

URBAN PLANNING INSTRUMENTS FOR PROMOTING SOCIAL INTEREST HOUSING:

FROM ZONING TO OBLIGATORY PERCENTAGES IN SÃO
PAULO, BRAZIL, IN DIALOG WITH BOGOTÁ, COLOMBIA

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ABSTRACT: *One of the major challenges for urban planning in Latin America is to provide low-income families with housing in areas that have an infrastructure and a good supply of jobs and services, thereby promoting diversity and equity, translated by mixing classes, races and social cohesion. This mission becomes increasingly difficult in a neoliberal capitalist context which transfers the task of providing land and housing for low-income families to the market and where the logic of such actions is based on achieving more rent from land and consequently of the holding of real estate becoming more profitable. This paper sets out to discuss two proposals for urban instruments that dialog with the production of housing through the market and guarantee of the right to the city. The first centered on the reserve of land for the production of social interest housing (HIS, in Portuguese) in the zoning by creating Special Social Interest Housing Zones (ZEIS, in Portuguese), spread throughout Brazil, and described here based on the experience of São Paulo. Or else, comparatively, classifying land to be used as a priority for social housing (vivienda de interés prioritario) widespread in Colombia, and here presented by the Bogota experience. There is another, which already has international experience and has recently been debated in Brazil, which consists of conceiving of the promotion of social interest housing policies based on the regulation of urban restructuring but experiences of this are rare in Brazil. These may be termed as inclusive housing policies. As a result, this article points out that the creation of alternative regulations has set the tone for the market to exclude itself from producing housing of social interest, and guarantees greater profitability to commercial undertakings.*

KEY WORDS: *zoning; Special Social Interest Housing Zones; social housing; Urban Operations; São Paulo - municipality; Bogotá.*

SOME OF THE THEORY ON INCLUSIONARY HOUSING POLICIES

One of the major challenges for urban planning in Latin America is to provide affordable housing for low-income families in areas with infrastructure, thereby 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, in which the logic of its activity is based on achieving the greatest profitability on real estate.

This neoliberal scenario has been taking shape since the 1990s, ranging from the reorganization of the State's role in urban transformation (in the context of an erosion of the municipal economic and tax base) to the withdrawal of the State from its role of being a direct funder of urban development. This period was associated with the strong encouragement of deregulation policies, privatization and liberation of markets, restructuring changes which 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, being replaced by the formula of "public-private partnerships".

In the field of housing policy, those programs that were once centred on large-scale State production, as happened for example in 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 for this production were structured in several countries.

The market's entry into the production of urban space has always been heavily criticized because it is grounded on assuring the profitability of real estate business obtained in the urban transformation.

This paper is organized into two parts that set out to discuss two proposals for urban instruments that are related to the production of social housing by the market:

- i. The first one, focused on the land reserve in the zoning for the production of social housing by creating Special Social Housing Zones (ZEIS), spread throughout Brazil and described here based on the experience of São Paulo. Or else, comparatively, the classification of land for *vivienda de interés prioritario* (priority social housing), widespread in Colombia, and presented here from the experience of Bogota;
- ii. The second proposal, which has some existing international experience and has only recently entered the debate in Brazil, consists of conceiving policies to promote social housing based on the regulation of urban restructuring. These can be termed *inclusionary housing policies*, found in several countries as documented by Calavita and Malatch (2010).
- iii. In Brazil, where experiences are still rare, this paper analyses the instrument called a Solidarity Quota and the production of social housing through Joint Urban Operations, both of which take place in São Paulo. In Colombia, the analysis is centred on 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 up by the macro-projects of social housing production by the Central Government, on a larger scale and number of units.

Considering that Latin America does not have a strong tradition of regulating urban restructuring – unlike the US or European countries whose experiences serve as a basis for arguments discussed in this article – the debate on implementing these instruments is permeated by the fear that aspects relating to the guarantee of public interests will be neglected when placed against the logic of profitability imposed by the neoliberal approach to urban transformation. In this context of non-regulatory tradition, the latter responds to the logic of the monetary appreciation of urban land and its role as an exchange value, thus moving away from a regard for rights and the notion of the value of using land and having access to land so as to guarantee the right to housing and to the city.

INCLUSIONARY HOUSING POLICIES DERIVED FROM THE LAND RESERVE IN ZONED AREAS

Inclusionary housing policies derived from the reserve of land in zoned areas 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 to those for whom the market does not offer this possibility. The most common example in Brazil is that of Special Social Interest Zones (ZEIS, in Portuguese). 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 bounded zones of areas considered underused, unused or not built on, which would be used to produce, primarily, social housing; the zoning was now nicknamed “vacancy ZEIS”.

In Brazil, much publicity was given to the instrument of ZEIS: just under one third of municipalities across the country reported having specific legislation on Zones or Areas of Social Interest¹ (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 publicity took place after City Statute (Federal Law No. 10.257/2001) had been approved. This is the legal framework that required municipalities with over 20,000 inhabitants to draw up or review a Master Plan. The measure allowed the instrument contained in the municipal plans to be expanded, usually accompanied by zoning and urban planning instruments.

Maldonado (2012), when describing the reasons behind using the reserve of land in the zoning of Bogota, points to the importance of zoning in supporting housing policies. According to her, this type of zone reduces the value of the land, thus 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 and Tsukumo, 2009). Furthermore, it meets the urban law principle of equitable delivery of charges and benefits and, perceptibly, reinforces the social function of property. Some of these effects commented on by others have not yet been well measured in the literature published in Brazil, e.g. there is no reliable up-to-date research that has succeeded in assessing the effect of zoning on land prices in Brazil.

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 more 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, a subject widely discussed in the literature (VILLAÇA, 1998; 2005; ROLNIK, 1997), it ensures that the poor can live in the city – in urbanized, well- equipped areas which have a good infrastructure – and not outside it. Thus, it is an instrument conceived to avoid urban segregation that argues that the demarcation of areas is meant to stimulate social and racial mix, and to promote spaces with social cohesion. In economic terms, it is expected that the coexistence of different social classes in the same area might have a positive impact for the groups of lower income who might benefit from positive externalities generated by higher income groups.

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

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

LAND RESERVE: THE EXPERIENCE OF IMPLEMENTING ZEIS IN BRAZIL

According to Rolnik and Santoro (2014) analysis of the implementation of the “vacancy ZEIS” since it was conceived in the 1990s shows 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 since Zeis was implemented has doubled the supply of land for this purpose and managed to negotiate the land, thereby effectively producing housing;
- ii. Recognize the right to housing and prevent forced evictions, or even to raise lawsuits that would be used to demand the production of social housing in areas from which original residents had been removed;
- iii. Offer and put land on the market, through negotiation and orchestrated mediation by the public authorities, thereby working actively to build up housing policy;
- iv. Gain production in scale, even more so if combined with housing policies for financing homebuyers, as in the case of the Program My House My Life (*Minha Casa, Minha Vida* in Portuguese) in São Paulo;
- v. Or even to do “more of the same”, i.e., to reproduce the poor examples of using regulatory instruments to allow the production of housing on smaller useful plots or in areas with less urban infrastructure, thereby reproducing the precariousness of the settlements in a new area.

Other challenges can be added to this assessment of the instrument. Further analysis of setting up 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 of the Land) was not linked to a housing plan with a quantitative and qualitative assessment of the reserve of land required to produce new housing units of social interest, or that might have intertwined ZEIS with other urban planning instruments in order to effectively use the land for social housing.

The instrument was also only somewhat combined with other mechanisms laid down in the City Statute, the purpose of which is to put pressure on landowners to make their land available for this production – such as the triad formed by Compulsory Subdivision, Construction and Use (PEUCs, in Portuguese), the Progressive Urban Property Tax (Time Progressive IPTU) and Expropriation with Government Bonds – or even that they worked as an alternative to the traditional expropriation proceedings, which are generally lengthy and costly – such as the Right of Preemption, and later the Donation in Government Bonds, among others – in order to corroborate the process of making urbanized land accessible, in accordance with 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, thereby allocating them to more profitable uses.

No less challenging is to make the territorial planning of the ZEIS, including the “vacancy ZEIS”, democratic and participatory. Gatti (2013) points out that the Nova Luz project in 2009, in São Paulo, was conducted without effective public participation in spite of residents and shopkeepers being subject to expropriations and evictions. In this context of conflict, the Advisory 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 the right to participation, and managed to legally stop the project being implemented.

Equally challenging has been the demarcation of ZEIS in more central areas undergoing urban restructuring, due to the high prices of the land that, if, on the one hand, prevent the government from purchasing it, on the other hand, due to the profitability of the land, the market is not interested in producing 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 difficult situation of families who might wish to remain on this land is aggravated because they feel under pressure from the possibility of selling their homes and taking a profit related to the good location, and therefore they negotiate their property and, very often, head back to the outlying, cheaper areas, thereby reinforcing the old centre-periphery model. In these cases, even though some housing units are subtracted from the final account, market logic sets itself apart from the logic of housing needs (on the same subject, and again for São Paulo, see Santoro and Macedo, 2014). And moreover, this draws attention to more complex processes of gentrification that occur because of the action of the housing market over time (SMITH, 1996).

THE CASE OF ZEIS IN SÃO PAULO

Santoro and Borrelli (2015) indicated that discussions on the master plan of São Paulo could be divided into two broader groups: on the one hand, there were the elites concerned about safeguarding their victories (e.g. preventing mixed use in exclusively residential areas), and, on the other hand, there were residents of outlying areas, demanding improvements in sanitation, infrastructure and, primarily, clamouring for the setting of new ZEIS perimeters. Organized urban social movements demanded the latter.

However, the perimeters of ZEIS have never exceeded 10% of the urbanized area and, of those, only 1% were vacant ZEIS. More “vacancy ZEIS” were demanded by social movements, but technicians in the Municipal Housing Agency resisted, using the justification that the price of land was too high to be able to buy such land for social housing and because the size of the properties was below ideal pre-established standards, e.g. with very small plots.

ZEIS are zones in which a mandatory percentage is set aside for social housing. The “vacancy ZEIS” (ZEIS 2 and 3) required the production of 40% of social interest housing (HIS, comprising families with an income of between 0 and 6 minimum wages), of 40% of low-income housing (HMP - in Portuguese - , households with an

income of between 6 and 16 minimum wages), and of 20% for other uses. It must be highlighted that it is unusual in Brazil that a zone has a compulsory percentage set for a specific use, as zones will customarily only restrict uses and lay down occupancy standards. But because the ZEIS of São Paulo were used as an example for other national experiences, the instrument was drawn up with mandatory percentages for HIS and HMP and publicized all over Brazil.

Among the innovative aspects of the delimitation of ZEIS in São Paulo is the inclusion of buildings occupied by squatters in the city centre and the social pressure to establish a rehabilitation program for delivering under-used buildings in the centre from which to produce social housing (CYMBALISTA; TSUKUMO, 2009).

Another relevant aspect was the methodology for setting the perimeters of ZEIS in the belts around the centre: perimeters should combine properties with “housing problems”, such as tenement 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 belt, while the public power chose not to interfere in areas that attracted most interest from the property market at that time.

Little progress was made in the revision of the 2014 Master Plan, conducted throughout 2013. A framework of housing needs in the city was drawn up: there was a demand for 230,000 new homes, for refurbishing about 890,000 households (which had problems with conforming to formal, urban planning or building regularization), besides the housing solution for about 13,000 people living on the streets (Municipal Housing Plan 2009-2014). The estimate for 2024 is even greater, the demand being for almost 720,000 new homes. In order to produce this amount, 42 km² of land resources would be needed and only 8 km² were earmarked for this purpose. The framework has prompted the development of some strategies to anticipate and facilitate the access to land and resources for producing social housing.

A first strategy, needed to overcome resistance and approve the Master Plan, was to differentiate “vacancy ZEIS” in two directions.

The first, known as “the social movements’ ZEIS”, changed the parameters in the “vacancy ZEIS” (ZEIS 3), which now required a mandatory percentage of 60% of the built area for families with an income of between 0 and 3 minimum wages, who cannot afford to pay for a home loan and are the largest group of those affected by 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 for correcting the way the instrument was being used. The previous plan allowed assistance for families with an income of between 0 and 16 minimum wages but, as the minimum wage increased significantly in the last decade, this distorted the social groups that were able to access subsidised housing in the zone, which began to go back to primarily the middle classes.

The other one became known as “market ZEIS” (ZEIS 5). This incorporated the request made by the real estate market that the ZEIS should have a higher percentage of HMP, built for families whose income ranges from 6 to 10 minimum wages, and a lower one for HIS, thus making the product more profitable, which would cause the market to be interested 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 increasing

the number of perimeters from 964 to 2,281. The total area of ZEIS increased from 8 km² to approximately 41 km², but even so, the perimeters that grew the most were those of occupied ZEIS (Office of City Councillor Nabil Bonduki, 2014). However, if the areas of ZEIS considered unused, underused or not built – ZEIS 2, 3, 4 and 5 – are added, they grew at a similar value to ZEIS 1 alone, of 18.62 km² –, yet they still occupy only 35.86 km² (and have some demarcation problems) (SANTORO; BORRELLI, 2015).

As third strategy, the Plan sought to consider the territory as an important part of a social housing policy, and thus reserved land and resources for social housing and interlinked these instruments with those that put pressure on the social function of property and the city being fulfilled, as will be discussed later.

The framework for tackling housing needs by using 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, which to date have not been modified;
- ii. Upper-market housing projects occupying the totality of some perimeters of ZEIS, allowed to remain because they have the *right of protocol* (projects were filed before the Master Plan was adopted), or in some cases, even endorsed by a special council that evaluates cases requiring exceptional approval or those corruption in the process of approval (as was the case of Solomon’s Temple, which fully occupies one ZEIS). The transition from master plans kept this possibility;
- iii. Areas that remain unoccupied in ZEIS given the difficulty of approving projects in a protected area of springs that supply water, the regulations for which are more restrictive than those of the municipal legal framework (SANTORO; BORRELLI, 2015).

Moreover, the assessments show that there must be good technical staff who will monitor the specificities of the instrument of approval with a view to avoiding distortions.

COUP DE GRACE: FROM LAND RESERVE TO THE POSSIBILITY OF PRODUCING SOCIAL HOUSING OUTSIDE ZEIS

“Vacancy ZEIS” in Brazil today could have a strategic role in a policy aimed at requiring, from private entrepreneurs, both land and resources for the production of social housing, and could indicate where the market should produce such units. But in order to facilitate even more the production through the market, the strategy adopted by the municipalities has been to create rules for producing 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 seeking housing assistance. These two aspects have hampered the effectiveness of the ZEIS in the context of firmly-rooted neoliberal rationality (SANTORO; MACEDO, 2014).

Apart from these reasons, the inefficacy of ZEIS can also be explained because of what took place outside their perimeters.

The idea was to make ZEIS areas attractive for the real estate sector by assigning

higher coefficients of land use, while other areas would have their coefficients lowered. However, what happened was that other areas were also allowed to become denser, which meant that the ZEIS did not become as attractive as expected (CYMBALISTA; TSUKUMO, 2009).

The real estate market asked the public authority 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 leverage increased profitability. Also, the market protested because it had to deliver housing units for residents indicated by the City (CALDAS, 2009).

Several modifications were made to the instrument by using decrees thereby allowing, *inter alia*, the production of social housing outside ZEIS, usually on cheaper land, reinforcing the peripheral pattern of the 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 (CALDAS, 2009 *apud* ROLNIK; SANTORO, 2014).

This scenario of an increased supply of units outside ZEIS in São Paulo changed considerably after the introduction of the Federal program Minha Casa Minha Vida, in 2009, which offered subsidies to home buyers with an income ranging from 1 to 6 minimum wages. An evaluation of the period 2005-2010 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 them (3,500 housing units)”. There was also a significant increase in the total number 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 piece of 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 approved as HIS projects, and thus distorting the objective of the instrument (SAMORA; HIRATA, 2013).

The analysis of SECOVI data seems to show that the instrument was interesting even in the context of high property prices, considering the compensation to land-owners by means of subsidies to homebuyers. However, considering that the period analysed coincides with many complaints and acknowledged cases of corruption, it is reasonable to question the validity of these results, by recognizing there were cases in which upper-market projects were approved as HIS ones.

In any case, considering (i) that the final design of the perimeter of ZEIS proved to be 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 promoting the social function of property, it is crucial to consider the uniqueness of the application of ZEIS in São Paulo.

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). Especially Law 388/97 introduced instruments related to the production of social housing, to be adopted by municipalities and better regulated in their Plans for Land Management (POTs, in Spanish).

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 that of the ZEIS in Brazil.

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 may 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 the 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 bounded on plans in other scales, as is the case with *Áreas de Actuación Urbanística*. By delimiting these areas, the promotion of social housing could happen either by qualifying land use in the zoning, or yet, by determining a mandatory percentage of area to be set aside for social housing, and this can be defined for any urban development project, either for restructuring or for urban sprawl areas, in the POT.

The Declaration of Priority Development allows the municipality to auction land which the 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 at prices previously fixed. To do so, the Declaration must be established in the POT, and every 4-year 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 from issuing its own regulations, and the subject ended up making no progress as it did not take shape as an urbanistic obligation.

INCLUSIONARY HOUSING POLICIES DERIVED FROM URBAN RESTRUCTURING REGULATION

Within the purposes of the regulation of the urban structuring combined with inclusionary housing policies is the aim of regaining for the collective, part of the land surplus value that the private sector obtains with the appreciation that follows flexibilizing the rules of use and occupation of the land, often required by the market in projects that will transform urban areas. The recuperation of this surplus can be achieved by capturing resources, which go to a fund that promotes public interests 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), for less profitable uses of land which are in the public interest.

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

According to the 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; safeguarding that a percentage of properties in the project is either delivered for social rent or sold at affordable prices, which is usually between 10 and 20% of the properties produced, aimed at low-income families unable to purchase housing on the open 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 incorporated company (CALAVITA; MALATCH, 2010).

These policies are based on assumptions that housing production costs reflect, *inter alia*, 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 (such as being able to build more or to implement more rentable uses), designed to simultaneously enforce the production of social housing and make real estate business viable. Thus, it is expected that costs estimated by the entrepreneurs will be compensated for, at the same time as land surplus value recovers for the benefit of the public, by producing housing units. In Brazil, especially in São Paulo, this aspect of “compensation to the owners” described above has been firmly embedded in urban regulation (ROLNIK; SANTORO, 2014).

Considering that there is no tradition of regulating urban transformation 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 the use value and access to land predominate, translated by 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 work together with the occupation of degraded and inner-city areas (Latin American context);
- ii. They prevent urban sprawl, and likewise, help sustain the urban environment and 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 used to produce social housing;
- iv. They may be a response to government policies, which have segregatory typologies and processes which have been heavily criticized (e.g. in many studies that address racial issues in the USA);
- v. There might be gains for low-income groups from externalities by proximity to groups of higher income, if they are mixed into 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 on the State to provide housing.

Critics of the instrument argue that inclusionary housing policies:

- i. Are a form of housing provision by the market, which often replaces full public provision;
- ii. Solve the housing problems generated by the condition of the market by using 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 towards the production of homeowners rather than renters (social rental), and distort policies that guarantee the permanence of the population that comes under pressure to sell their homes when the price of the land is high;
- vi. In the context of a housing bubble (e.g. Spain), this policy helped to stimulate 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 vis-à-vis the Latin American context, with emphasis on a case from each of São Paulo and Bogotá, possibly the two cities that are the most advanced in the use of instruments of urban management that come close to what international literature has been calling inclusionary housing policies.

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 others in the interest of all citizens –, translated into a larger debate and regulation for the production of social housing based on the activity of the property market and urban development.

The new Plan broadened the debate on the definition of ZEIS, with proposals for regulatory instruments for urban restructuring so as to obtain land and resources to promote social housing, such as the Solidarity Share; or the required percentage of resources for social housing within urban renewal projects. In addition, it combined ZEIS with instruments that might press for the social function of property to be fulfilled.

SOCIAL INTEREST HOUSING IN THE JOINT URBAN OPERATIONS IN SÃO PAULO

Since the 1990s, São Paulo has had 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 by public-private partnerships. This is a specific instrument for urban transformations, such as urban renewal projects or transformation of the use of land 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 undertaken that will structurally transform the area, and secondly, what the infrastructure and urban improvements are that will be funded from the recuperation of the surplus value of land. The selling of building right certificates brings resources that will fund the investments listed in the Urban Operation law, but are not incorporated into 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 via public electronic auctions regulated by the *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 comprise the design of urban plans, but only described a list of interventions, mainly of new transportation axes; (iii) there was no relationship between intervention costs and the benefits achieved by selling building rights; and, (iv) because there was no definition of a period of time or phases in which to implement projects, 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 serve the totality of families removed; and also, (iv) that the adopted housing solution, be it relocation or compensation, might not be either 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 were only made quite recently.

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 drawn up, 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. Yet, 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 urban instruments for management and funding laid down in 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 urban regulation, which becomes ineffective.

For the area of urban restructuring, therefore, there is no definition of a compulsory percentage of land or built area for social housing, but in some cases, a percentage of the financial resources is required. While Urban Operations have been subject to a lot of criticism, several other instruments have been left without regulation. Moreover, 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 obligatory percentage required for these cases.

Still regarding the percentage of financial resources, besides the PIU areas, there is the estimate that 30% of the resources from the Urban Development Fund (FUNDURB) – a fund obtained from selling land with building potential in the whole urbanized area of the city, excepting those with PIUs – should be “preferentially” used on “vacancy ZEIS” (ZEIS 3). By restricting this to a few ZEIS 3 areas, specific areas are being chosen, despite there being other equally well-located areas,

marked as vacant ZEIS outside central areas (ZEIS 2) that could expand the offer of land for this end, thereby working with the offer of affordable land.

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

UNFULFILLED PROMISES: THE SOLIDARITY QUOTA

The Solidarity Quota, 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 units will be provided by the developer, who can either produce the units himself or donate the land and the resources so the public authority itself produces these. 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 by licensing the project.

The initial idea was to require the production of new social housing units in developments with an area greater than 10,000 m², of which at least 10% of the total ground area should be set aside for the production of social housing for families with an income of 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 m² of computable (not total) built area, for families with an income of up to six (and not three) 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 worth the equivalent of 10% of the total area of the project, calculated based on the Register of Land Value, which corresponds to about 80% of 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 the FUNDURB the amount corresponding to 80% of the market value of their land, than to produce HIS in the same location as their project, with rare exceptions.

Beyond the creation of alternatives that made the initial idea of the Solidarity Share unviable, 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 authorities, and (ii) an article which laid down the application of the instrument in cases in which large projects are divided into several small ones, which considered their cumulative impact.

If anyone expected that with these strategies of raising funds 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 off these strategies. These 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, who focused their action on the demarcation of the ZEIS.

COMPULSORY PERCENTAGES OF LAND AND UNITS FOR SOCIAL HOUSING IN COLOMBIA

Regarding the compulsory percentage of land and units for social housing, Law 388 defines that the POTs (equivalent to municipal master plans) should determine the values to be allocated to 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 such 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 prioritário*.

COMPULSORY PERCENTAGES: THE CASE OF BOGOTA

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

- i. *Vivienda de interés prioritário* (VIP), equivalent version of HIS 1 in Brazil, which focuses on the lowest income groups and has an area of approximately 42m². 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 an area of approximately 55m². 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 VIS. Moreover, 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. It is seen that there was a considerable increase in the percentage of affordable housing in which poor families are already concentrated, and irregular occupation, compared to the more valuable area, where the percentage is only 15%.

A review of the most up-to-date Bogota Plan initiated a discussion on the possi-

bility that any new development should cede 30% of useful 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, creating alternatives hindered applying the instrument with its initial goals.

MACRO PROJECTS

Macro projects were defined by Law 388/97 (art. 114), but only in 2011 did they obtain a specific apparel, with Law 1,469/11, which created the *Macroproyectos de interés social nacional*, corresponding to a set of planning, financing and land management administrative decisions so as 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 at the initiative of the national government on territories, which may involve one or more municipalities. Brazil recently adopted the Metropolis Statute, which also enables inter-urban operations to be conducted, in an obvious approximation of this instrument.

The instrument was questioned, had its first version considered unconstitutional and was then revoked, on the grounds that it hurt municipal autonomy by introducing changes in the POTs and imposing conditions on municipalities. In fact, the law provided some parameters that were sometimes more permissive than those of municipalities, such as a minimum plot of 35 m² for a single family, 70 m² for two families, and 120 m² for groups, which critics argued would lead 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, with an estimate of 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 farthest outlying areas, where there is a large-scale production of units.

FINAL CONSIDERATIONS

In the case of land reserve instruments, the dialog of the Brazilian experience with the Colombian one shows the first is very traditional, still uses zoning as a matrix, while the latter is directly linked to the fulfillment of the social function of property, without which it does not exist. Moreover, the Colombian case brings the need for development plans with a shorter time frame than a territorial development plan (equivalent to our master plan on working at the municipal level), functioning as a plan of governance that necessarily associates targets with transformations of the territory. However, these are more normative developments than practices, since the

city of Bogota, chosen for this dialogue, had numerous management difficulties and legal disputes - disputes that are closely linked to the fact that the instrument is intertwined with those who are pressing for the social function of property to be fulfilled, provoked an emergency that causes resistance to its application - and the instrument ended up not being used.

In the case of instruments that require a mandatory percentage of social housing production, both Brazilian and Colombian experiences point to the difficulty of incorporating these percentages on better-located areas, thus highlighting the taboo that exists in relation to the subject of "good location" and the logical resistance of the market, supported by legislation that translates % of land with % of resources, which is not at all the same thing, and this is also pointed out in the literature (Villaça, 1998). This resistance translates into the creation of alternative rules that impose good locations for resources, with arguments concerning the increase in the quantity to be produced.

This paper has sought to show that there is an on-going Latin American laboratory, at least in two countries, of new initiatives for regulating town planning that aim at promoting social housing, either by means of land reserve in the zoning, i.e., by setting compulsory percentages to guarantee land and resources so as to promote low-income housing in more central areas, which already have infrastructure.

However, modifications were made in the regulation, allowing alternatives that seem more interesting to the real estate market and less so to the public interest. Possibilities such as delivering these housing units to higher income groups, or that developers donate the land or provide homes in areas far from the developments, where the land is cheaper, *inter alia*, reproduce the logic of locating social housing in more peripheral areas, thereby making the objective of the inclusionary housing policies studied innocuous, the objective being to produce such housing in more central areas which already have infrastructure and are well served by social facilities, public services and job offers.

The model of the segregated and gentrified city remains, thus threatening inclusionary policies. And without the promotion of policies that might prevent gentrification, e.g. social rents linked in with a public stock of houses, those policies associated with town planning instruments, centred on a single model of home ownership, complete the possibility of gentrification by 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 making policies adequate on behalf of these interests, added to the balance of power which frequently leans to the side of the market, has not allowed this to be properly regulated. Consequently, initiatives of inclusionary housing policies have fallen 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 logic of the market, thereby transferring the centre of these policies from the challenge of ensuring the realization of the right to the city to the assurance of profitability, as imposed by the real estate market. And these include taking its new financialised configurations into consideration.

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R E S U M O : *Um dos grandes desafios para o planejamento das cidades latino-americanas é prover com habitação famílias de baixa renda em áreas infraestruturadas, com boa oferta de empregos e serviços, promovendo diversidade e equidade, traduzido pela mistura de classes, raças e coesão social. Essa missão torna-se cada vez mais difícil em um contexto capitalista neoliberal, o qual transfere ao mercado a tarefa de prover terras e moradias para famílias de baixa renda e cuja lógica de atuação está baseada na obtenção da valorização da terra e, conseqüentemente, da maior rentabilidade imobiliária. Este artigo pretende discorrer sobre duas propostas de instrumentos urbanísticos que dialogam com a produção da habitação via mercado e garantia do direito à cidade. Uma primeira centrada na reserva de terra para produção de habitação de interesse social (HIS) no zoneamento, através da criação das Zonas Especiais de Interesse Social (ZEIS), disseminadas pelo Brasil, aqui descritas a partir da experiência da cidade de São Paulo. Ou ainda, comparativamente, a qualificação do solo para vivienda de interés prioritário, disseminada na Colômbia, aqui apresentada pela experiência de Bogotá. Outra, que já possui experiências internacionais e que vem recentemente sendo debatida no Brasil, que consiste na concepção de políticas de promoção de habitação de interesse social a partir da regulação da reestruturação urbana, ainda com raras experiências no país. Estas podem ser denominadas como políticas habitacionais inclusivas. Como resultado, aponta que a criação de regulações alternativas tem sido a tônica para que o mercado se exclua da produção de habitação de interesse social e garanta uma maior rentabilidade ao empreender.*

P A L A V A S - C H A V E : *zoneamento; Zonas Especiais de Interesse Social; habitação social; Operações Urbanas; São Paulo – município; Bogotá.*