipal legal framework (Santoro & Borrelli, 2014).

### **3.2. Mercy shot: from land reserve to the possibility of producing social housing outside ZEIS**

"Vacancy ZEIS" in Brazil could have today a strategic role in a policy aimed at requiring, from private entrepreneurs, both land and resources for the production of social housing, indicating where the market should produce those units. But in order to facilitate even more the production through the market, the strategy adopted by the municipalities has been the creation of rules to produce affordable housing that apply to any area of the city, disregarding the pursuit of a good location. In addition, there is a selection of the families, and those who cannot afford loans are driven away from housing assistance. These two aspects have put into question the effectiveness of the instrument ZEIS in the context of installed neoliberal rationality (Santoro & Macedo, 2014).

Apart from those mentioned reasons, the inefficacy of ZEIS can also be explained for what took place outside their perimeters.

The idea was to turn ZEIS areas attractive for the real estate sector by assigning higher coefficients of land use, while other areas would lower their coefficients. However, what happened was that other areas were also allowed to become denser, which meant the ZEIS didn't gain the expected attractiveness (Cymbalista & Tsukumo, 2009).

The real estate market asked the public power for more incentives, pointing out that the obligation to carry out combined projects (of HIS and HMP) hindered the approval of projects and decreased their profitability, notwithstanding that the social mix was designed precisely to

cooperate with increased profitability. Also, the market protested for having to deliver housing units for residents indicated by the City (Caldas, 2009).

Several modifications through decrees were made to the instrument, allowing, among others, the production of social housing outside ZEIS, usually on cheaper land, reinforcing the peripheral pattern of supply of affordable housing. As a result, between 2003 and 2007, more housing developments were made outside ZEIS than within their perimeters, a total of 242 of the former against 110 of the latter (Rolnik and Santoro, 2014 quoted in Caldas, 2009, p. 36).

This scenario of increased supply of units outside ZEIS in São Paulo changed considerably after the release of the Federal program *Minha Casa Minha Vida*, in 2009, offering subsidies to home buyers with an income ranging from 1 to 6 minimum wages. An evaluation of the 2005-2010 period conducted by the union of real estate companies (Secovi), showed that there was an inversion, with "more HIS developments approved and implemented in ZEIS (approximately 6,300 housing units) than outside (3,500 housing units)". There was also a significant increase in the total of units produced in ZEIS, both of HIS and HMP, "from 45,000 units between 2003 and 2007 to 68,000 between 2005 and 2010" (Santoro & Rolnik, 2014, p 17.). However, a hidden information behind this success of the instrument is that the increase of the minimum wage created the possibility of producing middle class housing in ZEIS, often erroneously approving projects as HIS, and thus distorting the purpose of the instrument.

The analysis of Secovi's data seems to show that the instrument was interesting even in the context of high property prices, considering the compensation to landowners, through subsidies to homebuyers. However, considering that the analysed period coincides with many complaints and recognized cases of corruption, it is reasonable to question the validity of these results, recognizing the existence of cases in which upper-market projects were approved as HIS.

In any case, considering (i) that the final design of the perimeter of ZEIS was proved below expectations, (ii) that there has not been an active administration seeking to implement social housing in central areas, and (iii) that the instrument has not been very effective in the promotion of the social function of property, it is crucial to consider the uniqueness of the application of ZEIS in São Paulo.

#### 4. Land reserve in Colombia: qualification of land for social interest

According to Maldonado et al. (2006), one of the central concerns of the main Colombian legal frameworks – Urban Reform Law (Ley 9ª of 1989) and Territorial Development Law (Ley 388 of 1997) – was "the search for alternative solutions to the problems of access to urbanized land and housing for the poorest sectors of the population, the same as the control of the occupation of high-risk areas" (Maldonado et al., 2006, p. 13). The Law 388/97 introduced instruments related to the production of social housing, to be adopted by municipalities and better regulated in their Plans of Land Management (POTs).

In order to illustrate the challenges of Colombian legislation, Maldonado (2012) points out that it is possible to reserve land by qualifying soil for *vivienda de interés prioritario* (that is, housing for lower income groups), which may be associated with the percentage required for the different types of social housing, as has been done in Bogota. This land use classification is similar to Brazilian ZEIS.

The fulfilment of these percentages must be part of the contents of the Declaration of Priority Development (in Spanish, *Declaratoria de Desarrollo Prioritario*) (Ley 388/97, art. 52), an instrument that recognizes the right of the public administration to decide, through plans and policies, whether a property fulfils its social function. In other words, the instrument might limit the right to private property. In Brazil, the Master Plan should give the elements to assess whether a property fulfils its social function. In Colombia, this instrument can also be the POT, which contains a zoning or qualification of land use for areas of social interest. Also, the Declaration of Priority Development can be set in the Economic and Social Development Plans, as happened in Bogota.

A POT may contain the properties in which the Declaration of Priority Development can be applied. The Declaration must be accompanied by an implementation program, with strategies and parameters provided in the Plan aiming at their implementation. Those properties may be marked on plans in other scales, as it is the case with *Áreas de Actuación Urbanística*. By delimiting these areas, the promotion of social housing could happen either through qualification of land use in the zoning, or yet, through a mandatory percentage of area destined to social housing, determined by any urban development project, either for restructuring or for urban sprawl areas, defined by the POT.

The Declaration of Priority Development allows the municipality to auction land whose owner did not urbanize or build in periods ranging from one year (for developed land) to three years (for land in expansion fronts). The auctioned land is delivered to third parties who accept the

conditions and will build *vivienda de interés social* or *vivienda de interés prioritario* in percentages and prices previously fixed. To do so, the Declaration must be established in the POT, and every 4 years administration must determine how many homes will be needed and mark the land for this production during this period.

However, the instrument was not widely applied. Bogota, for example, adopted the option of qualifying land for social housing in its Development Plan, but should still regulate the instrument. The national government ended up regulating the matter and preventing Bogota to issue its own regulations, and the subject ended up frozen, not conforming an urbanistic obligation.

## **5. Inclusionary housing policies derived from urban restructuring regulation**

The regulation of the urban structuring combined with inclusionary housing policies has, in its proposal, the aim of regaining for the collective part of the land surplus value that the private sector obtains with the appreciation that follows the flexibilization of the rules of use and occupation of the land, often required by the market in projects for the transformation of urban areas. The recuperation of this surplus can be achieved by capturing resources, which go to a fund for the promotion of the public interest in the city. This allows urban projects to have as a final product not only the rentability of the land and a set of developments, but also the possibility of offering public compensation in land reserve (and not only revenue), to less profitable uses of public interest.

The choice for the regulation of urban transformation functions, in these cases, as a sort of minimum regulation of the market action. It has also been associated to the idea that the very urban development could be self-financed by recovering resources, and ensures that the public interest in the production of the urban is also possible from the market, with urban and environmental quality and social inclusion. In theory, market regulation would help to ensure some collective rights in the urban development.

According to the existing literature, examples of inclusionary housing policies are: the production of social housing as a condition for the approval of a major development; a required compensation for using building rights; the safeguarding that a percentage of the estate in the project is either delivered to social rent or sold at affordable prices, usually between 10 and 20% of the produced properties, aimed at low-income families unable to purchase housing on the market. Or even that the entrepreneur can contribute to a specific

fund or donate a parcel of land either to a bank of public land, or to a municipal or cooperative incorporating company (Calavita & Malatch, 2010).

These policies are based on assumptions that housing production costs reflect, among others, what is allowed by the rules of land use and occupation. In this regard, it is seen as possible that a municipality will approve rules that promote inclusion combined with incentives to the market (like building more or implementing more rentable uses), designed to simultaneously enforce the production of social housing and enable the real estate business. Thus, it is expected that costs estimated by the entrepreneurs will be compensated, at the same time that there is a capture of land surplus value in benefit of the public, through the production of the housing units. In Brazil, especially in São Paulo, this aspect of "compensation to the owners" described above has been strongly embedded in the urban regulation (Rolnik & Santoro, 2014).

Considering that a tradition of regulating urban transformation inexists in Brazil, the aspects related to the guarantee of public interests are the ones that have been little developed in the regulation of the territory. This fact leads to the severest criticism of planners: that the imposed rationality obeys the notions of exchange value and appreciation of urban land, rather than the logic of rights, in which predominates the use value and access to land, translated in the guarantee of the right to housing and to the city (Santoro, 2015).

Among the arguments in the international literature from those who defend the use of these instruments, are:

- (i) They prevent urban segregation, and can collaborate with occupation of degraded and inner-city areas (Latin American context);
- (ii) They prevent urban sprawl, and likewise, cooperate for urban environmental sustainability and to the idea that urban growth produces impacts that deserve mitigation or compensation;
- (iii) They have become, in some cases, vehicles through which public funds can be destined to the production of social housing;
- (iv) They may be a response to government policies, whose segregatory typologies and processes were much criticized (e.g. in many works addressing racial issues in the US);
- (v) There might have gains for low-income groups from externalities by proximity to groups of higher income, if mixed in areas with a diversity of household incomes (mix-income communities);
- (vi) The capture of land surplus value is rarely seen as an alternative to cover costs such as land supply and affordable housing;

(vii) They extend the scale of the assistance, by not relying only in housing provision by the State.

Critics to the instrument argue that inclusionary housing policies:

- (i) Are market housing provision, often replacing full public provision;
- (ii) Solve the housing problems generated by market condition by employing more market rules;
- (iii) Only work when the market is efficient. In weak market contexts, there is no provision of social housing;
- (iv) Must be accompanied by subsidy policies, but once home buyers receive subsidies, land prices inflate;
- (v) Distort the housing system for the production of homeowners rather than renters (social rental), policies that guarantee the permanence of the population that is pressured to sell their homes when the price of the land is high;
- (vi) In the context of a housing bubble (e.g. Spain), they helped to stimulate the real estate production and the entry of social housing in the market, with great advantages in the capture of land surplus values, but without actually guaranteeing the right to housing.

It is evident that these arguments relate to specific contexts. This paper seeks to bring new arguments for the Latin American context, with emphasis on two cases of São Paulo and Bogota, possibly the two most advanced cities in the use of instruments of urban management that come close to what international literature has been calling inclusionary housing policies.

## **6. Inclusionary housing policies in São Paulo, Brazil**

A recent debate around the revision of the Strategic Master Plan of São Paulo, approved in 2014, brought to light once again the discussion on the instruments for inclusionary housing. The subject of housing has been always more present than the debate over the commons – public spaces for culture, leisure, among other interests of the citizens –, translated in a greater debate and regulation for the production of social housing through the market and through urban development.

The new Plan broadened the debate on the definition of ZEIS, with proposals for regulatory instruments of urban restructuring for the attainment of land and resources for the promotion of social housing, such as the Solidarity Share; or the required percentage of resources for

social housing within the urban renewal projects. In addition, it combined ZEIS with instruments that might force the fulfilment of the social function of property.

### **6.1. Social interest housing in the Joint Urban Operations in São Paulo**

Since the 1990s, São Paulo has on-going Urban Operations and other urban restructuring instruments that can promote social housing projects, although little has been actually done. Urban Operations can be designed in municipalities' master plans to promote structural changes in large urban areas, through land-based incentives offered from public-private partnerships. It is a specific instrument to urban transformations, such as urban renewal projects or transformation of the land use in large areas (e.g. former industrial zones) etc. The City Statute (Federal Law 10.257/01) determines that a Joint Urban Operation must have an urban plan that defines, first which interventions will be done to structurally transform the area, and second, the infrastructure and urban improvements that will be funded with the recuperation of land surplus value. The selling of building right certificates brings resources that will fund the investments listed in the Urban Operation law, not incorporated to the public budget, but kept in a special fund.

The land surplus value in the area of a Joint Urban Operation is produced and captured through Building Rights Certificate (CEPACs), bonds that are purchased by competing developers through public electronic auctions regulated by *Comissão de Valores Mobiliários* (CVM, the Brazilian equivalent of the U.S. Securities and Exchange Commission). A critical view based on what was experienced in São Paulo points out that: (i) land surplus value is produced and captured in the same area, in a re-valuating processes; (ii) the Urban Operations did not comprised the design of urban plans, but only described a list of interventions, mainly of new transportation axes; (iii) there was no relation between intervention costs and the benefits achieved with the selling of building rights; and, (iv) because there was no definition of a period of time or phases for the projects to be implemented, some of the interventions were done, and some were not.

Urban Operations could be one of the best instruments for the promotion of social housing. However, Santoro and Macedo (2014) show that, whereas Joint Urban Operations in São Paulo are regarded as instruments for recovering land surplus values, which theoretically means the possibility of accessing resources for the promotion of social housing, reality shows that: (i) most of the funds obtained through the instrument are not invested in housing policies; (ii) the market is not producing HIS in the majority of the ZEIS within these perimeters; (iii) good

quality housing built in selected ZEIS are few and do not assist the totality of removed families; and also, (iv) that the adopted housing solution, be it relocation or compensation, might not be neither adequate or isonomic, and might not come to safeguard the permanence of the population in these areas.

In this same line, Santoro and Macedo (2014) go back to a recent presentation of the City Hall which showed that investments in affordable housing did not reach 10% of the resources of on-going Joint Urban Operations: Faria Lima reached 8%, Água Espraiada 7% and Água Branca 0%. Although all of these operations have been in development for over 10 years, investments in housing only came to happen quite recently.

## **6.2. New instruments for the promotion of HIS in the 2014 Strategic Master Plan of São Paulo**

The plan approved in 2014 estimates an expansion of the financial resources for the production of social housing in areas to be restructured. For those areas, an Urban Intervention Plan (PIU) must be elaborated, although it is not required that the basic content of the plan fixes a percentage of land or resources guaranteeing the production of social housing. Still, the PIU should meet the housing and social needs of the low-income resident population in the areas, whether they are affected or not by the interventions in the plan.

In order to be implemented, each PIU must be combined with one of the urbanistic instruments for management and funding provided by the Master Plan. It is only when combined with either Joint Urban Operations or Urban Intervention Areas (AIUs) that it is required that at least 25% of the funds raised are applied to HIS, preferably in the acquisition of plots. This means that, when combined with other instruments – such as Urban Concession, Local Structuring Areas (AEL) or real estate investment trusts – the obligation for reserving resources for HIS does not apply. Once again, these alternatives allow the market to deviate from the goals of the urbanistic regulation, which becomes ineffective.

For the area of urban restructuring, therefore, there is no definition of compulsory percentage of land or built area for social housing, but in some cases it is required a percentage of the financial resources. While Urban Operations have raised a lot of criticism, several other instruments have been left with no regulation. Yet, as the Master Plan defines that areas to be restructured are contained within the Macro-Area of Metropolitan Structuring, there is no provision of these instruments for areas of urban sprawl, which means that there is no percentage required for these cases.

Still regarding the percentage of financial resources, besides the PIUs' areas, there is the estimate that 30% of the resources from the Urban Development Fund (FUNDURB) – obtained from the selling of building potential in the whole urbanized area of the city, excepting those with PIUs – must be primarily used in “vacancy ZEIS” (ZEIS 3). By restricting it to few areas of ZEIS 3, specific areas are being chosen, in despite of other equally well-located areas, marked as vacancy ZEIS outside central areas (ZEIS 2), that could expand the offer of land to this end, collaborating with the offer of affordable land.

Yet, these earmarked resources expand the budget for social housing in the city. FUNDURB's revenue is estimated in 509 million BRL, which totals 152.7 million BRL for HIS, enough for building 1,300 to 1,500 housing units per year (Cabinet of Councillor Nabil Bonduki, 2014).

### **6.3. Unfulfilled promises: the Solidarity Share**

The Solidarity Share, listed in the Master Plan of São Paulo of 2014, determines that for each new major urban development, plan or project, a number of social housing will be provided by the developer, that can either produce the units himself or donate the land and the resources so the public power produces itself. The major innovation here was the incorporation of an instrument that would produce housing at the time and place where urban development happens, and that this production would be conditioned for licensing the project.

The initial idea was to require the production of new social housing units in developments with more than 10,000 m<sup>2</sup>, of which at least 10% of the total floor area should be delivered for the production of social housing for families with income up to six minimum wages (HIS 1 and 2). This proposal was modified during the process of debating the bill in the City Council, and the requirement changed for developments with more than 20,000 m<sup>2</sup> of computable built area (not total), for families with income of up to six minimum wages.

Moreover, alternatives to the production of HIS on the site of the project were created, allowing the developer to: (i) produce HIS on already structured areas of the city within the Macrozone of Urban Structuring and Qualification, excepting in those sectors not yet infrastructured; (ii) donate land worthing the equivalent of 10% of the total area of the project, calculated based on the Register of Land Value, which corresponds to about 80% the market value, in the same Macrozone cited above and with the same exceptions; or (iii) deposit in the FUNDURB the same amount described above, that should be “primarily” used in the purchase of land or subsidising the production of HIS, “preferably” in ZEIS 3. That is, for the developer, it

is a better option to pay for FUNDURB the amount corresponding to 80% of the market value of their land, than producing HIS in the same location of their project, with rare exceptions.

Beyond the creation of alternatives that made unviable the initial idea of the Solidarity Share, much was gained and then lost throughout the discussions of the bill in the City Council. Two important proposals were not approved: (i) that the area for HIS would be donated to the public power, and (ii) an article which provided the instrument's application in cases in which large projects are divided into several small ones, considering their cumulative impact.

If one expected that with these strategies of fundraising for the purchase of land (with resources from the Onerous Grant, Urban Operations, Urban Areas of Intervention, Solidarity Share) and with land donation to the government (Solidarity Share) the municipality would deliver land for the production of social housing, alternatives to the instruments might kill these strategies. They reflect the unequal correlation of power between the forces that battle for the profitability of their investments, against those who struggle for the right to housing, which focused their action on the demarcation of ZEIS.

## **7. Compulsory percentages of land and units for social housing in Colombia**

Regarding the compulsory percentage of land and units for social housing, the Law 388 defines that the POTs (equivalent to master plans) should determine the values to be allocated in the development of housing in urban sprawl land. The Partial Plans, differently, determine the allocation in those areas of urban renewal. Thus, two possibilities of urban restructuring, on more peripheral or central areas, are incorporated. In addition, a federal decree defined percentages for the donation of public areas in land parceling (subdivision) projects that will produce social housing, in which cases, housing with space for leisure and public facilities must be produced.

The percentages required for new parceling on sprawl areas in Colombia are similar to the percentages required for leisure area and public facilities under Brazilian federal law on land subdivision, Law 6,766/1979. In the same manner, a percentage for HIS would also be proposed, along the lines of what had been discussed under the bill that proposed changes in the Brazilian Subdivision Act (PL 3,057/2000).

As already mentioned, the required percentage, in order to be built, can also be determined through the Declaration of Priority Interest, in the case of land use qualification for *vivienda de interés prioritario*.

### **7.1. Compulsory percentages: the case of Bogota**

The 2000 POT of Bogotá (revised in 2003) created two types of housing:

(i) *Vivienda de interés prioritario* (VIP), equivalent version of HIS 1 in Brazil, which focus on the group of lowest income and has area of approximately 42m<sup>2</sup>. In the last review of Bogota POT, it reached families with income up to 1.6 minimum wages (in 2011, equivalent to \$ 270), and before that it reached families of up to 2 minimum wages;

(ii) *Vivienda de interés social* (VIS), equivalent version HIS 2 in Brazil, with approximately 55m<sup>2</sup>. This typology of housing is associated with mortgages and credit to homebuyers.

In the case of partial plans, Bogota's POT adopted different compulsory percentages for each area required to make a partial plan for urban sprawl: Ciudad Norte, the richest area of the city, must produce 20% of VIS and 15% of VIP; while Ciudad Sur and Ciudad Occidental should provide 50% of VIP and 30% of SIV. Still, any urban land must have 20% of VIS, without obligation for VIP (the percentages are applied to the floor area of each partial plan, discounting the areas of road infrastructure, public utilities and areas of conservation and environmental protection). Partial plans should establish when and at which steps these housing units should be built.

A review of the most up-to-date Bogota Plan initiated a discussion on the possibility that any new development should cede 30% of the land for VIP – in addition to the mandatory percentage of usable land in areas of urban sprawl or urban restructuring from the previous plan and indicated by Law 388/97. The debate has moved on and produced a normative that is very similar to the Solidarity Share in São Paulo: any development should either donate 20% of the land for *vivienda de interés prioritario* in the same area, or to donate land in another part of the city or through a cash payment. That means that also in Bogota the making of alternatives hindered the application of the instrument from its initial goals.

### **7.2. Macro projects**

Macro projects were defined by the Law 388/97 (art. 114), but only in 2011 they obtained a specific garment, with the Law 1,469/11, that created the *Macroproyectos de interés social nacional*, corresponding to a set of planning, financing and land management administrative decisions, to perform a large-scale operation that contributes to the territorial development of certain municipalities, districts, metropolitan areas or regions of the country, for the

production of social housing. They are the national government initiative on territories, which may involve one or more municipalities. Brazil recently adopted the Metropolis Statute, which also enables to perform inter-urban operations, in an obvious approach to this instrument.

The instrument was questioned, had its first version claimed unconstitutional and was then revoked, on the grounds that it hurt municipal autonomy by introducing changes in the POTs and imposing conditions to municipalities. In fact, the law provided some parameters that were more permissive than the ones of municipalities, such as a minimum plot of 35 m<sup>2</sup> for a single family, 70 m<sup>2</sup> for two families, and 120 m<sup>2</sup> for groups, which critics argued that would be leading to high densities and poor living conditions (Maldonado, 2008).

Since 2011, few cases have been implemented. At least two cases were documented in the literature, Ciudadela Gonzalo Vallejo Restrepo, estimating 8,500 houses, in the municipality of Pedreira (started in 2004), and another one in Bogota. None of the projects has been yet completed, but both are located in peripheral areas and include the production of affordable housing in large-scale, reproducing location patterns that concentrate the poor in the most remote areas, with a large-scale production of units.

## **8. Final considerations**

This paper has sought to show that there is an on-going Latin American laboratory, at least in two countries, of new initiatives for urbanistic regulation that aim at promoting social housing, either by means of land reserve in the zoning, or by fixing compulsory percentages for guaranteeing land and resources for the promotion of low-income housing in infrastructured and central areas.

However, modifications were made in the regulation, allowing alternatives that seem more interesting to the real estate market and less to the public interest. Possibilities such as delivering these housing units to groups of higher income, or that developers donate the land or provide homes in areas far from their developments, where the land is cheaper, among others, reproduce the logic of placing social housing in more peripheral areas, turning innocuous the aims of studied inclusionary housing policies, which consist in producing housing in more central and infrastructured areas, served by social facilities, public equipment and job offer.

The model of the segregated and gentrified city remains, threatening inclusionary policies. And without the promotion of policies that might prevent gentrification, e.g. social rents

articulated to a public bank of houses, those policies associated to urbanistic instruments, centred in a single model of home ownership, do complete the possibility of gentrification through the market.

Although the debate seems to address relevant points for the construction of new policies, the context of lack of regulation over the real estate market, or even the adequation of policies in its benefit, added to the balance of power which frequently pends to the side of the market, has not allowed its proper regulation. Consequently, initiatives of inclusionary housing policies fell into disrepute.

This paper shows that, although those inclusionary housing policies did have some social achievements, in some cases observed and underlined in order to guide policies, they were generically appropriated by the market logic, transferring the centre of these policies from the task of ensuring the realization of the right to the city to the assurance of the profitability, as imposed by the real state market.

## 9. Reference list

CALDAS, N. M. P. *Os novos instrumentos da política urbana: alcance e limitações das ZEIS*. Tese de Doutorado apresentada à FAUUSP. São Paulo, 2009.

CALAVITA, N.; MALLACH, A. *Inclusionary housing in international perspective: affordable housing, social inclusion, and land value recapture*. USA: Lincoln Institute of Land Policy, 2010.

CYMBALISTA, R.; TSUKUMO, I. L. Terra urbana para habitação social: alternativas à desapropriação na experiência brasileira. In: FERNANDES, E.; ALFONSIN, B. (orgs.). *Revisitando o Instituto da Desapropriação*. Belo Horizonte, Editora Fórum, 2009, pp. 85-118.

FARIA, J. R. V. de. Função social e IPTU Progressivo: o avesso do avesso num desenho lógico. In: *Anais do XV Encontro Nacional da ANPUR*, Recife-PE, maio 2013.

GATTI, S. Em busca de uma construção democrática no Projeto Nova Luz. In: *Anais do XV Encontro Nacional da ANPUR*, Recife-PE, maio 2013.

HARVEY, D. From Managerialism to Entrepreneurialism: The transformation in urban governance in late capitalism. *Geografiska Annaler*. Series B, Human Geography, Vol. 71, n. 1, 1989. p. 3-17.

MALDONADO, M. M.; PINILLA, J. F.; VITTA, J. F.; VALENCIA, N. *Planes parciales, gestión asociada y mecanismos de distribución equitativa de cargas y beneficios em el sistema*

*urbanístico colombiano: marco jurídico, conceptos básicos y alternativas de aplicación*. Bogotá: Lincoln Institute of Land Policy, 2006.

MALDONADO, M. M. La ley 388 de 1997 en Colombia: algunos puntos de tensión en el proceso de su implementación. *ACE*, Barcelona, año III, n.7, junio, 2008.

\_\_\_\_\_. Limitaciones de las políticas de suelo y vivienda social para superar la exclusión social: la experiencia de Bogotá. In: SALAZAR, Clara Eugenia (coord.). *I-regular: suelo y mercado en América Latina*. México, D.F.: El Colegio de México, Centro de Estudios Demográficos, Urbanos y Ambientales, 2012, pp. 159-212.

ROLNIK, R.; SANTORO, P. F. Zonas Especiais de Interesse Social (ZEIS) em cidades brasileiras – trajetória recente de implementação de um instrumento de política fundiária. *Foro Latinoamericano de Instrumentos Notables de Intervención Urbana*. Quito, Ecuador: Lincoln Institute of Land Policy, Banco del Estado de Ecuador, 2014. (cd-rom)

SANTORO, P. F.; MACEDO, S. M. A (des)articulação dos instrumentos de planejamento urbano sob a ótica das soluções habitacionais: remover, relocar ou indenizar na Operação Urbana Água Espreada. In: *III Encontro da Associação Nacional de Pesquisa e Pós-graduação em Arquitetura e Urbanismo*, São Paulo, 2014.

SANTORO, P. F.; BORRELLI, J. Os desafios de produzir habitação de interesse social em São Paulo: da reserva de terra no zoneamento às contrapartidas obtidas a partir do desenvolvimento imobiliário ou das ZEIS à Cota de Solidariedade. In: *Anais do XVI Encontro Nacional da ANPUR*, Belo Horizonte-MG, maio 2015.

SANTORO, P. F. O redesenho dos instrumentos urbanísticos e a equação (im)possível da garantia de rentabilidade da terra e do direito à cidade nos projetos urbanos. In: *Anais do XVI Encontro Nacional da ANPUR*, Belo Horizonte-MG, maio 2015.

SMITH, N. *The new urban frontier: gentrification and the revanchist city*. London: Routledge, 1996.

VILLAÇA, F. *Espaço intra-urbano no Brasil*. São Paulo: Studio Nobel, 1998.