

Report on the São Paulo Consultation on Security of Tenure, June 17th, 2013.

The event organized in São Paulo on June 17th, 2013, was attended by 28 people from different regions of the country, including representatives from government, academia, NGOs that work with technical and legal support to urban communities, and social movements.

The main goal of the Consultation was to identify relevant aspects of the Brazilian experience to help define guidelines on security of tenure for the urban poor, which will be presented to the UN Human Rights Council. It also aimed to discuss in what measure new guidelines about the issue, conceived in an international venue, could in turn strengthen tenure security for the urban poor populations in Brazil.

This report succinctly presents the main debates around the issues of land regularization, the social function of urban property and how this concept may improve the access to land for social housing, and also the theme of forced evictions. At the end of the event, proposals for international guidelines were debated.

The Brazilian Experience on Land regularization

Based on their experience, the participants presented their considerations on land regularization. After their presentations, all participants debated the issue. There was consensus on the following aspects:

- Events depend very much on the local government, on how it is politically and institutionally structured and on how much importance it attributes to land regularization policies.
- Although the Brazilian legal framework is advanced, its efficiency is limited by an absolutely discretionary enforcement, which depends on the sensitivity of the local government to the issue.
- In the past, the issue of land regularization had greater importance in the country's public agenda, especially in the context of recognition of rights. At that time, on the other hand, the regularization had a more complex approach

to the issue and the procedures were much slower because there was neither specific legislation nor sufficient available resources.

- In the present context, with so much progress in legal frameworks, and greater availability of resources (PAC, MCMV¹ etc.), the land regularization agenda is marginalized, and national policy changed to prioritize the large-scale housing production.
- Within the logic of federal housing and urban policies priorities, there is a clear tendency to, on one hand, dismount collective tenure security instruments (CDRU, CUEM²...) and, on the other, strengthen individual freehold.
- Two dimensions were perceived in titling: first, the deed as a legal recognition of the right itself, and second as social/symbolic recognition of poor people's territory in the city. These two dimensions may or may not combine.
- The country's housing and urban policies are not oriented by the recognition and strengthening of tenure security. Expressions of this new context are: the exclusive promotion of individual freehold by the MCMV program, and the weakening of concessions as a mechanism to ensure rights, considering that titled families in areas already regularized with concession titles are being forcefully evicted.
- It was also noted that "cities" have been created without titles or registration. Both slum upgrading projects and housing projects (MCMV) are not promoting families' titling. The process of land regularization seldom reaches the recording of titles phase, a fact that leads to community insecurity.
- Notary offices resist promoting the registration of titles CDRU/CUEM, which should be fully recorded to get the full legal and title security bestowed on individual freehold.
- The main bottlenecks faced by the efficacy of actions for land regularization are license issuing (which need a national regulation); the conflict of competencies between different entities (national X local governments) and also the conflict

¹ PAC and MCMV are Portuguese acronyms for two Brazilian federal programs, respectively the Program for Growth Acceleration, and My House, My Life, a national housing project.

² CDRU and CUEM respectively stand, in Brazil, for two juridical figures to concede public land use, respectively: Concession for Real Right of Use (Concessão de Direito Real de Uso), and the Special Concession for Social Housing Use (Concessão de Uso Especial para Fins de Moradia).

within the same sphere (between different ministries at national level or different secretariats at the local level); the lack of technical and operational capacity at all governmental levels; and the profound ignorance and formalist vision of notary offices.

- About collective instruments: they are seldom adopted. On one hand, a collective instrument is identified as a strengthening mechanism of community rights, and, on the other, families “wish” to convert their title into an individual freehold title, as it would supposedly open credit access and greater “legal security.”
- Brazilian legal framework is advanced, but not much, as it does not focus on true collective property.
- The land regularization process may promote the community’s strengthening when it is configured as a social organization mechanism and it actively involves the community. However, in most cases, participation spaces are merely formal.
- The (false) dichotomy between environmental and social issues is used as an obstacle to recognize and effective the right to housing, and it is often interpreted as a conflict between environmental and urban legislations.
- Where is the place in the city for those without tenure (homeless, etc.)?

Other important points for land regularization:

Since 2004 there is a national policy for land regularization, but it still depends on scarce resources. The processes of land regularization that were concluded are insignificant (since 2004, only 7% of the families obtained registered titles; since 2007, just 3% of the families included in slum upgrading projects within PAC were titled).

There is currently incipient land regularization in private areas.

In public areas belonging to the Federal Government (CDRU and CUEM), concession instruments are applied just for certain uses (mainly for social housing), which are written in the concession instrument, and there can not be any deviance from those.

There are double standards regarding validity of public titles: the rights of families already titled are not recognized and/or respected when they are subject to evictions

or granted compensation only for improvements on the property, while developers with precarious authorizations to use public land (registered occupation of federal lands, and other) have their projects approved and implemented.

Social function of property and land access for social housing (HIS³)

The participants presented, based on their experience, answers to the issue of social function of property, and of access to social housing. Afterwards, all participants debated the subject. Main points approached were:

- There is no consolidated jurisprudence about the social function of property. Thus, courts arbitrarily judge cases involving conflict of interest between property rights and the social function of property.
- Urban instruments defined by the City Statute represent an improvement within the dispute for land access by poor urban populations. However, validating the social function of property through effective use of urban instruments still depends mostly on the will of local governments. It is necessary to advance on control mechanisms to fully enforce the application of such instruments.
- It is necessary to establish mechanisms to confront market forces in order to provide access land for the urban poor.
- The Social Interest Special Zones (ZEIS, in the Portuguese acronym) are the most innovative instrument, and the most appropriated by the population and by local governments; and it is the instrument that advanced most in its application. ZEIS represent the recognition of the existence of popular territories, and of resistance strategies.
- It is necessary to clearly define what is “public interest.” Currently, on behalf of public interest, different kinds of urban interventions that violate rights are approved.

³ The Portuguese acronym stands for Social Housing.

- The occupation of a territory's portion is determined more by economic, social and political conditions of the occupiers than by the nature of the instrument mobilized to recognize tenure rights to the area.
- Challenge: how to introduce the concept of social function of **tenure**, especially in courts, replacing the simple concept of property?

Three other important points in the debate about social function of property and of access to land for social interest housing were mentioned: the need to eliminate the courts' privatism culture, and to change criteria for choosing judges; the lack of knowledge in the courts about urbanistic concepts; and the need for mechanisms that compel the courts to take responsibility in assuring human rights.

Evictions.

Also based on their experience, others participants presented their considerations on evictions. A debate with all participants followed. Main points mentioned were:

- Lack of uniformity and thus extreme discretionary actions of entities promoting urban interventions when providing compensation for evicted families. These entities' actions and compensations vary according to the degree of resistance and organization of the affected community.
- The intervention plan for infrastructure projects usually does not include an accurate plan for evictions, often lacking information on how many families will be evicted, who will have to leave, etc. In that case, the rule is the unpredictability of the project.
- Often, in case of evictions, there is neither participation of the community nor transparency in the process. This could be supposedly explained by the fact that the government does not recognize the rights of families residing in such settlements: if families do not have their rights recognized, then they have no right to intervene in the process involving their eviction.
- It is needed a national regulation with clear guidelines on evictions, including: the obligation to formulate an eviction plan within urban intervention projects;

procedures and criteria for evictions; and adequate definition of assistance options to affected families.

- There is also need to build parameters to define the amount of compensations based on the right to adequate housing, not on economic biases.

Other important points about evictions were mentioned: the need to approach cases of market-driven evictions, when families are affected and expelled from their territories as a consequence of indirect impacts and of the real estate appreciation due to developments in the area.

There are numerous cases of isolated evictions (because of risk situations or conflict of interest), to which it is difficult to offer resistance.

There is need to make public the administrative processes where the State is a part, to make them more transparent and allow the parts to confront each other.

Finally, there is a need to create other mechanisms to protect vulnerable communities and resist to pressures from the real estate industry, such as the institute of legal preservation of a property because of its historical or cultural value.

Guidelines from Brazil to the World

These are the relevant aspects of the Brazilian experience that may help define guidelines on tenure security for the urban poor that will be presented to the UN Human Rights Council:

- 1- Instruments for the recognition of tenure rights, already found in legal frameworks, are diverse and sufficient to respond to different situations. Normative basis and regulation framework were constituted with social participation and pressure.
- 2- The Social Interest Special Zones (ZEIS, established in empty or occupied lots) constitute a planning, resistance, and rights recognition instrument most appropriated by the population and government. The application of this instrument makes possible to maintain the poor urban communities in well located urban lands and to insert them into the formal city.

- 3- Although themes of social control, social construction, and social participation were raised as an integral part of disputes and a battle flag of social movements, in most cases their implementation is limited to mere formality. Effective mechanisms or practices of participation are not established.

Guidelines from the World to Brazil

These aspects might be approached by new international guidelines, and may, in turn, strengthen tenure security of poor Brazilian urban population:

- 1- State commitment (government and courts) to right to housing.
- 2- Clearer legal mechanisms.
- 3- Definition of parameters to compensate all forms of tenure. Compensations' amounts must reflect the assurance of the right to adequate housing. There should be no eviction without a previous and adequate alternative.
- 4- Eviction must be the last option, and parameters must be defined in order to respect right to housing.
- 5- Definition of the social function of tenure, and of social tenure.
- 6- Effective enforcement of housing rights laws already in place.
- 7- Incorporate the concept of social justice vs. social licensing.